
HOUSE BILL 2235

State of Washington 59th Legislature 2005 Regular Session

By Representatives McIntire, Sommers, Fromhold, Moeller and Kagi

Read first time 02/25/2005. Referred to Committee on Finance.

1 AN ACT Relating to conforming Washington's tax structure to the
2 streamlined sales and use tax agreement; amending RCW 82.32.020,
3 82.32.030, and 82.14.390; amending 2003 c 168 s 902 (uncodified);
4 reenacting and amending RCW 82.14.020; adding new sections to chapter
5 82.32 RCW; adding new sections to chapter 82.14 RCW; adding a new
6 section to chapter 82.08 RCW; adding a new section to chapter 82.12
7 RCW; creating a new section; providing effective dates; providing
8 contingent effective dates; and declaring an emergency.

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 **PART II. REGISTRATION**

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

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

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

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

22 (1) Except as provided in subsections (2) and (3) of this section,
23 if any person engages in any business or performs any act upon which a
24 tax is imposed by the preceding chapters, he or she shall, under such
25 rules as the department of revenue shall prescribe, apply for and
26 obtain from the department a registration certificate. Such
27 registration certificate shall be personal and nontransferable and
28 shall be valid as long as the taxpayer continues in business and pays
29 the tax accrued to the state. In case business is transacted at two or
30 more separate places by one taxpayer, a separate registration
31 certificate for each place at which business is transacted with the
32 public shall be required. Each certificate shall be numbered and shall
33 show the name, residence, and place and character of business of the
34 taxpayer and such other information as the department of revenue deems
35 necessary and shall be posted in a conspicuous place at the place of

1 business for which it is issued. Where a place of business of the
2 taxpayer is changed, the taxpayer must return to the department the
3 existing certificate, and a new certificate will be issued for the new
4 place of business. No person required to be registered under this
5 section shall engage in any business taxable hereunder without first
6 being so registered. The department, by rule, may provide for the
7 issuance of certificates of registration to temporary places of
8 business.

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

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

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

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

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

24 (3) Persons who agree to collect and remit sales and use tax to the
25 department under the agreement, but are not required to register under
26 subsection (1) of this section, may register under subsection (1) of
27 this section or register through an on-line system authorized under the
28 agreement.

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

30 NEW SECTION. Sec. 301. A new section is added to chapter 82.32
31 RCW to read as follows:

32 (1) The department shall adopt by rule monetary allowances for
33 certified service providers, model 2 sellers, model 3 sellers, and
34 other sellers that are not model 1 or model 2 sellers. The department
35 may be guided by the provisions for monetary allowances adopted by the
36 governing board of the agreement to determine the amount of the

1 allowances and the conditions under which they are allowed. The
2 monetary allowance must be reasonable and provide adequate incentive
3 for certified service providers and sellers to collect and remit under
4 the agreement.

5 (2) For certified service providers, the monetary allowance may
6 include a base rate that applies to taxable transactions processed by
7 the certified service provider. Additionally, for a period not to
8 exceed twenty-four months following a seller's registration under RCW
9 82.32.030(3), the monetary allowance may include a percentage of tax
10 revenue generated by the seller.

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

14 (4) For model 3 sellers and all other sellers that are not model 1
15 sellers or model 2 sellers, the monetary allowance may include a
16 percentage of tax revenue generated by a seller registering under RCW
17 82.32.030(3), but shall not exceed a period of twenty-four months.

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

20 (1) The department may adopt by rule vendor compensation for
21 sellers collecting and remitting sales and use taxes. The vendor
22 compensation may include a base rate or a percentage of tax revenue
23 collected by the seller, and may vary by type of seller. The
24 department may be guided by the findings of the cost of collection
25 study performed under the agreement, by cost of collection studies
26 performed by the department, and by vendor compensation provided by
27 other states, to determine reasonable vendor compensation for sellers
28 for the costs to collect and remit sales and use taxes.

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

32 **PART IV. AMNESTY**

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

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

4 (a) Within twelve months of the effective date of this state
5 becoming a member state of the agreement, registers to collect and
6 remit to the department the applicable taxes imposed under chapters
7 82.08 and 82.12 RCW on sales made to buyers in this state in accordance
8 with the terms of the agreement, if the seller was not so registered in
9 this state in the twelve-month period preceding the effective date of
10 this state becoming a member state of the agreement; and

11 (b) Continues to be registered and continues to collect and remit
12 to the department the applicable taxes imposed under chapters 82.08 and
13 82.12 RCW for a period of at least thirty-six months, absent the
14 seller's fraud or intentional misrepresentation of a material fact.

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

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

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

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

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

30 (4) The periods of limitation for making an assessment or
31 correction of an assessment prescribed in RCW 82.32.050(3) and
32 82.32.100(3) do not run during the thirty-six month period in
33 subsection (1)(b) of this section.

34 **PART V. SOURCING**

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

1 (1) Except as provided in subsections (5), (6), (7), and (8) of
2 this section, for purposes of collecting or paying sales or use taxes
3 to the appropriate jurisdictions, all sales at retail shall be sourced
4 in accordance with this subsection and subsections (2) through (4) of
5 this section.

6 (a) When tangible personal property or a service defined as a
7 retail sale under RCW 82.04.050 is received by the purchaser at a
8 business location of the seller, the sale is sourced to that business
9 location.

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

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

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

27 (e) When (a), (b), (c), or (d) of this subsection do not apply,
28 including the circumstance where the seller is without sufficient
29 information to apply those provisions, then the location shall be
30 determined by the address from which tangible personal property was
31 shipped, from which the digital good or the computer software delivered
32 electronically was first available for transmission by the seller, or
33 from which the service defined as a retail sale under RCW 82.04.050 was
34 provided, disregarding for these purposes any location that merely
35 provided the digital transfer of the product sold.

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

1 (a) For a lease or rental that requires recurring periodic
2 payments, the first periodic payment is sourced the same as a retail
3 sale in accordance with subsection (1) of this section. Periodic
4 payments made subsequent to the first payment are sourced to the
5 primary property location for each period covered by the payment. The
6 primary property location shall be as indicated by an address for the
7 property provided by the lessee that is available to the lessor from
8 its records maintained in the ordinary course of business, when use of
9 this address does not constitute bad faith. The property location
10 shall not be altered by intermittent use at different locations, such
11 as use of business property that accompanies employees on business
12 trips and service calls.

13 (b) For a lease or rental that does not require recurring periodic
14 payments, the payment is sourced the same as a retail sale in
15 accordance with subsection (1) of this section.

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

19 (3) The lease or rental of motor vehicles, trailers, semitrailers,
20 or aircraft that do not qualify as transportation equipment shall be
21 sourced as follows:

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

30 (b) For a lease or rental that does not require recurring periodic
31 payments, the payment is sourced the same as a retail sale in
32 accordance with subsection (1) of this section.

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

36 (4) The retail sale, including lease or rental, of transportation
37 equipment shall be sourced the same as a retail sale in accordance with
38 subsection (1) of this section.

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

8 (a) Upon receipt of the multiple point of use exemption form, the
9 seller is relieved of all obligation to collect, pay, or remit the
10 applicable tax and the purchaser is obligated to collect, pay, or remit
11 the applicable tax.

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

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

20 (6)(a) A purchaser of direct mail that is not a holder of a direct
21 pay permit shall provide to the seller in conjunction with the purchase
22 either a direct mail form or information that shows the jurisdictions
23 to which the direct mail is delivered to recipients.

24 (i) Upon receipt of the direct mail form, the seller is relieved of
25 all obligations to collect, pay, or remit the applicable tax and the
26 purchaser is obligated to pay or remit the applicable tax on a direct
27 pay basis. A direct mail form shall remain in effect for all future
28 sales of direct mail by the seller to the purchaser until it is revoked
29 in writing.

30 (ii) Upon receipt of information from the purchaser showing the
31 jurisdictions to which the direct mail is delivered to recipients, the
32 seller shall collect the tax according to the delivery information
33 provided by the purchaser. In the absence of bad faith, the seller is
34 relieved of any further obligation to collect tax on any transaction
35 where the seller has collected tax pursuant to the delivery information
36 provided by the purchaser.

37 (b) If the purchaser of direct mail does not have a direct pay
38 permit and does not provide the seller with either a direct mail form

1 or delivery information as required by (a) of this subsection, the
2 seller shall collect the tax according to subsection (1)(e) of this
3 section. This subsection does not limit a purchaser's obligation for
4 sales or use tax to any state to which the direct mail is delivered.

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

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

10 (a) A retail sale consisting of watercraft;

11 (b) A retail sale consisting of a modular home, manufactured home,
12 or mobile home; and

13 (c) A retail sale, excluding the lease and rental, consisting of a
14 motor vehicle, trailer, semitrailer, or aircraft, that do not qualify
15 as transportation equipment.

16 (8) A retail sale consisting of the providing of telecommunications
17 services shall be sourced in accordance with RCW 82.32.520.

18 (9) The definitions in this subsection apply throughout this
19 section.

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

22 (b) "Direct mail" means printed material delivered or distributed
23 by United States mail or other delivery service to a mass audience or
24 to addressees on a mailing list provided by the purchaser or at the
25 direction of the purchaser when the cost of the items are not billed
26 directly to the recipients. "Direct mail" includes tangible personal
27 property supplied directly or indirectly by the purchaser to the direct
28 mail seller for inclusion in the package containing the printed
29 material. "Direct mail" does not include multiple items of printed
30 material delivered to a single address.

31 (c) "Receive" and "receipt" means taking possession of tangible
32 personal property, making first use of services, or taking possession
33 or making first use of digital goods, whichever comes first. "Receive"
34 and "receipt" do not include possession by a shipping company on behalf
35 of the purchaser.

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

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

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

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

5 (B) Operated under authority of a carrier authorized and
6 certificated by the United States department of transportation or
7 another federal authority to engage in the carriage of persons or
8 property in interstate commerce;

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

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

16 (10) In those instances where there is no obligation on the part of
17 a seller to collect or remit use tax, the use of tangible personal
18 property or of a service, subject to use tax, is sourced to the place
19 of first use. The definition of use in RCW 82.12.010 applies to this
20 subsection.

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

23 For purposes of this chapter:

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

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

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

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

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

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

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

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

17 ~~((8)) (2) The meaning ascribed to words and phrases in chapters~~
18 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
19 ~~applicable, shall have full force and effect with respect to taxes~~
20 ~~imposed under authority of this chapter;~~

21 ~~((9)) (3) "Taxable event" shall mean any retail sale, or any use,~~
22 ~~upon which a state tax is imposed pursuant to chapter 82.08 or 82.12~~
23 ~~RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER,~~
24 ~~That the term shall not include a retail sale taxable pursuant to RCW~~
25 ~~82.08.150, as now or hereafter amended;~~

26 ~~((10)) (4) "Treasurer or other legal depository" shall mean the~~
27 ~~treasurer or legal depository of a county or city.~~

28 NEW SECTION. Sec. 503. A new section is added to chapter 82.14
29 RCW to read as follows:

30 Sales and use taxes imposed under this chapter shall be sourced in
31 accordance with section 501 of this act.

32 **PART VI. CONFIDENTIALITY AND PRIVACY PROTECTIONS FOR**
33 **PERSONS USING CERTIFIED SERVICE PROVIDERS**

34 NEW SECTION. Sec. 601. A new section is added to chapter 82.32
35 RCW to read as follows:

1 (1) A fundamental precept of allowing the use of a certified
2 service provider is to preserve the privacy of consumers by protecting
3 their anonymity. With very limited exceptions, a certified service
4 provider shall perform its tax calculation, remittance, and reporting
5 functions without retaining the personally identifiable information of
6 consumers.

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

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

16 (4) When personally identifiable information regarding an
17 individual is retained by or on behalf of the state of Washington, this
18 state shall provide reasonable access for the individual to his or her
19 own information and a right to correct any inaccurately recorded
20 information.

21 (5) If anyone other than a member state of the agreement, or other
22 than a person authorized by Washington law or the agreement, seeks to
23 discover personally identifiable information, the state of Washington
24 shall make a reasonable and timely effort to notify the individual of
25 the request.

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

28 **PART VII. TAXABILITY MATRIX**

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

31 (1) The department of revenue shall complete a taxability matrix
32 maintained by the member states of the agreement in downloadable
33 format. The matrix contains terms defined in the agreement. The
34 department of revenue shall provide notice of changes in the taxability
35 of products or services listed in the matrix.

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

6 **PART VIII. DELIVERY CHARGES**

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

9 When computing the tax levied by RCW 82.08.020, if a shipment
10 consists of taxable tangible personal property and nontaxable tangible
11 personal property, and delivery charges are included in the sales
12 price, the seller must collect and remit tax on the percentage of
13 delivery charges allocated to the taxable tangible property, but does
14 not have to collect and remit tax on the percentage allocated to exempt
15 tangible personal property. The seller may use either of the following
16 percentages to determine the taxable portion of the delivery charges:

17 (1) A percentage based on the total sales price of the taxable
18 tangible property compared to the total sales price of all tangible
19 personal property in the shipment; or

20 (2) A percentage based on the total weight of the taxable tangible
21 personal property compared to the total weight of all tangible personal
22 property in the shipment.

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

25 When computing the tax levied by RCW 82.12.020, if a shipment
26 consists of taxable tangible personal property and nontaxable tangible
27 personal property, and delivery charges are included in the purchase
28 price, the consumer must remit tax or the retailer must collect and
29 remit tax on the percentage of delivery charges allocated to the
30 taxable personal property, but does not have to remit or collect and
31 remit tax on the percentage allocated to exempt tangible personal
32 property. The consumer or retailer may use either of the following
33 percentages to determine the taxable portion of the delivery charges:

34 (1) A percentage based on the total purchase price of the taxable

1 personal property compared to the total purchase price of all tangible
2 personal property in the shipment; or

3 (2) A percentage based on the total weight of the taxable tangible
4 personal property compared to the total weight of all tangible personal
5 property in the shipment.

6 **PART IX. SALES AND USE TAX MITIGATION**

7 NEW SECTION. **Sec. 901.** A new section is added to chapter 82.14
8 RCW to read as follows:

9 The legislature finds and declares that:

10 (1) Washington state's participation as a member state in the
11 streamlined sales and use tax agreement benefits the state, its local
12 taxing jurisdictions, and its retailing industry by increasing state
13 and local revenues, improving the state's business climate, and
14 simplifying the state's tax structure.

15 (2) Participation in the streamlined sales and use tax agreement
16 requires the adoption of the agreement's sourcing provisions, which
17 changes the location in which a retail sale of tangible personal
18 property occurs from the point of origin of delivery to the point of
19 destination of delivery.

20 (3) The streamlined sales and use tax agreement's sourcing
21 provisions will cause sales and use tax revenues to shift among local
22 taxing jurisdictions, causing some local taxing jurisdictions to suffer
23 significant revenue losses.

24 (4) Washington state's participation in the streamlined sales and
25 use tax agreement will generate new additional revenue that can be used
26 to assist local taxing jurisdictions.

27 (5) It is necessary for the preservation of the health, safety, and
28 support of the state government and its existing public institutions to
29 distribute the additional state revenue generated from Washington
30 state's participation in the streamlined sales and use tax agreement to
31 local taxing jurisdictions to mitigate the adverse effects of adopting
32 the agreement's sourcing provisions.

33 NEW SECTION. **Sec. 902.** A new section is added to chapter 82.14
34 RCW to read as follows:

35 (1) The streamlined sales and use tax agreement mitigation account

1 is created in the state treasury, and shall be used for mitigating
2 financial impacts related to the enactment of section 501 of this act.
3 Into this account shall be deposited an amount of state sales and use
4 taxes, as provided in section 904 of this act, representing a portion
5 of the amount that is expected to be received by the department from
6 sellers who, under the agreement, register to collect and remit to the
7 department state sales and use taxes and who are otherwise not required
8 to register under RCW 82.32.030(1).

9 (2)(a) Funds in the streamlined sales and use tax agreement
10 mitigation account shall be distributed without appropriation by the
11 state treasurer to cities, counties, transportation authorities,
12 regional transportation investment districts, and public facilities
13 districts in accordance with section 903 of this act.

14 (b) On June 30th of the fourth fiscal year after the effective date
15 of this section and each fiscal year thereafter, any funds that remain
16 in the account as of June 30th of each fiscal year shall be distributed
17 to the general fund. The fiscal year in which this section is
18 effective is the first fiscal year after the effective date of this
19 section.

20 (3) For purposes of this section and sections 903 and 904 of this
21 act, the following definitions apply:

22 (a) "State sales and use taxes" means the taxes imposed under
23 chapters 82.08 and 82.12 RCW.

24 (b) "Agreement" means the same as in RCW 82.58.010.

25 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.14
26 RCW to read as follows:

27 (1) The state treasurer shall make distributions to eligible
28 sourcing counties, cities, transportation authorities, regional
29 transportation investment districts, and public facilities districts,
30 from the streamlined sales and use tax agreement mitigation account.
31 The state treasurer shall make the distributions as provided in this
32 section without appropriation.

33 (a) Funds in the streamlined sales and use tax agreement mitigation
34 account shall be distributed to eligible sourcing counties, cities,
35 transportation authorities, regional transportation investment
36 districts, and public facilities districts by the state treasurer as
37 directed by the department.

1 (b) Each fiscal year, eligible sourcing counties, cities,
2 transportation authorities, regional transportation investment
3 districts, and public facilities districts shall receive distributions
4 based on the actual local sales and tax reductions that result each
5 fiscal year from section 501 of this act. The department shall
6 determine the actual amount of local sales and use tax reductions of
7 eligible sourcing counties, cities, transportation authorities,
8 regional transportation investment districts, and public facilities
9 districts by comparing data pertaining to local sales and use tax
10 collections each fiscal year after the effective date of section 501 of
11 this act to data pertaining to local sales and use tax collections the
12 fiscal year before the effective date of this section. The department
13 may account and adjust for economic growth, annexations and
14 incorporations, and other unique circumstances affecting sales tax
15 collections in the department's analysis as necessary.

16 (c) Distributions shall be made on a quarterly basis and the first
17 distribution shall occur six calendar months after the effective date
18 of this section. However, if the department estimates that the local
19 sales and use tax collections of an eligible sourcing county, city,
20 transportation authority, regional transportation investment district,
21 or public facilities district will be reduced more than two percent
22 during the first fiscal year after the effective date of this section
23 due to section 501 of this act, the department may direct the state
24 treasurer to make monthly or prepayment distributions to the eligible
25 sourcing county, city, transportation authority, regional
26 transportation investment district, or public facilities district at
27 such times as distributions are made under RCW 82.14.060.

28 (d) If a distribution is made to an eligible sourcing county, city,
29 transportation authority, regional transportation investment district,
30 or public facilities district, and the department determines that the
31 amount distributed exceeded the actual local sales and use tax
32 reductions resulting from section 501 of this act, the excess amount
33 shall be deducted from any future distributions under this section for
34 twenty-four calendar months. The excess amount of any distribution
35 that remains after twenty-four calendar months shall be deducted from
36 any tax collected under the authority of this chapter for the eligible
37 sourcing county, city, transportation authority, regional

1 transportation investment district, or public facilities district, and
2 the deducted amounts shall be deposited in the streamlined sales and
3 use tax agreement mitigation account.

4 (e) If the amounts necessary to make the distributions under this
5 subsection exceed the amount of funds in the streamlined sales and use
6 tax agreement mitigation account, then the distributions under this
7 subsection shall be reduced ratably among the eligible sourcing
8 counties, cities, transportation authorities, regional transportation
9 investment districts, or public facilities districts.

10 (f) Determinations by the department of amounts to be distributed
11 by the state treasurer under this section are final and not appealable.

12 (2) For purposes of this section, "eligible sourcing counties,
13 cities, transportation authorities, regional transportation investment
14 districts, and public facilities districts" means those counties,
15 cities, transportation authorities, regional transportation investment
16 districts, and public facilities districts imposing a tax authorized
17 under this chapter, except public facilities districts imposing a tax
18 authorized under RCW 82.14.390, that have each experienced an actual
19 local sales and use tax reduction as a result of section 501 of this
20 act.

21 NEW SECTION. **Sec. 904.** A new section is added to chapter 82.32
22 RCW to read as follows:

23 (1) On the effective date of this section and on July 1st of each
24 year thereafter, an amount of sales and use taxes under chapters 82.08
25 and 82.12 RCW shall be deposited into the streamlined sales and use tax
26 agreement mitigation account created under section 902 of this act
27 equal to the product of (a) the amount, less five million seven hundred
28 thousand dollars, that is forecasted as of June 30, 2005, by the office
29 of the forecast council to be received by the department during fiscal
30 year 2006 pursuant to the enactment of chapter . . . , Laws of 2005
31 (this act) from sellers who, under the agreement, register to collect
32 and remit to the department state sales and use taxes and who are
33 otherwise not required to register under RCW 82.32.030(1) and (b) the
34 factor specified in subsection (2) of this section.

35 (2)(a) For the first three fiscal years after the effective date of
36 this section, the factor is equal to one. The fiscal year in which

1 this section is effective is the first fiscal year after the effective
2 date of this section.

3 (b) For the fourth fiscal year after the effective date of this
4 section, the factor is equal to nine-tenths.

5 (c) For the fifth fiscal year after the effective date of this
6 section, the factor is equal to eight-tenths.

7 (d) For the sixth fiscal year after the effective date of this
8 section, the factor is equal to seven-tenths.

9 (e) For the seventh fiscal year after the effective date of this
10 section, the factor is equal to six-tenths.

11 (f) For the eighth fiscal year after the effective date of this
12 section, the factor is equal to five-tenths.

13 (g) For the ninth fiscal year after the effective date of this
14 section, the factor is equal to four-tenths.

15 (h) For the tenth fiscal year after the effective date of this
16 section, the factor is equal to three-tenths.

17 (i) For the eleventh fiscal year after the effective date of this
18 section, the factor is equal to two-tenths.

19 (j) For the twelfth fiscal year after the effective date of this
20 section, the factor is equal to one-tenth.

21 (k) For the thirteenth fiscal year after the effective date of this
22 section, the factor is equal to zero.

23 **Sec. 905.** RCW 82.14.390 and 2002 c 363 s 4 are each amended to
24 read as follows:

25 (1) Except as provided in subsection (~~((6))~~) (7) of this section,
26 the governing body of a public facilities district created before July
27 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction
28 of a new regional center, or improvement or rehabilitation of an
29 existing new regional center, before January 1, 2004, may impose a
30 sales and use tax in accordance with the terms of this chapter. The
31 tax is in addition to other taxes authorized by law and shall be
32 collected from those persons who are taxable by the state under
33 chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event
34 within the public facilities district. The rate of tax shall not
35 exceed 0.033 percent of the selling price in the case of a sales tax or
36 value of the article used in the case of a use tax.

1 (2)(a) The governing body of a public facilities district imposing
2 a sales and use tax under this section may increase the rate of tax up
3 to 0.037 percent if, within three fiscal years of the effective date of
4 this section, the department determines that, as a result of section
5 501 of this act, a public facilities district's sales and use tax
6 collections for fiscal years after the effective date of this section
7 have been reduced at least 0.50 percent from the fiscal year before the
8 effective date of this section. The fiscal year in which this section
9 is effective is the first fiscal year after the effective date of this
10 section.

11 (b) The department shall determine sales and use tax collection
12 reductions under this section as provided in section 903(1) of this
13 act. The department shall provide written notice of its determinations
14 to public facilities districts. Determinations by the department of a
15 public facilities district's sales and use tax collection reductions as
16 a result of section 501 of this act are final and not appealable.

17 (c) A public facilities district may increase its rate of tax after
18 it has received written notice from the department as provided in (b)
19 of this subsection. The increase in the rate of tax must be made in
20 0.001 percent increments and must be the least amount necessary to
21 mitigate the reduction in sales and use tax collections as a result of
22 section 501 of this act. The increase in the rate of tax is subject to
23 RCW 82.14.055.

24 (3) The tax imposed under subsections (1) and (2) of this section
25 shall be deducted from the amount of tax otherwise required to be
26 collected or paid over to the department of revenue under chapter 82.08
27 or 82.12 RCW. The department of revenue shall perform the collection
28 of such taxes on behalf of the county at no cost to the public
29 facilities district.

30 ~~((3))~~ (4) No tax may be collected under this section before
31 August 1, 2000. The tax imposed in this section shall expire when the
32 bonds issued for the construction of the regional center and related
33 parking facilities are retired, but not more than twenty-five years
34 after the tax is first collected.

35 ~~((4))~~ (5) Moneys collected under this section shall only be used
36 for the purposes set forth in RCW 35.57.020 and must be matched with an
37 amount from other public or private sources equal to thirty-three
38 percent of the amount collected under this section, provided that

1 amounts generated from nonvoter approved taxes authorized under chapter
2 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
3 RCW shall not constitute a public or private source. For the purpose
4 of this section, public or private sources includes, but is not limited
5 to cash or in-kind contributions used in all phases of the development
6 or improvement of the regional center, land that is donated and used
7 for the siting of the regional center, cash or in-kind contributions
8 from public or private foundations, or amounts attributed to private
9 sector partners as part of a public and private partnership agreement
10 negotiated by the public facilities district.

11 ~~((+5))~~ (6) The combined total tax levied under this section shall
12 not be greater than ~~((0.033))~~ 0.037 percent. If both a public
13 facilities district created under chapter 35.57 RCW and a public
14 facilities district created under chapter 36.100 RCW impose a tax under
15 this section, the tax imposed by a public facilities district created
16 under chapter 35.57 RCW shall be credited against the tax imposed by a
17 public facilities district created under chapter 36.100 RCW.

18 ~~((+6))~~ (7) A public facilities district created under chapter
19 36.100 RCW is not eligible to impose the tax under this section if the
20 legislative authority of the county where the public facilities
21 district is located has imposed a sales and use tax under RCW
22 82.14.0485 or 82.14.0494.

23 **PART X. MISCELLANEOUS PROVISIONS**

24 NEW SECTION. **Sec. 1001.** (1) Sections 501 through 503, 901 through
25 905, and 1002 of this act take effect the later of July 1, 2006, or the
26 first day of April, July, or October at least six months after the
27 streamlined sales and use tax agreement takes effect. Section 401 of
28 this act takes effect when Washington becomes a member state of the
29 streamlined sales and use tax agreement.

30 (2) Section 302 of this act takes effect when:

31 (a) The United States congress grants individual states the
32 authority to impose sales and use tax collection duties on remote
33 sellers; or

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

1 (3) The department shall provide notice of the effective dates of
2 sections 302, 401, 501 through 503, 901 through 905, and 1002 of this
3 act to affected taxpayers, the legislature, and others as deemed
4 appropriate by the department.

5 (4) The remainder of this act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 July 1, 2005.

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

11 (1) If a court of competent jurisdiction enters a final judgment on
12 the merits that is based on federal or state law, is no longer subject
13 to appeal, and substantially limits or impairs the essential elements
14 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
15 2002, then chapter 67, Laws of 2002 is null and void in its entirety,
16 except as provided in subsection (2) of this section.

17 (2) ~~((If the contingency in subsection (1) of this section occurs,~~
18 ~~section 502, chapter 168, Laws of 2003 is null and void))~~ Subsection
19 (1) of this section does not apply to section 7, chapter 67, Laws of
20 2002 on or after the date section 502 of this act takes effect.

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

23 NEW SECTION. **Sec. 1004.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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