

CERTIFICATION OF ENROLLMENT

SENATE BILL 6515

Chapter 153, Laws of 2004

58th Legislature
2004 Regular Session

SALES AND USE TAX CORRECTIONS

EFFECTIVE DATE: 7/1/04 - Except section 201, which becomes effective 1/1/04.

Passed by the Senate March 10, 2004
YEAS 48 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House March 10, 2004
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6515** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

Approved March 26, 2004.

FILED

March 26, 2004 - 3:24 p.m.

GARY F. LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6515

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senators Zarelli, Regala and Winsley; by request of Department of Revenue

Read first time 01/22/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to correcting errors, omissions, and
2 inconsistencies within Title 82 RCW from chapter 168, Laws of 2003,
3 which implemented portions of the streamlined sales and use tax
4 agreement; amending RCW 82.08.0283, 82.08.0281, 82.08.945, 82.12.945,
5 82.08.0293, 82.08.037, 82.08.100, 82.12.037, 82.12.070, 82.32.060,
6 82.04.4284, 82.16.050, 82.14B.150, 82.58.050, 82.04.040, 82.32.520,
7 82.32.530, 82.02.230, 82.08.010, 82.04.050, 82.32.525, 82.08.080, and
8 82.04.530; amending 2003 c 168 s 902 (uncodified); reenacting and
9 amending RCW 82.12.0277; adding new sections to chapter 82.08 RCW;
10 adding new sections to chapter 82.12 RCW; creating a new section;
11 providing effective dates; providing a contingent expiration date; and
12 declaring an emergency.

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

14 **PART I**
15 **MEDICAL PROVISIONS**

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

18 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

1 (a) Prosthetic devices prescribed, fitted, or furnished for an
2 individual by a person licensed under (~~chapter 18.22, 18.25, 18.57, or~~
3 ~~18.71 RCW~~) the laws of this state to prescribe, fit, or furnish
4 prosthetic devices;

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

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

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

17 (~~(+2)~~) (3) The exemption in subsection (1) of this section shall
18 not apply to sales of durable medical equipment or mobility enhancing
19 equipment.

20 (~~(+3)~~) (4) The definitions in this subsection apply throughout
21 this section.

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

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

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

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

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

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

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

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

7 (d) The terms "durable medical equipment" and "mobility enhancing
8 equipment" are mutually exclusive.

9 NEW SECTION. Sec. 102. A new section is added to chapter 82.08
10 RCW to read as follows:

11 The tax levied by RCW 82.08.020 shall not apply to sales of insulin
12 for human use.

13 NEW SECTION. Sec. 103. A new section is added to chapter 82.12
14 RCW to read as follows:

15 The provisions of this chapter shall not apply in respect to the
16 use of insulin by humans.

17 NEW SECTION. Sec. 104. A new section is added to chapter 82.08
18 RCW to read as follows:

19 The tax levied by RCW 82.08.020 shall not apply to sales of
20 nebulizers, including repair and replacement parts for nebulizers, for
21 human use pursuant to a prescription. In addition, the tax levied by
22 RCW 82.08.020 shall not apply to charges made for labor and services
23 rendered in respect to the repairing, cleaning, altering, or improving
24 of nebulizers. "Nebulizer" means a device, not a building fixture,
25 that converts a liquid medication into a mist so that it can be
26 inhaled.

27 NEW SECTION. Sec. 105. A new section is added to chapter 82.12
28 RCW to read as follows:

29 The provisions of this chapter shall not apply in respect to the
30 use of nebulizers, including repair and replacement parts for
31 nebulizers, for human use pursuant to a prescription. In addition, the
32 provisions of this chapter shall not apply in respect to labor and
33 services rendered in respect to the repairing, cleaning, altering, or

1 improving of nebulizers. "Nebulizer" has the same meaning as in
2 section 104 of this act.

3 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.08
4 RCW to read as follows:

5 The tax levied by RCW 82.08.020 shall not apply to sales of ostomic
6 items used by colostomy, ileostomy, or urostomy patients. "Ostomic
7 items" means disposable medical supplies used by colostomy, ileostomy,
8 and urostomy patients, and includes bags, belts to hold up bags, tapes,
9 tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and
10 other like supplies. "Ostomic items" does not include undergarments,
11 pads and shields to protect undergarments, sponges, or rubber sheets.

12 NEW SECTION. **Sec. 107.** A new section is added to chapter 82.12
13 RCW to read as follows:

14 The provisions of this chapter shall not apply in respect to the
15 use of ostomic items by colostomy, ileostomy, or urostomy patients.
16 "Ostomic items" has the same meaning as in section 106 of this act.

17 **Sec. 108.** RCW 82.08.0281 and 2003 c 168 s 403 are each amended to
18 read as follows:

19 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
20 drugs for human use dispensed or to be dispensed to patients, pursuant
21 to a prescription.

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

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

31 (4) The definitions in this subsection apply throughout this
32 section.

33 (a) "Prescription" means an order, formula, or recipe issued in any
34 form of oral, written, electronic, or other means of transmission by a

1 duly licensed practitioner authorized by the laws of this state to
2 prescribe.

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

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

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

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

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

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

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

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

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

22 (a) Prosthetic devices prescribed, fitted, or furnished for an
23 individual by a person licensed under (~~chapter 18.22, 18.25, 18.57, or~~
24 ~~18.71~~ RCW) the laws of this state to prescribe, fit, or furnish
25 prosthetic devices;

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

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

34 (2) In addition, the provisions of this chapter shall not apply in
35 respect to the use of labor and services rendered in respect to the
36 repairing, cleaning, altering, or improving of any of the items
37 exempted under subsection (1) of this section.

1 (~~(2)~~) (3) The exemption provided by subsection (1) of this
2 section shall not apply to the use of durable medical equipment or
3 mobility enhancing equipment.

4 (~~(3)~~) (4) "Prosthetic device," "durable medical equipment," and
5 "mobility enhancing equipment" have the same meanings as in RCW
6 82.08.0283.

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

9 The tax levied by RCW 82.08.020 shall not apply to sales of kidney
10 dialysis devices, including repair and replacement parts, for human use
11 pursuant to a prescription. In addition, the tax levied by RCW
12 82.08.020 shall not apply to charges made for labor and services
13 rendered in respect to the repairing, cleaning, altering, or improving
14 of kidney dialysis devices.

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

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

23 **PART II**
24 **FOOD PROVISIONS**

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

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

33 (a) "Alcoholic beverages," which means beverages that are suitable

1 for human consumption and contain one-half of one percent or more of
2 alcohol by volume; and

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

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

8 (a) "Prepared food" means:

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

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

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

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

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

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

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

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

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

37 (ii) Food sold in an unheated state by weight or volume as a single
38 item; or

1 (iii) Bakery items. The term "bakery items" includes bread, rolls,
2 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
3 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

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

9 ~~((e))~~ (d) "Dietary supplement" means any product, other than
10 tobacco, intended to supplement the diet that:

11 (i) Contains one or more of the following dietary ingredients:

12 (A) A vitamin;

13 (B) A mineral;

14 (C) An herb or other botanical;

15 (D) An amino acid;

16 (E) A dietary substance for use by humans to supplement the diet by
17 increasing the total dietary intake; or

18 (F) A concentrate, metabolite, constituent, extract, or combination
19 of any ingredient described in this subsection; ~~((and))~~

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

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

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

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

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

1 (4)(a) Subsection (1) of this section notwithstanding, the retail
2 sale of food and food ingredients is subject to sales tax under RCW
3 82.08.020 if the food and food ingredients are sold through a vending
4 machine, and in this case the selling price for purposes of RCW
5 82.08.020 is fifty-seven percent of the gross receipts.

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

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

12 **PART III**
13 **BAD DEBT PROVISIONS**

14 NEW SECTION. **Sec. 301.** For the purposes of sections 302 through
15 305 of this act, the legislature does not intend by any provision of
16 this act relating to bad debts, and did not intend by any provision of
17 chapter 168, Laws of 2003 relating to bad debts, to affect the holding
18 of the supreme court of the state of Washington in *Puget Sound National*
19 *Bank v. the Department of Revenue*, 123 Wn. 2nd 284 (1994).

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

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

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

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

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

30 (c) Repossessed property.

31 ~~((+2))~~ (3) If a credit or refund of sales tax is taken for a bad
32 debt and the debt is subsequently collected in whole or in part, the
33 tax on the amount collected must be paid and reported on the return
34 filed for the period in which the collection is made.

1 ~~((3))~~ (4) Payments on a previously claimed bad debt are applied
2 first proportionally to the taxable price of the property or service
3 and the sales or use tax thereon, and secondly to interest, service
4 charges, and any other charges.

5 ~~((4))~~ (5) If the seller uses a certified service provider as
6 defined in RCW 82.58.010 to administer its sales tax responsibilities,
7 the certified service provider may claim, on behalf of the seller, the
8 credit or refund allowed by this section. The certified service
9 provider must credit or refund the full amount received to the seller.

10 (6) The department shall allow an allocation of bad debts among
11 member states to the streamlined sales tax agreement, as defined in RCW
12 82.58.010(1), if the books and records of the person claiming bad debts
13 support the allocation.

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

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

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

27 (1) A seller is entitled to a credit or refund for use taxes
28 previously paid on ~~((debts which are deductible as worthless for~~
29 federal income tax purposes)) bad debts, as that term is used in 26
30 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

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

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

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

35 (c) Repossessed property.

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

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

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

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

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

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

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

31 (1) If, upon receipt of an application by a taxpayer for a refund
32 or for an audit of the taxpayer's records, or upon an examination of
33 the returns or records of any taxpayer, it is determined by the
34 department that within the statutory period for assessment of taxes,
35 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
36 penalty, or interest has been paid in excess of that properly due, the

1 excess amount paid within, or attributable to, such period shall be
2 credited to the taxpayer's account or shall be refunded to the
3 taxpayer, at the taxpayer's option. Except as provided in subsection
4 (2) of this section, no refund or credit shall be made for taxes,
5 penalties, or interest paid more than four years prior to the beginning
6 of the calendar year in which the refund application is made or
7 examination of records is completed.

8 (2)(a) The execution of a written waiver under RCW 82.32.050 or
9 82.32.100 shall extend the time for making a refund or credit of any
10 taxes paid during, or attributable to, the years covered by the waiver
11 if, prior to the expiration of the waiver period, an application for
12 refund of such taxes is made by the taxpayer or the department
13 discovers a refund or credit is due.

14 (b) A refund or credit shall be allowed for an excess payment
15 resulting from the failure to claim a bad debt deduction, credit, or
16 refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or
17 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166,
18 as amended or renumbered as of January 1, 2003, less than four years
19 prior to the beginning of the calendar year in which the refund
20 application is made or examination of records is completed.

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

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

33 (a) Interest at the rate of three percent per annum shall be
34 allowed by the department and by any court on the amount of any refund,
35 credit, or other recovery allowed to a taxpayer for taxes, penalties,
36 or interest paid by the taxpayer before January 1, 1992. This rate of
37 interest shall apply for all interest allowed through December 31,
38 1998. Interest allowed after December 31, 1998, shall be computed at

1 the rate as computed under RCW 82.32.050(2). The rate so computed
2 shall be adjusted on the first day of January of each year for use in
3 computing interest for that calendar year.

4 (b) For refunds or credits of amounts paid or other recovery
5 allowed to a taxpayer after December 31, 1991, the rate of interest
6 shall be the rate as computed for assessments under RCW 82.32.050(2)
7 less one percent. This rate of interest shall apply for all interest
8 allowed through December 31, 1998. Interest allowed after December 31,
9 1998, shall be computed at the rate as computed under RCW 82.32.050(2).
10 The rate so computed shall be adjusted on the first day of January of
11 each year for use in computing interest for that calendar year.

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

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

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

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

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

32 (c) Interest included in a credit notice shall accrue up to the
33 date the taxpayer could reasonably be expected to use the credit
34 notice, as defined by the department's rules. If a credit notice is
35 converted to a refund, interest shall be recomputed to the date the
36 refund is issued, but not to exceed the amount of interest that would
37 have been allowed with the credit notice.

1 **Sec. 307.** RCW 82.04.4284 and 1980 c 37 s 5 are each amended to
2 read as follows:

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

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

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

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

12 (c) Sales or use taxes payable to a seller; and

13 (d) Repossessed property.

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

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

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

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

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

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

36 (3) Amounts actually paid by a taxpayer to another person taxable
37 under this chapter as the latter's portion of the consideration due for

1 services furnished jointly by both, if the total amount has been
2 credited to and appears in the gross income reported for tax by the
3 former;

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

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

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

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

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

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

36 (10) Amounts derived from the distribution of water by a nonprofit
37 water association and used for capital improvements by that nonprofit
38 water association;

1 (11) Amounts paid by a sewerage collection business taxable under
2 RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the
3 treatment or disposal of sewage.

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

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

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

19 **PART IV**
20 **MISCELLANEOUS PROVISIONS**

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

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

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

28 (2) The agreement must establish uniform standards for:

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

32 (3) The agreement must provide a central, electronic registration
33 system that allows a seller to register to collect and remit sales and
34 use taxes for all signatory states.

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

5 (5) The agreement must provide for reduction of the burdens of
6 complying with local sales and use taxes by:

7 (a) Restricting variances between the state and local tax bases;

8 (b) Requiring states to administer any sales and use taxes levied
9 by local jurisdictions within the state so that sellers collecting and
10 remitting these taxes will not have to register or file returns with,
11 remit funds to, or be subject to independent audits from local taxing
12 jurisdictions;

13 (c) Restricting the frequency of changes in the local sales and use
14 tax rates and setting effective dates for the application of local
15 jurisdictional boundary changes to local sales and use taxes; and

16 (d) Providing notice of changes in local sales and use tax rates
17 and of changes in the boundaries of local taxing jurisdictions.

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

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

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

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

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

37 (1) "Sale" means any transfer of the ownership of, title to, or

1 possession of property for a valuable consideration and includes any
2 activity classified as a "sale at retail" or "retail sale" under RCW
3 82.04.050. It includes lease or rental, conditional sale contracts,
4 and any contract under which possession of the property is given to the
5 purchaser but title is retained by the vendor as security for the
6 payment of the purchase price. It also includes the furnishing of
7 food, drink, or meals for compensation whether consumed upon the
8 premises or not.

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

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

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

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

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

33 (iii) Providing tangible personal property along with an operator
34 for a fixed or indeterminate period of time. A condition of this
35 exclusion is that the operator is necessary for the ~~((equipment))~~
36 tangible personal property to perform as designed. For the purpose of
37 this subsection (3)(b)(iii), an operator must do more than maintain,
38 inspect, or set up the tangible personal property.

1 **Sec. 403.** RCW 82.32.520 and 2003 c 168 s 501 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

36 (iii) When (c)(i) and (ii) of this subsection do not apply, the
37 sale is sourced to the location indicated by an address for the

1 purchaser that is available from the business records of the seller
2 that are maintained in the ordinary course of the seller's business
3 when use of this address does not constitute bad faith;

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

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

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

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

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

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

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

36 (iv) Service for segments of a channel located in more than one
37 jurisdiction or levels of jurisdiction and which segments are not
38 separately billed is sourced in each jurisdiction based on the

1 percentage determined by dividing the number of customer channel
2 termination points in the jurisdiction by the total number of customer
3 channel termination points.

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

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

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

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

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

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

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

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

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

34 (i) "Place of primary use" means the street address representative
35 of where the customer's use of the telecommunications service primarily
36 occurs, which must be the residential street address or the primary
37 business street address of the customer. In the case of mobile

1 telecommunications services, "place of primary use" must be within the
2 licensed service area of the home service provider.

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

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

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

25 (m) "Service address" means:

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

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

35 (iii) If the ~~((location[s]))~~ locations in (m)(i) and (ii) of this
36 subsection are not known, the location of the customer's place of
37 primary use.

1 **Sec. 404.** RCW 82.32.530 and 2003 c 168 s 213 are each amended to
2 read as follows:

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

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

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

16 (2) There shall be one jurisdiction-wide rate for local sales and
17 use taxes imposed at levels below the state level. This subsection
18 does not apply to the taxes imposed by chapter 67.28 RCW, RCW
19 35.21.280, 36.38.010, 36.38.040, 67.40.090, or 82.14.360, or to taxes
20 imposed on the sale, rental, lease, or use of motor vehicles, aircraft,
21 watercraft, modular homes, manufactured homes, or mobile homes.

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

24 For the purposes of this chapter:

25 (1) "Selling price" includes "sales price." "Sales price" means
26 the total amount of consideration, except separately stated trade-in
27 property of like kind, including cash, credit, property, and services,
28 for which tangible personal property or services defined as a "retail
29 sale" under RCW 82.04.050 are sold, leased, or rented, valued in money,
30 whether received in money or otherwise. No deduction from the total
31 amount of consideration is allowed for the following: (a) The seller's
32 cost of the property sold; (b) the cost of materials used, labor or
33 service cost, interest, losses, all costs of transportation to the
34 seller, all taxes imposed on the seller, and any other expense of the
35 seller; (c) charges by the seller for any services necessary to
36 complete the sale, other than delivery and installation charges; (d)

1 delivery charges; (e) installation charges; and (f) the value of exempt
2 tangible personal property given to the purchaser where taxable and
3 exempt tangible personal property have been bundled together and sold
4 by the seller as a single product or piece of merchandise.

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

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

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

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

36 (4) "Delivery charges" means charges by the seller of personal
37 property or services for preparation and delivery to a location

1 designated by the purchaser of personal property or services including,
2 but not limited to, transportation, shipping, postage, handling,
3 crating, and packing;

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

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

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

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

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

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

34 (c) Purchases for the purpose of consuming the property purchased
35 in producing for sale a new article of tangible personal property or
36 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;

1 (c) The charge for labor and services rendered in respect to
2 constructing, repairing, or improving any structure upon, above, or
3 under any real property owned by an owner who conveys the property by
4 title, possession, or any other means to the person performing such
5 construction, repair, or improvement for the purpose of performing such
6 construction, repair, or improvement and the property is then
7 reconveyed by title, possession, or any other means to the original
8 owner;

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

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

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

35 (g) The sale of or charge made for tangible personal property,
36 labor and services to persons taxable under (a), (b), (c), (d), (e),
37 and (f) of this subsection when such sales or charges are for property,
38 labor and services which are used or consumed in whole or in part by

1 such persons in the performance of any activity defined as a "sale at
2 retail" or "retail sale" even though such property, labor and services
3 may be resold after such use or consumption. Nothing contained in this
4 subsection shall be construed to modify subsection (1) of this section
5 and nothing contained in subsection (1) of this section shall be
6 construed to modify this subsection.

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

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

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

16 (c) Credit bureau services;

17 (d) Automobile parking and storage garage services;

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

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

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

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

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

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

37 (b) The term shall not include the renting or leasing of tangible

1 personal property where the lease or rental is for the purpose of
2 sublease or subrent.

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

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

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

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

23 (a) Persons who participate in the federal conservation reserve
24 program, the environmental quality incentives program, the wetlands
25 reserve program, and the wildlife habitat incentives program, or their
26 successors administered by the United States department of agriculture;

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

33 (9) The term shall not include the sale of or charge made for labor
34 and services rendered in respect to the constructing, repairing,
35 decorating, or improving of new or existing buildings or other
36 structures under, upon, or above real property of or for the United
37 States, any instrumentality thereof, or a county or city housing
38 authority created pursuant to chapter 35.82 RCW, including the

1 installing, or attaching of any article of tangible personal property
2 therein or thereto, whether or not such personal property becomes a
3 part of the realty by virtue of installation. Nor shall the term
4 include the sale of services or charges made for the clearing of land
5 and the moving of earth of or for the United States, any
6 instrumentality thereof, or a county or city housing authority. Nor
7 shall the term include the sale of services or charges made for
8 cleaning up for the United States, or its instrumentalities,
9 radioactive waste and other byproducts of weapons production and
10 nuclear research and development.

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

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

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

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

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

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

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

31 (1) The department of revenue may authorize a seller to pay the tax
32 levied under this chapter upon sales made under conditions of business
33 such as to render impracticable the collection of the tax as a separate
34 item and waive collection of the tax from the customer. Where sales
35 are made by (~~receipt of a coin or coins dropped into a receptacle~~)) a
36 vending machine that results in delivery of the merchandise in single

1 purchases of smaller value than the minimum sale upon which a one cent
2 tax may be collected from the purchaser, according to the schedule
3 provided by the department under authority of RCW 82.08.060, and where
4 the design of the sales device is such that multiple sales of items are
5 not possible or cannot be detected so as practically to assess a tax,
6 in such a case the selling price for the purposes of the tax imposed
7 under RCW 82.08.020 shall be sixty percent of the gross receipts of the
8 vending machine through which such sales are made.

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

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

18 (a) Dispenses tangible personal property;

19 (b) Provides facilities for installing, repairing, cleaning,
20 altering, imprinting, or improving tangible personal property; or

21 (c) Provides a service to the buyer.

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

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

34 **PART V**

35 **MISCELLANEOUS**

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

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

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

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

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

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

Passed by the Senate March 10, 2004.
Passed by the House March 10, 2004.
Approved by the Governor March 26, 2004.
Filed in Office of Secretary of State March 26, 2004.