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SECOND SUBSTITUTE SENATE BILL 5451

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State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Prentice, Doumit and Kohl-Welles)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to excise taxation of certain cosmetic medical  
2 services; amending RCW 82.04.060, 82.12.035, and 82.12.0251; reenacting  
3 and amending RCW 82.04.050, 82.12.020, 82.04.190, and 82.12.010; adding  
4 a new section to chapter 82.32 RCW; adding a new section to chapter  
5 82.04 RCW; and providing an effective date.

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

7 **Sec. 1.** RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are  
8 each reenacted and amended to read as follows:

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

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

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

6 (c) Purchases for the purpose of consuming the property purchased  
7 in producing for sale a new article of tangible personal property or  
8 substance, of which such property becomes an ingredient or component or  
9 is a chemical used in processing, when the primary purpose of such  
10 chemical is to create a chemical reaction directly through contact with  
11 an ingredient of a new article being produced for sale; or

12 (d) Purchases for the purpose of consuming the property purchased  
13 in producing ferrosilicon which is subsequently used in producing  
14 magnesium for sale, if the primary purpose of such property is to  
15 create a chemical reaction directly through contact with an ingredient  
16 of ferrosilicon; or

17 (e) Purchases for the purpose of providing the property to  
18 consumers as part of competitive telephone service, as defined in RCW  
19 82.04.065. The term shall include every sale of tangible personal  
20 property which is used or consumed or to be used or consumed in the  
21 performance of any activity classified as a "sale at retail" or "retail  
22 sale" even though such property is resold or utilized as provided in  
23 (a), (b), (c), (d), or (e) of this subsection following such use. The  
24 term also means every sale of tangible personal property to persons  
25 engaged in any business which is taxable under RCW 82.04.280 (2) and  
26 (7), 82.04.290, and 82.04.2908.

27 (2) The term "sale at retail" or "retail sale" shall include the  
28 sale of or charge made for tangible personal property consumed and/or  
29 for labor and services rendered in respect to the following:

30 (a) The installing, repairing, cleaning, altering, imprinting, or  
31 improving of tangible personal property of or for consumers, including  
32 charges made for the mere use of facilities in respect thereto, but  
33 excluding charges made for the use of coin-operated laundry facilities  
34 when such facilities are situated in an apartment house, rooming house,  
35 or mobile home park for the exclusive use of the tenants thereof, and  
36 also excluding sales of laundry service to nonprofit health care  
37 facilities, and excluding services rendered in respect to live animals,  
38 birds and insects;

1 (b) The constructing, repairing, decorating, or improving of new or  
2 existing buildings or other structures under, upon, or above real  
3 property of or for consumers, including the installing or attaching of  
4 any article of tangible personal property therein or thereto, whether  
5 or not such personal property becomes a part of the realty by virtue of  
6 installation, and shall also include the sale of services or charges  
7 made for the clearing of land and the moving of earth excepting the  
8 mere leveling of land used in commercial farming or agriculture;

9 (c) The charge for labor and services rendered in respect to  
10 constructing, repairing, or improving any structure upon, above, or  
11 under any real property owned by an owner who conveys the property by  
12 title, possession, or any other means to the person performing such  
13 construction, repair, or improvement for the purpose of performing such  
14 construction, repair, or improvement and the property is then  
15 reconveyed by title, possession, or any other means to the original  
16 owner;

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

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

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

1 For the purposes of this subsection, it shall be presumed that the sale  
2 of and charge made for the furnishing of lodging for a continuous  
3 period of one month or more to a person is a rental or lease of real  
4 property and not a mere license to enjoy the same;

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

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

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

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

24 (c) Credit bureau services;

25 (d) Automobile parking and storage garage services;

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

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

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

36 (h) Cosmetic medical services.

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

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

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

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

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

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

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

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

32 (a) Persons who participate in the federal conservation reserve  
33 program, the environmental quality incentives program, the wetlands  
34 reserve program, and the wildlife habitat incentives program, or their  
35 successors administered by the United States department of agriculture;

36 (b) farmers for the purpose of producing for sale any agricultural  
37 product; and (c) farmers acting under cooperative habitat development  
38 or access contracts with an organization exempt from federal income tax

1 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
2 fish and wildlife to produce or improve wildlife habitat on land that  
3 the farmer owns or leases.

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

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

22 The sales and use taxes collected under RCW 82.08.020 and 82.12.020  
23 on cosmetic medical services, as defined in section 3 of this act,  
24 shall be deposited into the health services account in RCW 43.72.900  
25 and used solely for children's health care services.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW  
27 to read as follows:

28 (1) "Cosmetic medical service" means any medical procedure  
29 performed on an individual by a person licensed or regulated in a  
30 health profession as described in RCW 18.120.020, and any services  
31 directly related to the performance of the medical procedure, that is  
32 directed at improving the individual's appearance and that is not  
33 medically necessary to promote the proper function of the body or  
34 prevent or treat physical illness or disease. "Cosmetic medical  
35 service" includes, but is not limited to, cosmetic surgery, hair  
36 transplants, cosmetic injections, cosmetic soft tissue fillers,

1 dermabrasion and chemical peel, laser hair removal, laser skin  
2 resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic  
3 dentistry. Any medical procedure performed on abnormal structures  
4 caused by or related to congenital defects, developmental  
5 abnormalities, trauma, infection, tumors, or disease, including  
6 procedures to improve function or give a more normal appearance, is  
7 medically necessary. Services covered by the individual's medical or  
8 dental insurance or that are deductible by the individual as medical  
9 expenses for purposes of federal income tax are presumed to be  
10 medically necessary services.

11 (2) "Cosmetic surgery" means the surgical reshaping of normal  
12 structures on the body to improve the body image, self-esteem, or  
13 appearance of an individual.

14 (3) "Services directly related to the performance of the medical  
15 procedure" include occupancy at medical facilities and services  
16 provided by an anesthesiologist, surgeon, or other licensed or  
17 regulated health professional described in RCW 18.120.020. Services  
18 required for or directly related to cosmetic medical services do not  
19 include evaluation and referral by a primary care physician or  
20 consultation or treatment by a counselor, psychologist, or  
21 psychiatrist.

22 (4) An individual claiming that a medical procedure, otherwise  
23 meeting the definition of cosmetic medical service in this section, is  
24 not a cosmetic medical service must complete and provide to the seller  
25 an affidavit in a form and manner prescribed by the department  
26 documenting that the procedure is medically necessary to promote the  
27 proper function of the body or prevent or treat physical illness or  
28 disease. The seller shall retain a copy of the affidavit for the  
29 seller's files.

30 **Sec. 4.** RCW 82.12.020 and 2003 c 361 s 302 and 2003 c 168 s 214  
31 are each reenacted and amended to read as follows:

32 (1) There is hereby levied and there shall be collected from every  
33 person in this state a tax or excise for the privilege of using within  
34 this state as a consumer: (a) Any article of tangible personal  
35 property purchased at retail, or acquired by lease, gift, repossession,  
36 or bailment, or extracted or produced or manufactured by the person so  
37 using the same, or otherwise furnished to a person engaged in any

1 business taxable under RCW 82.04.280 (2) or (7); or (b) any prewritten  
2 computer software, regardless of the method of delivery, but excluding  
3 prewritten computer software that is either provided free of charge or  
4 is provided for temporary use in viewing information, or both.

5 (2) This tax shall apply to the use of every service defined as a  
6 retail sale in RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h) and the  
7 use of every article of tangible personal property, including property  
8 acquired at a casual or isolated sale, and including byproducts used by  
9 the manufacturer thereof, except as hereinafter provided, irrespective  
10 of whether the article or similar articles are manufactured or are  
11 available for purchase within this state.

12 (3) The provisions of this chapter do not apply in respect to the  
13 use of any article of tangible personal property or service taxable  
14 under RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h) purchased at  
15 retail or acquired by lease, gift, or bailment if the sale to, or the  
16 use by, the present user or his bailor or donor has already been  
17 subjected to the tax under chapter 82.08 RCW or this chapter and the  
18 tax has been paid by the present user or by his bailor or donor.

19 (4) Except as provided in this section, payment by one purchaser or  
20 user of tangible personal property or service of the tax imposed by  
21 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any  
22 other purchaser or user of the same property or service from the taxes  
23 imposed by such chapters. If the sale to, or the use by, the present  
24 user or his or her bailor or donor has already been subjected to the  
25 tax under chapter 82.08 RCW or this chapter and the tax has been paid  
26 by the present user or by his or her bailor or donor; or in respect to  
27 the use of property acquired by bailment and the tax has once been paid  
28 based on reasonable rental as determined by RCW 82.12.060 measured by  
29 the value of the article at time of first use multiplied by the tax  
30 rate imposed by chapter 82.08 RCW or this chapter as of the time of  
31 first use; or in respect to the use of any article of tangible personal  
32 property acquired by bailment, if the property was acquired by a  
33 previous bailee from the same bailor for use in the same general  
34 activity and the original bailment was prior to June 9, 1961, the tax  
35 imposed by this chapter does not apply.

36 (5) The tax shall be levied and collected in an amount equal to the  
37 value of the article used or value of the service used by the taxpayer  
38 multiplied by the rates in effect for the retail sales tax under RCW



1 82.08.020, except in the case of a seller required to collect use tax  
2 from the purchaser, the tax shall be collected in an amount equal to  
3 the purchase price multiplied by the rate in effect for the retail  
4 sales tax under RCW 82.08.020.

5 **Sec. 5.** RCW 82.04.060 and 2002 c 367 s 1 are each amended to read  
6 as follows:

7 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of  
8 tangible personal property, any sale of services defined as a retail  
9 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation  
10 services as defined in RCW 82.04.050(3)(a), any sale of canned  
11 software, any sale of cosmetic medical services defined as a retail  
12 sale in RCW 82.04.050(3)(h), or any sale of telephone service as  
13 defined in RCW 82.04.065, which is not a sale at retail; and (2) any  
14 charge made for labor and services rendered for persons who are not  
15 consumers, in respect to real or personal property, if such charge is  
16 expressly defined as a retail sale by RCW 82.04.050 when rendered to or  
17 for consumers: PROVIDED, That the term "real or personal property" as  
18 used in this subsection shall not include any natural products named in  
19 RCW 82.04.100.

20 **Sec. 6.** RCW 82.04.190 and 2004 c 174 s 4 and 2004 c 2 s 8 are each  
21 reenacted and amended to read as follows:

22 "Consumer" means the following:

23 (1) Any person who purchases, acquires, owns, holds, or uses any  
24 article of tangible personal property irrespective of the nature of the  
25 person's business and including, among others, without limiting the  
26 scope hereof, persons who install, repair, clean, alter, improve,  
27 construct, or decorate real or personal property of or for consumers  
28 other than for the purpose (a) of resale as tangible personal property  
29 in the regular course of business or (b) of incorporating such property  
30 as an ingredient or component of real or personal property when  
31 installing, repairing, cleaning, altering, imprinting, improving,  
32 constructing, or decorating such real or personal property of or for  
33 consumers or (c) of consuming such property in producing for sale a new  
34 article of tangible personal property or a new substance, of which such  
35 property becomes an ingredient or component or as a chemical used in  
36 processing, when the primary purpose of such chemical is to create a

1 chemical reaction directly through contact with an ingredient of a new  
2 article being produced for sale or (d) purchases for the purpose of  
3 consuming the property purchased in producing ferrosilicon which is  
4 subsequently used in producing magnesium for sale, if the primary  
5 purpose of such property is to create a chemical reaction directly  
6 through contact with an ingredient of ferrosilicon;

7 (2)(a) Any person engaged in any business activity taxable under  
8 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
9 uses any telephone service as defined in RCW 82.04.065, other than for  
10 resale in the regular course of business; (c) any person who purchases,  
11 acquires, or uses any service defined in RCW 82.04.050(2)(a), any  
12 service described in RCW 82.04.050(3)(h), or any amusement and  
13 recreation service defined in RCW 82.04.050(3)(a), other than for  
14 resale in the regular course of business; and (d) any person who is an  
15 end user of software;

16 (3) Any person engaged in the business of contracting for the  
17 building, repairing or improving of any street, place, road, highway,  
18 easement, right of way, mass public transportation terminal or parking  
19 facility, bridge, tunnel, or trestle which is owned by a municipal  
20 corporation or political subdivision of the state of Washington or by  
21 the United States and which is used or to be used primarily for foot or  
22 vehicular traffic including mass transportation vehicles of any kind as  
23 defined in RCW 82.04.280, in respect to tangible personal property when  
24 such person incorporates such property as an ingredient or component of  
25 such publicly owned street, place, road, highway, easement, right of  
26 way, mass public transportation terminal or parking facility, bridge,  
27 tunnel, or trestle by installing, placing or spreading the property in  
28 or upon the right of way of such street, place, road, highway,  
29 easement, bridge, tunnel, or trestle or in or upon the site of such  
30 mass public transportation terminal or parking facility;

31 (4) Any person who is an owner, lessee or has the right of  
32 possession to or an easement in real property which is being  
33 constructed, repaired, decorated, improved, or otherwise altered by a  
34 person engaged in business, excluding only (a) municipal corporations  
35 or political subdivisions of the state in respect to labor and services  
36 rendered to their real property which is used or held for public road  
37 purposes, and (b) the United States, instrumentalities thereof, and  
38 county and city housing authorities created pursuant to chapter 35.82

1 RCW in respect to labor and services rendered to their real property.  
2 Nothing contained in this or any other subsection of this definition  
3 shall be construed to modify any other definition of "consumer";

4 (5) Any person who is an owner, lessee, or has the right of  
5 possession to personal property which is being constructed, repaired,  
6 improved, cleaned, imprinted, or otherwise altered by a person engaged  
7 in business;

8 (6) Any person engaged in the business of constructing, repairing,  
9 decorating, or improving new or existing buildings or other structures  
10 under, upon, or above real property of or for the United States, any  
11 instrumentality thereof, or a county or city housing authority created  
12 pursuant to chapter 35.82 RCW, including the installing or attaching of  
13 any article of tangible personal property therein or thereto, whether  
14 or not such personal property becomes a part of the realty by virtue of  
15 installation; also, any person engaged in the business of clearing land  
16 and moving earth of or for the United States, any instrumentality  
17 thereof, or a county or city housing authority created pursuant to  
18 chapter 35.82 RCW. Any such person shall be a consumer within the  
19 meaning of this subsection in respect to tangible personal property  
20 incorporated into, installed in, or attached to such building or other  
21 structure by such person, except that consumer does not include any  
22 person engaged in the business of constructing, repairing, decorating,  
23 or improving new or existing buildings or other structures under, upon,  
24 or above real property of or for the United States, or any  
25 instrumentality thereof, if the investment project would qualify for  
26 sales and use tax deferral under chapter 82.63 RCW if undertaken by a  
27 private entity;

28 (7) Any person who is a lessor of machinery and equipment, the  
29 rental of which is exempt from the tax imposed by RCW 82.08.020 under  
30 RCW 82.08.02565, with respect to the sale of or charge made for  
31 tangible personal property consumed in respect to repairing the  
32 machinery and equipment, if the tangible personal property has a useful  
33 life of less than one year. Nothing contained in this or any other  
34 subsection of this section shall be construed to modify any other  
35 definition of "consumer"; and

36 (8) Any person engaged in the business of cleaning up for the  
37 United States, or its instrumentalities, radioactive waste and other  
38 byproducts of weapons production and nuclear research and development.

1       **Sec. 7.** RCW 82.12.010 and 2003 c 168 s 102 and 2003 c 5 s 1 are  
2 each reenacted and amended to read as follows:

3       For the purposes of this chapter:

4       (1) "Purchase price" means the same as sales price as defined in  
5 RCW 82.08.010.

6       (2)(a) "Value of the article used" shall be the purchase price for  
7 the article of tangible personal property, the use of which is taxable  
8 under this chapter. The term also includes, in addition to the  
9 purchase price, the amount of any tariff or duty paid with respect to  
10 the importation of the article used. In case the article used is  
11 acquired by lease or by gift or is extracted, produced, or manufactured  
12 by the person using the same or is sold under conditions wherein the  
13 purchase price does not represent the true value thereof, the value of  
14 the article used shall be determined as nearly as possible according to  
15 the retail selling price at place of use of similar products of like  
16 quality and character under such rules as the department may prescribe.

17       (b) In case the articles used are acquired by bailment, the value  
18 of the use of the articles so used shall be in an amount representing  
19 a reasonable rental for the use of the articles so bailed, determined  
20 as nearly as possible according to the value of such use at the places  
21 of use of similar products of like quality and character under such  
22 rules as the department of revenue may prescribe. In case any such  
23 articles of tangible personal property are used in respect to the  
24 construction, repairing, decorating, or improving of, and which become  
25 or are to become an ingredient or component of, new or existing  
26 buildings or other structures under, upon, or above real property of or  
27 for the United States, any instrumentality thereof, or a county or city  
28 housing authority created pursuant to chapter 35.82 RCW, including the  
29 installing or attaching of any such articles therein or thereto,  
30 whether or not such personal property becomes a part of the realty by  
31 virtue of installation, then the value of the use of such articles so  
32 used shall be determined according to the retail selling price of such  
33 articles, or in the absence of such a selling price, as nearly as  
34 possible according to the retail selling price at place of use of  
35 similar products of like quality and character or, in the absence of  
36 either of these selling price measures, such value may be determined  
37 upon a cost basis, in any event under such rules as the department of  
38 revenue may prescribe.

1 (c) In the case of articles owned by a user engaged in business  
2 outside the state which are brought into the state for no more than one  
3 hundred eighty days in any period of three hundred sixty-five  
4 consecutive days and which are temporarily used for business purposes  
5 by the person in this state, the value of the article used shall be an  
6 amount representing a reasonable rental for the use of the articles,  
7 unless the person has paid tax under this chapter or chapter 82.08 RCW  
8 upon the full value of the article used, as defined in (a) of this  
9 subsection.

10 (d) In the case of articles manufactured or produced by the user  
11 and used in the manufacture or production of products sold or to be  
12 sold to the department of defense of the United States, the value of  
13 the articles used shall be determined according to the value of the  
14 ingredients of such articles.

15 (e) In the case of an article manufactured or produced for purposes  
16 of serving as a prototype for the development of a new or improved  
17 product, the value of the article used shall be determined by: (i) The  
18 retail selling price of such new or improved product when first offered  
19 for sale; or (ii) the value of materials incorporated into the  
20 prototype in cases in which the new or improved product is not offered  
21 for sale.

22 (f) In the case of an article purchased with a direct pay permit  
23 under RCW 82.32.087, the value of the article used shall be determined  
24 by the purchase price of such article if, but for the use of the direct  
25 pay permit, the transaction would have been subject to sales tax;

26 (3) "Value of the service used" means the purchase price for the  
27 service, the use of which is taxable under this chapter. If the  
28 service is received by gift or under conditions wherein the purchase  
29 price does not represent the true value thereof, the value of the  
30 service used shall be determined as nearly as possible according to the  
31 retail selling price at place of use of similar services of like  
32 quality and character under rules the department may prescribe;

33 (4) "Use," "used," "using," or "put to use" shall have their  
34 ordinary meaning, and shall mean:

35 (a) With respect to tangible personal property, the first act  
36 within this state by which the taxpayer takes or assumes dominion or  
37 control over the article of tangible personal property (as a consumer),

1 and include installation, storage, withdrawal from storage,  
2 distribution, or any other act preparatory to subsequent actual use or  
3 consumption within this state; (~~and~~)

4 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
5 first act within this state after the service has been performed by  
6 which the taxpayer takes or assumes dominion or control over the  
7 article of tangible personal property upon which the service was  
8 performed (as a consumer), and include installation, storage,  
9 withdrawal from storage, distribution, or any other act preparatory to  
10 subsequent actual use or consumption of the article within this state;  
11 and

12 (c) With respect to a service described in RCW 82.04.050(3)(h), the  
13 first presence within this state by the taxpayer after the service has  
14 been performed upon that taxpayer;

15 (5) "Taxpayer" and "purchaser" include all persons included within  
16 the meaning of the word "buyer" and the word "consumer" as defined in  
17 chapters 82.04 and 82.08 RCW;

18 (6) "Retailer" means every seller as defined in RCW 82.08.010 and  
19 every person engaged in the business of selling tangible personal  
20 property at retail and every person required to collect from purchasers  
21 the tax imposed under this chapter;

22 (7) The meaning ascribed to words and phrases in chapters 82.04 and  
23 82.08 RCW, insofar as applicable, shall have full force and effect with  
24 respect to taxes imposed under the provisions of this chapter.  
25 "Consumer," in addition to the meaning ascribed to it in chapters 82.04  
26 and 82.08 RCW insofar as applicable, shall also mean any person who  
27 distributes or displays, or causes to be distributed or displayed, any  
28 article of tangible personal property, except newspapers, the primary  
29 purpose of which is to promote the sale of products or services. With  
30 respect to property distributed to persons within this state by a  
31 consumer as defined in this subsection (7), the use of the property  
32 shall be deemed to be by such consumer.

33 **Sec. 8.** RCW 82.12.035 and 2002 c 367 s 5 are each amended to read  
34 as follows:

35 A credit shall be allowed against the taxes imposed by this chapter  
36 upon the use of tangible personal property(~~(7)~~) or services taxable  
37 under RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h), in the state of

1 Washington in the amount that the present user thereof or his or her  
2 bailor or donor has paid a retail sales or use tax with respect to such  
3 property or service to any other state of the United States, any  
4 political subdivision thereof, the District of Columbia, and any  
5 foreign country or political subdivision thereof, prior to the use of  
6 such property or service in Washington.

7 **Sec. 9.** RCW 82.12.0251 and 2003 c 5 s 18 are each amended to read  
8 as follows:

9 The provisions of this chapter shall not apply in respect to the  
10 use:

11 (1) Of any article of tangible personal property, and services that  
12 were rendered in respect to such property, brought into the state of  
13 Washington by a nonresident thereof for his or her use or enjoyment  
14 while temporarily within the state of Washington unless such property  
15 is used in conducting a nontransitory business activity within the  
16 state of Washington;

17 (2) By a nonresident of Washington of a motor vehicle or trailer  
18 which is registered or licensed under the laws of the state of his or  
19 her residence, and which is not required to be registered or licensed  
20 under the laws of Washington, including motor vehicles or trailers  
21 exempt pursuant to a declaration issued by the department of licensing  
22 under RCW 46.85.060, and services rendered outside the state of  
23 Washington in respect to such property;

24 (3) Of household goods, personal effects, and private motor  
25 vehicles, and services rendered in respect to such property, by a bona  
26 fide resident of Washington, or nonresident members of the armed forces  
27 who are stationed in Washington pursuant to military orders, if such  
28 articles and services were acquired and used by such person in another  
29 state while a bona fide resident thereof and such acquisition and use  
30 occurred more than ninety days prior to the time he or she entered  
31 Washington. For purposes of this subsection, private motor vehicles  
32 (~~does [do]~~) do not include motor homes;

33 (4) Of any service defined as a retail sale in RCW 82.04.050(3)(h)  
34 by a nonresident of Washington.

35 (~~(4)~~) For purposes of this section, "state" means a state of the  
36 United States, any political subdivision thereof, the District of

1 Columbia, and any foreign country or political subdivision thereof, and  
2 "services" means services defined as retail sales in RCW  
3 82.04.050(2)(a).

4 NEW SECTION. **Sec. 10.** This act takes effect October 1, 2005.

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