
HOUSE BILL 2273

State of Washington

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2005 Regular Session

By Representatives Simpson, Roach, Williams, Ericks, McDonald, P. Sullivan, Hasegawa, Sells, Roberts, McCoy, Hunt, Morrell, Upthegrove and Moeller

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

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

11 **PART I. DEFINITIONS**

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

14 For the purposes of this chapter:

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

1 "engaging in business," "successor," "gross operating revenue," "gross
2 income," "taxpayer," "retail sale," and "value of products" shall apply
3 equally to the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) The department shall adopt by rule monetary allowances for
35 certified service providers, model 2 sellers, and model 3 sellers and
36 other sellers that are not model 1 or model 2 sellers. The department

1 may be guided by the provisions for monetary allowances adopted by the
2 governing board of the agreement to determine the amount of the
3 allowances and the conditions under which they are allowed. The
4 monetary allowance must be reasonable and provide adequate incentive
5 for certified service providers and sellers to collect and remit under
6 the agreement.

7 (2) For certified service providers, the monetary allowance may
8 include a base rate that applies to taxable transactions processed by
9 the certified service provider. Additionally, for a period not to
10 exceed twenty-four months following a seller's registration under RCW
11 82.32.030(3), the monetary allowance may include a percentage of tax
12 revenue generated by the seller.

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

16 (4) For model 3 sellers and all other sellers that are not model 1
17 sellers or model 2 sellers, the monetary allowance may include a
18 percentage of tax revenue generated by a seller registering under RCW
19 82.32.030(3), but shall not exceed a period of twenty-four months.

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

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

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

34 **PART IV. AMNESTY**

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

3 For purposes of this chapter:

4 (1) Subsections (2) through (11) of this section apply to retail
5 sales occurring after the effective date of this section. If any
6 county, city, transportation authority, public facilities district, or
7 regional transportation investment district imposing a sales and use
8 tax under this chapter has its local sales and use tax collection
9 reduced during a fiscal year as a result of section 501 of this act,
10 and is not otherwise fully compensated or mitigated for such losses by
11 the state as provided in sections 901 through 904 of this act,
12 subsection (12) of this section applies on the first day of the month
13 of the following calendar quarter, and thereafter. The department
14 shall provide notice of the application of subsection (12) of this
15 section to affected taxpayers, the legislature, and others as deemed
16 appropriate by the department.

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

22 (a) When tangible personal property or a service defined as a
23 retail sale under RCW 82.04.050 is received by the purchaser at a
24 business location of the seller, the sale is sourced to that business
25 location.

26 (b) When the tangible personal property or a service defined as a
27 retail sale under RCW 82.04.050 is not received by the purchaser at a
28 business location of the seller, the sale is sourced to the location
29 where receipt by the purchaser or the purchaser's donee, designated as
30 such by the purchaser, occurs, including the location indicated by
31 instructions for delivery to the purchaser or donee, known to the
32 seller.

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

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

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

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

18 (a) For a lease or rental that requires recurring periodic
19 payments, the first periodic payment is sourced the same as a retail
20 sale in accordance with subsection (2) of this section. Periodic
21 payments made subsequent to the first payment are sourced to the
22 primary property location for each period covered by the payment. The
23 primary property location shall be as indicated by an address for the
24 property provided by the lessee that is available to the lessor from
25 its records maintained in the ordinary course of business, when use of
26 this address does not constitute bad faith. The property location
27 shall not be altered by intermittent use at different locations, such
28 as use of business property that accompanies employees on business
29 trips and service calls.

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 (2) 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 lease or rental of motor vehicles, trailers, semitrailers,
37 or aircraft that do not qualify as transportation equipment shall be
38 sourced as follows:

1 (a) For a lease or rental that requires recurring periodic
2 payments, each periodic payment is sourced to the primary property
3 location. The primary property location shall be as indicated by an
4 address for the property provided by the lessee that is available to
5 the lessor from its records maintained in the ordinary course of
6 business, when use of this address does not constitute bad faith. This
7 location shall not be altered by intermittent use at different
8 locations.

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

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

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

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

25 (a) Upon receipt of the multiple point of use exemption form, the
26 seller is relieved of all obligation to collect, pay, or remit the
27 applicable tax and the purchaser is obligated to collect, pay, or remit
28 the applicable tax.

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

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

37 (7)(a) A purchaser of direct mail that is not a holder of a direct

1 pay permit shall provide to the seller in conjunction with the purchase
2 either a direct mail form or information that shows the jurisdictions
3 to which the direct mail is delivered to recipients.

4 (i) Upon receipt of the direct mail form, the seller is relieved of
5 all obligations to collect, pay, or remit the applicable tax and the
6 purchaser is obligated to pay or remit the applicable tax on a direct
7 pay basis. A direct mail form shall remain in effect for all future
8 sales of direct mail by the seller to the purchaser until it is revoked
9 in writing.

10 (ii) Upon receipt of information from the purchaser showing the
11 jurisdictions to which the direct mail is delivered to recipients, the
12 seller shall collect the tax according to the delivery information
13 provided by the purchaser. In the absence of bad faith, the seller is
14 relieved of any further obligation to collect tax on any transaction
15 where the seller has collected tax pursuant to the delivery information
16 provided by the purchaser.

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

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

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

28 (a) A retail sale consisting of watercraft;

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

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

34 (d) Until January 1, 2007, a retail sale of tangible personal
35 property made by a person engaged in the business of selling flowers.
36 The rules for the sourcing retail sales and use taxes of flowers
37 delivered with telegraphic instructions in WAC 458-20-158, as effective
38 on July 1, 1970, shall remain in effect until January 1, 2007.

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

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

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

7 (b) "Direct mail" means printed material delivered or distributed
8 by United States mail or other delivery service to a mass audience or
9 to addressees on a mailing list provided by the purchaser or at the
10 direction of the purchaser when the cost of the items are not billed
11 directly to the recipients. "Direct mail" includes tangible personal
12 property supplied directly or indirectly by the purchaser to the direct
13 mail seller for inclusion in the package containing the printed
14 material. "Direct mail" does not include multiple items of printed
15 material delivered to a single address.

16 (c) "Receive" and "receipt" means taking possession of tangible
17 personal property, making first use of services, or taking possession
18 or making first use of digital goods, whichever comes first. "Receive"
19 and "receipt" do not include possession by a shipping company on behalf
20 of the purchaser.

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

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

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

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

28 (B) Operated under authority of a carrier authorized and
29 certificated by the United States department of transportation or
30 another federal authority to engage in the carriage of persons or
31 property in interstate commerce;

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

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

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

6 (12)(a) A retail sale consisting solely of the sale of tangible
7 personal property shall be deemed to have occurred at the retail outlet
8 at or from which delivery is made to the consumer.

9 (b) A retail sale consisting essentially of the performance of
10 personal, business, or professional services shall be deemed to have
11 occurred at the place at which such services were primarily performed,
12 except that for the performance of a tow truck service, as defined in
13 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
14 place of business of the operator of the tow truck service.

15 (c) A retail sale consisting of the rental of tangible personal
16 property shall be deemed to have occurred (i) in the case of a rental
17 involving periodic rental payments, at the place of primary use by the
18 lessee during the period covered by each payment, or (ii) in all other
19 cases, at the place of first use by the lessee.

20 (d) A retail sale within the scope of RCW 82.04.050(2), and a
21 retail sale of taxable personal property to be installed by the seller
22 shall be deemed to have occurred at the place where the labor and
23 services involved were primarily performed.

24 (e)(i) A retail sale consisting of the providing to a consumer of
25 telephone service, as defined in RCW 82.04.065, other than a sale of
26 tangible personal property under (a) of this subsection or a rental of
27 tangible personal property under (c) of this subsection or a sale of
28 mobile telecommunications services, shall be deemed to have occurred at
29 the situs of the telephone or other instrument through which the
30 telephone service is rendered.

31 (ii) A retail sale consisting of the providing of
32 telecommunications services shall be sourced in accordance with RCW
33 82.32.520.

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

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

1 For purposes of this chapter:

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

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

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

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

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

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

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

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

32 ~~((8)) (2) The meaning ascribed to words and phrases in chapters~~
33 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
34 ~~applicable, shall have full force and effect with respect to taxes~~
35 ~~imposed under authority of this chapter;~~

36 ~~((9)) (3) "Taxable event" shall mean any retail sale, or any use,~~
37 ~~upon which a state tax is imposed pursuant to chapter 82.08 or 82.12~~

1 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER,
2 That the term shall not include a retail sale taxable pursuant to RCW
3 82.08.150, as now or hereafter amended;

4 ((+10)) (4) "Treasurer or other legal depository" shall mean the
5 treasurer or legal depository of a county or city.

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

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

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

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

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

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

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

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

1 **PART VII. TAXABILITY MATRIX**

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

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

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

14 **PART VIII. DELIVERY CHARGES**

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **PART IX. SOURCING MITIGATION**

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

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

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

3 (b) Participation in the streamlined sales and use tax agreement is
4 a matter of statewide concern and is in the best interests of the
5 state, the general public, and all counties, cities, and transportation
6 authorities under RCW 82.14.045, public facility districts under
7 chapters 36.100 and 35.57 RCW, public transportation benefit areas
8 under RCW 82.14.440, and regional transportation investment districts,
9 that impose a sales and use tax under applicable law;

10 (c) Participation in the streamlined sales and use tax agreement
11 requires the adoption of the agreement's sourcing provisions, which
12 changes the location in which a retail sale of delivered tangible
13 personal property occurs from the point of origin to the point of
14 delivery;

15 (d) Changes in the state's sourcing law provisions to conform with
16 the streamlined sales and use tax agreement will cause sales and use
17 tax revenues to shift among local taxing jurisdictions. In so doing,
18 the legislature finds that there will be an unintended adverse impact
19 on local taxing jurisdictions that receive less revenues because local
20 tax revenues will be suddenly redistributed, with revenue increases for
21 some jurisdictions and reductions for others, due solely to changes in
22 state sales tax sourcing rules to be implemented under section 501 of
23 this act, even though no local taxing jurisdiction or subdivision has
24 changed its tax rate or tax base;

25 (e) The purpose of providing mitigation to such jurisdictions is to
26 appropriately stabilize revenues before congressional or court action
27 which is needed to fully implement the agreement, and for a limited
28 time after congressional action, and to mitigate the unintended revenue
29 redistribution effect of the sourcing law changes among local
30 governments for a period of time as provided herein;

31 (f) Additionally, changes in sourcing laws may have negative
32 implications for industry sectors such as warehousing and
33 manufacturing, as well as jurisdictions that house a concentration of
34 these industries and have made zoning decisions, infrastructure
35 investments, bonding decisions, and land-use policy decisions based on
36 point of origin sales tax rules in place prior to this act; and

37 (g) It is in the best interest of the state and all its

1 subdivisions to fully mitigate the adverse effects of amending the
2 state's sales and use tax sourcing provisions to be in conformance with
3 the streamlined sales and use tax agreement.

4 (2) The legislature intends that the streamlined sales and use tax
5 mitigation account established in section 902 of this act have the
6 objective of replacing, for each negatively affected local taxing
7 jurisdiction, the net local sales and use tax revenue reductions
8 incurred as a result of section 501 of this act. Because the
9 mitigation account developed in section 902 of this act will be
10 affected by changing circumstances and changes in retail sales patterns
11 in given communities, the legislature additionally finds that the
12 department would benefit from the formation of an oversight committee
13 to provide assistance with assessing and evaluating the mitigation
14 account formulae on an annual basis.

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

17 (1) The streamlined sales and use tax mitigation account is created
18 in the state treasury and shall be used for the purpose of mitigating
19 the negative fiscal impacts to local taxing jurisdictions as a result
20 of section 501 of this act. The state treasurer shall transfer into
21 this account from the general fund amounts as prescribed in section 903
22 of this act.

23 (2) Beginning July 1, 2006, the state treasurer, as directed by the
24 department, shall distribute the funds in the streamlined sales and use
25 tax mitigation account without appropriation to cities, counties,
26 transportation authorities, regional transportation investment
27 districts, and public facilities districts in accordance with section
28 903 of this act.

29 (3) For purposes of this section and section 903 of this act, the
30 following definitions apply:

31 (a) "Local taxing jurisdiction" means counties, cities, or
32 transportation authorities under RCW 82.14.045, public facility
33 districts under chapters 36.100 and 35.57 RCW, public transportation
34 benefit areas under RCW 82.14.440, and regional transportation
35 investment districts, that impose a sales and use tax under this
36 chapter.

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

1 (c) "Net loss" means the local sales and use tax revenue loss to
2 local taxing jurisdictions resulting from the sourcing provisions in
3 section 501 of this act offset by any gains as a result of Washington
4 becoming a member state in the streamlined sales and use tax agreement.

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

7 (1) Beginning July 1, 2006, in order to mitigate local sales and
8 use tax revenue losses as a result of this act, the state treasurer
9 shall transfer into the streamlined sales and use tax mitigation
10 account from the general fund the sum of twenty-eight million dollars.
11 Each July 1st thereafter, the state treasurer shall transfer an amount
12 from the general fund equivalent to the department's estimate of
13 cumulative net losses to local taxing jurisdictions into the
14 streamlined sales and use tax mitigation account.

15 (2) Each fiscal year, the department shall estimate the amount of
16 local sales and use tax net loss each local taxing jurisdiction
17 experiences as a result of this act using data from tax return
18 information and tax collections from fiscal years before and after the
19 effective date of this section. Using these estimates, the department
20 shall develop formulae to make distributions from the streamlined sales
21 and use tax mitigation account as necessary to mitigate the net loss to
22 local taxing jurisdictions resulting from this act. The department
23 will evaluate and revise the formulae each fiscal year.

24 (3) The department shall convene an oversight committee to assist
25 in the development and revision of the formulae each fiscal year. The
26 committee shall include one representative of a city whose revenues are
27 increased, one representative of a city whose revenues are reduced, one
28 representative of a county whose revenues are increased, one
29 representative of a county whose revenues are decreased, one
30 representative of a transportation authority under RCW 82.14.045 whose
31 revenues are increased, and one representative of a transportation
32 authority under RCW 82.14.045 whose revenues are reduced, as a result
33 of section 501 of this act.

34 (4) Distributions shall be made from the streamlined sales and use
35 tax mitigation account by the state treasurer, as directed by the
36 department, to each adversely affected local taxing jurisdiction an

1 amount representing their net loss, based on the formulae developed in
2 subsection (2) of this section, as such times as distributions are made
3 under RCW 82.14.060.

4 (5) If a distribution is made to an eligible local taxing
5 jurisdiction and the department determines that the amount distributed
6 exceeds the local taxing jurisdiction's actual local sales and use tax
7 reductions resulting from this act, the excess amount shall be deducted
8 from any tax collected under the authority of this chapter by the
9 eligible local taxing jurisdiction, and the deducted amount shall be
10 deposited into the streamlined sales and use tax mitigation account.

11 (6) The rule-making provisions of chapter 34.05 RCW do not apply to
12 this section.

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

15 (1) For purposes of gathering the data to develop the formulae in
16 section 903(2) of this act, the department of revenue may require
17 persons engaging within this state in the business of making sales at
18 retail to report additional information on a form prescribed by the
19 department, but no more than once every six months. The report is due
20 within thirty days of the date that the form is transmitted to the
21 taxpayer by the department of revenue.

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

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

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

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

8 **Sec. 905.** RCW 82.32.330 and 2000 c 173 s 1 and 2000 c 106 s 1 are
9 each reenacted and amended to read as follows:

10 (1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **PART X. MISCELLANEOUS PROVISIONS**

32 NEW SECTION. **Sec. 1001.** (1) Sections 501, 502, and 901 through
33 905 of this act take effect the later of July 1, 2006, or the first day
34 of April, June, or October at least six months after the streamlined
35 sales and use tax agreement takes effect.

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

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

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

7 (3) Section 401 of this act takes effect when Washington becomes a
8 member state of the streamlined sales and use tax agreement.

9 (4) The department shall provide notice of the effective date of
10 sections 302, 401, 501, 502, and 901 through 905 of this act to
11 affected taxpayers, the legislature, the code reviser, and others as
12 deemed appropriate by the department.

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

15 (1) If a court of competent jurisdiction enters a final judgment on
16 the merits that is based on federal or state law, is no longer subject
17 to appeal, and substantially limits or impairs the essential elements
18 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
19 2002, then chapter 67, Laws of 2002 is null and void in its entirety,
20 except as provided in subsection (2) of this section.

21 ~~((If the contingency in subsection (1) of this section occurs,~~
22 ~~section 502, chapter 168, Laws of 2003 is null and void)) Subsection~~

23 (1) of this section does not apply to section 7, chapter 67, Laws of
24 2002 on or after the effective date of section 502 of this act.

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

27 NEW SECTION. **Sec. 1004.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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