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HOUSE BILL 1863

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Gombosky, Cairnes and McIntire; by request of Department of Revenue

Read first time 02/12/2003. Referred to Committee on Finance.

1 AN ACT Relating to implementing the streamlined sales and use tax  
2 agreement; amending RCW 82.08.010, 82.12.010, 82.04.040, 82.04.050,  
3 82.14.050, 82.14.070, 82.08.050, 82.04.470, 82.08.064, 82.14.055,  
4 82.32.430, 82.08.02566, 82.12.02566, 82.08.037, 82.12.020, 82.12.040,  
5 82.12.060, 82.08.0293, 82.12.0293, 66.28.190, 82.04.272, 82.04.4289,  
6 82.08.0281, 82.12.0275, 82.08.0283, 82.12.0277, 82.14.020, 82.04.215,  
7 82.04.29001, 82.12.0284, and 82.04.120; amending 2002 c 67 s 18  
8 (uncodified); reenacting and amending RCW 82.14.020; adding new  
9 sections to chapter 82.02 RCW; adding new sections to chapter 82.08  
10 RCW; adding new sections to chapter 82.32 RCW; adding new sections to  
11 chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; creating  
12 a new section; and providing an effective date.

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

14 **INTENT**

15 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.02 RCW  
16 to read as follows:

17 (1) It is the intent of the legislature that Washington join as a  
18 member state in the streamlined sales and use tax agreement referred to

1 in chapter 82.58 RCW. The agreement provides for a simpler and more  
2 uniform sales and use tax structure among states that have sales and  
3 use taxes. The intent of the legislature is to bring Washington's  
4 sales and use tax system into compliance with the agreement so that  
5 Washington may join as a member state and have a voice in the  
6 development and administration of the system, and to substantially  
7 reduce the burden of tax compliance on sellers.

8 (2) This act does not include changes to Washington law that may be  
9 required in the future and that are not fully developed under the  
10 agreement. These include, but are not limited to, changes relating to  
11 online registration, reporting, and remitting of payments by businesses  
12 for sales and use tax purposes, monetary allowances for sellers and  
13 their agents, sourcing, and amnesty for businesses registering under  
14 the agreement.

15 (3) It is the intent of the legislature that the provisions of  
16 chapters 82.08 and 82.12 RCW be interpreted and applied consistently  
17 with the agreement.

18 (4) The department of revenue shall report to the fiscal committees  
19 of the legislature on January 1, 2004, and each January 1st thereafter,  
20 on the development of the agreement and shall recommend changes to the  
21 sales and use tax structure and propose legislation as may be necessary  
22 to keep Washington in compliance with the agreement.

23 **PART I--DEFINITIONS**

24 **Sec. 101.** RCW 82.08.010 and 1985 c 38 s 3 are each amended to read  
25 as follows:

26 For the purposes of this chapter:

27 (1) "Selling price" includes "sales price." "Sales price" means  
28 the total amount of consideration, (~~whether money, credits, rights, or~~  
29 ~~other property except trade-in property of like kind, expressed in the~~  
30 ~~terms of money paid or delivered by a buyer to a seller without any~~  
31 ~~deduction on account of the cost of tangible property sold, the cost of~~  
32 ~~materials used, labor costs, interest, discount, delivery costs, taxes~~  
33 ~~other than taxes imposed under this chapter if the seller advertises~~  
34 ~~the price as including the tax or that the seller is paying the tax, or~~  
35 ~~any other expenses whatsoever paid or accrued and without any deduction~~

1 ~~on account of losses; but shall not include the amount of cash discount~~  
2 ~~actually taken by a buyer; and shall be subject to modification to the~~  
3 ~~extent modification is provided for in RCW 82.08.080.~~

4 ~~When tangible personal property is rented or leased under~~  
5 ~~circumstances that the consideration paid does not represent a~~  
6 ~~reasonable rental for the use of the articles so rented or leased, the~~  
7 ~~"selling price" shall be determined as nearly as possible according to~~  
8 ~~the value of such use at the places of use of similar products of like~~  
9 ~~quality and character under such rules as the department of revenue may~~  
10 ~~prescribe)) except trade-in property of like kind, including cash,~~  
11 ~~credit, property, and services, for which tangible personal property or~~  
12 ~~services defined as a "retail sale" under RCW 82.04.050 are sold,~~  
13 ~~leased, or rented, valued in money, whether received in money or~~  
14 ~~otherwise. No deduction from the total amount of consideration is~~  
15 ~~allowed for the following: (a) The seller's cost of the property sold;~~  
16 ~~(b) the cost of materials used, labor or service cost, interest,~~  
17 ~~losses, all costs of transportation to the seller, all taxes imposed on~~  
18 ~~the seller, and any other expense of the seller; (c) charges by the~~  
19 ~~seller for any services necessary to complete the sale, other than~~  
20 ~~delivery and installation charges; (d) delivery charges; (e)~~  
21 ~~installation charges; and (f) the value of exempt tangible personal~~  
22 ~~property given to the purchaser where taxable and exempt tangible~~  
23 ~~personal property have been bundled together and sold by the seller as~~  
24 ~~a single product or piece of merchandise.~~

25 ~~When tangible personal property is rented or leased under~~  
26 ~~circumstances that the consideration paid does not represent a~~  
27 ~~reasonable rental for the use of the articles so rented or leased, the~~  
28 ~~"selling price" shall be determined as nearly as possible according to~~  
29 ~~the value of such use at the places of use of similar products of like~~  
30 ~~quality and character under such rules as the department may prescribe.~~

31 ~~"Selling price" or "sales price" does not include: Discounts,~~  
32 ~~including cash, term, or coupons that are not reimbursed by a third~~  
33 ~~party that are allowed by a seller and taken by a purchaser on a sale;~~  
34 ~~interest, financing, and carrying charges from credit extended on the~~  
35 ~~sale of tangible personal property or services, if the amount is~~  
36 ~~separately stated on the invoice, bill of sale, or similar document~~  
37 ~~given to the purchaser; and any taxes legally imposed directly on the~~

1 consumer that are separately stated on the invoice, bill of sale, or  
2 similar document given to the purchaser;

3 (2) "Seller" means every person, including the state and its  
4 departments and institutions, making sales at retail or retail sales to  
5 a buyer, purchaser, or consumer, whether as agent, broker, or  
6 principal, except "seller" does not mean the state and its departments  
7 and institutions when making sales to the state and its departments and  
8 institutions;

9 (3) "Buyer," "purchaser," and "consumer" include, without limiting  
10 the scope hereof, every individual, receiver, assignee, trustee in  
11 bankruptcy, trust, estate, firm, copartnership, joint venture, club,  
12 company, joint stock company, business trust, corporation, association,  
13 society, or any group of individuals acting as a unit, whether mutual,  
14 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,  
15 quasi municipal corporation, and also the state, its departments and  
16 institutions and all political subdivisions thereof, irrespective of  
17 the nature of the activities engaged in or functions performed, and  
18 also the United States or any instrumentality thereof;

19 (4) "Delivery charges" means charges by the seller of personal  
20 property or services for preparation and delivery to a location  
21 designated by the purchaser of personal property or services including,  
22 but not limited to, transportation, shipping, postage, handling,  
23 crating, and packing;

24 (5) The meaning attributed in chapter 82.04 RCW to the terms "tax  
25 year," "taxable year," "person," "company," "sale," "sale at retail,"  
26 "retail sale," "sale at wholesale," "wholesale," "business," "engaging  
27 in business," "cash discount," "successor," "consumer," "in this state"  
28 and "within this state" shall apply equally to the provisions of this  
29 chapter;

30 (6) For the purposes of the taxes imposed under this chapter and  
31 under chapter 82.12 RCW, "tangible personal property" means personal  
32 property that can be seen, weighed, measured, felt, or touched, or that  
33 is in any other manner perceptible to the senses. Tangible personal  
34 property includes electricity, water, gas, steam, and prewritten  
35 computer software.

36 **Sec. 102.** RCW 82.12.010 and 2002 c 367 s 3 are each amended to  
37 read as follows:

1 For the purposes of this chapter:

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

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

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

1 articles, or in the absence of such a selling price, as nearly as  
2 possible according to the retail selling price at place of use of  
3 similar products of like quality and character or, in the absence of  
4 either of these selling price measures, such value may be determined  
5 upon a cost basis, in any event under such rules as the department of  
6 revenue may prescribe.

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

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

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

28 (f) In the case of an article purchased with a direct pay permit  
29 under RCW 82.32.087, the value of the article used shall be determined  
30 by the ~~((retail selling))~~ purchase price ~~((, as defined in RCW~~  
31 ~~82.08.010,))~~ of such article if, but for the use of the direct pay  
32 permit, the transaction would have been subject to sales tax;

33 ~~((+2))~~ (3) "Value of the service used" means the ~~((consideration,~~  
34 ~~whether money, credit, rights, or other property, expressed in terms of~~  
35 ~~money, paid or given or contracted to be paid or given by the purchaser~~  
36 ~~to the seller))~~ purchase price for the service, the use of which is  
37 taxable under this chapter. If the service is received by gift or  
38 under conditions wherein the purchase price does not represent the true

1 value thereof, the value of the service used shall be determined as  
2 nearly as possible according to the retail selling price at place of  
3 use of similar services of like quality and character under rules the  
4 department (~~(of revenue)~~) may prescribe;

5 ~~((+3))~~ (4) "Use," "used," "using," or "put to use" shall have  
6 their ordinary meaning, and shall mean:

7 (a) With respect to tangible personal property, the first act  
8 within this state by which the taxpayer takes or assumes dominion or  
9 control over the article of tangible personal property (as a consumer),  
10 and include installation, storage, withdrawal from storage,  
11 distribution, or any other act preparatory to subsequent actual use or  
12 consumption within this state; and

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

20 ~~((+4))~~ (5) "Taxpayer" and "purchaser" include all persons included  
21 within the meaning of the word "buyer" and the word "consumer" as  
22 defined in chapters 82.04 and 82.08 RCW;

23 ~~((+5))~~ (6) "Retailer" means every seller as defined in RCW  
24 82.08.010 and every person engaged in the business of selling tangible  
25 personal property at retail and every person required to collect from  
26 purchasers the tax imposed under this chapter;

27 ~~((+6))~~ (7) The meaning ascribed to words and phrases in chapters  
28 82.04 and 82.08 RCW, insofar as applicable, shall have full force and  
29 effect with respect to taxes imposed under the provisions of this  
30 chapter. "Consumer," in addition to the meaning ascribed to it in  
31 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any  
32 person who distributes or displays, or causes to be distributed or  
33 displayed, any article of tangible personal property, except  
34 newspapers, the primary purpose of which is to promote the sale of  
35 products or services. With respect to property distributed to persons  
36 within this state by a consumer as defined in this subsection ~~((+6))~~  
37 (7), the use of the property shall be deemed to be by such consumer.

1       **Sec. 103.** RCW 82.04.040 and 1961 c 15 s 82.04.040 are each amended  
2 to read as follows:

3       (1) "Sale" means any transfer of the ownership of, title to, or  
4 possession of property for a valuable consideration and includes any  
5 activity classified as a "sale at retail" or "retail sale" under RCW  
6 82.04.050. It includes (~~renting or leasing~~) lease or rental,  
7 conditional sale contracts, (~~leases with option to purchase,~~) and any  
8 contract under which possession of the property is given to the  
9 purchaser but title is retained by the vendor as security for the  
10 payment of the purchase price. It also includes the furnishing of  
11 food, drink, or meals for compensation whether consumed upon the  
12 premises or not.

13       (2) "Casual or isolated sale" means a sale made by a person who is  
14 not engaged in the business of selling the type of property involved.

15       (3)(a) "Lease or rental" means any transfer of possession or  
16 control of tangible personal property for a fixed or indeterminate term  
17 for consideration. A lease or rental may include future options to  
18 purchase or extend. "Lease or rental" includes transactions under  
19 agreements covering motor vehicles and trailers where the amount of  
20 consideration may be increased or decreased by reference to the amount  
21 realized upon sale or disposition of the property as defined in 26  
22 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003.  
23 The definition in this subsection (3) shall be used for sales and use  
24 tax purposes regardless if a transaction is characterized as a lease or  
25 rental under generally accepted accounting principles, the United  
26 States internal revenue code, Washington state's commercial code, or  
27 other provisions of federal, state, or local law.

28       (b) "Lease or rental" does not include:

29       (i) A transfer of possession or control of property under a  
30 security agreement or deferred payment plan that requires the transfer  
31 of title upon completion of the required payments;

32       (ii) A transfer of possession or control of party under an  
33 agreement that requires the transfer of title upon completion of  
34 required payments, and payment of an option price does not exceed the  
35 greater of one hundred dollars or one percent of the total required  
36 payments; or

37       (iii) Providing tangible personal property along with an operator  
38 for a fixed or indeterminate period of time. A condition of this



1 exclusion is that the operator is necessary for the equipment to  
2 perform as designed. For the purpose of this subsection (3)(b)(iii),  
3 an operator must do more than maintain, inspect, or set up the tangible  
4 personal property.

5 **Sec. 104.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to  
6 read as follows:

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

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

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

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

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

34 (e) Purchases for the purpose of providing the property to  
35 consumers as part of competitive telephone service, as defined in RCW  
36 82.04.065. The term shall include every sale of tangible personal  
37 property which is used or consumed or to be used or consumed in the

1 performance of any activity classified as a "sale at retail" or "retail  
2 sale" even though such property is resold or utilized as provided in  
3 (a), (b), (c), (d), or (e) of this subsection following such use. The  
4 term also means every sale of tangible personal property to persons  
5 engaged in any business which is taxable under RCW 82.04.280 (2) and  
6 (7) and 82.04.290.

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

10 (a) The installing, repairing, cleaning, altering, imprinting, or  
11 improving of tangible personal property of or for consumers, including  
12 charges made for the mere use of facilities in respect thereto, but  
13 excluding charges made for the use of coin-operated laundry facilities  
14 when such facilities are situated in an apartment house, rooming house,  
15 or mobile home park for the exclusive use of the tenants thereof, and  
16 also excluding sales of laundry service to nonprofit health care  
17 facilities, and excluding services rendered in respect to live animals,  
18 birds and insects;

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

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

35 (d) The sale of or charge made for labor and services rendered in  
36 respect to the cleaning, fumigating, razing or moving of existing  
37 buildings or structures, but shall not include the charge made for  
38 janitorial services; and for purposes of this section the term

1 "janitorial services" shall mean those cleaning and caretaking services  
2 ordinarily performed by commercial janitor service businesses  
3 including, but not limited to, wall and window washing, floor cleaning  
4 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
5 The term "janitorial services" does not include painting, papering,  
6 repairing, furnace or septic tank cleaning, snow removal or  
7 sandblasting;

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

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

23 (g) The sale of or charge made for tangible personal property,  
24 labor and services to persons taxable under (a), (b), (c), (d), (e),  
25 and (f) of this subsection when such sales or charges are for property,  
26 labor and services which are used or consumed in whole or in part by  
27 such persons in the performance of any activity defined as a "sale at  
28 retail" or "retail sale" even though such property, labor and services  
29 may be resold after such use or consumption. Nothing contained in this  
30 subsection shall be construed to modify subsection (1) of this section  
31 and nothing contained in subsection (1) of this section shall be  
32 construed to modify this subsection.

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

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

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

5 (c) Credit bureau services;

6 (d) Automobile parking and storage garage services;

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

12 (f) Service charges associated with tickets to professional  
13 sporting events; and

14 (g) The following personal services: Physical fitness services,  
15 tanning salon services, tattoo parlor services, steam bath services,  
16 turkish bath services, escort services, and dating services.

17 (4)(a) The term shall also include:

18 (i) The renting or leasing of tangible personal property to  
19 consumers ((and the rental of equipment with an operator)); and

20 (ii) Providing tangible personal property along with an operator  
21 for a fixed or indeterminate period of time. A consideration of this  
22 is that the operator is necessary for the equipment to perform as  
23 designed. For the purpose of this subsection (4)(a)(ii), an operator  
24 must do more than maintain, inspect, or set up the tangible personal  
25 property.

26 (b) The term shall not include the renting or leasing of tangible  
27 personal property where the lease or rental is for the purpose of  
28 sublease or subrent.

29 (5) The term shall also include the providing of telephone service,  
30 as defined in RCW 82.04.065, to consumers.

31 (6) The term shall also include the sale of ((eanned)) prewritten  
32 computer software other than a sale to a person who presents a resale  
33 certificate under RCW 82.04.470, regardless of the method of delivery  
34 to the end user, but shall not include custom software or the  
35 customization of ((eanned)) prewritten computer software.

36 (7) The term shall not include the sale of or charge made for labor  
37 and services rendered in respect to the building, repairing, or  
38 improving of any street, place, road, highway, easement, right of way,

1 mass public transportation terminal or parking facility, bridge,  
2 tunnel, or trestle which is owned by a municipal corporation or  
3 political subdivision of the state or by the United States and which is  
4 used or to be used primarily for foot or vehicular traffic including  
5 mass transportation vehicles of any kind.

6 (8) The term shall also not include sales of chemical sprays or  
7 washes to persons for the purpose of postharvest treatment of fruit for  
8 the prevention of scald, fungus, mold, or decay, nor shall it include  
9 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
10 pollination including insects such as bees, and spray materials to:

11 (a) Persons who participate in the federal conservation reserve  
12 program, the environmental quality incentives program, the wetlands  
13 reserve program, and the wildlife habitat incentives program, or their  
14 successors administered by the United States department of agriculture;

15 (b) farmers for the purpose of producing for sale any agricultural  
16 product; and (c) farmers acting under cooperative habitat development  
17 or access contracts with an organization exempt from federal income tax  
18 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
19 fish and wildlife to produce or improve wildlife habitat on land that  
20 the farmer owns or leases.

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

37 (10) Until July 1, 2003, the term shall not include the sale of or

1 charge made for labor and services rendered for environmental remedial  
2 action as defined in RCW 82.04.2635(2).

3 **PART II--ADMINISTRATIVE PROVISIONS**

4 **Sec. 201.** RCW 82.14.050 and 2002 c 56 s 406 are each amended to  
5 read as follows:

6 The counties, cities, and transportation authorities under RCW  
7 82.14.045, public facilities districts under chapters 36.100 and 35.57  
8 RCW, and regional transportation investment districts shall contract,  
9 prior to the effective date of a resolution or ordinance imposing a  
10 sales and use tax, the administration and collection to the state  
11 department of revenue, which shall deduct a percentage amount, as  
12 provided by contract, not to exceed two percent of the taxes collected  
13 for administration and collection expenses incurred by the department.  
14 The remainder of any portion of any tax authorized by this chapter that  
15 is collected by the department of revenue shall be deposited by the  
16 state department of revenue in the local sales and use tax account  
17 hereby created in the state treasury. Moneys in the local sales and  
18 use tax account may be spent only for distribution to counties, cities,  
19 transportation authorities, public facilities districts, and regional  
20 transportation investment districts imposing a sales and use tax. All  
21 administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32  
22 RCW, as they now exist or may hereafter be amended, shall, insofar as  
23 they are applicable to state sales and use taxes, be applicable to  
24 taxes imposed pursuant to this chapter. Counties, cities,  
25 transportation authorities, public facilities districts, and regional  
26 transportation investment districts may not conduct independent sales  
27 or use tax audits of sellers registered under the streamlined sales tax  
28 agreement. Except as provided in RCW 43.08.190, all earnings of  
29 investments of balances in the local sales and use tax account shall be  
30 credited to the local sales and use tax account and distributed to the  
31 counties, cities, transportation authorities, public facilities  
32 districts, and regional transportation investment districts monthly.

33 **Sec. 202.** RCW 82.14.070 and 2000 c 104 s 5 are each amended to  
34 read as follows:

35 It is the intent of this chapter that any local sales and use tax

1 adopted pursuant to this chapter be (~~as consistent and uniform as~~  
2 ~~possible with~~) identical to the state sales and use tax, unless  
3 otherwise prohibited by federal law, and with other local sales and use  
4 taxes adopted pursuant to this chapter. It is further the intent of  
5 this chapter that the local sales and use tax shall be imposed upon an  
6 individual taxable event simultaneously with the imposition of the  
7 state sales or use tax upon the same taxable event. The rule making  
8 powers of the state department of revenue contained in RCW 82.08.060  
9 and 82.32.300 shall be applicable to this chapter. The department  
10 shall, as soon as practicable, and with the assistance of the  
11 appropriate associations of county prosecutors and city attorneys,  
12 draft a model resolution and ordinance.

13 **Sec. 203.** RCW 82.08.050 and 2001 c 188 s 4 are each amended to  
14 read as follows:

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

26 In case any seller fails to collect the tax herein imposed or,  
27 having collected the tax, fails to pay it to the department in the  
28 manner prescribed by this chapter, whether such failure is the result  
29 of his or her own acts or the result of acts or conditions beyond his  
30 or her control, he or she shall, nevertheless, be personally liable to  
31 the state for the amount of the tax, unless the seller has taken from  
32 the buyer (~~in good faith a properly executed~~) a resale certificate  
33 under RCW 82.04.470 (~~or~~), a copy of a direct pay permit issued under  
34 RCW 82.32.087, information required under the streamlined sales and use  
35 tax agreement, or information required under rules adopted by the  
36 department. Sellers shall not be relieved from personal liability for

1 the amount of the tax unless they maintain proper records of exempt  
2 transactions and provide them to the department when requested.

3 The amount of tax, until paid by the buyer to the seller or to the  
4 department, shall constitute a debt from the buyer to the seller and  
5 any seller who fails or refuses to collect the tax as required with  
6 intent to violate the provisions of this chapter or to gain some  
7 advantage or benefit, either direct or indirect, and any buyer who  
8 refuses to pay any tax due under this chapter shall be guilty of a  
9 misdemeanor. The tax required by this chapter to be collected by the  
10 seller shall be stated separately from the selling price in any sales  
11 invoice or other instrument of sale. On all retail sales through  
12 vending machines, the tax need not be stated separately from the  
13 selling price or collected separately from the buyer. For purposes of  
14 determining the tax due from the buyer to the seller and from the  
15 seller to the department it shall be conclusively presumed that the  
16 selling price quoted in any price list, sales document, contract or  
17 other agreement between the parties does not include the tax imposed by  
18 this chapter, but if the seller advertises the price as including the  
19 tax or that the seller is paying the tax, the advertised price shall  
20 not be considered the selling price.

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

33 **Sec. 204.** RCW 82.04.470 and 1993 sp.s. c 25 s 701 are each amended  
34 to read as follows:

35 (1) Unless a seller has taken from the buyer a resale certificate,  
36 the burden of proving that a sale of tangible personal property, or of



1 services, was not a sale at retail shall be upon the person who made  
2 it.

3 (2) If a seller does not receive a resale certificate at the time  
4 of the sale, have a resale certificate on file at the time of the sale,  
5 or obtain a resale certificate from the buyer within a reasonable time  
6 after the sale, the seller shall remain liable for the tax as provided  
7 in RCW 82.08.050, unless the seller can demonstrate facts and  
8 circumstances according to rules adopted by the department of revenue  
9 that show the sale was properly made without payment of sales tax.

10 (3) Resale certificates shall be valid for a period of four years  
11 from the date the certificate is provided to the seller.

12 (4) The department may provide by rule for suggested forms for  
13 resale certificates or equivalent documents containing the information  
14 that will be accepted as resale certificates. The department shall  
15 provide by rule the categories of items or services that must be  
16 specified on resale certificates and the business classifications that  
17 may use a blanket resale certificate.

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

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

23 (b) The uniform business identifier or revenue registration number  
24 of the buyer, if the buyer is required to (~~be~~) be registered;

25 (c) The type of business engaged in;

26 (d) The categories of items or services to be purchased for resale  
27 or that are exempt, unless the buyer is in a business classification  
28 that may present a blanket resale certificate as provided by the  
29 department by rule;

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

31 (f) A statement that the items or services purchased either: (i)  
32 Are purchased for resale in the regular course of business; or (ii) are  
33 exempt from tax pursuant to statute;

34 (g) A statement that the buyer acknowledges that the buyer is  
35 solely responsible for purchasing within the categories specified on  
36 the certificate and that misuse of the resale or exemption privilege  
37 claimed on the certificate subjects the buyer to a penalty of fifty

1 percent of the tax due, in addition to the tax, interest, and any other  
2 penalties imposed by law;

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

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

6 (j) The name of the seller.

7 (6) Subsection (5)(h), (i), and (j) of this section does not apply  
8 if the certificate is provided in a format other than paper. If the  
9 certificate is provided in a format other than paper, the name of the  
10 individual providing the certificate must be included in the  
11 certificate.

12 **Sec. 205.** RCW 82.08.064 and 2000 c 104 s 3 are each amended to  
13 read as follows:

14 (1) A sales and use tax rate change under this chapter or chapter  
15 82.12 RCW shall be imposed (~~((+1))~~) (a) no sooner than seventy-five days  
16 after its enactment into law and (~~((+2))~~) (b) only on the first day of  
17 January, April, July, or October.

18 (2)(a) A sales and use tax rate increase under this chapter or  
19 chapter 82.12 RCW imposed on services applies to the first billing  
20 period starting on or after the effective date of the increase.

21 (b) A sales and use tax rate decrease under this chapter or chapter  
22 82.12 RCW imposed on services applies to bills rendered on or after the  
23 effective date of the decrease.

24 (c) For the purposes of this subsection (2), "services" means  
25 retail services such as installing and constructing and retail services  
26 such as telecommunications, but does not include services such as  
27 tattooing.

28 **Sec. 206.** RCW 82.14.055 and 2001 c 320 s 7 are each amended to  
29 read as follows:

30 (1) Except as provided in subsections (2), (3), and (4) of this  
31 section, a local sales and use tax change shall take effect (a) no  
32 sooner than seventy-five days after the department receives notice of  
33 the change and (b) only on the first day of January, April, July, or  
34 October.

35 (2) In the case of a local sales and use tax that is a credit  
36 against the state sales tax or use tax, a local sales and use tax

1 change shall take effect (a) no sooner than thirty days after the  
2 department receives notice of the change and (b) only on the first day  
3 of a month.

4 (3)(a) A local sales and use tax rate increase imposed on services  
5 applies to the first billing period starting on or after the effective  
6 date of the increase.

7 (b) A local sales and use tax rate decrease imposed on services  
8 applies to bills rendered on or after the effective date of the  
9 decrease.

10 (c) For the purposes of this subsection (3), "services" means  
11 retail services such as installing and constructing and retail services  
12 such as telecommunications, but does not include services such as  
13 tattooing.

14 (4) For the purposes of this section, "local sales and use tax  
15 change" means enactment or revision of local sales and use taxes under  
16 this chapter or any other statute, including changes resulting from  
17 referendum or annexation.

18 **Sec. 207.** RCW 82.32.430 and 2001 c 320 s 11 are each amended to  
19 read as follows:

20 (1) A person who collects and remits sales or use tax to the  
21 department and who calculates the tax using geographic information  
22 system technology developed and provided by the department shall be  
23 held harmless and is not liable for the difference in amount due nor  
24 subject to penalties or interest in regards to rate calculation errors  
25 resulting from the proper use of such technology.

26 (2) Except as provided in subsection (3) of this section, the  
27 department shall notify sellers who collect and remit sales or use tax  
28 to the department of changes in boundaries and rates to taxes imposed  
29 by chapter 82.14 RCW no later than sixty days before the effective date  
30 of the change.

31 (3) The department shall notify sellers who collect and remit sales  
32 or use tax to the department and make sales from printed catalogs of  
33 changes, as to such sales, of boundaries and rates to taxes imposed by  
34 chapter 82.14 RCW no later than one hundred twenty days before the  
35 effective date of the change.

36 (4) Sellers who have not received timely notice of rate and  
37 boundary changes under subsections (2) and (3) of this section due to

1 actions or omissions of the department are not liable for the  
2 difference in the amount due until they have received the appropriate  
3 period of notice. Purchasers are liable for any uncollected amounts of  
4 tax.

5 **Sec. 208.** RCW 82.08.02566 and 1997 c 302 s 1 are each amended to  
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
8 tangible personal property incorporated into a prototype for aircraft  
9 parts, auxiliary equipment, or modifications; or to sales of tangible  
10 personal property that at one time is incorporated into the prototype  
11 but is later destroyed in the testing or development of the prototype.

12 (2) This exemption does not apply to sales to any person whose  
13 total taxable amount during the immediately preceding calendar year  
14 exceeds twenty million dollars. For purposes of this section, "total  
15 taxable amount" means gross income of the business and value of  
16 products manufactured, less any amounts for which a credit is allowed  
17 under RCW 82.04.440.

18 (3) State and local taxes for which an exemption is received under  
19 this section and RCW 82.12.02566 shall not exceed one hundred thousand  
20 dollars for any person during any calendar year.

21 (4) Sellers shall collect tax on sales subject to this exemption.  
22 The buyer shall apply for a refund directly from the department.

23 **Sec. 209.** RCW 82.12.02566 and 1997 c 302 s 2 are each amended to  
24 read as follows:

25 (1) The provisions of this chapter shall not apply with respect to  
26 the use of tangible personal property incorporated into a prototype for  
27 aircraft parts, auxiliary equipment, or modifications; or in respect to  
28 the use of tangible personal property that at one time is incorporated  
29 into the prototype but is later destroyed in the testing or development  
30 of the prototype.

31 (2) This exemption does not apply in respect to the use of tangible  
32 personal property by any person whose total taxable amount during the  
33 immediately preceding calendar year exceeds twenty million dollars.  
34 For purposes of this section, "total taxable amount" means gross income  
35 of the business and value of products manufactured, less any amounts  
36 for which a credit is allowed under RCW 82.04.440.

1 (3) State and local taxes for which an exemption is received under  
2 this section and RCW 82.08.02566 shall not exceed one hundred thousand  
3 dollars for any person during any calendar year.

4 (4) Sellers obligated to collect use tax shall collect tax on sales  
5 subject to this exemption. The buyer shall apply for a refund directly  
6 from the department.

7 NEW SECTION. Sec. 210. A new section is added to chapter 82.08  
8 RCW to read as follows:

9 Sellers shall compute the tax due under this chapter and chapters  
10 82.12 and 82.14 RCW by carrying the computation to the third decimal  
11 place and rounding to a whole cent using a method that rounds up to the  
12 next cent whenever the third decimal place is greater than four.  
13 Sellers may elect to compute the tax due on a transaction on an item or  
14 an invoice basis. This rounding rule shall be applied to the  
15 aggregated state and local taxes.

16 NEW SECTION. Sec. 211. A new section is added to chapter 82.32  
17 RCW to read as follows:

18 A purchaser's cause of action against the seller for over-collected  
19 sales or use tax does not accrue until the purchaser has provided  
20 written notice to the seller and the seller has sixty days to respond.  
21 The notice to the seller must contain the information necessary to  
22 determine the validity of the request.

23 **Sec. 212.** RCW 82.08.037 and 1982 1st ex.s. c 35 s 35 are each  
24 amended to read as follows:

25 (1) A seller is entitled to a credit or refund for sales taxes  
26 previously paid on debts which are ((deductible as worthless for  
27 federal income tax purposes)) bad debts under 26 U.S.C. Sec. 166, as  
28 amended or renumbered as of January 1, 2003, except for:

29 (a) Amounts due on property that remains in the possession of the  
30 seller until the full purchase price is paid;

31 (b) Expenses incurred in attempting to collect debt; and

32 (c) Repossessed property.

33 (2) If a credit or refund of sales tax is taken for a bad debt and  
34 the debt is subsequently collected in whole or in part, the tax on the

1 amount collected must be paid and reported on the return filed for the  
2 period in which the collection is made.

3 (3) Payments on a bad debt are applied first proportionally to the  
4 taxable price of the property or service and the sales tax thereon, and  
5 secondly to interest, service charges, and any other charges.

6 (4) If the seller uses a certified service provider to administer  
7 its sales tax responsibilities, the certified service provider may  
8 claim, on behalf of the seller, the credit or refund allowed by this  
9 section. The certified service provider must credit or refund the full  
10 amount to the seller.

11 NEW SECTION. Sec. 213. A new section is added to chapter 82.32  
12 RCW to read as follows:

13 The department may not attribute nexus with Washington to any  
14 seller solely by virtue of the seller registering under the streamlined  
15 sales and use tax agreement.

16 **Sec. 214.** RCW 82.12.020 and 2002 c 367 s 4 are each amended to  
17 read as follows:

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

29 (2) This tax shall apply to the use of every service defined as a  
30 retail sale in RCW 82.04.050 (2)(a) or (3)(a) and the use of every  
31 article of tangible personal property, including property acquired at  
32 a casual or isolated sale, and including byproducts used by the  
33 manufacturer thereof, except as hereinafter provided, irrespective of  
34 whether the article or similar articles are manufactured or are  
35 available for purchase within this state.

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

6 (4) The tax shall be levied and collected in an amount equal to the  
7 value of the article used or value of the service used by the taxpayer  
8 multiplied by the rate in effect for the retail sales tax under RCW  
9 82.08.020, except in the case of a seller required to collect use tax  
10 from the purchaser, the tax shall be collected in an amount equal to  
11 the purchase price multiplied by the rate in effect for the retail  
12 sales tax under RCW 82.08.020.

13 **Sec. 215.** RCW 82.12.040 and 2001 c 188 s 5 are each amended to  
14 read as follows:

15 (1) Every person who maintains in this state a place of business or  
16 a stock of goods, or engages in business activities within this state,  
17 shall obtain from the department a certificate of registration, and  
18 shall, at the time of making sales of tangible personal property or  
19 sales of any service defined as a retail sale in RCW 82.04.050 (2)(a)  
20 or (3)(a), or making transfers of either possession or title, or both,  
21 of tangible personal property for use in this state, collect from the  
22 purchasers or transferees the tax imposed under this chapter. The tax  
23 to be collected under this section shall be in an amount equal to the  
24 purchase price multiplied by the rate in effect for the retail sales  
25 tax under RCW 82.08.020. For the purposes of this chapter, the phrase  
26 "maintains in this state a place of business" shall include the  
27 solicitation of sales and/or taking of orders by sales agents or  
28 traveling representatives. For the purposes of this chapter, "engages  
29 in business activity within this state" includes every activity which  
30 is sufficient under the Constitution of the United States for this  
31 state to require collection of tax under this chapter. The department  
32 shall in rules specify activities which constitute engaging in business  
33 activity within this state, and shall keep the rules current with  
34 future court interpretations of the Constitution of the United States.

35 (2) Every person who engages in this state in the business of  
36 acting as an independent selling agent for persons who do not hold a  
37 valid certificate of registration, and who receives compensation by

1 reason of sales of tangible personal property, or sales of any service  
2 defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or  
3 her principals (~~made~~) for use in this state, shall, at the time such  
4 sales are made, collect from the purchasers the tax imposed on the  
5 purchase price under this chapter, and for that purpose shall be deemed  
6 a retailer as defined in this chapter.

7 (3) The tax required to be collected by this chapter shall be  
8 deemed to be held in trust by the retailer until paid to the department  
9 and any retailer who appropriates or converts the tax collected to  
10 (~~his~~) the retailer's own use or to any use other than the payment of  
11 the tax provided herein to the extent that the money required to be  
12 collected is not available for payment on the due date as prescribed  
13 shall be guilty of a misdemeanor. In case any seller fails to collect  
14 the tax herein imposed or having collected the tax, fails to pay the  
15 same to the department in the manner prescribed, whether such failure  
16 is the result of (~~his~~) the seller's own acts or the result of acts or  
17 conditions beyond (~~his~~) the seller's control, (~~he~~) the seller shall  
18 nevertheless, be personally liable to the state for the amount of such  
19 tax, unless the seller has taken from the buyer in good faith a copy of  
20 a direct pay permit issued under RCW 82.32.087.

21 (4) Any retailer who refunds, remits, or rebates to a purchaser, or  
22 transferee, either directly or indirectly, and by whatever means, all  
23 or any part of the tax levied by this chapter shall be guilty of a  
24 misdemeanor.

25 **Sec. 216.** RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each  
26 amended to read as follows:

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

31 (~~In the case of property acquired by bailment, the department, by~~  
32 ~~regulation, may provide for payment of the tax due in installments~~  
33 ~~based on the reasonable rental for the property as determined under RCW~~  
34 ~~82.12.010(1).)~~)

35 **PART III--FOOD**



1       **Sec. 301.** RCW 82.08.0293 and 1988 c 103 s 1 are each amended to  
2 read as follows:

3       (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
4 food (~~(products for human consumption.~~

5       ~~"Food products" include cereals and cereal products, oleomargarine,~~  
6 ~~meat and meat products including livestock sold for personal~~  
7 ~~consumption, fish and fish products, eggs and egg products, vegetables~~  
8 ~~and vegetable products, fruit and fruit products, spices and salt,~~  
9 ~~sugar and sugar products, coffee and coffee substitutes, tea, cocoa and~~  
10 ~~cocoa products.~~

11       ~~"Food products" include milk and milk products, milk shakes, malted~~  
12 ~~milks, and any other similar type beverages which are composed at least~~  
13 ~~in part of milk or a milk product and which require the use of milk or~~  
14 ~~a milk product in their preparation.~~

15       ~~"Food products" include all fruit juices, vegetable juices, and~~  
16 ~~other beverages except bottled water, spirituous, malt or vinous~~  
17 ~~liquors or carbonated beverages, whether liquid or frozen.~~

18       ~~"Food products" do not include medicines and preparations in~~  
19 ~~liquid, powdered, granular, tablet, capsule, lozenge, and pill form~~  
20 ~~sold as dietary supplements or adjuncts)) and food ingredients. "Food~~  
21 ~~and food ingredients" means substances, whether in liquid,~~  
22 ~~concentrated, solid, frozen, dried, or dehydrated form, that are sold~~  
23 ~~for ingestion or chewing by humans and are consumed for their taste or~~  
24 ~~nutritional value. "Food and food ingredients" does not include:~~

25       (a) "Alcoholic beverages," which means beverages that are suitable  
26 for human consumption and contain one-half of one percent or more of  
27 alcohol by volume; and

28       (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
29 tobacco, or any other item that contains tobacco.

30       (2) The exemption of "food (~~(products)) and food ingredients"~~

31 provided for in subsection (1) of this section shall not apply(~~(:—(a)~~

32 ~~When the food products are ordinarily sold for immediate consumption on~~

33 ~~or near a location at which parking facilities are provided primarily~~

34 ~~for the use of patrons in consuming the products purchased at the~~

35 ~~location, even though such products are sold on a "takeout" or "to go"~~

36 ~~order and are actually packaged or wrapped and taken from the premises~~

37 ~~of the retailer, or (b) when the food products are sold for consumption~~

38 ~~within a place, the entrance to which is subject to an admission~~

1 charge, except for national and state parks and monuments, or (c) to a  
2 food product, when sold by the retail vendor, which by law must be  
3 handled on the vendor's premises by a person with a food and beverage  
4 service worker's permit under RCW 69.06.010, including but not be  
5 limited to sandwiches prepared or chicken cooked on the premises, deli  
6 trays, home delivered pizzas or meals, and salad bars but excluding:

7 (i) Raw meat prepared by persons who slaughter animals, including  
8 fish and fowl, or dress or wrap slaughtered raw meat such as fish  
9 mongers, butchers, or meat wrappers;

10 (ii) Meat and cheese sliced and/or wrapped, in any quantity  
11 determined by the buyer, sold by vendors such as meat markets,  
12 delicatessens, and grocery stores;

13 (iii) Bakeries which only sell baked goods;

14 (iv) Combination bakery businesses, as prescribed by rule of the  
15 department, to the extent that sales of baked goods are separately  
16 accounted for and the baked goods claimed for exemption are not sold as  
17 part of meals or with beverages in unsealed containers; or

18 (v) Bulk food products sold from bins or barrels, including but not  
19 limited to flour, fruits, vegetables, sugar, salt, candy, chips, and  
20 ~~eeea~~) to prepared food, soft drinks, or dietary supplements.

21 (a) "Prepared food" means:

22 (i) Food sold in a heated state or heated by the seller;

23 (ii) Two or more food ingredients mixed or combined by the seller  
24 for sale as a single item; or

25 (iii) Food sold with eating utensils provided by the seller,  
26 including plates, knives, forks, spoons, glasses, cups, napkins, or  
27 straws. A plate does not include a container or packaging used to  
28 transport the food.

29 "Prepared food" in (a)(ii) of this subsection, does not include  
30 food that is only cut, repackaged, or pasteurized by the seller and raw  
31 eggs, fish, meat, poultry, and foods containing these raw animal foods  
32 requiring cooking by the consumer as recommended by the federal food  
33 and drug administration in chapter 3, part 401.11 of The Food Code,  
34 published by the food and drug administration, as amended or renumbered  
35 as of January 1, 2003, so as to prevent foodborne illness; or bakery  
36 items, including bread, rolls, buns, biscuits, bagels, croissants,  
37 pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,  
38 cookies, or tortillas.

1        (b) "Soft drinks" means nonalcoholic beverages that contain natural  
2 or artificial sweeteners. Soft drinks do not include beverages that  
3 contain: Milk or milk products; soy, rice, or similar milk  
4 substitutes; or greater than fifty percent of vegetable or fruit juice  
5 by volume.

6        (c) "Dietary supplement" means any product, other than tobacco,  
7 intended to supplement the diet that:

8        (i) Contains one or more of the following dietary ingredients: A  
9 vitamin; a mineral; an herb or other botanical; an amino acid; a  
10 dietary substance for use by humans to supplement the diet by  
11 increasing the total dietary intake; or a concentrate, metabolite,  
12 constituent, extract, or combination of any ingredient described in  
13 this subsection; and is intended for ingestion in tablet, capsule,  
14 powder, softgel, gelcap, or liquid form, or if not intended for  
15 ingestion in such form, is not represented as conventional food and is  
16 not represented for use as a sole item of a meal or of the diet; and

17        (ii) Is required to be labeled as a dietary supplement,  
18 identifiable by the "supplement facts" box found on the label as  
19 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as  
20 of January 1, 2003.

21        (3) Notwithstanding anything in this section to the contrary, the  
22 exemption of "food (~~products~~) and food ingredients" provided in this  
23 section shall apply to food (~~products~~) and food ingredients which are  
24 furnished, prepared, or served as meals:

25        (a) Under a state administered nutrition program for the aged as  
26 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
27 74.38.040(6); or

28        (b) Which are provided to senior citizens, disabled persons, or  
29 low-income persons by a not-for-profit organization organized under  
30 chapter 24.03 or 24.12 RCW.

31        (4) Subsection (1) of this section notwithstanding, the retail sale  
32 of food (~~products~~) and food ingredients is subject to sales tax under  
33 RCW 82.08.020 if the food (~~products~~) and food ingredients are sold  
34 through a vending machine, and in this case the selling price for  
35 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

36        This subsection does not apply to hot prepared food (~~products~~)  
37 and food ingredients, other than food (~~products~~) and food ingredients

1 which are heated after they have been dispensed from the vending  
2 machine.

3 For tax collected under this subsection, the requirements that the  
4 tax be collected from the buyer and that the amount of tax be stated as  
5 a separate item are waived.

6 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.08  
7 RCW to read as follows:

8 The tax levied by RCW 82.08.020 shall not apply to sales of dietary  
9 supplements for human use dispensed or to be dispensed to patients,  
10 pursuant to a prescription. "Dietary supplement" has the same meaning  
11 as in RCW 82.08.0293.

12 **Sec. 303.** RCW 82.12.0293 and 1988 c 103 s 2 are each amended to  
13 read as follows:

14 (1) The provisions of this chapter shall not apply in respect to  
15 the use of food (~~(products))~~ and food ingredients for human  
16 consumption. "Food and food ingredients" has the same meaning as in  
17 RCW 82.08.0293.

18 (~~("Food products" include cereals and cereal products,~~  
19 ~~oleomargarine, meat and meat products including livestock sold for~~  
20 ~~personal consumption, fish and fish products, eggs and egg products,~~  
21 ~~vegetables and vegetable products, fruit and fruit products, spices and~~  
22 ~~salt, sugar and sugar products, coffee and coffee substitutes, tea,~~  
23 ~~cocoa and cocoa products.~~

24 ~~"Food products" include milk and milk products, milk shakes, malted~~  
25 ~~milks, and any other similar type beverages which are composed at least~~  
26 ~~in part of milk or a milk product and which require the use of milk or~~  
27 ~~a milk product in their preparation.~~

28 ~~"Food products" include all fruit juices, vegetable juices, and~~  
29 ~~other beverages except bottled water, spirituous, malt or vinous~~  
30 ~~liquors or carbonated beverages, whether liquid or frozen.~~

31 ~~"Food products" do not include medicines and preparations in~~  
32 ~~liquid, powdered, granular, tablet, capsule, lozenge, and pill form~~  
33 ~~sold as dietary supplements or adjuncts.))~~

34 (2) The exemption of "food (~~(products))~~ and food ingredients"  
35 provided for in subsection (1) of this section shall not apply(~~(:—(a)~~  
36 ~~When the food products are ordinarily sold for immediate consumption on~~

1 ~~or near a location at which parking facilities are provided primarily~~  
2 ~~for the use of patrons in consuming the products purchased at the~~  
3 ~~location, even though such products are sold on a "takeout" or "to go"~~  
4 ~~order and are actually packaged or wrapped and taken from the premises~~  
5 ~~of the retailer, or (b) when the food products are sold for consumption~~  
6 ~~within a place, the entrance to which is subject to an admission~~  
7 ~~charge, except for national and state parks and monuments, or (c) to a~~  
8 ~~food product, when sold by the retail vendor, which by law must be~~  
9 ~~handled on the vendor's premises by a person with a food and beverage~~  
10 ~~service worker's permit under RCW 69.06.010, including but not be~~  
11 ~~limited to sandwiches prepared or chicken cooked on the premises, deli~~  
12 ~~trays, home delivered pizzas or meals, and salad bars but excluding:~~

13 ~~(i) Raw meat prepared by persons who slaughter animals, including~~  
14 ~~fish and fowl, or dress or wrap slaughtered raw meat such as fish~~  
15 ~~mongers, butchers, or meat wrappers;~~

16 ~~(ii) Meat and cheese sliced and/or wrapped, in any quantity~~  
17 ~~determined by the buyer, sold by vendors such as meat markets,~~  
18 ~~delicatessens, and grocery stores;~~

19 ~~(iii) Bakeries which only sell baked goods;~~

20 ~~(iv) Combination bakery businesses, as prescribed by rule of the~~  
21 ~~department, to the extent that sales of baked goods are separately~~  
22 ~~accounted for and the baked goods claimed for exemption are not sold as~~  
23 ~~part of meals or with beverages in unsealed containers; or~~

24 ~~(v) Bulk food products sold from bins or barrels, including but not~~  
25 ~~limited to flour, fruits, vegetables, sugar, salt, candy, chips, and~~  
26 ~~☺☺☺)) to prepared food, soft drinks, or dietary supplements.~~  
27 ~~"Prepared food," "soft drinks," and "dietary supplements" have the same~~  
28 ~~meanings as in RCW 82.08.0293.~~

29 (3) Notwithstanding anything in this section to the contrary, the  
30 exemption of "food ((~~products~~)) and food ingredients" provided in this  
31 section shall apply to food ((~~products~~)) and food ingredients which are  
32 furnished, prepared, or served as meals:

33 (a) Under a state administered nutrition program for the aged as  
34 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW  
35 74.38.040(6); or

36 (b) Which are provided to senior citizens, disabled persons, or  
37 low-income persons by a not-for-profit organization organized under  
38 chapter 24.03 or 24.12 RCW.

1 NEW SECTION. Sec. 304. A new section is added to chapter 82.12  
2 RCW to read as follows:

3 The provisions of this chapter shall not apply to the use of  
4 dietary supplements dispensed or to be dispensed to patients, pursuant  
5 to a prescription, if the dietary supplements are for human use.  
6 "Dietary supplement" has the same meaning as in RCW 82.08.0293.

7 **Sec. 305.** RCW 66.28.190 and 1997 c 321 s 52 are each amended to  
8 read as follows:

9 RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200  
10 as wine distributors and persons licensed under RCW 66.24.250 as beer  
11 distributors may sell at wholesale nonliquor food (~~((products))~~) and food  
12 ingredients on thirty-day credit terms to persons licensed as retailers  
13 under this title, but complete and separate accounting records shall be  
14 maintained on all sales of nonliquor food (~~((products))~~) and food  
15 ingredients to ensure that such persons are in compliance with RCW  
16 66.28.010.

17 For the purpose of this section, "nonliquor food (~~((products))~~) and  
18 food ingredients" includes all food (~~((products))~~) and food ingredients  
19 for human consumption as defined in RCW 82.08.0293 as it exists on July  
20 1, (~~((1987, except that for the purposes of this section bottled water~~  
21 ~~and carbonated beverages, whether liquid or frozen, shall be considered~~  
22 ~~food products))~~) 2004.

23 **PART IV--MEDICAL PROVISIONS**

24 **Sec. 401.** RCW 82.04.272 and 1998 c 343 s 1 are each amended to  
25 read as follows:

26 (1) Upon every person engaging within this state in the business of  
27 warehousing and reselling (~~((prescription))~~) drugs for human use pursuant  
28 to a prescription; as to such persons, the amount of the tax shall be  
29 equal to the gross income of the business multiplied by the rate of  
30 0.138 percent.

31 (2) For the purposes of this section:

32 (a) "Prescription" and "drug" (~~((has))~~) have the same meaning as  
33 (~~((that term is given))~~) in RCW 82.08.0281; and

34 (b) "Warehousing and reselling (~~((prescription))~~) drugs for human use  
35 pursuant to a prescription" means the buying of (~~((prescription))~~) drugs

1 for human use pursuant to a prescription from a manufacturer or another  
2 wholesaler, and reselling of the drugs to persons selling at retail or  
3 to hospitals, clinics, health care providers, or other providers of  
4 health care services, by a wholesaler or retailer who is registered  
5 with the federal drug enforcement administration and licensed by the  
6 state board of pharmacy.

7 **Sec. 402.** RCW 82.04.4289 and 1998 c 325 s 1 are each amended to  
8 read as follows:

9 This chapter does not apply to amounts derived as compensation for  
10 services rendered to patients or from sales of (~~prescription~~) drugs  
11 (~~as defined in RCW 82.08.0281~~) for human use pursuant to a  
12 prescription furnished as an integral part of services rendered to  
13 patients by a kidney dialysis facility operated as a nonprofit  
14 corporation, a nonprofit hospice agency licensed under chapter 70.127  
15 RCW, and nursing homes and homes for unwed mothers operated as  
16 religious or charitable organizations, but only if no part of the net  
17 earnings received by such an institution inures directly or indirectly,  
18 to any person other than the institution entitled to deduction  
19 hereunder. "Prescription" and "drug" have the same meaning as in RCW  
20 82.08.0281.

21 **Sec. 403.** RCW 82.08.0281 and 1993 sp.s. c 25 s 308 are each  
22 amended to read as follows:

23 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
24 (~~prescription~~) drugs(~~(, including sales to the state or a political~~  
25 ~~subdivision or municipal corporation thereof of drugs to be dispensed~~  
26 ~~to patients by prescription without charge. The term "prescription~~  
27 ~~drugs" shall include any medicine, drug, prescription lens, or other~~  
28 ~~substance other than food for use in the diagnosis, cure, mitigation,~~  
29 ~~treatment, or prevention of disease or other ailment in humans, or for~~  
30 ~~use for family planning purposes, including the prevention of~~  
31 ~~conception, supplied:~~

32 ~~(1) By a family planning clinic that is under contract with the~~  
33 ~~department of health to provide family planning services; or~~

34 ~~(2) Under the written prescription to a pharmacist by a~~  
35 ~~practitioner authorized by law of this state or laws of another~~  
36 ~~jurisdiction to issue prescriptions; or~~

1 ~~(3) Upon an oral prescription of such practitioner which is reduced~~  
2 ~~promptly to writing and filed by a duly licensed pharmacist; or~~

3 ~~(4) By refilling any such written or oral prescription if such~~  
4 ~~refilling is authorized by the prescriber either in the original~~  
5 ~~prescription or by oral order which is reduced promptly to writing and~~  
6 ~~filed by the pharmacist; or~~

7 ~~(5) By physicians or optometrists by way of written directions and~~  
8 ~~specifications for the preparation, grinding, and fabrication of lenses~~  
9 ~~intended to aid or correct visual defects or anomalies of humans)) for~~  
10 human use dispensed or to be dispensed to patients, pursuant to a  
11 prescription.

12 (2) The tax levied by RCW 82.08.020 shall not apply to sales of  
13 drugs or devices used for family planning purposes, including the  
14 prevention of conception, for human use dispensed or to be dispensed to  
15 patients, pursuant to a prescription.

16 (3) The tax levied by RCW 82.08.020 shall not apply to sales of  
17 drugs and devices used for family planning purposes, including the  
18 prevention of conception, for human use supplied by a family planning  
19 clinic that is under contract with the department of health to provide  
20 family planning services.

21 (4) The definitions in this subsection apply throughout this  
22 section.

23 (a) "Prescription" means an order, formula, or recipe issued in any  
24 form of oral, written, electronic, or other means of transmission by a  
25 duly licensed practitioner authorized by the laws of this state.

26 (b) "Drug" means a compound, substance, or preparation, and any  
27 component of a compound, substance, or preparation, other than food and  
28 food ingredients, dietary supplements, or alcoholic beverages:

29 (i) Recognized in the official United States pharmacopoeia,  
30 official homeopathic pharmacopoeia of the United States, or official  
31 national formulary, or any supplement to any of them; or

32 (ii) Intended for use in the diagnosis, cure, mitigation,  
33 treatment, or prevention of disease; or

34 (iii) Intended to affect the structure or any function of the body.

35 (c) "Over-the-counter drug" means a drug that contains a label that  
36 identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as  
37 amended or renumbered on January 1, 2003. The label includes:

38 (i) A "drug facts" panel; or



1        (ii) A statement of the "active ingredient(s)" with a list of those  
2 ingredients contained in the compound, substance, or preparation.

3        NEW SECTION. Sec. 404. A new section is added to chapter 82.08  
4 RCW to read as follows:

5        The tax levied by RCW 82.08.020 shall not apply to sales of  
6 disposable devices used or to be used to deliver drugs for human use,  
7 pursuant to a prescription. "Disposable devices used to deliver drugs"  
8 means single use items such as syringes, tubing, or catheters.

9        NEW SECTION. Sec. 405. A new section is added to chapter 82.08  
10 RCW to read as follows:

11        The tax levied by RCW 82.08.020 shall not apply to sales of over-  
12 the-counter drugs for human use dispensed or to be dispensed to  
13 patients, pursuant to a prescription. "Over-the-counter drug" has the  
14 same meaning as in RCW 82.08.0281.

15        **Sec. 406.** RCW 82.12.0275 and 1993 sp.s. c 25 s 309 are each  
16 amended to read as follows:

17        (1) The provisions of this chapter shall not apply in respect to  
18 the use of ((prescription)) drugs((, including the use by the state or  
19 a political subdivision or municipal corporation thereof of drugs to be  
20 dispensed to patients by prescription without charge. The term  
21 "prescription drugs" shall include any medicine, drug, prescription  
22 lens, or other substance other than food for use in the diagnosis,  
23 cure, mitigation, treatment, or prevention of disease or other ailment  
24 in humans, or for use for family planning purposes, including the  
25 prevention of conception, supplied:

26        (1) By a family planning clinic that is under contract with the  
27 department of health to provide family planning services; or

28        (2) Under the written prescription to a pharmacist by a  
29 practitioner authorized by law of this state or laws of another  
30 jurisdiction to issue prescriptions; or

31        (3) Upon an oral prescription of such practitioner which is reduced  
32 promptly to writing and filed by a duly licensed pharmacist; or

33        (4) By refilling any such written or oral prescription if such  
34 refilling is authorized by the prescriber either in the original

1 ~~prescription or by oral order which is reduced promptly to writing and~~  
2 ~~filed by the pharmacist; or~~

3 ~~(5) By physicians or optometrists by way of written directions and~~  
4 ~~specifications for the preparation, grinding, and fabrication of lenses~~  
5 ~~intended to aid or correct visual defects or anomalies of humans))~~  
6 dispensed or to be dispensed to patients, pursuant to a prescription,  
7 if the drugs are for human use.

8 (2) The provisions of this chapter shall not apply in respect to  
9 the use of drugs or devices used for family planning purposes,  
10 including the prevention of conception, for human use dispensed or to  
11 be dispensed to patients, pursuant to a prescription.

12 (3) The provisions of this chapter shall not apply in respect to  
13 the use of drugs or devices used for family planning purposes,  
14 including the prevention of conception, for human use supplied by a  
15 family planning clinic that is under contract with the department of  
16 health to provide family planning services.

17 (4) As used in this section, "prescription" and "drug" have the  
18 same meanings as in RCW 82.08.0281.

19 NEW SECTION. Sec. 407. A new section is added to chapter 82.12  
20 RCW to read as follows:

21 The provisions of this chapter shall not apply to the use of  
22 disposable devices used to deliver drugs for human use, pursuant to a  
23 prescription. Disposable devices means the same as provided in section  
24 404 of this act.

25 NEW SECTION. Sec. 408. A new section is added to chapter 82.12  
26 RCW to read as follows:

27 The provisions of this chapter shall not apply to the use of over-  
28 the-counter drugs dispensed or to be dispensed to patients, pursuant to  
29 a prescription, if the over-the-counter drugs are for human use.  
30 "Over-the-counter drug" has the same meaning as in RCW 82.08.0281.

31 **Sec. 409.** RCW 82.08.0283 and 2001 c 75 s 1 are each amended to  
32 read as follows:

33 (1) The tax levied by RCW 82.08.020 shall not apply to sales of  
34 ((insulin;)) prosthetic devices ((and the components thereof; dental  
35 appliances, devices, restorations, and substitutes, and the components

1 ~~thereof, including but not limited to full and partial dentures,~~  
2 ~~crowns, inlays, fillings, braces, and retainers; orthotic devices))~~  
3 prescribed for an individual by a person licensed under chapter ~~((s))~~  
4 18.22, 18.25, 18.57, or 18.71 RCW; ~~((hearing instruments dispensed or~~  
5 ~~fitted by a person licensed or certified under chapter 18.35 RCW, and~~  
6 ~~the components thereof;))~~ medicines of mineral, animal, and botanical  
7 origin ~~((prescribed,))~~ administered, dispensed, or used in the  
8 treatment of an individual by a person licensed under chapter 18.36A  
9 RCW; ~~((ostomic items;))~~ and medically prescribed oxygen, including, but  
10 not limited to, oxygen concentrator systems, oxygen enricher systems,  
11 liquid oxygen systems, and gaseous, bottled oxygen systems prescribed  
12 for an individual by a person licensed under chapter 18.57 or 18.71 RCW  
13 for use in the medical treatment of that individual. In addition, the  
14 tax levied by RCW 82.08.020 shall not apply to charges made for labor  
15 and services rendered in respect to the repairing, cleaning, altering,  
16 or improving of any of the items exempted under this section.

17 (2) The exemption in subsection (1) of this section shall not apply  
18 to sales of durable medical equipment or mobility enhancing equipment.

19 (3) The definitions in this subsection apply throughout this  
20 section.

21 (a) "Prosthetic device" means a replacement, corrective, or  
22 supportive device, including repair and replacement parts for a  
23 prosthetic device, worn on or in the body to:

24 (i) Artificially replace a missing portion of the body;

25 (ii) Prevent or correct a physical deformity or malfunction; or

26 (iii) Support a weak or deformed portion of the body.

27 (b) "Durable medical equipment" means equipment, including repair  
28 and replacement for durable medical equipment, but does not include  
29 mobility enhancing equipment, that:

30 (i) Can withstand repeated use;

31 (ii) Is primarily and customarily used to serve a medical purpose;

32 (iii) Generally is not useful to a person in the absence of illness  
33 or injury; and

34 (iv) Does not work in or on the body.

35 (c) "Mobility enhancing equipment" means equipment, including  
36 repair and replacement parts for mobility enhancing equipment, but does  
37 not include medical equipment, that:

1 (i) Is primarily and customarily used to provide or increase the  
2 ability to move from one place to another and that is appropriate for  
3 use either at home or a motor vehicle;

4 (ii) Is not generally used by persons with normal mobility; and

5 (iii) Does not include any motor vehicle or equipment on a motor  
6 vehicle normally provided by a motor vehicle manufacturer.

7 NEW SECTION. Sec. 410. A new section is added to chapter 82.08  
8 RCW to read as follows:

9 The tax levied by RCW 82.08.020 shall not apply to sales of kidney  
10 dialysis devices, including repair and replacement parts, for human use  
11 pursuant to a prescription.

12 NEW SECTION. Sec. 411. A new section is added to chapter 82.12  
13 RCW to read as follows:

14 The provisions of this chapter shall not apply to the use of kidney  
15 dialysis devices, including repair and replacement parts, for human use  
16 pursuant to a prescription.

17 **Sec. 412.** RCW 82.12.0277 and 2001 c 75 s 2 are each amended to  
18 read as follows:

19 (1) The provisions of this chapter shall not apply in respect to  
20 the use of ~~((insulin;))~~ prosthetic devices ~~((and the components~~  
21 ~~thereof; dental appliances, devices, restorations, and substitutes, and~~  
22 ~~the components thereof, including but not limited to full and partial~~  
23 ~~dentures, crowns, inlays, fillings, braces, and retainers; orthotic~~  
24 ~~devices))~~ prescribed for an individual by a person licensed under  
25 chapter~~((s))~~ 18.22, 18.25, 18.57, or 18.71 RCW; ~~((hearing instruments~~  
26 ~~dispensed or fitted by a person licensed or certified under chapter~~  
27 ~~18.35 RCW, and the components thereof;))~~ medicines of mineral, animal,  
28 and botanical origin ~~((prescribed,))~~ administered, dispensed, or used  
29 in the treatment of an individual by a person licensed under chapter  
30 18.36A RCW; ~~((ostomic items;))~~ and medically prescribed oxygen,  
31 including, but not limited to, oxygen concentrator systems, oxygen  
32 enricher systems, liquid oxygen systems, and gaseous, bottled oxygen  
33 systems prescribed for an individual by a person licensed under chapter  
34 18.57 or 18.71 RCW for use in the medical treatment of that individual.



1 (ii) When a prepaid calling service is not received by the  
2 purchaser at a business location of the seller, the sale is sourced to  
3 the location where receipt by the purchaser or the purchaser's donee,  
4 designated as such by the purchaser, occurs, including the location  
5 indicated by instructions for delivery to the purchaser or donee, known  
6 to the seller;

7 (iii) When (c)(i) and (ii) of this subsection do not apply, the  
8 sale is sourced to the location indicated by an address for the  
9 purchaser that is available from the business records of the seller  
10 that are maintained in the ordinary course of the seller's business  
11 when use of this address does not constitute bad faith;

12 (iv) When (c)(i), (ii), and (iii) of this subsection do not apply,  
13 the sale is sourced to the location indicated by an address for the  
14 purchaser obtained during the consummation of the sale, including the  
15 address of a purchaser's payment instrument, if no other address is  
16 available, when use of this address does not constitute bad faith;

17 (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not  
18 apply, including the circumstance where the seller is without  
19 sufficient information to apply those provisions, then the location  
20 shall be determined by the address from which tangible personal  
21 property was shipped, from which the digital good or the computer  
22 software delivered electronically was first available for transmission  
23 by the seller, or from which the service defined as a retail sale under  
24 RCW 82.04.050 was provided, disregarding for these purposes any  
25 location that merely provided the digital transfer of the product sold;

26 (vi) In the case of a sale of mobile telecommunications service  
27 that is a prepaid telecommunications service, (c)(iv) of this  
28 subsection shall include as an option the location associated with the  
29 mobile telephone number.

30 (d) A sale of a private communication service is sourced as  
31 follows:

32 (i) Service for a separate charge related to a customer channel  
33 termination point is sourced to each level of jurisdiction in which  
34 such customer channel termination point is located.

35 (ii) Service where all customer termination points are located  
36 entirely within one jurisdiction or levels of jurisdiction is sourced  
37 in such jurisdiction in which the customer channel termination points  
38 are located.

1 (iii) Service for segments of a channel between two customer  
2 channel termination points located in different jurisdictions and which  
3 segment of channel are separately charged is sourced fifty percent in  
4 each level of jurisdiction in which the customer channel termination  
5 points are located.

6 (iv) Service for segments of a channel located in more than one  
7 jurisdiction or levels of jurisdiction and which segments are not  
8 separately billed is sourced in each jurisdiction based on the  
9 percentage determined by dividing the number of customer channel  
10 termination points in the jurisdiction by the total number of customer  
11 channel termination points.

12 (4) The definitions in this subsection apply throughout this  
13 chapter.

14 (a) "Air-ground radiotelephone service" means air-ground radio  
15 service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered  
16 as of January 1, 2003, in which common carriers are authorized to offer  
17 and provide radio telecommunications service for hire to subscribers in  
18 aircraft.

19 (b) "Call-by-call basis" means any method of charging for  
20 telecommunications services where the price is measured by individual  
21 calls.

22 (c) "Communications channel" means a physical or virtual path of  
23 communications over which signals are transmitted between or among  
24 customer channel termination points.

25 (d) "Customer" means the person or entity that contracts with the  
26 seller of telecommunications services. If the end user of  
27 telecommunications services is not the contracting party, the end user  
28 of the telecommunications service is the customer of the  
29 telecommunications service. "Customer" does not include a reseller of  
30 telecommunications service or for mobile telecommunications service of  
31 a serving carrier under an agreement to serve the customer outside the  
32 home service provider's licensed service area.

33 (e) "Customer channel termination point" means the location where  
34 the customer either inputs or receives the communications.

35 (f) "End user" means the person who uses the telecommunications  
36 service. In the case of an entity, the term end user means the  
37 individual who uses the service on behalf of the entity.

1 (g) "Home service provider" means the same as that term is defined  
2 in RCW 82.04.065.

3 (h) "Mobile telecommunications service" means the same as that term  
4 is defined in RCW 82.04.065.

5 (i) "Place of primary use" means the street address representative  
6 of where the customer's use of the telecommunications service primarily  
7 occurs, which must be the residential street address or the primary  
8 business street address of the customer. In the case of mobile  
9 telecommunications services, "place of primary use" must be within the  
10 licensed service area of the home service provider.

11 (j) "Postpaid calling service" means the telecommunications service  
12 obtained by making a payment on a call-by-call basis either through the  
13 use of a credit card or payment mechanism such as a bank card, travel  
14 card, credit card, or debit card, or by charge made to which a  
15 telephone number that is not associated with the origination or  
16 termination of the telecommunications service. A postpaid calling  
17 service includes a telecommunications service that would be a prepaid  
18 calling service except it is not exclusively a telecommunications  
19 service.

20 (k) "Prepaid calling service" means the right to access exclusively  
21 telecommunications services, which must be paid for in advance and  
22 which enables the origination of calls using an access number and/or  
23 authorization code, whether manually or electronically dialed, and that  
24 is sold in predetermined units or dollars of which the number declines  
25 with use in a known amount.

26 (l) "Private communication service" means a telecommunications  
27 service that entitles the customer to exclusive or priority use of a  
28 communications channel or group of channels between or among  
29 termination points, regardless of the manner in which such channel or  
30 channels are connected, and includes switching capacity, extension  
31 lines, stations, and any other associated services that are provided in  
32 connection with the use of such channel or channels.

33 (m) "Service address" means:

34 (i) The location of the telecommunications equipment to which a  
35 customer's call is charged and from which the call originates or  
36 terminates, regardless of where the call is billed or paid;

37 (ii) If the location in (m)(i) of this subsection is not known, the  
38 origination point of the signal of the telecommunications services



1 first identified by either the seller's telecommunications system or in  
2 information received by the seller from its home service provider,  
3 where the system used to transport such signals is not that of the  
4 seller;

5 (iii) If the location in (m)(i) and (ii) of this subsection are not  
6 known, the location of the customer's place of primary use.

7 **Sec. 502.** RCW 82.14.020 and 2002 c 367 s 6 and 2002 c 67 s 7 are  
8 each reenacted and amended to read as follows:

9 For purposes of this chapter:

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

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

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

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

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

35 (b) A retail sale consisting of the providing ~~((to a consumer of~~  
36 ~~mobile telecommunications services is deemed to have occurred at the~~  
37 ~~customer's place of primary use, regardless of where the mobile~~

1 ~~telecommunications services originate, terminate, or pass through,~~  
2 ~~consistent with the mobile telecommunications sourcing act, P.L. 106-~~  
3 ~~252, 4 U.S.C. Secs. 116 through 126))~~ of telecommunications services  
4 shall be sourced in accordance with section 501 of this act;

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

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

8 (8) The meaning ascribed to words and phrases in chapters 82.04,  
9 82.08 and 82.12 RCW, as now or hereafter amended, insofar as  
10 applicable, shall have full force and effect with respect to taxes  
11 imposed under authority of this chapter;

12 (9) "Taxable event" shall mean any retail sale, or any use, upon  
13 which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as  
14 they now exist or may hereafter be amended: PROVIDED, HOWEVER, That  
15 the term shall not include a retail sale taxable pursuant to RCW  
16 82.08.150, as now or hereafter amended;

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

19 **Sec. 503.** RCW 82.14.020 and 2002 c 367 s 6 are each amended to  
20 read as follows:

21 For purposes of this chapter:

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

25 (2) A retail sale consisting essentially of the performance of  
26 personal, business, or professional services shall be deemed to have  
27 occurred at the place at which such services were primarily performed,  
28 except that for the performance of a tow truck service, as defined in  
29 RCW 46.55.010, the retail sale shall be deemed to have occurred at the  
30 place of business of the operator of the tow truck service;

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 RCW 82.04.050(2), and a

1 retail sale of taxable personal property to be installed by the seller  
2 shall be deemed to have occurred at the place where the labor and  
3 services involved were primarily performed;

4 (5) A retail sale consisting of the providing (~~to a consumer of~~  
5 ~~telephone service, as defined in RCW 82.04.065, other than a sale of~~  
6 ~~tangible personal property under subsection (1) of this section or a~~  
7 ~~rental of tangible personal property under subsection (3) of this~~  
8 ~~section, shall be deemed to have occurred at the situs of the telephone~~  
9 ~~or other instrument through which the telephone service is rendered~~)  
10 of telecommunications services shall be sourced in accordance with  
11 section 501 of this act;

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

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

15 (8) The meaning ascribed to words and phrases in chapters 82.04,  
16 82.08 and 82.12 RCW, as now or hereafter amended, insofar as  
17 applicable, shall have full force and effect with respect to taxes  
18 imposed under authority of this chapter;

19 (9) "Taxable event" shall mean any retail sale, or any use, upon  
20 which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as  
21 they now exist or may hereafter be amended: PROVIDED, HOWEVER, That  
22 the term shall not include a retail sale taxable pursuant to RCW  
23 82.08.150, as now or hereafter amended;

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

26 NEW SECTION. Sec. 504. The department of revenue shall conduct a  
27 study of the fiscal impact on local jurisdictions of the sourcing  
28 provisions proposed in the streamlined sales and use tax agreement.  
29 The department shall use, and regularly consult, a committee composed  
30 of city and county officials to assist with the study. Committee  
31 responsibilities include identification of elements of the study  
32 including mitigation options for jurisdictions negatively impacted by  
33 the sourcing provision. The department shall report the results of the  
34 study, which at minimum shall include the identification of the fiscal  
35 impacts on local governments of the sourcing provisions, by December 1,  
36 2003, to the governor and fiscal committees of the legislature.

PART VI--SOFTWARE AND RELATED ITEMS

Sec. 601. RCW 82.04.215 and 1998 c 332 s 3 are each amended to read as follows:

(1) (~~"Canned software" means software that is created for sale to more than one person~~) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means software created for a single person.  
(~~(+3)~~) (4) "Customization of (~~eanned~~) prewritten computer software" means any alteration, modification, or development of applications using or incorporating (~~eanned~~) prewritten computer software for a specific person. "Customization of (~~eanned~~) prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of (~~eanned~~) prewritten computer software does not change the underlying character or taxability of the original (~~eanned~~) prewritten computer software.

(~~(+4)~~) (5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(~~(+5)~~) (6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of

1 the person's modifications or enhancements. Prewritten computer  
2 software or a prewritten portion thereof that is modified or enhanced  
3 to any degree, where such modification or enhancement is designed and  
4 developed to the specifications of a specific purchaser, remains  
5 prewritten computer software; however where there is a reasonable,  
6 separately stated charge or an invoice or other statement of the price  
7 given to the purchaser for the modification or enhancement, the  
8 modification or enhancement shall not constitute prewritten computer  
9 software.

10 (7) "Retained rights" means any and all rights, including  
11 intellectual property rights such as those rights arising from  
12 copyrights, patents, and trade secret laws, that are owned or are held  
13 under contract or license by a software developer, author, inventor,  
14 publisher, licensor, sublicensor, or distributor.

15 ~~((6) "Software" means any information, program, or routine, or any~~  
16 ~~set of one or more programs, routines, or collections of information~~  
17 ~~used, or intended for use, to convey information that causes one or~~  
18 ~~more computers or pieces of computer related peripheral equipment, or~~  
19 ~~any combination thereof, to perform a task or set of tasks. "Software"~~  
20 ~~includes only those copies of such information, programs, or routines~~  
21 ~~intended for use by an end user and specifically excludes retained~~  
22 ~~rights in software and master copies of software. "Software" includes~~  
23 ~~the associated documentation that describes the code and its use,~~  
24 ~~operation, and maintenance and typically is delivered with the code to~~  
25 ~~the consumer. All software is classified as either canned or custom.))~~

26 **Sec. 602.** RCW 82.04.29001 and 1998 c 332 s 4 are each amended to  
27 read as follows:

28 (1) The creation and distribution of custom software is a service  
29 taxable under RCW 82.04.290(2). Duplication of the software for the  
30 same person, or by the same person for its own use, does not change the  
31 character of the software.

32 (2) The customization of ~~((canned))~~ prewritten computer software is  
33 a service taxable under RCW 82.04.290(2).

34 **Sec. 603.** RCW 82.12.0284 and 1983 1st ex.s. c 55 s 7 are each  
35 amended to read as follows:

36 The provisions of this chapter shall not apply in respect to the

1 use of computers, computer components, computer accessories, or  
2 computer software irrevocably donated to any public or private  
3 nonprofit school or college, as defined under chapter 84.36 RCW, in  
4 this state. For purposes of this section, "computer" (~~means a data  
5 processor that can perform substantial computation, including numerous  
6 arithmetic or logic operations, without intervention by a human  
7 operator during the run~~) has the same meaning as in RCW 82.04.215.

8 **Sec. 604.** RCW 82.04.120 and 1999 sp.s. c 9 s 1 are each amended to  
9 read as follows:

10 "To manufacture" embraces 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 thereof a new, different or  
13 useful substance or article of tangible personal property is produced  
14 for sale or commercial or industrial use, and shall include: (1) The  
15 production or fabrication of special made or custom made articles; (2)  
16 the production or fabrication of dental appliances, devices,  
17 restorations, substitutes, or other dental laboratory products by a  
18 dental laboratory or dental technician; (3) cutting, delimiting, and  
19 measuring of felled, cut, or taken trees; and (4) crushing and/or  
20 blending of rock, sand, stone, gravel, or ore.

21 "To manufacture" shall not include: Conditioning of seed for use  
22 in planting; cubing hay or alfalfa; activities which consist of  
23 cutting, grading, or ice glazing seafood which has been cooked, frozen,  
24 or canned outside this state; the growing, harvesting, or producing of  
25 agricultural products; (~~or~~) packing of agricultural products,  
26 including sorting, washing, rinsing, grading, waxing, treating with  
27 fungicide, packaging, chilling, or placing in controlled atmospheric  
28 storage; or the production of computer software if the computer  
29 software is delivered from the seller to the purchaser by means other  
30 than tangible storage media, including the delivery by use of a  
31 tangible storage media where the tangible storage media is not  
32 physically transferred to the purchaser.

33 **PART VII--STEAM, ELECTRICITY, AND ELECTRICAL ENERGY**

34 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.02  
35 RCW to read as follows:



1 or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of  
2 motor vehicles, aircraft, watercraft, modular homes, manufactured  
3 homes, or mobile homes.

4 **PART IX--MISCELLANEOUS PROVISIONS**

5 NEW SECTION. **Sec. 901.** Part headings used in this act are not any  
6 part of the law.

7 **Sec. 902.** 2002 c 67 s 18 (uncodified) is amended to read as  
8 follows:

9 (1) If a court of competent jurisdiction enters a final judgment on  
10 the merits that is based on federal or state law, is no longer subject  
11 to appeal, and substantially limits or impairs the essential elements  
12 of P.L. 106-252(~~([, 4 U.S.C.]~~), 4 U.S.C. Secs. 116 through 126, or  
13 chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and  
14 void in its entirety.

15 (2) If the contingency in subsection (1) of this section occurs,  
16 section 502, chapter . . ., Laws of 2003 (section 502 of this act) is  
17 null and void.

18 NEW SECTION. **Sec. 903.** Sections 101 through 104, 201 through 216,  
19 301 through 305, 401 through 412, 501, 502, 601 through 604, 701  
20 through 704, 801, 901, and 902 of this act take effect July 1, 2004.

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