
SUBSTITUTE SENATE BILL 6544

State of Washington

58th Legislature

2004 Regular Session

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

READ FIRST TIME 02/26/04.

1 AN ACT Relating to conforming Washington's tax structure to
2 portions of the streamlined sales and use tax agreement not implemented
3 by chapter 168, Laws of 2003; amending RCW 82.32.020, 82.32.030, and
4 82.14.060; amending 2003 c 168 s 902 (uncodified); reenacting and
5 amending RCW 82.14.020 and 82.32.330; adding new sections to chapter
6 82.32 RCW; adding a new section to chapter 82.14 RCW; adding a new
7 section to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW;
8 creating new sections; and providing a contingent effective date.

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

10 **PART I. DEFINITIONS**

11 **Sec. 101.** RCW 82.32.020 and 2003 1st sp.s. c 13 s 16 are each
12 amended to read as follows:

13 For the purposes of this chapter:

14 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
15 the words and phrases "tax year," "taxable year," "person," "company,"
16 "gross proceeds of sales," "gross income of the business," "business,"
17 "engaging in business," "successor," "gross operating revenue," "gross

1 income," "taxpayer," "retail sale," and "value of products" shall apply
2 equally to the provisions of this chapter.

3 (2) Unless the context requires otherwise, "agreement" means the
4 streamlined sales and use tax agreement.

5 (3) "Certified automated system" means software certified under the
6 agreement to calculate the tax imposed by each jurisdiction on a
7 transaction, determine the amount of tax to remit to the appropriate
8 state, and maintain a record of the transaction.

9 (4) "Certified service provider" means an agent certified under the
10 agreement to perform all of the seller's sales and use tax functions,
11 other than the seller's obligation to remit tax on its own purchases.

12 (5)(a) "Member state" means a state that:

13 (i) Has petitioned for membership in the agreement and submitted a
14 certificate of compliance; and

15 (ii) Prior to the effective date of the agreement, has been found
16 to be in substantial compliance with the requirements of the agreement
17 by an affirmative vote of three-fourths of the other petitioning
18 states; or

19 (iii) After the effective date of the agreement, has been found to
20 be in compliance with the agreement by a three-fourths vote of the
21 entire governing board of the agreement.

22 (b) Membership under (a)(ii) of this subsection is effective on the
23 first day of a calendar quarter at least sixty days after at least ten
24 states comprising at least twenty percent of the total population, as
25 determined by the 2000 federal census, of all states imposing a state
26 sales tax have petitioned for membership and have been found in
27 compliance with the agreement.

28 (c) Membership under (a)(iii) of this subsection is effective on
29 the state's proposed date of entry.

30 (6) "Model 1 seller" means a seller that has selected a certified
31 service provider as its agent to perform all the seller's sales and use
32 tax functions, other than the seller's obligation to remit tax on its
33 own purchases.

34 (7) "Model 2 seller" means a seller that has selected a certified
35 automated system to perform part of its sales and use tax functions,
36 but retains responsibility for remitting the tax.

37 (8) "Model 3 seller" means a seller that has sales in at least five
38 member states, has total annual sales revenue of at least five hundred

1 million dollars, has a proprietary system that calculates the amount of
2 tax due each jurisdiction, and has entered into a performance agreement
3 with the member states that establishes a tax performance standard for
4 the seller. As used in this subsection, a seller includes an
5 affiliated group of sellers using the same proprietary system.

6 (9) "Source" means the location in which the sale or use, of
7 tangible personal property or a service, subject to tax under chapter
8 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur.

9 (10) "Operational date" means the first day of the first calendar
10 quarter that is at least six months after the first month that the
11 state can lawfully require remote sellers to collect sales or use tax
12 on retail sales made to Washington residents as determined by a court
13 of competent jurisdiction, in a judgment not subject to review, or by
14 other legal act as certified by the director of revenue.

15 **PART II. REGISTRATION**

16 NEW SECTION. Sec. 201. A new section is added to chapter 82.32
17 RCW to read as follows:

18 (1) A seller, by written agreement, may appoint a person to
19 represent the seller as its agent. The seller's agent has authority to
20 register the seller with the state. An agent may also be a certified
21 service provider, with authority to perform all the seller's sales and
22 use tax functions, except that the seller remains responsible for
23 remitting the tax on its own purchases.

24 (2) The seller or its agent must provide the state with a copy of
25 the written agreement upon request.

26 **Sec. 202.** RCW 82.32.030 and 1996 c 111 s 2 are each amended to
27 read as follows:

28 (1) Except as provided in subsections (2) and (3) of this section,
29 if any person engages in any business or performs any act upon which a
30 tax is imposed by the preceding chapters, he or she shall, under such
31 rules as the department of revenue shall prescribe, apply for and
32 obtain from the department a registration certificate. Such
33 registration certificate shall be personal and nontransferable and
34 shall be valid as long as the taxpayer continues in business and pays
35 the tax accrued to the state. In case business is transacted at two or

1 more separate places by one taxpayer, a separate registration
2 certificate for each place at which business is transacted with the
3 public shall be required. Each certificate shall be numbered and shall
4 show the name, residence, and place and character of business of the
5 taxpayer and such other information as the department of revenue deems
6 necessary and shall be posted in a conspicuous place at the place of
7 business for which it is issued. Where a place of business of the
8 taxpayer is changed, the taxpayer must return to the department the
9 existing certificate, and a new certificate will be issued for the new
10 place of business. No person required to be registered under this
11 section shall engage in any business taxable hereunder without first
12 being so registered. The department, by rule, may provide for the
13 issuance of certificates of registration to temporary places of
14 business.

15 (2) Unless the person is a dealer as defined in RCW 9.41.010,
16 registration under this section is not required if the following
17 conditions are met:

18 (a) A person's value of products, gross proceeds of sales, or gross
19 income of the business, from all business activities taxable under
20 chapter 82.04 RCW, is less than twelve thousand dollars per year;

21 (b) The person's gross income of the business from all activities
22 taxable under chapter 82.16 RCW is less than twelve thousand dollars
23 per year;

24 (c) The person is not required to collect or pay to the department
25 of revenue any other tax or fee which the department is authorized to
26 collect; and

27 (d) The person is not otherwise required to obtain a license
28 subject to the master application procedure provided in chapter 19.02
29 RCW.

30 (3) Persons who agree to collect and remit sales and use tax to the
31 department under the agreement and are not required to register under
32 subsection (1) of this section may:

33 (a) Register through an on-line system authorized under the
34 agreement, if the person agrees to provide additional information to
35 the department to complete the registration process; or

36 (b) Register under subsection (1) of this section.

1 **PART III. MONETARY ALLOWANCES AND VENDOR DISCOUNTS**

2 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.32
3 RCW to read as follows:

4 (1) The department shall adopt by rule monetary allowances for
5 certified service providers, model 2 sellers, and model 3 sellers and
6 other sellers that are not model 1 or model 2 sellers. The department
7 may be guided by the provisions for monetary allowances adopted by the
8 governing board of the agreement to determine the amount of the
9 allowances and the conditions under which they are allowed. The
10 monetary allowance must be reasonable and provide adequate incentive
11 for certified service providers and sellers to collect and remit under
12 the agreement.

13 (2) For certified service providers, the monetary allowance may
14 include a base rate that applies to taxable transactions processed by
15 the certified service provider. Additionally, for a period not to
16 exceed twenty-four months following a seller's registration under RCW
17 82.32.030(3), the monetary allowance may include a percentage of tax
18 revenue generated by the seller.

19 (3) For model 2 sellers, the monetary allowance may include a base
20 rate or percentage of revenue generated by a seller registering under
21 RCW 82.32.030(3), but shall not exceed a period of twenty-four months.

22 (4) For model 3 sellers and all other sellers that are not model 1
23 sellers or model 2 sellers, the monetary allowance may include a
24 percentage of tax revenue generated by a seller registering under RCW
25 82.32.030(3), but shall not exceed a period of twenty-four months.

26 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.32
27 RCW to read as follows:

28 (1) The department may adopt by rule vendor compensation for
29 sellers collecting and remitting sales and use taxes. The vendor
30 compensation may include a base rate or a percentage of tax revenue
31 collected by the seller, and may vary by type of seller. The
32 department may be guided by the findings of the cost of collection
33 study performed under the agreement, by cost of collection studies
34 performed by the department, and by vendor compensation provided by
35 other states, to determine reasonable vendor compensation for sellers
36 for the costs to collect and remit sales and use taxes.

1 (2) A seller shall not be entitled to vendor compensation while the
2 seller or its certified service provider, as defined in RCW 82.32.020,
3 receives a monetary allowance under section 301 of this act.

4 **PART IV. AMNESTY**

5 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
6 RCW to read as follows:

7 (1) No assessment for taxes imposed under chapters 82.08 and 82.12
8 RCW, or related penalties or interest, may be made by the department
9 against a seller who:

10 (a) Within four months of the effective date of this section,
11 registers to collect and remit to the department the applicable taxes
12 imposed under chapters 82.08 and 82.12 RCW on sales made to buyers in
13 this state in accordance with the terms of the agreement, if the seller
14 was not so registered in this state in the twelve-month period
15 preceding the effective date of this section; and

16 (b) Continues to be registered and continues to collect and remit
17 to the department the applicable taxes imposed under chapters 82.08 and
18 82.12 RCW for a period of at least thirty-six months, absent the
19 seller's fraud or intentional misrepresentation of a material fact.

20 (2) The provisions of subsection (1) of this section preclude an
21 assessment for taxes imposed under chapters 82.08 and 82.12 RCW for
22 sales made to buyers during the period the seller was not registered in
23 this state.

24 (3) The provisions of this section do not apply to any seller with
25 respect to:

26 (a) Any matter or matters for which the seller, before registering
27 to collect and remit the applicable taxes imposed under chapters 82.08
28 and 82.12 RCW, received notice from the department of the commencement
29 of an audit and which audit is not yet finally resolved including any
30 related administrative and judicial processes;

31 (b) Taxes imposed under chapters 82.08 and 82.12 RCW and collected
32 or remitted to the department by the seller; or

33 (c) That seller's liability for taxes imposed under chapters 82.08
34 and 82.12 RCW in that seller's capacity as a buyer.

35 (4) The periods of limitation for making an assessment or

1 correction of an assessment prescribed in RCW 82.32.050(3) and
2 82.32.100(3) do not run during the thirty-six month period in
3 subsection (1)(b) of this section.

4 **PART V. SOURCING**

5 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
6 RCW to read as follows:

7 (1) This subsection applies to retail sales occurring before the
8 operational date. Subsections (2) through (11) of this section apply
9 to retail sales occurring on or after the operational date.

10 (a) 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 (b) 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 (c) A retail sale consisting of the rental of tangible personal
20 property shall be deemed to have occurred (i) 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 (ii) in all other
23 cases, at the place of first use by the lessee.

24 (d) 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 (e)(i) 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 (a) of this subsection or a rental of
31 tangible personal property under (c) of this subsection or a sale of
32 mobile telecommunications services, shall be deemed to have occurred at
33 the situs of the telephone or other instrument through which the
34 telephone service is rendered.

35 (ii) A retail sale consisting of the providing of

1 telecommunications services shall be sourced in accordance with RCW
2 82.32.520.

3 (f) A retail sale of linen and uniform supply services is deemed to
4 occur as provided in RCW 82.08.0202.

5 (2) Except as provided in subsections (6), (7), (8), and (9) of
6 this section, for purposes of collecting or paying sales or use taxes
7 to the appropriate jurisdictions, all sales at retail shall be sourced
8 in accordance with this subsection and subsections (3) through (5) of
9 this section.

10 (a) When tangible personal property or a service defined as a
11 retail sale under RCW 82.04.050 is received by the purchaser at a
12 business location of the seller, the sale is sourced to that business
13 location.

14 (b) When the tangible personal property or a service defined as a
15 retail sale under RCW 82.04.050 is not received by the purchaser at a
16 business location of the seller, the sale is sourced to the location
17 where receipt by the purchaser or the purchaser's donee, designated as
18 such by the purchaser, occurs, including the location indicated by
19 instructions for delivery to the purchaser or donee, known to the
20 seller.

21 (c) When (a) and (b) of this subsection do not apply, the sale is
22 sourced to the location indicated by an address for the purchaser that
23 is available from the business records of the seller that are
24 maintained in the ordinary course of the seller's business when use of
25 this address does not constitute bad faith.

26 (d) When (a), (b), and (c) of this subsection do not apply, the
27 sale is sourced to the location indicated by an address for the
28 purchaser obtained during the consummation of the sale, including the
29 address of a purchaser's payment instrument, if no other address is
30 available, when use of this address does not constitute bad faith.

31 (e) When (a), (b), (c), or (d) of this subsection do not apply,
32 including the circumstance where the seller is without sufficient
33 information to apply those provisions, then the location shall be
34 determined by the address from which tangible personal property was
35 shipped, from which the digital good or the computer software delivered
36 electronically was first available for transmission by the seller, or
37 from which the service defined as a retail sale under RCW 82.04.050 was

1 provided, disregarding for these purposes any location that merely
2 provided the digital transfer of the product sold.

3 (3) The lease or rental of tangible personal property, other than
4 property identified in subsection (4) or (5) of this section, shall be
5 sourced as follows:

6 (a) For a lease or rental that requires recurring periodic
7 payments, the first periodic payment is sourced the same as a retail
8 sale in accordance with subsection (2) of this section. Periodic
9 payments made subsequent to the first payment are sourced to the
10 primary property location for each period covered by the payment. The
11 primary property location shall be as indicated by an address for the
12 property provided by the lessee that is available to the lessor from
13 its records maintained in the ordinary course of business, when use of
14 this address does not constitute bad faith. The property location
15 shall not be altered by intermittent use at different locations, such
16 as use of business property that accompanies employees on business
17 trips and service calls.

18 (b) For a lease or rental that does not require recurring periodic
19 payments, the payment is sourced the same as a retail sale in
20 accordance with subsection (2) of this section.

21 (c) This subsection does not affect the imposition or computation
22 of sales or use tax on leases or rentals based on a lump sum or
23 accelerated basis, or on the acquisition of property for lease.

24 (4) The lease or rental of motor vehicles, trailers, semitrailers,
25 or aircraft that do not qualify as transportation equipment shall be
26 sourced as follows:

27 (a) For a lease or rental that requires recurring periodic
28 payments, each periodic payment is sourced to the primary property
29 location. The primary property location shall be as indicated by an
30 address for the property provided by the lessee that is available to
31 the lessor from its records maintained in the ordinary course of
32 business, when use of this address does not constitute bad faith. This
33 location shall not be altered by intermittent use at different
34 locations.

35 (b) For a lease or rental that does not require recurring periodic
36 payments, the payment is sourced the same as a retail sale in
37 accordance with subsection (2) of this section.

1 (c) This subsection does not affect the imposition or computation
2 of sales or use tax on leases or rentals based on a lump sum or
3 accelerated basis, or on the acquisition of property for lease.

4 (5) The retail sale, including lease or rental, of transportation
5 equipment shall be sourced the same as a retail sale in accordance with
6 subsection (2) of this section.

7 (6) A purchaser that is a business and is not a holder of a direct
8 pay permit that knows at the time of purchase of a digital good,
9 computer software delivered electronically, or a service that the
10 digital good, computer software delivered electronically, or service
11 will be concurrently available for use in more than one jurisdiction
12 shall deliver to the seller in conjunction with its purchase a multiple
13 points of use exemption form disclosing this fact.

14 (a) Upon receipt of the multiple point of use exemption form, the
15 seller is relieved of all obligation to collect, pay, or remit the
16 applicable tax and the purchaser is obligated to collect, pay, or remit
17 the applicable tax.

18 (b) A purchaser delivering the multiple point of use exemption
19 form, or a direct pay permit in lieu of a multiple point of use
20 exemption form, may use any reasonable, but consistent and uniform,
21 method of apportionment that is supported by the purchaser's business
22 records as they exist at the time of the consummation of the sale.

23 (c) The multiple point of use exemption form shall remain in effect
24 for all future sales by the seller to the purchaser until it is revoked
25 in writing.

26 (7)(a) A purchaser of direct mail that is not a holder of a direct
27 pay permit shall provide to the seller in conjunction with the purchase
28 either a direct mail form or information that shows the jurisdictions
29 to which the direct mail is delivered to recipients.

30 (i) Upon receipt of the direct mail form, the seller is relieved of
31 all obligations to collect, pay, or remit the applicable tax and the
32 purchaser is obligated to pay or remit the applicable tax on a direct
33 pay basis. A direct mail form shall remain in effect for all future
34 sales of direct mail by the seller to the purchaser until it is revoked
35 in writing.

36 (ii) Upon receipt of information from the purchaser showing the
37 jurisdictions to which the direct mail is delivered to recipients, the
38 seller shall collect the tax according to the delivery information

1 provided by the purchaser. In the absence of bad faith, the seller is
2 relieved of any further obligation to collect tax on any transaction
3 where the seller has collected tax pursuant to the delivery information
4 provided by the purchaser.

5 (b) If the purchaser of direct mail does not have a direct pay
6 permit and does not provide the seller with either a direct mail form
7 or delivery information as required by (a) of this subsection, the
8 seller shall collect the tax according to subsection (2)(e) of this
9 section. This subsection does not limit a purchaser's obligation for
10 sales or use tax to any state to which the direct mail is delivered.

11 (c) If a purchaser of direct mail provides the seller with
12 documentation of direct pay authority, the purchaser is not required to
13 provide a direct mail form or delivery information to the seller.

14 (8) The following are sourced to the location at or from which
15 delivery is made to the consumer:

16 (a) A retail sale consisting of watercraft;

17 (b) A retail sale consisting of a modular home, manufactured home,
18 or mobile home;

19 (c) A retail sale, excluding the lease and rental, consisting of a
20 motor vehicle, trailer, semitrailer, or aircraft, that do not qualify
21 as transportation equipment; and

22 (d) Until January 1, 2006, a retail sale of tangible personal
23 property made by a person engaged in the business of selling flowers.
24 The rules for the sourcing retail sales and use taxes of flowers
25 delivered with telegraphic instructions in WAC 458-20-158, as effective
26 on July 1, 1970, shall remain in effect until January 1, 2006.

27 (9) A retail sale consisting of the providing of telecommunications
28 services shall be sourced in accordance with RCW 82.32.520.

29 (10) The definitions in this subsection apply throughout this
30 section.

31 (a) "Delivered electronically" means delivered to the purchaser by
32 means other than tangible storage media.

33 (b) "Direct mail" means printed material delivered or distributed
34 by United States mail or other delivery service to a mass audience or
35 to addressees on a mailing list provided by the purchaser or at the
36 direction of the purchaser when the cost of the items are not billed
37 directly to the recipients. "Direct mail" includes tangible personal
38 property supplied directly or indirectly by the purchaser to the direct

1 mail seller for inclusion in the package containing the printed
2 material. "Direct mail" does not include multiple items of printed
3 material delivered to a single address.

4 (c) "Receive" and "receipt" means taking possession of tangible
5 personal property, making first use of services, or taking possession
6 or making first use of digital goods, whichever comes first. "Receive"
7 and "receipt" do not include possession by a shipping company on behalf
8 of the purchaser.

9 (d) "Transportation equipment" means any of the following:

10 (i) Locomotives and railcars that are used for the carriage of
11 persons or property in interstate commerce;

12 (ii) Trucks and truck-tractors with a gross vehicle weight rating
13 of 10,001 pounds or greater, trailers, semitrailers, or passenger buses
14 that are:

15 (A) Registered through the international registration plan; and

16 (B) Operated under authority of a carrier authorized and
17 certificated by the United States department of transportation or
18 another federal authority to engage in the carriage of persons or
19 property in interstate commerce;

20 (iii) Aircraft that are operated by air carriers authorized and
21 certificated by the United States department of transportation or
22 another federal or foreign authority to engage in the carriage of
23 persons or property in interstate or foreign commerce;

24 (iv) Containers designed for use on and component parts attached or
25 secured on the items described in (d)(i) through (iii) of this
26 subsection.

27 (11) In those instances where there is no obligation on the part of
28 a seller to collect or remit use tax, the use of tangible personal
29 property or of a service, subject to use tax, is sourced to the place
30 of first use. The definition of use in RCW 82.12.010 applies to this
31 subsection.

32 **Sec. 502.** RCW 82.14.020 and 2003 c 168 s 503 and 2003 c 168 s 502
33 are each reenacted and amended to read as follows:

34 For purposes of this chapter:

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

1 ~~(2) A retail sale consisting essentially of the performance of~~
2 ~~personal, business, or professional services shall be deemed to have~~
3 ~~occurred at the place at which such services were primarily performed,~~
4 ~~except that for the performance of a tow truck service, as defined in~~
5 ~~RCW 46.55.010, the retail sale shall be deemed to have occurred at the~~
6 ~~place of business of the operator of the tow truck service;~~

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

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

16 ~~(5)(a) A retail sale consisting of the providing to a consumer of~~
17 ~~telephone service, as defined in RCW 82.04.065, other than a sale of~~
18 ~~tangible personal property under subsection (1) of this section or a~~
19 ~~rental of tangible personal property under subsection (3) of this~~
20 ~~section or a sale of mobile telecommunications services, shall be~~
21 ~~deemed to have occurred at the situs of the telephone or other~~
22 ~~instrument through which the telephone service is rendered;~~

23 ~~(b) A retail sale consisting of the providing of telecommunications~~
24 ~~services shall be sourced in accordance with RCW 82.32.520;~~

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

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

28 ~~((8)) (2) The meaning ascribed to words and phrases in chapters~~
29 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
30 ~~applicable, shall have full force and effect with respect to taxes~~
31 ~~imposed under authority of this chapter;~~

32 ~~((9)) (3) "Taxable event" shall mean any retail sale, or any use,~~
33 ~~upon which a state tax is imposed pursuant to chapter 82.08 or 82.12~~
34 ~~RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER,~~
35 ~~That the term shall not include a retail sale taxable pursuant to RCW~~
36 ~~82.08.150, as now or hereafter amended;~~

37 ~~((10)) (4) "Treasurer or other legal depository" shall mean the~~
38 ~~treasurer or legal depository of a county or city.~~

1 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.14
2 RCW to read as follows:
3 Sales and use taxes imposed under this chapter shall be sourced in
4 accordance with section 501 of this act.

5 **PART VI. CONFIDENTIALITY AND PRIVACY PROTECTIONS FOR**
6 **PERSONS USING CERTIFIED SERVICE PROVIDERS**

7 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.32
8 RCW to read as follows:

9 (1) A fundamental precept of allowing the use of a certified
10 service provider is to preserve the privacy of consumers by protecting
11 their anonymity. With very limited exceptions, a certified service
12 provider shall perform its tax calculation, remittance, and reporting
13 functions without retaining the personally identifiable information of
14 consumers.

15 (2) The department of revenue shall provide public notification to
16 consumers, including purchasers claiming exemption from tax, of its
17 practices relating to the collection, use, and retention of personally
18 identifiable information.

19 (3) When personally identifiable information that has been
20 collected and retained is no longer required to ensure the validity of
21 exemptions from taxation by reason of the consumer's status or the
22 intended use of the goods or services purchased, the information shall
23 no longer be retained by the state of Washington.

24 (4) When personally identifiable information regarding an
25 individual is retained by or on behalf of the state of Washington, this
26 state shall provide reasonable access for the individual to his or her
27 own information and a right to correct any inaccurately recorded
28 information.

29 (5) If anyone other than a member state of the agreement, or other
30 than a person authorized by Washington law or the agreement, seeks to
31 discover personally identifiable information, the state of Washington
32 shall make a reasonable and timely effort to notify the individual of
33 the request.

34 (6) The provisions of this section may be enforced by petitioning
35 the superior court of Thurston county for injunctive relief.

1 **PART VII. TAXABILITY MATRIX**

2 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.32
3 RCW to read as follows:

4 (1) The department of revenue shall complete a taxability matrix
5 maintained by the member states of the agreement in downloadable
6 format. The matrix contains terms defined in the agreement. The
7 department of revenue shall provide notice of changes in the taxability
8 of products or services listed in the matrix.

9 (2) Sellers and certified service providers are relieved from
10 liability to the state and to local jurisdictions for having charged or
11 collected the incorrect amount of sales or use tax if the error
12 resulted from reliance on erroneous information provided by the
13 department of revenue in the taxability matrix.

14 **PART VIII. DELIVERY CHARGES**

15 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 When computing the tax levied by RCW 82.08.020, if a shipment
18 consists of taxable tangible personal property and nontaxable tangible
19 personal property, and delivery charges are included in the sales
20 price, the seller must collect and remit tax on the percentage of
21 delivery charges allocated to the taxable tangible property, but does
22 not have to collect and remit tax on the percentage allocated to exempt
23 tangible personal property. The seller may use either of the following
24 percentages to determine the taxable portion of the delivery charges:

25 (1) A percentage based on the total sales price of the taxable
26 tangible property compared to the total sales price of all tangible
27 personal property in the shipment; or

28 (2) A percentage based on the total weight of the taxable tangible
29 personal property compared to the total weight of all tangible personal
30 property in the shipment.

31 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
32 RCW to read as follows:

33 When computing the tax levied by RCW 82.12.020, if a shipment
34 consists of taxable tangible personal property and nontaxable tangible
35 personal property, and delivery charges are included in the purchase

1 price, the retailer must collect and remit tax on the percentage of
2 delivery charges allocated to the taxable personal property, but does
3 not have to collect and remit tax on the percentage allocated to exempt
4 tangible personal property. The retailer may use either of the
5 following percentages to determine the taxable portion of the delivery
6 charges:

7 (1) A percentage based on the total purchase price of the taxable
8 personal property compared to the total purchase price of all tangible
9 personal property in the shipment; or

10 (2) A percentage based on the total weight of the taxable tangible
11 personal property compared to the total weight of all tangible personal
12 property in the shipment.

13 NEW SECTION. **Sec. 803.** A new section is added to chapter 82.12
14 RCW to read as follows:

15 When computing the tax levied by RCW 82.12.020, if a shipment
16 consists of taxable tangible personal property and nontaxable tangible
17 personal property, and delivery charges are included in the value of
18 the article used, the consumer must remit tax on the percentage of
19 delivery charges allocated to the taxable personal property, but does
20 not have to remit tax on the percentage allocated to exempt tangible
21 personal property. The consumer may use either of the following
22 percentages to determine the taxable portion of the delivery charges:

23 (1) A percentage based on the entire value of the taxable personal
24 property compared to the total value of all tangible personal property
25 in the shipment; or

26 (2) A percentage based on the total weight of the taxable tangible
27 personal property compared to the total weight of all tangible personal
28 property in the shipment.

29 **PART IX. SOURCING MITIGATION**

30 NEW SECTION. **Sec. 901.** (1) The legislature finds and declares
31 that:

32 (a) Washington state's participation as a member state in the
33 streamlined sales and use tax agreement benefits the state, all its
34 local taxing jurisdictions, and its retailing industry by increasing

1 state and local revenues, improving the state's business climate, and
2 simplifying the state's tax structure;

3 (b) Participation in the streamlined sales and use tax agreement
4 requires the adoption of the agreement's sourcing provisions, which
5 changes the location in which a retail sale of delivered tangible
6 personal property occurs from the point of origin to the point of
7 delivery;

8 (c) The streamlined sales and use tax agreement's sourcing
9 provisions will cause sales and use tax revenues to shift among local
10 taxing jurisdictions and it is in the best interest of the state and
11 all its subdivisions to mitigate the adverse effects of adopting the
12 agreement's sourcing provision by redistributing on an ongoing basis
13 sales and use tax revenues from local taxing jurisdictions that gain
14 revenues to local taxing jurisdictions that lose revenues;

15 (d) Revenue shifts among local taxing jurisdictions cannot be
16 precisely determined without significantly increasing the
17 administrative burden on the retail industry, which is contrary to the
18 intent of the streamlined sales and use tax agreement. Therefore, the
19 legislature recognizes that local taxing jurisdictions will not be
20 completely, but only adequately, mitigated for revenue losses that
21 result from this act.

22 (2) The legislature intends that the formulae developed in section
23 902 of this act have the objective of mitigating, for each negatively
24 affected local taxing jurisdiction, at least eighty percent of revenue
25 losses that result from this act and that higher mitigation be pursued
26 if it can be achieved without compounding revenue losses to other local
27 taxing jurisdictions adversely impacted by this act.

28 **Sec. 902.** RCW 82.14.060 and 1991 c 207 s 3 are each amended to
29 read as follows:

30 (1) Except as provided in subsection (3) of this section, monthly
31 the state treasurer shall make distribution from the local sales and
32 use tax account to the counties, cities, transportation authorities,
33 and public facilities districts the amount of tax collected on behalf
34 of each taxing authority, less the deduction provided for in RCW
35 82.14.050. The state treasurer shall make the distribution under this
36 section without appropriation.

1 (2) In the event that any ordinance or resolution imposes a sales
2 and use tax at a rate in excess of the applicable limits contained
3 herein, such ordinance or resolution shall not be considered void in
4 toto, but only with respect to that portion of the rate which is in
5 excess of the applicable limits contained herein.

6 (3) In order to mitigate potential sales and use tax revenue losses
7 from the adoption of the streamlined sales and use tax agreement's
8 sourcing provisions, the department of revenue, after the operational
9 date, shall monthly, prior to the time distributions are made under
10 subsection (1) of this section, advise the state treasurer to increase
11 or decrease distributions to the counties, cities, and transportation
12 authorities from the local sales and use tax account as provided in
13 subsection (4) of this section. The treasurer shall revise the
14 distributions accordingly.

15 (4) Since it is not practical to determine precisely the amount of
16 revenue shifted among local taxing authorities solely from section 501
17 of this act, the department of revenue shall determine the increase or
18 decrease in distributions of taxes imposed under chapter 82.14 RCW
19 based on formulae the department shall develop. The formulae shall be
20 used to distribute taxes collected by selected retailers from the
21 county, city, and transportation authority where the consumer receives
22 delivery of the tangible personal property to the county, city, and
23 transportation authority where the retail outlet is located,
24 notwithstanding section 501 of this act. The department will evaluate
25 and revise the formulae on an annual basis. In developing the formulae
26 under this subsection (4), the department:

27 (a) Shall include a sample of persons within select North American
28 industry classifications who make retail sales of tangible personal
29 property to consumers and that deliver such property from warehouses or
30 other centralized distribution centers;

31 (b) May also include in the sample the twenty largest persons who
32 make and deliver retail sales of tangible personal property, as
33 measured by volume of taxable retail sales of tangible personal
34 property, within each county, city, or transportation authority
35 adversely affected by this act; and

36 (c) May exclude from the sample persons who make and deliver retail
37 sales of tangible personal property when inclusion of that person would
38 cause another county, city, or transportation authority to incur a

1 larger loss of sales and use tax revenues from this act than it would
2 otherwise incur absent the provisions of subsections (3) and (4) of
3 this section.

4 (5) No county, city, or transportation authority may receive
5 increases in distributions that would exceed its actual loss in sales
6 and use tax revenues resulting from this act.

7 (6) The department shall consult with a representative of the
8 association of Washington cities, a representative of the Washington
9 state association of counties, a representative of the Washington state
10 transit association, and counties, cities, and transportation
11 authorities negatively impacted by this act to develop and revise the
12 formulae in subsection (4) of this section. The rule-making provisions
13 of chapter 34.05 RCW do not apply to this section.

14 NEW SECTION. Sec. 903. A new section is added to chapter 82.32
15 RCW to read as follows:

16 (1) For purposes of gathering the data to develop the formulae in
17 RCW 82.14.060(4), the department of revenue after the operational date
18 may require persons engaging within this state in the business of
19 making sales at retail to report additional information on a form
20 prescribed by the department, but no more than once every six months.
21 The report is due within thirty days of the date that the form is
22 transmitted to the taxpayer by the department of revenue.

23 (2) If the additional information to be filed by a taxpayer is not
24 received by the department of revenue by the due date, there shall be
25 assessed a penalty of five hundred dollars if the taxpayer is required
26 to report and remit sales tax on a quarterly or annual basis, or the
27 greater of five hundred dollars or one percent of the sales tax
28 reported on the taxpayer's return due the month the request for
29 additional information is due if the taxpayer is required to report and
30 remit the sales tax on a monthly basis.

31 (3) If the additional information is received by the department of
32 revenue by the due date, the taxpayer shall receive a credit against
33 the tax due under chapter 82.04 RCW in the amount of five hundred
34 dollars. In no case may a credit earned during one calendar year be
35 carried over to be credited against taxes incurred in a subsequent
36 calendar year. No refunds may be granted for credits under this
37 section.

1 (4) If the department of revenue finds that the failure of a
2 taxpayer to provide the additional information required under this
3 section by the due date was the result of circumstances beyond the
4 control of the taxpayer, the department of revenue shall waive or
5 cancel any penalties imposed under this section.

6 (5) The penalties imposed under this section are in addition to any
7 other penalties authorized by law.

8 **Sec. 904.** RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are
9 each reenacted and amended to read as follows:

10 (1) For purposes of this section:

11 (a) "Disclose" means to make known to any person in any manner
12 whatever a return or tax information;

13 (b) "Return" means a tax or information return or claim for refund
14 required by, or provided for or permitted under, the laws of this state
15 which is filed with the department of revenue by, on behalf of, or with
16 respect to a person, and any amendment or supplement thereto, including
17 supporting schedules, attachments, or lists that are supplemental to,
18 or part of, the return so filed;

19 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
20 nature, source, or amount of the taxpayer's income, payments, receipts,
21 deductions, exemptions, credits, assets, liabilities, net worth, tax
22 liability deficiencies, overassessments, or tax payments, whether taken
23 from the taxpayer's books and records or any other source, (iii)
24 whether the taxpayer's return was, is being, or will be examined or
25 subject to other investigation or processing, (iv) a part of a written
26 determination that is not designated as a precedent and disclosed
27 pursuant to RCW 82.32.410, or a background file document relating to a
28 written determination, and (v) other data received by, recorded by,
29 prepared by, furnished to, or collected by the department of revenue
30 with respect to the determination of the existence, or possible
31 existence, of liability, or the amount thereof, of a person under the
32 laws of this state for a tax, penalty, interest, fine, forfeiture, or
33 other imposition, or offense: PROVIDED, That data, material, or
34 documents that do not disclose information related to a specific or
35 identifiable taxpayer do not constitute tax information under this
36 section. Except as provided by RCW 82.32.410, nothing in this chapter

1 shall require any person possessing data, material, or documents made
2 confidential and privileged by this section to delete information from
3 such data, material, or documents so as to permit its disclosure;

4 (d) "State agency" means every Washington state office, department,
5 division, bureau, board, commission, or other state agency;

6 (e) "Taxpayer identity" means the taxpayer's name, address,
7 telephone number, registration number, or any combination thereof, or
8 any other information disclosing the identity of the taxpayer; and

9 (f) "Department" means the department of revenue or its officer,
10 agent, employee, or representative.

11 (2) Returns and tax information shall be confidential and
12 privileged, and except as authorized by this section, neither the
13 department of revenue nor any other person may disclose any return or
14 tax information.

15 (3) The foregoing, however, shall not prohibit the department of
16 revenue from:

17 (a) Disclosing such return or tax information in a civil or
18 criminal judicial proceeding or an administrative proceeding:

19 (i) In respect of any tax imposed under the laws of this state if
20 the taxpayer or its officer or other person liable under Title 82 RCW
21 is a party in the proceeding; or

22 (ii) In which the taxpayer about whom such return or tax
23 information is sought and another state agency are adverse parties in
24 the proceeding;

25 (b) Disclosing, subject to such requirements and conditions as the
26 director shall prescribe by rules adopted pursuant to chapter 34.05
27 RCW, such return or tax information regarding a taxpayer to such
28 taxpayer or to such person or persons as that taxpayer may designate in
29 a request for, or consent to, such disclosure, or to any other person,
30 at the taxpayer's request, to the extent necessary to comply with a
31 request for information or assistance made by the taxpayer to such
32 other person: PROVIDED, That tax information not received from the
33 taxpayer shall not be so disclosed if the director determines that such
34 disclosure would compromise any investigation or litigation by any
35 federal, state, or local government agency in connection with the civil
36 or criminal liability of the taxpayer or another person, or that such
37 disclosure would identify a confidential informant, or that such
38 disclosure is contrary to any agreement entered into by the department

1 that provides for the reciprocal exchange of information with other
2 government agencies which agreement requires confidentiality with
3 respect to such information unless such information is required to be
4 disclosed to the taxpayer by the order of any court;

5 (c) Disclosing the name of a taxpayer with a deficiency greater
6 than five thousand dollars and against whom a warrant under RCW
7 82.32.210 has been either issued or filed and remains outstanding for
8 a period of at least ten working days. The department shall not be
9 required to disclose any information under this subsection if a
10 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
11 a warrant that has not been filed; and (iii) has entered a deferred
12 payment arrangement with the department of revenue and is making
13 payments upon such deficiency that will fully satisfy the indebtedness
14 within twelve months;

15 (d) Disclosing the name of a taxpayer with a deficiency greater
16 than five thousand dollars and against whom a warrant under RCW
17 82.32.210 has been filed with a court of record and remains
18 outstanding;

19 (e) Publishing statistics so classified as to prevent the
20 identification of particular returns or reports or items thereof;

21 (f) Disclosing such return or tax information, for official
22 purposes only, to the governor or attorney general, or to any state
23 agency, or to any committee or subcommittee of the legislature dealing
24 with matters of taxation, revenue, trade, commerce, the control of
25 industry or the professions;

26 (g) Permitting the department of revenue's records to be audited
27 and examined by the proper state officer, his or her agents and
28 employees;

29 (h) Disclosing any such return or tax information to a peace
30 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
31 official purposes. The disclosure may be made only in response to a
32 search warrant, subpoena, or other court order, unless the disclosure
33 is for the purpose of criminal tax enforcement. A peace officer or
34 county prosecuting attorney who receives the return or tax information
35 may disclose that return or tax information only for use in the
36 investigation and a related court proceeding, or in the court
37 proceeding for which the return or tax information originally was
38 sought;

1 (i) Disclosing any such return or tax information to the proper
2 officer of the internal revenue service of the United States, the
3 Canadian government or provincial governments of Canada, or to the
4 proper officer of the tax department of any state or city or town or
5 county, for official purposes, but only if the statutes of the United
6 States, Canada or its provincial governments, or of such other state or
7 city or town or county, as the case may be, grants substantially
8 similar privileges to the proper officers of this state;

9 (j) Disclosing any such return or tax information to the Department
10 of Justice, the Bureau of Alcohol, Tobacco and Firearms of the
11 Department of the Treasury, the Department of Defense, the United
12 States Customs Service, the Coast Guard of the United States, and the
13 United States Department of Transportation, or any authorized
14 representative thereof, for official purposes;

15 (k) Publishing or otherwise disclosing the text of a written
16 determination designated by the director as a precedent pursuant to RCW
17 82.32.410;

18 (l) Disclosing, in a manner that is not associated with other tax
19 information, the taxpayer name, entity type, business address, mailing
20 address, revenue tax registration numbers, North American industry
21 classification system or standard industrial classification code of a
22 taxpayer, and the dates of opening and closing of business. This
23 subsection shall not be construed as giving authority to the department
24 to give, sell, or provide access to any list of taxpayers for any
25 commercial purpose;

26 (m) Disclosing such return or tax information that is also
27 maintained by another Washington state or local governmental agency as
28 a public record available for inspection and copying under the
29 provisions of chapter 42.17 RCW or is a document maintained by a court
30 of record not otherwise prohibited from disclosure;

31 (n) Disclosing such return or tax information to the United States
32 department of agriculture for the limited purpose of investigating food
33 stamp fraud by retailers;

34 (o) Disclosing to a financial institution, escrow company, or title
35 company, in connection with specific real property that is the subject
36 of a real estate transaction, current amounts due the department for a
37 filed tax warrant, judgment, or lien against the real property; ((or))

1 (p) Disclosing to a person against whom the department has asserted
2 liability as a successor under RCW 82.32.140 return or tax information
3 pertaining to the specific business of the taxpayer to which the person
4 has succeeded; or

5 (q) Disclosing to a local jurisdiction which has contracted with
6 the department for the administration of its sales and use taxes under
7 RCW 82.14.050 tax information used to determine the increase or
8 decrease in the distribution to that local jurisdiction under RCW
9 82.14.060.

10 (4)(a) The department may disclose return or taxpayer information
11 to a person under investigation or during any court or administrative
12 proceeding against a person under investigation as provided in this
13 subsection (4). The disclosure must be in connection with the
14 department's official duties relating to an audit, collection activity,
15 or a civil or criminal investigation. The disclosure may occur only
16 when the person under investigation and the person in possession of
17 data, materials, or documents are parties to the return or tax
18 information to be disclosed. The department may disclose return or tax
19 information such as invoices, contracts, bills, statements, resale or
20 exemption certificates, or checks. However, the department may not
21 disclose general ledgers, sales or cash receipt journals, check
22 registers, accounts receivable/payable ledgers, general journals,
23 financial statements, expert's workpapers, income tax returns, state
24 tax returns, tax return workpapers, or other similar data, materials,
25 or documents.

26 (b) Before disclosure of any tax return or tax information under
27 this subsection (4), the department shall, through written
28 correspondence, inform the person in possession of the data, materials,
29 or documents to be disclosed. The correspondence shall clearly
30 identify the data, materials, or documents to be disclosed. The
31 department may not disclose any tax return or tax information under
32 this subsection (4) until the time period allowed in (c) of this
33 subsection has expired or until the court has ruled on any challenge
34 brought under (c) of this subsection.

35 (c) The person in possession of the data, materials, or documents
36 to be disclosed by the department has twenty days from the receipt of
37 the written request required under (b) of this subsection to petition

1 the superior court of the county in which the petitioner resides for
2 injunctive relief. The court shall limit or deny the request of the
3 department if the court determines that:

4 (i) The data, materials, or documents sought for disclosure are
5 cumulative or duplicative, or are obtainable from some other source
6 that is more convenient, less burdensome, or less expensive;

7 (ii) The production of the data, materials, or documents sought
8 would be unduly burdensome or expensive, taking into account the needs
9 of the department, the amount in controversy, limitations on the
10 petitioner's resources, and the importance of the issues at stake; or

11 (iii) The data, materials, or documents sought for disclosure
12 contain trade secret information that, if disclosed, could harm the
13 petitioner.

14 (d) The department shall reimburse reasonable expenses for the
15 production of data, materials, or documents incurred by the person in
16 possession of the data, materials, or documents to be disclosed.

17 (e) Requesting information under (b) of this subsection that may
18 indicate that a taxpayer is under investigation does not constitute a
19 disclosure of tax return or tax information under this section.

20 (5) Any person acquiring knowledge of any return or tax information
21 in the course of his or her employment with the department of revenue
22 and any person acquiring knowledge of any return or tax information as
23 provided under subsection (3)(f), (g), (h), (i), (j), (~~(n)~~) (n), or
24 (q) of this section, who discloses any such return or tax information
25 to another person not entitled to knowledge of such return or tax
26 information under the provisions of this section, is guilty of a
27 misdemeanor. If the person guilty of such violation is an officer or
28 employee of the state, such person shall forfeit such office or
29 employment and shall be incapable of holding any public office or
30 employment in this state for a period of two years thereafter.

31 **PART X. MISCELLANEOUS PROVISIONS**

32 NEW SECTION. **Sec. 1001.** Section 302 of this act takes effect
33 when:

34 (1) The United States congress grants individual states the
35 authority to impose sales and use tax collection duties on remote
36 sellers; or

1 (2) It is determined by a court of competent jurisdiction, in a
2 judgment not subject to review, that a state can impose sales and use
3 tax collection duties on remote sellers.

4 **Sec. 1002.** 2003 c 168 s 902 (uncodified) is amended to read as
5 follows:

6 (1) If a court of competent jurisdiction enters a final judgment on
7 the merits that is based on federal or state law, is no longer subject
8 to appeal, and substantially limits or impairs the essential elements
9 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
10 2002, then chapter 67, Laws of 2002 is null and void in its entirety,
11 except as provided in subsection (2) of this section.

12 (~~(If the contingency in subsection (1) of this section occurs,~~
13 ~~section 502, chapter 168, Laws of 2003 is null and void))~~ Subsection
14 (1) of this section does not apply to section 7, chapter 67, Laws of
15 2002 on or after April 1, 2005.

16 NEW SECTION. **Sec. 1003.** Part headings used in this act are not
17 any part of the law.

18 NEW SECTION. **Sec. 1004.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

--- END ---