State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Zarelli, Regala and Winsley; by request of Department of Revenue)

READ FIRST TIME 02/26/04.

1 AN ACT Relating to correcting errors, omissions, and inconsistencies within Title 82 RCW from chapter 168, Laws of 2003, which implemented portions of the streamlined sales and use tax agreement; amending RCW 82.08.0283, 82.08.0281, 82.08.945, 82.12.945, 82.08.0293, 82.08.037, 82.08.100, 82.12.037, 82.12.070, 82.32.060, 82.04.4284, 82.16.050, 82.14B.150, 82.58.050, 82.04.040, 82.32.520, 82.32.530, 82.02.230, 82.08.010, 82.04.050, 82.32.525, 82.08.080, and 82.04.530; amending 2003 c 168 s 902 (uncodified); reenacting and amending RCW 82.12.0277; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; creating a new section; providing effective dates; providing a contingent expiration date; and declaring an emergency.

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

PART I

MEDICAL PROVISIONS

Sec. 101. RCW 82.08.0283 and 2003 c 168 s 409 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of:
(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under (chapter 18.22, 18.25, 18.57, or 18.71 RCW) the laws of this state to prescribe, fit, or furnish prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

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

((3+)) (4) The definitions in this subsection apply throughout this section.

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

(i) Artificially replace a missing portion of the body;
(ii) Prevent or correct a physical deformity or malfunction; or
(iii) Support a weak or deformed portion of the body.

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

(i) Can withstand repeated use;
(ii) Is primarily and customarily used to serve a medical purpose;
(iii) Generally is not useful to a person in the absence of illness or injury; and
(iv) Does not work in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment((, but does not include medical equipment,)) that:
(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either ((at)) in a home or a motor vehicle;
(ii) Is not generally used by persons with normal mobility; and
(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
(d) The terms "durable medical equipment" and "mobility enhancing equipment" are mutually exclusive.

NEW SECTION.  Sec. 102. A new section is added to chapter 82.08 RCW to read as follows:
The tax levied by RCW 82.08.020 shall not apply to sales of insulin for human use.

NEW SECTION.  Sec. 103. A new section is added to chapter 82.12 RCW to read as follows:
The provisions of this chapter shall not apply in respect to the use of insulin by humans.

NEW SECTION.  Sec. 104. A new section is added to chapter 82.08 RCW to read as follows:
The tax levied by RCW 82.08.020 shall not apply to sales of nebulizers, including repair and replacement parts for nebulizers, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" means a device, not a building fixture, that converts a liquid medication into a mist so that it can be inhaled.

NEW SECTION.  Sec. 105. A new section is added to chapter 82.12 RCW to read as follows:
The provisions of this chapter shall not apply in respect to the use of nebulizers, including repair and replacement parts for nebulizers, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to labor and services rendered in respect to the repairing, cleaning, altering, or
improving of nebulizers. "Nebulizer" has the same meaning as in section 104 of this act.

NEW SECTION. Sec. 106. A new section is added to chapter 82.08 RCW to read as follows:
The tax levied by RCW 82.08.020 shall not apply to sales of ostomic items used by colostomy, ileostomy, or urostomy patients. "Ostomic items" means disposable medical supplies used by colostomy, ileostomy, and urostomy patients, and includes bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and other like supplies. "Ostomic items" does not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets.

NEW SECTION. Sec. 107. A new section is added to chapter 82.12 RCW to read as follows:
The provisions of this chapter shall not apply in respect to the use of ostomic items by colostomy, ileostomy, or urostomy patients. "Ostomic items" has the same meaning as in section 106 of this act.

Sec. 108. RCW 82.08.0281 and 2003 c 168 s 403 are each amended to read as follows:
(1) The tax levied by RCW 82.08.020 shall not apply to sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription.
(2) The tax levied by RCW 82.08.020 shall not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.
(3) The tax levied by RCW 82.08.020 shall not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.
(4) The definitions in this subsection apply throughout this section.
(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a
duly licensed practitioner authorized by the laws of this state to prescribe.

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

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

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

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

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

(i) A "drug facts" panel; or

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

Sec. 109. RCW 82.12.0277 and 2003 c 168 s 412 and 2003 c 5 s 8 are each reenacted and amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under ((chapter 18.22, 18.25, 18.57, or 18.71 RCW)) the laws of this state to prescribe, fit, or furnish prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.
The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment or mobility enhancing equipment.

"Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283.

Sec. 110. RCW 82.08.945 and 2003 c 168 s 410 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices.

Sec. 111. RCW 82.12.945 and 2003 c 168 s 411 are each amended to read as follows:

The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices.

PART II
FOOD PROVISIONS

Sec. 201. RCW 82.08.0293 and 2003 c 168 s 301 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

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

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

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

(a) "Prepared food" means:

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

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

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

"Prepared food" in (a)(ii) of this subsection, does not include)); or

(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller ((and raw)); or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness(( or bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas)).

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

(ii) Food sold in an unheated state by weight or volume as a single item; or
(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; at least twenty percent cranberry juice by volume; or greater than fifty percent of vegetable or fruit juice by volume. Soft drinks do not include nectars of at least twenty percent fruit juice by volume.

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

(i) Contains one or more of the following dietary ingredients:
   (A) A vitamin;
   (B) A mineral;
   (C) An herb or other botanical;
   (D) An amino acid;
   (E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
   (F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection; ((and))

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

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

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

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

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

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

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

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

PART III
BAD DEBT PROVISIONS

NEW SECTION. Sec. 301. For the purposes of sections 302 through 305 of this act, the legislature does not intend by any provision of this act relating to bad debts, and did not intend by any provision of chapter 168, Laws of 2003 relating to bad debts, to affect the holding of the supreme court of the state of Washington in Puget Sound National Bank v. the Department of Revenue, 123 Wn. 2nd 284 (1994).

Sec. 302. RCW 82.08.037 and 2003 c 168 s 212 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes previously paid on ((debts which are)) bad debts ((under)), as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003((, except for:)).

(2) For purposes of this section, "bad debts" does not include:

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

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

(c) Repossessed property.

((2) (3)) (3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the
tax on the amount collected must be paid and reported on the return
filed for the period in which the collection is made.

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

(5) If the seller uses a certified service provider as
defined in RCW 82.58.010 to administer its sales tax responsibilities,
the certified service provider may claim, on behalf of the seller, the
credit or refund allowed by this section. The certified service
provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among
member states to the streamlined sales tax agreement, as defined in RCW
82.58.010(1), if the books and records of the person claiming bad debts
support the allocation.

Sec. 303. RCW 82.08.100 and 1982 1st ex.s. c 35 s 37 are each
amended to read as follows:

The department of revenue, by general regulation, shall provide
that a taxpayer whose regular books of account are kept on a cash
receipts basis may file returns based upon his cash receipts for each
reporting period and pay the tax herein provided upon such basis in
lieu of reporting and paying the tax on all sales made during such
period. A taxpayer filing returns on a cash receipts basis is not
required to pay such tax on ((debts which are deductible as worthless
for federal income tax purposes)) debt subject to credit or refund
under RCW 82.08.037.

Sec. 304. RCW 82.12.037 and 1982 1st ex.s. c 35 s 36 are each
amended to read as follows:

(1) A seller is entitled to a credit or refund for use taxes
previously paid on ((debts which are deductible as worthless for
federal income tax purposes)) bad debts, as that term is used in 26

(2) For purposes of this section, "bad debts" does not include:
(a) Amounts due on property that remains in the possession of the
seller until the full purchase price is paid;
(b) Expenses incurred in attempting to collect debt; and
(c) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

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

(5) If the seller uses a certified service provider as defined in RCW 82.58.010 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

Sec. 305. RCW 82.12.070 and 1982 1st ex.s. c 35 s 38 are each amended to read as follows:

The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on ((debts which are deductible as worthless for federal income tax purposes)) debt subject to credit or refund under RCW 82.12.037.

Sec. 306. RCW 82.32.060 and 2003 c 73 s 2 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit shall be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31,
1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, shall be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest shall be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest shall be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.
Sec. 307. RCW 82.04.4284 and 1980 c 37 s 5 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax (the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis) bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid.

(2) For purposes of this section, "bad debts" do not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
(b) Expenses incurred in attempting to collect debt;
(c) Sales or use taxes payable to a seller; and
(d) Repossessed property.

(3) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt must be applied under RCW 82.08.037(4) and 82.12.037, according to such rules as the department may prescribe.

Sec. 308. RCW 82.16.050 and 2000 c 245 s 1 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: PROVIDED, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for
services furnished jointly by both, if the total amount has been
credited to and appears in the gross income reported for tax by the
former;

(4) The amount of cash discount actually taken by the purchaser or
customer;

(5) The amount of ((credit losses actually sustained by taxpayers
whose regular books of accounts are kept upon an accrual basis)) bad
debts, as that term is used in 26 U.S.C. Sec. 166, as amended or
renumbered as of January 1, 2003, on which tax was previously paid
under this chapter;

(6) Amounts derived from business which the state is prohibited
from taxing under the Constitution of this state or the Constitution or
laws of the United States;

(7) Amounts derived from the distribution of water through an
irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from
points of origin in this state to final destination outside this state, or
from points of origin outside this state to final destination in
this state, with respect to which the carrier grants to the shipper the
privilege of stopping the shipment in transit at some point in this
state for the purpose of storing, manufacturing, milling, or other
processing, and thereafter forwards the same commodity, or its
equivalent, in the same or converted form, under a through freight rate
from point of origin to final destination; and amounts derived from the
transportation of commodities from points of origin in the state to an
export elevator, wharf, dock or ship side on tidewater or navigable
tributaries thereto from which such commodities are forwarded, without
intervening transportation, by vessel, in their original form, to
interstate or foreign destinations: PROVIDED, That no deduction will
be allowed when the point of origin and the point of delivery to such
an export elevator, wharf, dock, or ship side are located within the
corporate limits of the same city or town;

(9) Amounts derived from the production, sale, or transfer of
electrical energy for resale within or outside the state or for
consumption outside the state;

(10) Amounts derived from the distribution of water by a nonprofit
water association and used for capital improvements by that nonprofit
water association;
(11) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage.

Sec. 309. RCW 82.14B.150 and 1998 c 304 s 7 are each amended to read as follows:

(1) A local exchange company or radio communications service company shall file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A local exchange company or radio communications service company filing returns on a cash receipts basis is not required to pay tax on ((debts that are deductible as worthless for federal income tax purposes)) debt subject to credit or refund under subsection (2) of this section.

(2) A local exchange company or radio communications service company is entitled to a credit or refund for state enhanced 911 excise taxes previously paid on bad debts ((that are deductible as worthless for federal income tax purposes)), as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

PART IV

MISCELLANEOUS PROVISIONS

Sec. 401. RCW 82.58.050 and 2002 c 267 s 7 are each amended to read as follows:

The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the requirements in this section.

(1) The agreement must set restrictions to limit over time the number of state rates.

(2) The agreement must establish uniform standards for:

(a) The sourcing of transactions to taxing jurisdictions;
(b) The administration of exempt sales; and
(c) Sales and use tax returns and remittances.

(3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
(4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:
   (a) Restricting variances between the state and local tax bases;
   (b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
   (c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and
   (d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity (to be completed by July 1, 2002).

(7) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(8) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 402. RCW 82.04.040 and 2003 c 168 s 103 are each amended to read as follows:

(1) "Sale" means any transfer of the ownership of, title to, or
possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

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

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

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

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

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

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the ((equipment)) tangible personal property to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.
Sec. 403.  RCW 82.32.520 and 2003 c 168 s 501 are each amended to read as follows:

(1) Except for the defined telecommunications services listed in this section, the sale of telephone service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in this section, a sale of telephone service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telephone service as defined in RCW 82.04.065 that are listed in this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its ((home)) service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

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

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the
purchaser that is available from the business records of the seller when use of this address does not constitute bad faith;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) "Service address" means:

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

(ii) If the location in (m)(i) of this subsection is not known, the
origination point of the signal of the telecommunications services
first identified by either the seller's telecommunications system or in
information received by the seller from its service provider,
where the system used to transport such signals is not that of the
seller;

(iii) If the locations in (m)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use.
Sec. 404. RCW 82.32.530 and 2003 c 168 s 213 are each amended to read as follows:

The department may not attribute nexus with Washington to any seller solely by virtue of the seller registering under the streamlined sales and use tax agreement) use registration under the streamlined sales and use tax agreement and collection of sales and use taxes in member states as a factor in determining whether the seller has nexus with Washington for any tax at any time.

Sec. 405. RCW 82.02.230 and 2003 c 168 s 801 are each amended to read as follows:

(1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 35.21.280, 36.38.010, 36.38.040, 67.40.090, or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Sec. 406. RCW 82.08.010 and 2003 c 168 s 101 are each amended to read as follows:

For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d)
delivery charges; (e) installation charges; and (f) the value of exempt tangible personal property given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

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

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

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

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

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

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

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

Sec. 407. RCW 82.04.050 and 2003 c 168 s 104 are each amended to read as follows:

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

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

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

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or
1 is a chemical used in processing, when the primary purpose of such
2 chemical is to create a chemical reaction directly through contact with
3 an ingredient of a new article being produced for sale; or
4 (d) Purchases for the purpose of consuming the property purchased
5 in producing ferrosilicon which is subsequently used in producing
6 magnesium for sale, if the primary purpose of such property is to
7 create a chemical reaction directly through contact with an ingredient
8 of ferrosilicon; or
9 (e) Purchases for the purpose of providing the property to
10 consumers as part of competitive telephone service, as defined in RCW
11 82.04.065. The term shall include every sale of tangible personal
12 property which is used or consumed or to be used or consumed in the
13 performance of any activity classified as a "sale at retail" or "retail
14 sale" even though such property is resold or utilized as provided in
15 (a), (b), (c), (d), or (e) of this subsection following such use. The
16 term also means every sale of tangible personal property to persons
17 engaged in any business which is taxable under RCW 82.04.280 (2) and
18 (7) and 82.04.290.
19 (2) The term "sale at retail" or "retail sale" shall include the
20 sale of or charge made for tangible personal property consumed and/or
21 for labor and services rendered in respect to the following:
22 (a) The installing, repairing, cleaning, altering, imprinting, or
23 improving of tangible personal property of or for consumers, including
24 charges made for the mere use of facilities in respect thereto, but
25 excluding charges made for the use of coin-operated laundry facilities
26 when such facilities are situated in an apartment house, rooming house,
27 or mobile home park for the exclusive use of the tenants thereof, and
28 also excluding sales of laundry service to nonprofit health care
29 facilities, and excluding services rendered in respect to live animals,
30 birds and insects;
31 (b) The constructing, repairing, decorating, or improving of new or
32 existing buildings or other structures under, upon, or above real
33 property of or for consumers, including the installing or attaching of
34 any article of tangible personal property therein or thereto, whether
35 or not such personal property becomes a part of the realty by virtue of
36 installation, and shall also include the sale of services or charges
37 made for the clearing of land and the moving of earth excepting the
38 mere leveling of land used in commercial farming or agriculture;
(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

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

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

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

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

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

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

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

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

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

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

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

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

(i) The renting or leasing of tangible personal property to consumers; and

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

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

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

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

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

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

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

(10) Until July 1, 2003, the term shall not include the sale of or
charge made for labor and services rendered for environmental remedial
action as defined in RCW 82.04.2635(2).

**Sec. 408.** RCW 82.32.525 and 2003 c 168 s 211 are each amended to
read as follows:

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

(2) In connection with a purchaser's request from a seller for
over-collected sales or use taxes, a seller shall be presumed to have
a reasonable business practice, if in the collection of such sales or
use taxes, the seller:

(a) Uses either a provider or a system, including a proprietary
system, that is certified by the state; and

(b) Has remitted to the state all taxes collected less any
deductions, credits, or collection allowances.

**Sec. 409.** RCW 82.08.080 and 1986 c 36 s 2 are each amended to read
as follows:

(1) The department of revenue may authorize a seller to pay the tax
levied under this chapter upon sales made under conditions of business
such as to render impracticable the collection of the tax as a separate
item and waive collection of the tax from the customer. Where sales
are made by ((receipt of a coin or coins dropped into a receptacle)) a
vending machine that results in delivery of the merchandise in single
purchases of smaller value than the minimum sale upon which a one cent
tax may be collected from the purchaser, according to the schedule
provided by the department under authority of RCW 82.08.060, and where
the design of the sales device is such that multiple sales of items are
not possible or cannot be detected so as practically to assess a tax,
in such a case the selling price for the purposes of the tax imposed
under RCW 82.08.020 shall be sixty percent of the gross receipts of the
vending machine through which such sales are made.

(2) No such authority shall be granted except upon application to
the department and unless the department, after hearing, finds that the
conditions of the applicant's business are such as to render
impracticable the collection of the tax in the manner otherwise
provided. The department, by ((regulation)) rule, may provide that the
applicant, under this section, furnish a proper bond sufficient to
secure the payment of the tax.

(3) "Vending machine" means a machine or other mechanical device
that accepts payment and:

(a) Dispenses tangible personal property;
(b) Provides facilities for installing, repairing, cleaning,
altering, imprinting, or improving tangible personal property; or
(c) Provides a service to the buyer.

Sec. 410. RCW 82.04.530 and 2002 c 67 s 3 are each amended to read
as follows:

For purposes of this chapter, a telephone business other than a
mobile telecommunications service provider must calculate gross
proceeds of retail sales ((by including all charges for network
telephone services originating from or received on telecommunications
equipment or apparatus in this state if the charge for the service is
billed to a person in this state)) in a manner consistent with the
sourcing rules provided in RCW 82.32.520. The department may adopt
rules to implement this section, including rules that provide a
formulary method of determining gross proceeds that reasonably
approximates the taxable activity of a telephone business.

PART V
MISCELLANEOUS
NEW SECTION. Sec. 501. (1) Section 201 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and retroactively takes effect January 1, 2004.

(2) This act takes effect July 1, 2004, except section 201 of this act.

Sec. 502. 2003 c 168 s 902 (uncodified) is amended to read as follows:

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

(2) If the contingency in subsection (1) of this section occurs, section 502, chapter 168, Laws of 2003 is null and void.

(3) If the contingency in subsection (1) of this section occurs, section 410, chapter . . ., Laws of 2004 (section 410 of this act) is null and void.

--- END ---