
HOUSE BILL 2320

State of Washington 61st Legislature 2009 Regular Session

By Representatives Hunter and Roberts

Read first time 03/23/09. Referred to Committee on Finance.

1 AN ACT Relating to revising the tax code to ensure that products
2 transferred electronically, and the gross income derived from such
3 products, will continue to be subject to sales, use, and business and
4 occupation taxes in a manner that complies with the streamlined sales
5 and use tax agreement; amending RCW 82.04.190, 82.08.010, 82.12.010,
6 82.12.020, 82.04.060, 82.04.070, 82.04.110, 82.04.120, 82.04.2907,
7 82.04.297, 82.04.363, 82.04.4282, 82.04.470, 82.04.480, 82.04.065,
8 82.08.02525, 82.08.0253, 82.08.02535, 82.08.02537, 82.08.0256,
9 82.08.02565, 82.08.0257, 82.08.0273, 82.08.805, 82.08.995, 82.12.0251,
10 82.12.02525, 82.12.0255, 82.12.0257, 82.12.0258, 82.12.0259,
11 82.12.02595, 82.12.0272, 82.12.0284, 82.12.0315, 82.12.0345,
12 82.12.0347, 82.12.805, 82.12.860, 82.12.995, 82.32.730, 35.21.717,
13 48.14.080, 82.02.020, 82.04.44525, 82.08.040, 82.08.130, 82.12.035,
14 82.12.040, 82.14.465, 82.16.010, 82.32.020, and 82.32.023; reenacting
15 and amending RCW 82.04.050; adding new sections to chapter 82.04 RCW;
16 adding new sections to chapter 82.08 RCW; adding new sections to
17 chapter 82.12 RCW; creating new sections; providing an effective date;
18 and declaring an emergency.

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

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PART I
FINDINGS AND INTENT

3 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

4 (a) The department of revenue has historically interpreted the term
5 "tangible personal property," for sales and use tax purposes, to
6 include products delivered electronically (digital products), including
7 but not limited to music, video, and standard information such as books
8 and other electronic publications.

9 (b) In September 2007, the streamlined sales and use tax agreement
10 was amended to prohibit, prospectively, member states from interpreting
11 the definition of tangible personal property to include digital
12 products.

13 (c) As a result, to remain in compliance with the streamlined sales
14 and use tax agreement, this state must, by January 1, 2010, cease
15 interpreting the definition of tangible personal property in RCW
16 82.08.010 to include certain specified digital products, essentially
17 digital books, digital music and other digital audio works, and digital
18 movies and other digital audio-visual works.

19 (d) The state must, by January 1, 2012, also cease interpreting the
20 definition of tangible personal property in RCW 82.08.010 to include
21 any other digital products.

22 (2) By this act, the legislature:

23 (a) Ratifies the department of revenue's interpretation that
24 tangible personal property includes products delivered electronically
25 for sales and use tax purposes; and

26 (b) Intends to ensure the continued excise taxation of digital
27 products in conformity with the September 2007 amendments to the
28 streamlined sales and use tax agreement.

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PART II
DIGITAL PRODUCTS DEFINITIONS

31 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.04
32 RCW to be codified between RCW 82.04.010 and 82.04.220 to read as
33 follows:

34 (1) "Digital audio works" means works that result from the fixation
35 of a series of musical, spoken, or other sounds, including ringtones.

1 (2) "Digital audio-visual works" means a series of related images
2 which, when shown in succession, impart an impression of motion,
3 together with accompanying sounds, if any.

4 (3) "Digital books" means works that are generally recognized in
5 the ordinary and usual sense as books.

6 (4) "Digital code" means a code that provides a purchaser with the
7 right to obtain one or more digital products, if all of the digital
8 products to be obtained through the use of the code have the same sales
9 and use tax treatment. "Digital code" does not include a code that
10 represents a stored monetary value that is deducted from a total as it
11 is used by the purchaser. "Digital code" also does not include a code
12 that represents a redeemable card, gift card, or gift certificate that
13 entitles the holder to select digital products of an indicated cash
14 value. A digital code may be obtained by any means, including e-mail
15 or by tangible means regardless of its designation as song code, video
16 code, book code, or some other term.

17 (5)(a) "Digital goods," except as provided in (b) of this
18 subsection (5), means sounds, images, data, facts, or information, or
19 any combination thereof, transferred electronically, including, but not
20 limited to, digital audio works, digital audio-visual works, digital
21 books, and standard information.

22 (b) The term "digital goods" does not include:

23 (i) Telecommunications services and ancillary services as those
24 terms are defined in RCW 82.04.065;

25 (ii) Computer software as defined in RCW 82.04.215;

26 (iii) Internet access as defined in RCW 82.04.297;

27 (iv) The representation of a professional service in electronic
28 form, such as an electronic copy of an engineering report prepared by
29 an engineer, that primarily involves the application of human effort,
30 and the human effort originated after the customer requested the
31 service; and

32 (v) Information services. For purposes of this subsection,
33 "information services" means data, facts, or information, or any
34 combination thereof, generated or compiled solely for the specific
35 needs of a single client or customer.

36 (6) "Digital products" means digital goods and digital codes.

37 (7) "Electronically transferred" or "transferred electronically"
38 means obtained by the purchaser by means other than tangible storage

1 media. It is not necessary that a copy of the product be physically
2 transferred to the purchaser. So long as the purchaser may access the
3 product, it will be considered to have been electronically transferred
4 to the purchaser.

5 (8) "Standard information" means works consisting primarily of
6 data, facts, or information, or any combination thereof, not generated
7 or compiled for a specific client or customer.

8 **PART III**

9 **IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS**

10 **Sec. 301.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are
11 each reenacted and amended to read as follows:

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

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

23 (b) Installs, repairs, cleans, alters, imprints, improves,
24 constructs, or decorates real or personal property of or for consumers,
25 if such tangible personal property becomes an ingredient or component
26 of such real or personal property without intervening use by such
27 person; or

28 (c) Purchases for the purpose of consuming the property purchased
29 in producing for sale a new article of tangible personal property or
30 substance, of which such property becomes an ingredient or component or
31 is a chemical used in processing, when the primary purpose of such
32 chemical is to create a chemical reaction directly through contact with
33 an ingredient of a new article being produced for sale; or

34 (d) Purchases for the purpose of consuming the property purchased
35 in producing ferrosilicon which is subsequently used in producing

1 magnesium for sale, if the primary purpose of such property is to
2 create a chemical reaction directly through contact with an ingredient
3 of ferrosilicon; or

4 (e) Purchases for the purpose of providing the property to
5 consumers as part of competitive telephone service, as defined in RCW
6 82.04.065. The term shall include every sale of tangible personal
7 property which is used or consumed or to be used or consumed in the
8 performance of any activity classified as a "sale at retail" or "retail
9 sale" even though such property is resold or utilized as provided in
10 (a), (b), (c), (d), or (e) of this subsection following such use. The
11 term also means every sale of tangible personal property to persons
12 engaged in any business which is taxable under RCW 82.04.280 (2) and
13 (7), 82.04.290, and 82.04.2908; or

14 (f) Purchases for the purpose of satisfying the person's
15 obligations under an extended warranty as defined in subsection (7) of
16 this section, if such tangible personal property replaces or becomes an
17 ingredient or component of property covered by the extended warranty
18 without intervening use by such person.

19 (2) The term "sale at retail" or "retail sale" (~~shall include~~)
20 includes the sale of or charge made for tangible personal property
21 consumed and/or for labor and services rendered in respect to the
22 following:

23 (a) The installing, repairing, cleaning, altering, imprinting, or
24 improving of tangible personal property of or for consumers, including
25 charges made for the mere use of facilities in respect thereto, but
26 excluding charges made for the use of self-service laundry facilities,
27 and also excluding sales of laundry service to nonprofit health care
28 facilities, and excluding services rendered in respect to live animals,
29 birds and insects;

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

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

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

18 (e) Automobile towing and similar automotive transportation
19 services, but not in respect to those required to report and pay taxes
20 under chapter 82.16 RCW;

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

32 (g) The installing, repairing, altering, or improving of digital
33 products for consumers;

34 (h) Persons taxable under (a), (b), (c), (d), (e), (~~and~~) (f), and
35 (g) of this subsection when such sales or charges are for property,
36 labor and services which are used or consumed in whole or in part by
37 such persons in the performance of any activity defined as a "sale at
38 retail" or "retail sale" even though such property, labor and services

1 may be resold after such use or consumption. Nothing contained in this
2 subsection shall be construed to modify subsection (1) of this section
3 and nothing contained in subsection (1) of this section (~~shall~~) may
4 be construed to modify this subsection.

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

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

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

14 (c) Credit bureau services;

15 (d) Automobile parking and storage garage services;

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

21 (f) Service charges associated with tickets to professional
22 sporting events; and

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

26 (4)(a) The term (~~shall~~) also includes:

27 (i) The renting or leasing of tangible personal property to
28 consumers; and

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

35 (b) The term (~~shall~~) does not include the renting or leasing of
36 tangible personal property where the lease or rental is for the purpose
37 of sublease or subrent.

1 (5) The term (~~shall~~) also includes the providing of "competitive
2 telephone service," "telecommunications service," or "ancillary
3 services," as those terms are defined in RCW 82.04.065, to consumers.

4 (6) The term (~~shall~~) also includes the sale of prewritten
5 computer software other than a sale to a person who presents a resale
6 certificate under RCW 82.04.470, regardless of the method of delivery
7 to the end user(~~, but shall~~).

8 The term "retail sale" does not include the sale of or charge made
9 for:

10 (a) Custom software; or

11 (b) The customization of prewritten computer software.

12 (7) The term (~~shall~~) also includes the sale of or charge made for
13 an extended warranty to a consumer. For purposes of this subsection,
14 "extended warranty" means an agreement for a specified duration to
15 perform the replacement or repair of tangible personal property at no
16 additional charge or a reduced charge for tangible personal property,
17 labor, or both, or to provide indemnification for the replacement or
18 repair of tangible personal property, based on the occurrence of
19 specified events. The term "extended warranty" does not include an
20 agreement, otherwise meeting the definition of extended warranty in
21 this subsection, if no separate charge is made for the agreement and
22 the value of the agreement is included in the sales price of the
23 tangible personal property covered by the agreement. For purposes of
24 this subsection, "sales price" has the same meaning as in RCW
25 82.08.010.

26 (8)(a) The term also includes the following sales to consumers of
27 digital products:

28 (i) Sales in which the seller has granted the purchaser the right
29 of permanent use;

30 (ii) Sales in which the seller has granted the purchaser a right of
31 use that is less than permanent;

32 (iii) Sales in which the purchaser is not obligated to make
33 continued payment as a condition of the sale; and

34 (iv) Sales in which the purchaser is obligated to make continued
35 payment as a condition of the sale.

36 (b) For purposes of this subsection, "permanent" means perpetual or
37 for an indefinite or unspecified length of time. A right of permanent
38 use is presumed to have been granted unless the agreement between the

1 seller and the purchaser specifies or the circumstances surrounding the
2 transaction suggest or indicate that the right to use terminates on the
3 occurrence of a condition subsequent.

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

12 (~~(9)~~) (10) The term (~~shall~~) also does not include sales of
13 chemical sprays or washes to persons for the purpose of postharvest
14 treatment of fruit for the prevention of scald, fungus, mold, or decay,
15 nor (~~shall~~) does it include sales of feed, seed, seedlings,
16 fertilizer, agents for enhanced pollination including insects such as
17 bees, and spray materials to: (a) Persons who participate in the
18 federal conservation reserve program, the environmental quality
19 incentives program, the wetlands reserve program, and the wildlife
20 habitat incentives program, or their successors administered by the
21 United States department of agriculture; (b) farmers for the purpose of
22 producing for sale any agricultural product; and (c) farmers acting
23 under cooperative habitat development or access contracts with an
24 organization exempt from federal income tax under Title 26 U.S.C. Sec.
25 501(c)(3) or the Washington state department of fish and wildlife to
26 produce or improve wildlife habitat on land that the farmer owns or
27 leases.

28 (~~(10)~~) (11) The term (~~shall~~) does not include the sale of or
29 charge made for labor and services rendered in respect to the
30 constructing, repairing, decorating, or improving of new or existing
31 buildings or other structures under, upon, or above real property of or
32 for the United States, any instrumentality thereof, or a county or city
33 housing authority created pursuant to chapter 35.82 RCW, including the
34 installing, or attaching of any article of tangible personal property
35 therein or thereto, whether or not such personal property becomes a
36 part of the realty by virtue of installation. Nor (~~shall~~) does the
37 term include the sale of services or charges made for the clearing of
38 land and the moving of earth of or for the United States, any

1 instrumentality thereof, or a county or city housing authority. Nor
2 (~~shall~~) does the term include the sale of services or charges made
3 for cleaning up for the United States, or its instrumentalities,
4 radioactive waste and other byproducts of weapons production and
5 nuclear research and development.

6 (~~(11)~~) (12) The term (~~shall~~) does not include the sale of or
7 charge made for labor, services, or tangible personal property pursuant
8 to agreements providing maintenance services for bus, rail, or rail
9 fixed guideway equipment when a regional transit authority is the
10 recipient of the labor, services, or tangible personal property, and a
11 transit agency, as defined in RCW 81.104.015, performs the labor or
12 services.

13 **Sec. 302.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to
14 read as follows:

15 "Consumer" means the following:

16 (1) Any person who purchases, acquires, owns, holds, or uses any
17 article of tangible personal property irrespective of the nature of the
18 person's business and including, among others, without limiting the
19 scope hereof, persons who install, repair, clean, alter, improve,
20 construct, or decorate real or personal property of or for consumers
21 other than for the purpose (a) of resale as tangible personal property
22 in the regular course of business or (b) of incorporating such property
23 as an ingredient or component of real or personal property when
24 installing, repairing, cleaning, altering, imprinting, improving,
25 constructing, or decorating such real or personal property of or for
26 consumers or (c) of consuming such property in producing for sale a new
27 article of tangible personal property or a new substance, of which such
28 property becomes an ingredient or component or as a chemical used in
29 processing, when the primary purpose of such chemical is to create a
30 chemical reaction directly through contact with an ingredient of a new
31 article being produced for sale or (d) of consuming the property
32 purchased in producing ferrosilicon which is subsequently used in
33 producing magnesium for sale, if the primary purpose of such property
34 is to create a chemical reaction directly through contact with an
35 ingredient of ferrosilicon or (e) of satisfying the person's
36 obligations under an extended warranty as defined in RCW 82.04.050(7),

1 if such tangible personal property replaces or becomes an ingredient or
2 component of property covered by the extended warranty without
3 intervening use by such person;

4 (2)(a) Any person engaged in any business activity taxable under
5 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
6 uses any competitive telephone service, ancillary services, or
7 telecommunications service as those terms are defined in RCW 82.04.065,
8 other than for resale in the regular course of business; (c) any person
9 who purchases, acquires, or uses any service defined in RCW
10 82.04.050(2) (a) or (g), other than for resale in the regular course of
11 business or for the purpose of satisfying the person's obligations
12 under an extended warranty as defined in RCW 82.04.050(7); (d) any
13 person who purchases, acquires, or uses any amusement and recreation
14 service defined in RCW 82.04.050(3)(a), other than for resale in the
15 regular course of business; (e) any person who is an end user of
16 software; and (f) any person who purchases or acquires an extended
17 warranty as defined in RCW 82.04.050(7) other than for resale in the
18 regular course of business;

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

34 (4) Any person who is an owner, lessee or has the right of
35 possession to or an easement in real property which is being
36 constructed, repaired, decorated, improved, or otherwise altered by a
37 person engaged in business, excluding only (a) municipal corporations
38 or political subdivisions of the state in respect to labor and services

1 rendered to their real property which is used or held for public road
2 purposes, and (b) the United States, instrumentalities thereof, and
3 county and city housing authorities created pursuant to chapter 35.82
4 RCW in respect to labor and services rendered to their real property.
5 Nothing contained in this or any other subsection of this definition
6 shall be construed to modify any other definition of "consumer";

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

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

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

1 (8) Any person engaged in the business of cleaning up for the
2 United States, or its instrumentalities, radioactive waste and other
3 byproducts of weapons production and nuclear research and development;
4 ((and))

5 (9) Any person who is an owner, lessee, or has the right of
6 possession of tangible personal property that, under the terms of an
7 extended warranty as defined in RCW 82.04.050(7), has been repaired or
8 is replacement property, but only with respect to the sale of or charge
9 made for the repairing of the tangible personal property or the
10 replacement property;

11 (10)(a) Any end user of a digital product.

12 (b)(i) For purposes of this subsection, "end user" means any
13 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
14 by contract a digital good for further commercial broadcast,
15 rebroadcast, transmission, retransmission, licensing, relicensing,
16 distribution, redistribution or exhibition of the product, in whole or
17 in part, to others. A person that purchases digital goods or digital
18 codes for the purpose of giving away such goods or codes will not be
19 considered to have engaged in the distribution or redistribution of
20 such goods or codes and will be treated as an end user;

21 (ii) If a purchaser of a digital code does not receive the
22 contractual right to further redistribute, after the digital code is
23 redeemed, the underlying digital good to which the digital code
24 relates, then the purchaser of the digital code is an end user. If the
25 purchaser of the digital code receives the contractual right to further
26 redistribute, after the digital code is redeemed, the underlying
27 digital good to which the digital code relates, then the purchaser of
28 the digital code is not an end user. A purchaser of a digital code who
29 has the contractual right to further redistribute the digital code is
30 an end user if that purchaser does not have the right to further
31 redistribute, after the digital code is redeemed, the underlying
32 digital good to which the digital code relates.

33 **Sec. 303.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to
34 read as follows:

35 For the purposes of this chapter:

36 (1)(a) "Selling price" includes "sales price." "Sales price" means
37 the total amount of consideration, except separately stated trade-in

1 property of like kind, including cash, credit, property, and services,
2 for which tangible personal property, extended warranties, digital
3 products, or services defined as a "retail sale" under RCW 82.04.050
4 are sold, leased, or rented, valued in money, whether received in money
5 or otherwise. No deduction from the total amount of consideration is
6 allowed for the following: (i) The seller's cost of the property sold;
7 (ii) the cost of materials used, labor or service cost, interest,
8 losses, all costs of transportation to the seller, all taxes imposed on
9 the seller, and any other expense of the seller; (iii) charges by the
10 seller for any services necessary to complete the sale, other than
11 delivery and installation charges; (iv) delivery charges; and (v)
12 installation charges.

13 When tangible personal property is rented or leased under
14 circumstances that the consideration paid does not represent a
15 reasonable rental for the use of the articles so rented or leased, the
16 "selling price" shall be determined as nearly as possible according to
17 the value of such use at the places of use of similar products of like
18 quality and character under such rules as the department may prescribe;

19 (b) "Selling price" or "sales price" does not include: Discounts,
20 including cash, term, or coupons that are not reimbursed by a third
21 party that are allowed by a seller and taken by a purchaser on a sale;
22 interest, financing, and carrying charges from credit extended on the
23 sale of tangible personal property, extended warranties, digital
24 products, or services, if the amount is separately stated on the
25 invoice, bill of sale, or similar document given to the purchaser; and
26 any taxes legally imposed directly on the consumer that are separately
27 stated on the invoice, bill of sale, or similar document given to the
28 purchaser;

29 (c) "Selling price" or "sales price" includes consideration
30 received by the seller from a third party if:

31 (i) The seller actually receives consideration from a party other
32 than the purchaser, and the consideration is directly related to a
33 price reduction or discount on the sale;

34 (ii) The seller has an obligation to pass the price reduction or
35 discount through to the purchaser;

36 (iii) The amount of the consideration attributable to the sale is
37 fixed and determinable by the seller at the time of the sale of the
38 item to the purchaser; and

1 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

2 (A) The purchaser presents a coupon, certificate, or other
3 documentation to the seller to claim a price reduction or discount
4 where the coupon, certificate, or documentation is authorized,
5 distributed, or granted by a third party with the understanding that
6 the third party will reimburse any seller to whom the coupon,
7 certificate, or documentation is presented;

8 (B) The purchaser identifies himself or herself to the seller as a
9 member of a group or organization entitled to a price reduction or
10 discount, however a "preferred customer" card that is available to any
11 patron does not constitute membership in such a group; or

12 (C) The price reduction or discount is identified as a third party
13 price reduction or discount on the invoice received by the purchaser or
14 on a coupon, certificate, or other documentation presented by the
15 purchaser;

16 (2)(a) "Seller" means every person, including the state and its
17 departments and institutions, making sales at retail or retail sales to
18 a buyer, purchaser, or consumer, whether as agent, broker, or
19 principal, except "seller" does not mean:

20 (i) The state and its departments and institutions when making
21 sales to the state and its departments and institutions; or

22 (ii) A professional employer organization when a covered employee
23 coemployed with the client under the terms of a professional employer
24 agreement engages in activities that constitute a sale at retail that
25 is subject to the tax imposed by this chapter. In such cases, the
26 client, and not the professional employer organization, is deemed to be
27 the seller and is responsible for collecting and remitting the tax
28 imposed by this chapter.

29 (b) For the purposes of (a) of this subsection, the terms "client,"
30 "covered employee," "professional employer agreement," and
31 "professional employer organization" have the same meanings as in RCW
32 82.04.540;

33 (3) "Buyer," "purchaser," and "consumer" include, without limiting
34 the scope hereof, every individual, receiver, assignee, trustee in
35 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
36 company, joint stock company, business trust, corporation, association,
37 society, or any group of individuals acting as a unit, whether mutual,
38 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,

1 quasi municipal corporation, and also the state, its departments and
2 institutions and all political subdivisions thereof, irrespective of
3 the nature of the activities engaged in or functions performed, and
4 also the United States or any instrumentality thereof;

5 (4) "Delivery charges" means charges by the seller of personal
6 property or services for preparation and delivery to a location
7 designated by the purchaser of personal property or services including,
8 but not limited to, transportation, shipping, postage, handling,
9 crating, and packing;

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

19 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
20 year," "taxable year," "person," "company," "sale," "sale at retail,"
21 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
22 in business," "cash discount," "successor," "consumer," "in this state"
23 and "within this state" shall apply equally to the provisions of this
24 chapter;

25 (7) For the purposes of the taxes imposed under this chapter and
26 under chapter 82.12 RCW, "tangible personal property" means personal
27 property that can be seen, weighed, measured, felt, or touched, or that
28 is in any other manner perceptible to the senses. Tangible personal
29 property includes electricity, water, gas, steam, and prewritten
30 computer software;

31 (8) "Extended warranty" has the same meaning as in RCW
32 82.04.050(7);

33 (9) The definitions in section 201 of this act apply to this
34 chapter; and

35 (10) For the purposes of the taxes imposed under this chapter and
36 chapter 82.12 RCW, whenever the terms "property" or "personal property"
37 are used, those terms must be construed to include digital products
38 unless:

1 (a) It is clear from the context that the term "personal property"
2 is intended only to refer to tangible personal property;

3 (b) It is clear from the context that the term "property" is
4 intended only to refer to tangible personal property, real property, or
5 both; or

6 (c) To construe the term "property" or "personal property" as
7 including digital products would yield unlikely, absurd, or strained
8 consequences.

9 **Sec. 304.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to
10 read as follows:

11 For the purposes of this chapter:

12 (1) "Purchase price" means the same as sales price as defined in
13 RCW 82.08.010(~~(-)~~);

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

25 (b) In case the articles used are acquired by bailment, the value
26 of the use of the articles so used shall be in an amount representing
27 a reasonable rental for the use of the articles so bailed, determined
28 as nearly as possible according to the value of such use at the places
29 of use of similar products of like quality and character under such
30 rules as the department of revenue may prescribe. In case any such
31 articles of tangible personal property are used in respect to the
32 construction, repairing, decorating, or improving of, and which become
33 or are to become an ingredient or component of, new or existing
34 buildings or other structures under, upon, or above real property of or
35 for the United States, any instrumentality thereof, or a county or city
36 housing authority created pursuant to chapter 35.82 RCW, including the
37 installing or attaching of any such articles therein or thereto,

1 whether or not such personal property becomes a part of the realty by
2 virtue of installation, then the value of the use of such articles so
3 used shall be determined according to the retail selling price of such
4 articles, or in the absence of such a selling price, as nearly as
5 possible according to the retail selling price at place of use of
6 similar products of like quality and character or, in the absence of
7 either of these selling price measures, such value may be determined
8 upon a cost basis, in any event under such rules as the department of
9 revenue may prescribe.

10 (c) In the case of articles owned by a user engaged in business
11 outside the state which are brought into the state for no more than one
12 hundred eighty days in any period of three hundred sixty-five
13 consecutive days and which are temporarily used for business purposes
14 by the person in this state, the value of the article used shall be an
15 amount representing a reasonable rental for the use of the articles,
16 unless the person has paid tax under this chapter or chapter 82.08 RCW
17 upon the full value of the article used, as defined in (a) of this
18 subsection.

19 (d) In the case of articles manufactured or produced by the user
20 and used in the manufacture or production of products sold or to be
21 sold to the department of defense of the United States, the value of
22 the articles used shall be determined according to the value of the
23 ingredients of such articles.

24 (e) In the case of an article manufactured or produced for purposes
25 of serving as a prototype for the development of a new or improved
26 product, the value of the article used shall be determined by: (i) The
27 retail selling price of such new or improved product when first offered
28 for sale; or (ii) the value of materials incorporated into the
29 prototype in cases in which the new or improved product is not offered
30 for sale.

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

35 (3) "Value of the service used" means the purchase price for the
36 service, the use of which is taxable under this chapter. If the
37 service is received by gift or under conditions wherein the purchase
38 price does not represent the true value thereof, the value of the

1 service used shall be determined as nearly as possible according to the
2 retail selling price at place of use of similar services of like
3 quality and character under rules the department may prescribe;

4 (4) "Value of the extended warranty used" means the purchase price
5 for the extended warranty, the use of which is taxable under this
6 chapter. If the extended warranty is received by gift or under
7 conditions wherein the purchase price does not represent the true value
8 of the extended warranty, the value of the extended warranty used shall
9 be determined as nearly as possible according to the retail selling
10 price at place of use of similar extended warranties of like quality
11 and character under rules the department may prescribe;

12 (5) "Value of the digital product used" means the purchase price
13 for the digital product, the use of which is taxable under this
14 chapter. If the digital product is acquired other than by purchase,
15 the value of the digital product must be determined as nearly as
16 possible according to the retail selling price at place of use of
17 similar digital products of like quality and character under rules the
18 department may prescribe;

19 (6) "Use," "used," "using," or "put to use" (~~shall~~) have their
20 ordinary meaning, and (~~shall~~) mean:

21 (a) With respect to tangible personal property, the first act
22 within this state by which the taxpayer takes or assumes dominion or
23 control over the article of tangible personal property (as a consumer),
24 and include installation, storage, withdrawal from storage,
25 distribution, or any other act preparatory to subsequent actual use or
26 consumption within this state;

27 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
28 first act within this state after the service has been performed by
29 which the taxpayer takes or assumes dominion or control over the
30 article of tangible personal property upon which the service was
31 performed (as a consumer), and includes installation, storage,
32 withdrawal from storage, distribution, or any other act preparatory to
33 subsequent actual use or consumption of the article within this state;

34 (~~and~~)

35 (c) With respect to an extended warranty, the first act within this
36 state after the extended warranty has been acquired by which the
37 taxpayer takes or assumes dominion or control over the article of
38 tangible personal property to which the extended warranty applies, and

1 includes installation, storage, withdrawal from storage, distribution,
2 or any other act preparatory to subsequent actual use or consumption of
3 the article within this state;

4 (d) With respect to a digital product, the first act within this
5 state by which the taxpayer, as a consumer, downloads or otherwise
6 possesses the digital product; and

7 (e) With respect to a service defined as a retail sale in RCW
8 82.04.050(2)(g), the first act within this state after the service has
9 been performed by which the taxpayer, as a consumer, uses the digital
10 product upon which the service was performed;

11 ~~((+6))~~ (7) "Taxpayer" and "purchaser" include all persons included
12 within the meaning of the word "buyer" and the word "consumer" as
13 defined in chapters 82.04 and 82.08 RCW;

14 ~~((+7))~~ (8)(a)(i) Except as provided in (a)(ii) of this subsection
15 ~~((+7))~~ (8), "retailer" means every seller as defined in RCW 82.08.010
16 and every person engaged in the business of selling tangible personal
17 property at retail and every person required to collect from purchasers
18 the tax imposed under this chapter.

19 (ii) "Retailer" does not include a professional employer
20 organization when a covered employee coemployed with the client under
21 the terms of a professional employer agreement engages in activities
22 that constitute a sale of tangible personal property, extended
23 warranty, digital product, or a sale of any service defined as a retail
24 sale in RCW 82.04.050 (2)(a) or (g) or (3)(a) that is subject to the
25 tax imposed by this chapter. In such cases, the client, and not the
26 professional employer organization, is deemed to be the retailer and is
27 responsible for collecting and remitting the tax imposed by this
28 chapter.

29 (b) For the purposes of (a) of this subsection, the terms "client,"
30 "covered employee," "professional employer agreement," and
31 "professional employer organization" have the same meanings as in RCW
32 82.04.540;

33 ~~((+8))~~ (9) "Extended warranty" has the same meaning as in RCW
34 82.04.050(7);

35 ~~((+9))~~ (10) The meaning ascribed to words and phrases in chapters
36 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
37 effect with respect to taxes imposed under the provisions of this
38 chapter. "Consumer," in addition to the meaning ascribed to it in

1 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
2 person who distributes or displays, or causes to be distributed or
3 displayed, any article of tangible personal property, except
4 newspapers, the primary purpose of which is to promote the sale of
5 products or services. With respect to property distributed to persons
6 within this state by a consumer as defined in this subsection (~~(+9+)~~)
7 (10), the use of the property shall be deemed to be by such consumer.

8 **Sec. 305.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to
9 read as follows:

10 (1) There is hereby levied and there shall be collected from every
11 person in this state a tax or excise for the privilege of using within
12 this state as a consumer any:

13 (a) (~~(Any)~~) Article of tangible personal property purchased at
14 retail, or acquired by lease, gift, repossession, or bailment, or
15 extracted or produced or manufactured by the person so using the same,
16 or otherwise furnished to a person engaged in any business taxable
17 under RCW 82.04.280 (2) or (7), including tangible personal property
18 acquired at a casual or isolated sale, and including byproducts used by
19 the manufacturer thereof, except as otherwise provided in this chapter,
20 irrespective of whether the article or similar articles are
21 manufactured or are available for purchase within this state;

22 (b) (~~(any)~~) Prewritten computer software, regardless of the method
23 of delivery, but excluding prewritten computer software that is either
24 provided free of charge or is provided for temporary use in viewing
25 information, or both; (~~(or)~~)

26 (c) (~~(any)~~) Services defined as a retail sale in RCW 82.04.050
27 (2)(a) or (g) or (3)(a);

28 (d) Extended warranty; or

29 (e)(i) Digital product.

30 (ii) With respect to the use of digital products acquired by
31 purchase, the tax imposed in this subsection (1)(e) applies in respect
32 to:

33 (A) Sales in which the seller has granted the purchaser the right
34 of permanent use;

35 (B) Sales in which the seller has granted the purchaser a right of
36 use that is less than permanent;

1 (C) Sales in which the purchaser is not obligated to make continued
2 payment as a condition of the sale; and

3 (D) Sales in which the purchaser is obligated to make continued
4 payment as a condition of the sale.

5 (iii) With respect to the use of digital products acquired other
6 than by purchase, the tax imposed in this subsection (1)(e) applies
7 regardless of whether or not the consumer has a right of permanent use
8 or is obligated to make continued payment as a condition of use.

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

16 ~~(3))~~ The provisions of this chapter do not apply in respect to the
17 use of any article of tangible personal property, extended warranty,
18 digital product, or service taxable under RCW 82.04.050 (2)(a) or (g)
19 or (3)(a), ~~((purchased at retail or acquired by lease, gift, or~~
20 ~~bailment))~~ if the sale to, or the use by, the present user or ~~((his))~~
21 the present user's bailor or donor has already been subjected to the
22 tax under chapter 82.08 RCW or this chapter and the tax has been paid
23 by the present user or by ~~((his))~~ the present user's bailor or donor.

24 ~~((4))~~ (3)(a) Except as provided in this section, payment of the
25 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or
26 user of tangible personal property, extended warranty, digital product,
27 or service ~~((of the tax imposed by chapter 82.08 or 82.12 RCW shall))~~
28 does not have the effect of exempting any other purchaser or user of
29 the same property, extended warranty, digital product, or service from
30 the taxes imposed by such chapters.

31 (b) The tax imposed by this chapter does not apply:

32 (i) If the sale to, or the use by, the present user or his or her
33 bailor or donor has already been subjected to the tax under chapter
34 82.08 RCW or this chapter and the tax has been paid by the present user
35 or by his or her bailor or donor; ~~((or))~~

36 (ii) In respect to the use of any article of tangible personal
37 property acquired by bailment and the tax has once been paid based on
38 reasonable rental as determined by RCW 82.12.060 measured by the value

1 of the article at time of first use multiplied by the tax rate imposed
2 by chapter 82.08 RCW or this chapter as of the time of first use;
3 (~~(or)~~)

4 (iii) In respect to the use of any article of tangible personal
5 property acquired by bailment, if the property was acquired by a
6 previous bailee from the same bailor for use in the same general
7 activity and the original bailment was prior to June 9, 1961(~~(, the tax~~
8 imposed by this chapter does not apply)); or

9 (iv) To the use of digital goods, which were obtained through the
10 use of a digital code, if the sale of the digital code to, or the use
11 of the digital code by, the present user or the present user's bailor
12 or donor has already been subjected to the tax under chapter 82.08 RCW
13 or this chapter and the tax has been paid by the present user or by the
14 present user's bailor or donor.

15 ~~((+5))~~ (4)(a) Except as provided in (b) of this subsection (4),
16 the tax (~~(shall be))~~ is levied and must be collected in an amount equal
17 to the value of the article used, value of the digital product used,
18 value of the extended warranty used, or value of the service used by
19 the taxpayer, multiplied by the applicable rates in effect for the
20 retail sales tax under RCW 82.08.020(~~(, except))~~.

21 (b) In the case of a seller required to collect use tax from the
22 purchaser, the tax (~~(shall))~~ must be collected in an amount equal to
23 the purchase price multiplied by the applicable rate in effect for the
24 retail sales tax under RCW 82.08.020.

25 **PART IV**

26 **BUSINESS AND OCCUPATION TAX CHANGES**

27 NEW SECTION. Sec. 401. A new section is added to chapter 82.04
28 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as
29 follows:

30 (1) Upon every person engaging within this state in the business of
31 making sales at retail or wholesale of digital products, as to such
32 persons, the amount of tax with respect to such business is equal to
33 the gross proceeds of sales of the business, multiplied by the rate of
34 0.471 percent in the case of retail sales and by the rate of 0.484
35 percent in the case of wholesale sales.

1 (2) For purposes of this section, a person is considered to be
2 engaging within this state in the business of making sales of digital
3 products, if the person makes sales of digital products and the sales
4 are sourced to this state under RCW 82.32.730 for sales tax purposes or
5 would have been sourced to this state under RCW 82.32.730 if the sale
6 had been taxable under chapter 82.08 RCW.

7 (3) A person subject to tax under this section must report the tax
8 imposed in this chapter in an electronic format provided by the
9 department.

10 **Sec. 402.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to
11 read as follows:

12 "Sale at wholesale" or "wholesale sale" means:

13 (1) Any sale, which is not a sale at retail, of:

14 (a) Tangible personal property(~~(, any sale of)~~);

15 (b) Services defined as a retail sale in RCW 82.04.050(2)(a)(~~, any~~
16 sale of));

17 (c) Amusement or recreation services as defined in RCW
18 82.04.050(3)(a)(~~, any sale of canned software, any sale of an)~~);

19 (d) Prewritten computer software;

20 (e) Extended (~~warranty~~) warranties as defined in RCW
21 82.04.050(7)(~~, or any sale of)~~);

22 (f) Competitive telephone service, ancillary services, or
23 telecommunications service as those terms are defined in RCW
24 82.04.065(~~, which is not a sale at retail)~~);

25 (g) Digital products; or

26 (h) Services described in RCW 82.04.050(2)(g); and

27 (2) Any charge made for labor and services rendered for persons who
28 are not consumers, in respect to real or personal property, if such
29 charge is expressly defined as a retail sale by RCW 82.04.050 when
30 rendered to or for consumers(~~(: PROVIDED, That the term)~~). For the
31 purposes of this subsection (2), "real or personal property" (~~as used~~
32 in this subsection shall)) does not include any natural products named
33 in RCW 82.04.100.

34 **Sec. 403.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended
35 to read as follows:

36 "Gross proceeds of sales" means the value proceeding or accruing

1 from the sale of tangible personal property, digital products, and/or
2 for services rendered, without any deduction on account of the cost of
3 property sold, the cost of materials used, labor costs, interest,
4 discount paid, delivery costs, taxes, or any other expense whatsoever
5 paid or accrued and without any deduction on account of losses.

6 **Sec. 404.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to
7 read as follows:

8 (1) Except as otherwise provided in this section, "manufacturer"
9 means every person who, either directly or by contracting with others
10 for the necessary labor or mechanical services, manufactures for sale
11 or for commercial or industrial use from his or her own materials or
12 ingredients any articles, substances, or commodities.

13 (2)(a) When the owner of equipment or facilities furnishes, or
14 sells to the customer prior to manufacture, all or a portion of the
15 materials that become a part or whole of the manufactured article, the
16 department shall prescribe equitable rules for determining tax
17 liability(~~(:—PROVIDED, That)~~).

18 (b) A person who produces aluminum master alloys is a processor for
19 hire rather than a manufacturer, regardless of the portion of the
20 aluminum provided by that person's customer(~~(:—PROVIDED—FURTHER,~~
21 ~~That)~~). For the purposes of this subsection (2)(b), "aluminum master
22 alloy" means an alloy registered with the aluminum association as a
23 grain refiner or a hardener alloy using the American national standards
24 institute designating system H35.3.

25 (3) A nonresident of this state who is the owner of materials
26 processed for it in this state by a processor for hire shall not be
27 deemed to be engaged in business in this state as a manufacturer
28 because of the performance of such processing work for it in this
29 state(~~(:—PROVIDED—FURTHER, That)~~).

30 (4) The owner of materials from which a nuclear fuel assembly is
31 made for it by a processor for hire shall not be subject to tax under
32 this chapter as a manufacturer of the fuel assembly.

33 ~~((For the purposes of this section, "aluminum master alloy" means~~
34 ~~an alloy registered with the Aluminum Association as a grain refiner or~~
35 ~~a hardener alloy using the American National Standards Institute~~
36 ~~designating system H35.3.))~~

1 (5) For purposes of this section, the terms "articles,"
2 "substances," "materials," "ingredients," and "commodities" do not
3 include digital goods.

4 **Sec. 405.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to
5 read as follows:

6 "To manufacture" embraces all activities of a commercial or
7 industrial nature wherein labor or skill is applied, by hand or
8 machinery, to materials so that as a result thereof a new, different or
9 useful substance or article of tangible personal property is produced
10 for sale or commercial or industrial use, and shall include: (1) The
11 production or fabrication of special made or custom made articles; (2)
12 the production or fabrication of dental appliances, devices,
13 restorations, substitutes, or other dental laboratory products by a
14 dental laboratory or dental technician; (3) cutting, delimiting, and
15 measuring of felled, cut, or taken trees; and (4) crushing and/or
16 blending of rock, sand, stone, gravel, or ore.

17 "To manufacture" shall not include: Conditioning of seed for use
18 in planting; cubing hay or alfalfa; activities which consist of
19 cutting, grading, or ice glazing seafood which has been cooked, frozen,
20 or canned outside this state; the growing, harvesting, or producing of
21 agricultural products; packing of agricultural products, including
22 sorting, washing, rinsing, grading, waxing, treating with fungicide,
23 packaging, chilling, or placing in controlled atmospheric storage; the
24 production of digital goods; or the production of computer software if
25 the computer software is delivered from the seller to the purchaser by
26 means other than tangible storage media, including the delivery by use
27 of a tangible storage media where the tangible storage media is not
28 physically transferred to the purchaser.

29 **Sec. 406.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to
30 read as follows:

31 (1) Upon every person engaging within this state in the business of
32 receiving income from royalties or charges in the nature of royalties
33 for the granting of intangible rights, such as copyrights, licenses,
34 patents, or franchise fees, the amount of tax with respect to such
35 business shall be equal to the gross income from royalties or charges

1 in the nature of royalties from the business multiplied by the rate of
2 0.484 percent.

3 (2) For the purposes of this section, "royalties" means
4 compensation for the use of intangible property, such as copyrights,
5 patents, licenses, franchises, trademarks, trade names, and similar
6 items. It does not include compensation for any natural resource
7 ~~((or)), the licensing of ((earned))~~ prewritten computer software to the
8 end user, or the licensing or use of digital products.

9 **Sec. 407.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to
10 read as follows:

11 (1) The provision of internet ~~((services))~~ access is subject to tax
12 under RCW 82.04.290(2).

13 (2) ~~"Internet" ((means the international computer network of both~~
14 ~~federal and nonfederal interoperable packet switched data networks,~~
15 ~~including the graphical subnetwork called the world wide web))~~ and
16 "internet access" have the same meaning as those terms are defined in
17 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
18 existing on July 1, 2009.

19 (3) ~~(("Internet service" means a service that includes computer~~
20 ~~processing applications, provides the user with additional or~~
21 ~~restructured information, or permits the user to interact with stored~~
22 ~~information through the internet or a proprietary subscriber network.~~
23 ~~"Internet service" includes provision of internet electronic mail,~~
24 ~~access to the internet for information retrieval, and hosting of~~
25 ~~information for retrieval over the internet or the graphical subnetwork~~
26 ~~called the world wide web))~~ Unless the context clearly requires
27 otherwise, the definitions in this section apply throughout this
28 chapter.

29 **Sec. 408.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to
30 read as follows:

31 This chapter does not apply to amounts received by a nonprofit
32 organization from the sale or furnishing of the following items at a
33 camp or conference center conducted on property exempt from property
34 tax under RCW 84.36.030 (1), (2), or (3):

35 (1) Lodging, conference and meeting rooms, camping facilities,
36 parking, and similar licenses to use real property;

1 (2) Food and meals;

2 (3) Books, tapes, and other products, including books and other
3 products that are transferred electronically, that are available
4 exclusively to the participants at the camp, conference, or meeting and
5 are not available to the public at large.

6 **Sec. 409.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to
7 read as follows:

8 In computing tax there may be deducted from the measure of tax
9 amounts derived from bona fide (1) initiation fees, (2) dues, (3)
10 contributions, (4) donations, (5) tuition fees, (6) charges made by a
11 nonprofit trade or professional organization for attending or occupying
12 space at a trade show, convention, or educational seminar sponsored by
13 the nonprofit trade or professional organization, which trade show,
14 convention, or educational seminar is not open to the general public,
15 (7) charges made for operation of privately operated kindergartens, and
16 (8) endowment funds. This section (~~shall~~) may not be construed to
17 exempt any person, association, or society from tax liability upon
18 selling tangible personal property, digital products, or upon providing
19 facilities or services for which a special charge is made to members or
20 others. If dues are in exchange for any significant amount of goods or
21 services rendered by the recipient thereof to members without any
22 additional charge to the member, or if the dues are graduated upon the
23 amount of goods or services rendered, the value of such goods or
24 services shall not be considered as a deduction under this section.

25 **Sec. 410.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
26 read as follows:

27 (1) Unless a seller has taken from the buyer a resale certificate,
28 the burden of proving that a sale (~~of tangible personal property, or~~
29 ~~of services, was not a sale at retail shall be~~) is a wholesale sale
30 rather than a retail sale is upon the person who made it.

31 (2) If a seller does not receive a resale certificate at the time
32 of the sale, have a resale certificate on file at the time of the sale,
33 or obtain a resale certificate from the buyer within a reasonable time
34 after the sale, the seller shall remain liable for the tax as provided
35 in RCW 82.08.050, unless the seller can demonstrate facts and

1 circumstances according to rules adopted by the department of revenue
2 that show the sale was properly made without payment of sales tax.

3 (3) The department may provide by rule for suggested forms for
4 resale certificates or equivalent documents containing the information
5 that will be accepted as resale certificates. The department shall
6 provide by rule the categories of items or services that must be
7 specified on resale certificates and the business classifications that
8 may use a blanket resale certificate.

9 (4) As used in this section, "resale certificate" means
10 documentation provided by a buyer to a seller stating that the purchase
11 is for resale in the regular course of business, or that the buyer is
12 exempt from retail sales tax, and containing the following information:

13 (a) The name and address of the buyer;

14 (b) The uniform business identifier or revenue registration number
15 of the buyer, if the buyer is required to be registered;

16 (c) The type of business engaged in;

17 (d) The categories of items or services to be purchased for resale
18 or that are exempt, unless the buyer presents a blanket resale
19 certificate;

20 (e) The date on which the certificate was provided;

21 (f) A statement that the items or services purchased either: (i)
22 Are purchased for resale in the regular course of business; or (ii) are
23 exempt from tax pursuant to statute;

24 (g) A statement that the buyer acknowledges that the buyer is
25 solely responsible for purchasing within the categories specified on
26 the certificate and that misuse of the resale or exemption privilege
27 claimed on the certificate subjects the buyer to a penalty of fifty
28 percent of the tax due, in addition to the tax, interest, and any other
29 penalties imposed by law;

30 (h) The name of the individual authorized to sign the certificate,
31 printed in a legible fashion;

32 (i) The signature of the authorized individual; and

33 (j) The name of the seller.

34 (5) Subsection (4)(h), (i), and (j) of this section does not apply
35 if the certificate is provided in a format other than paper. If the
36 certificate is provided in a format other than paper, the name of the
37 individual providing the certificate must be included in the
38 certificate.

1 **Sec. 411.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each
2 amended to read as follows:

3 (1) Every consignee, bailee, factor, or auctioneer having either
4 actual or constructive possession of (~~tangible~~) personal property, or
5 having possession of the documents of title thereto, with power to sell
6 such (~~tangible~~) personal property in (~~his or its~~) that person's own
7 name and actually so selling, (~~shall be~~) is deemed the seller of such
8 (~~tangible~~) personal property within the meaning of this chapter(~~+
9 and further,~~). Furthermore, the consignor, bailor, principal, or
10 owner (~~shall be~~) is deemed a seller of such property to the
11 consignee, bailee, factor, or auctioneer.

12 (2) The burden (~~shall be upon~~) is on the taxpayer in every case
13 to establish the fact that (~~he~~) the taxpayer is not engaged in the
14 business of (~~selling tangible personal property~~) making retail sales
15 or wholesale sales but is acting merely as broker or agent in promoting
16 sales for a principal. Such claim will be allowed only when the
17 taxpayer's accounting records are kept in such manner as required by
18 rule by the department (~~of revenue shall by general regulation
19 provide~~)).

20 (3) For purposes of this section, "personal property" means
21 tangible personal property, digital products, and extended warranties.

22 **Sec. 412.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to
23 read as follows:

24 (1) "Competitive telephone service" means the providing by any
25 person of telecommunications equipment or apparatus, or service related
26 to that equipment or apparatus such as repair or maintenance service,
27 if the equipment or apparatus is of a type which can be provided by
28 persons that are not subject to regulation as telephone companies under
29 Title 80 RCW and for which a separate charge is made.

30 (2) "Ancillary services" means services that are associated with or
31 incidental to the provision of "telecommunications services," including
32 but not limited to "detailed telecommunications billing," "directory
33 assistance," "vertical service," and "voice mail services."

34 (3) "Conference-bridging service" means an ancillary service that
35 links two or more participants of an audio or video conference call and
36 may include the provision of a telephone number. "Conference-bridging

1 service" does not include the telecommunications services used to reach
2 the conference bridge.

3 (4) "Detailed telecommunications billing service" means an
4 ancillary service of separately stating information pertaining to
5 individual calls on a customer's billing statement.

6 (5) "Directory assistance" means an ancillary service of providing
7 telephone number information, and/or address information.

8 (6) "Vertical service" means an ancillary service that is offered
9 in connection with one or more telecommunications services, that offers
10 advanced calling features that allow customers to identify callers and
11 to manage multiple calls and call connections, including conference-
12 bridging services.

13 (7) "Voice mail service" means an ancillary service that enables
14 the customer to store, send, or receive recorded messages. "Voice mail
15 service" does not include any vertical services that the customer may
16 be required to have in order to use the voice mail service.

17 (8) "Telecommunications service" means the electronic transmission,
18 conveyance, or routing of voice, data, audio, video, or any other
19 information or signals to a point, or between or among points.
20 "Telecommunications service" includes such transmission, conveyance, or
21 routing in which computer processing applications are used to act on
22 the form, code, or protocol of the content for purposes of
23 transmission, conveyance, or routing without regard to whether such
24 service is referred to as voice over internet protocol services or is
25 classified by the federal communications commission as enhanced or
26 value added. "Telecommunications service" does not include:

27 (a) Data processing and information services that allow data to be
28 generated, acquired, stored, processed, or retrieved and delivered by
29 an electronic transmission to a purchaser where such purchaser's
30 primary purpose for the underlying transaction is the processed data or
31 information;

32 (b) Installation or maintenance of wiring or equipment on a
33 customer's premises;

34 (c) Tangible personal property;

35 (d) Advertising, including but not limited to directory
36 advertising;

37 (e) Billing and collection services provided to third parties;

38 (f) Internet access service;

1 (g) Radio and television audio and video programming services,
2 regardless of the medium, including the furnishing of transmission,
3 conveyance, and routing of such services by the programming service
4 provider. Radio and television audio and video programming services
5 include but are not limited to cable service as defined in 47 U.S.C.
6 Sec. 522(6) and audio and video programming services delivered by
7 commercial mobile radio service providers, as defined in section 20.3,
8 Title 47 C.F.R.;

9 (h) Ancillary services; ~~((or))~~

10 (i) Digital products delivered electronically, including but not
11 limited to ~~((software,))~~ music, video, reading materials, or ring
12 tones; or

13 (j) Software delivered electronically.

14 (9) "800 service" means a telecommunications service that allows a
15 caller to dial a toll-free number without incurring a charge for the
16 call. The service is typically marketed under the name "800," "855,"
17 "866," "877," and "888" toll-free calling, and any subsequent numbers
18 designated by the federal communications commission.

19 (10) "900 service" means an inbound toll "telecommunications
20 service" purchased by a subscriber that allows the subscriber's
21 customers to call in to the subscriber's prerecorded announcement or
22 live service. "900 service" does not include the charge for:
23 Collection services provided by the seller of the telecommunications
24 services to the subscriber, or services or products sold by the
25 subscriber to the subscriber's customer. The service is typically
26 marketed under the name "900" service, and any subsequent numbers
27 designated by the federal communications commission.

28 (11) "Fixed wireless service" means a telecommunications service
29 that provides radio communication between fixed points.

30 (12) "Mobile wireless service" means a telecommunications service
31 that is transmitted, conveyed, or routed regardless of the technology
32 used, whereby the origination and/or termination points of the
33 transmission, conveyance, or routing are not fixed, including, by way
34 of example only, telecommunications services that are provided by a
35 commercial mobile radio service provider.

36 (13) "Paging service" means a telecommunications service that
37 provides transmission of coded radio signals for the purpose of

1 activating specific pagers; these transmissions may include messages
2 and/or sounds.

3 (14) "Prepaid calling service" means the right to access
4 exclusively telecommunications services, which must be paid for in
5 advance and which enable the origination of calls using an access
6 number or authorization code, whether manually or electronically
7 dialed, and that is sold in predetermined units or dollars of which the
8 number declines with use in a known amount.

9 (15) "Prepaid wireless calling service" means a telecommunications
10 service that provides the right to use mobile wireless service as well
11 as other nontelecommunications services including the download of
12 digital products delivered electronically, content, and ancillary
13 services, which must be paid for in advance and that is sold in
14 predetermined units or dollars of which the number declines with use in
15 a known amount.

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

23 (17) "Value-added nonvoice data service" means a service that
24 otherwise meets the definition of telecommunications services in which
25 computer processing applications are used to act on the form, content,
26 code, or protocol of the information or data primarily for a purpose
27 other than transmission, conveyance, or routing.

28 (18) "Charges for mobile telecommunications services" means any
29 charge for, or associated with, the provision of commercial mobile
30 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
31 on June 1, 1999, or any charge for, or associated with, a service
32 provided as an adjunct to a commercial mobile radio service, regardless
33 of whether individual transmissions originate or terminate within the
34 licensed service area of the mobile telecommunications service
35 provider.

36 (19) "Customer" means: (a) The person or entity that contracts
37 with the home service provider for mobile telecommunications services;
38 or (b) the end user of the mobile telecommunications service, if the

1 end user of mobile telecommunications services is not the contracting
2 party, but this subsection (19)(b) applies only for the purpose of
3 determining the place of primary use. The term does not include a
4 reseller of mobile telecommunications service, or a serving carrier
5 under an arrangement to serve the customer outside the home service
6 provider's licensed service area.

7 (20) "Designated database provider" means a person representing all
8 the political subdivisions of the state that is:

9 (a) Responsible for providing an electronic database prescribed in
10 4 U.S.C. Sec. 119(a) if the state has not provided an electronic
11 database; and

12 (b) Approved by municipal and county associations or leagues of the
13 state whose responsibility it would otherwise be to provide a database
14 prescribed by 4 U.S.C. Secs. 116 through 126.

15 (21) "Enhanced zip code" means a United States postal zip code of
16 nine or more digits.

17 (22) "Home service provider" means the facilities-based carrier or
18 reseller with whom the customer contracts for the provision of mobile
19 telecommunications services.

20 (23) "Licensed service area" means the geographic area in which the
21 home service provider is authorized by law or contract to provide
22 commercial mobile radio service to the customer.

23 (24) "Mobile telecommunications service" means commercial mobile
24 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
25 on June 1, 1999.

26 (25) "Mobile telecommunications service provider" means a home
27 service provider or a serving carrier.

28 (26) "Place of primary use" means the street address representative
29 of where the customer's use of the mobile telecommunications service
30 primarily occurs, which must be:

31 (a) The residential street address or the primary business street
32 address of the customer; and

33 (b) Within the licensed service area of the home service provider.

34 (27) "Prepaid telephone calling service" means the right to
35 purchase exclusively telecommunications services that must be paid for
36 in advance, that enables the origination of calls using an access
37 number, authorization code, or both, whether manually or electronically

1 dialed, if the remaining amount of units of service that have been
2 prepaid is known by the provider of the prepaid service on a continuous
3 basis.

4 (28) "Reseller" means a provider who purchases telecommunications
5 services from another telecommunications service provider and then
6 resells, uses as a component part of, or integrates the purchased
7 services into a mobile telecommunications service. "Reseller" does not
8 include a serving carrier with whom a home service provider arranges
9 for the services to its customers outside the home service provider's
10 licensed service area.

11 (29) "Serving carrier" means a facilities-based carrier providing
12 mobile telecommunications service to a customer outside a home service
13 provider's or reseller's licensed service area.

14 (30) "Taxing jurisdiction" means any of the several states, the
15 District of Columbia, or any territory or possession of the United
16 States, any municipality, city, county, township, parish,
17 transportation district, or assessment jurisdiction, or other political
18 subdivision within the territorial limits of the United States with the
19 authority to impose a tax, charge, or fee.

20 **PART V**

21 **SALES TAX EXEMPTIONS**

22 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.08
23 RCW to read as follows:

24 The tax imposed by RCW 82.08.020 does not apply to the sale of a
25 digital code for one or more digital goods if the sale of the digital
26 goods to which the digital code relates is exempt from the tax levied
27 by RCW 82.08.020.

28 NEW SECTION. **Sec. 502.** A new section is added to chapter 82.08
29 RCW to read as follows:

30 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
31 digital products for purposes of consuming the digital products in
32 producing for sale a new product, where the digital products become an
33 ingredient or component of the new product. A digital code becomes an
34 ingredient or component of a new product if the digital good acquired

1 through the use of the digital code becomes an ingredient or component
2 of a new product.

3 (2) The exemption is available only when the buyer provides the
4 seller with an exemption certificate in a form and manner prescribed by
5 the department. The seller must retain a copy of the certificate for
6 the seller's files.

7 **Sec. 503.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to
8 read as follows:

9 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to the
10 sale of public records by state and local agencies, as the terms are
11 defined in RCW 42.17.020, that are copied or transferred electronically
12 under a request for the record for which no fee is charged other than
13 a statutorily set fee or a fee to reimburse the agency for its actual
14 costs directly incident to the copying. A request for a record
15 includes a request for a document not available to the public but
16 available to those persons who by law are allowed access to the
17 document, such as requests for fire reports, law enforcement reports,
18 taxpayer information, and academic transcripts.

19 **Sec. 504.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to
20 read as follows:

21 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to:
22 (a) The distribution and newsstand sale of printed newspapers; and
23 (b) The sale of newspapers transferred electronically, provided
24 that the electronic version of a printed newspaper:
25 (i) Shares content with the printed newspaper; and
26 (ii) Is prominently identified by the same name as the printed
27 newspaper or otherwise conspicuously indicates that it is a complement
28 to the printed newspaper.

29 (2) For purposes of this section, "printed newspaper" means a
30 publication issued regularly at stated intervals at least twice a month
31 and printed on newsprint in tabloid or broadsheet format folded loosely
32 together without stapling, glue, or any other binding of any kind,
33 including any supplement of a printed newspaper.

34 **Sec. 505.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each
35 amended to read as follows:

1 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to (~~the~~)
2 subscription sales (~~and distribution~~) of magazines or periodicals
3 (~~by subscription~~), including magazines and periodicals transferred
4 electronically to the buyer, for the purposes of fund-raising by (1)
5 educational institutions as defined in RCW 82.04.170, or (2) nonprofit
6 organizations engaged in activities primarily for the benefit of boys
7 and girls nineteen years and younger.

8 **Sec. 506.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to
9 read as follows:

10 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
11 of academic transcripts by educational institutions, including academic
12 transcripts transferred electronically.

13 **Sec. 507.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to
14 read as follows:

15 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
16 (including transfers of title through decree of appropriation)
17 heretofore or hereafter made of the entire operating property of a
18 publicly or privately owned public utility, or of a complete operating
19 integral section thereof, to the state or a political subdivision
20 thereof for use in conducting any business defined in RCW 82.16.010
21 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For
22 purposes of this section, "operating property" includes digital
23 products.

24 **Sec. 508.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to
25 read as follows:

26 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
27 sales to a manufacturer or processor for hire of machinery and
28 equipment used directly in a manufacturing operation or research and
29 development operation, to sales to a person engaged in testing for a
30 manufacturer or processor for hire of machinery and equipment used
31 directly in a testing operation, or to sales of or charges made for
32 labor and services rendered in respect to installing, repairing,
33 cleaning, altering, or improving the machinery and equipment, but only
34 when the purchaser provides the seller with an exemption certificate in

1 a form and manner prescribed by the department by rule. The seller
2 (~~shall~~) must retain a copy of the certificate for the seller's files.

3 (2) For purposes of this section and RCW 82.12.02565:

4 (a) "Machinery and equipment" means industrial fixtures, devices,
5 and support facilities, and tangible personal property that becomes an
6 ingredient or component thereof, including repair parts and replacement
7 parts. "Machinery and equipment" includes pollution control equipment
8 installed and used in a manufacturing operation, testing operation, or
9 research and development operation to prevent air pollution, water
10 pollution, or contamination that might otherwise result from the
11 manufacturing operation, testing operation, or research and development
12 operation. "Machinery and equipment" also includes digital products.

13 (b) "Machinery and equipment" does not include:

- 14 (i) Hand-powered tools;
- 15 (ii) Property with a useful life of less than one year;
- 16 (iii) Buildings, other than machinery and equipment that is
17 permanently affixed to or becomes a physical part of a building; and
- 18 (iv) Building fixtures that are not integral to the manufacturing
19 operation, testing operation, or research and development operation
20 that are permanently affixed to and become a physical part of a
21 building, such as utility systems for heating, ventilation, air
22 conditioning, communications, plumbing, or electrical.

23 (c) Machinery and equipment is "used directly" in a manufacturing
24 operation, testing operation, or research and development operation if
25 the machinery and equipment:

- 26 (i) Acts upon or interacts with an item of tangible personal
27 property;
- 28 (ii) Conveys, transports, handles, or temporarily stores an item of
29 tangible personal property at the manufacturing site or testing site;
- 30 (iii) Controls, guides, measures, verifies, aligns, regulates, or
31 tests tangible personal property at the site or away from the site;
- 32 (iv) Provides physical support for or access to tangible personal
33 property;
- 34 (v) Produces power for, or lubricates machinery and equipment;
- 35 (vi) Produces another item of tangible personal property for use in
36 the manufacturing operation, testing operation, or research and
37 development operation;

1 (vii) Places tangible personal property in the container, package,
2 or wrapping in which the tangible personal property is normally sold or
3 transported; or

4 (viii) Is integral to research and development as defined in RCW
5 82.63.010.

6 (d) "Manufacturing operation" means the manufacturing of articles,
7 substances, or commodities for sale as tangible personal property. A
8 manufacturing operation begins at the point where the raw materials
9 enter the manufacturing site and ends at the point where the processed
10 material leaves the manufacturing site. The term also includes that
11 portion of a cogeneration project that is used to generate power for
12 consumption within the manufacturing site of which the cogeneration
13 project is an integral part. The term does not include the production
14 of electricity by a light and power business as defined in RCW
15 82.16.010 or the preparation of food products on the premises of a
16 person selling food products at retail.

17 (e) "Cogeneration" means the simultaneous generation of electrical
18 energy and low-grade heat from the same fuel.

19 (f) "Research and development operation" means engaging in research
20 and development as defined in RCW 82.63.010 by a manufacturer or
21 processor for hire.

22 (g) "Testing" means activities performed to establish or determine
23 the properties, qualities, and limitations of tangible personal
24 property.

25 (h) "Testing operation" means the testing of tangible personal
26 property for a manufacturer or processor for hire. A testing operation
27 begins at the point where the tangible personal property enters the
28 testing site and ends at the point where the tangible personal property
29 leaves the testing site. The term also includes that portion of a
30 cogeneration project that is used to generate power for consumption
31 within the site of which the cogeneration project is an integral part.
32 The term does not include the production of electricity by a light and
33 power business as defined in RCW 82.16.010 or the preparation of food
34 products on the premises of a person selling food products at retail.

35 **Sec. 509.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to
36 read as follows:

37 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to auction

1 sales made by or through auctioneers of (~~tangible~~) personal property
2 (including household goods) (~~which have~~) that has been used in
3 conducting a farm activity, when the seller thereof is a farmer and the
4 sale is held or conducted upon a farm and not otherwise.

5 **Sec. 510.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
8 sales to nonresidents of this state of tangible personal property and
9 digital products, when such property is for use outside this state
10 (~~when~~), and the purchaser (a) is a bona fide resident of a state or
11 possession or Province of Canada other than the state of Washington and
12 such state, possession, or Province of Canada does not impose a retail
13 sales tax or use tax of three percent or more or, if imposing such a
14 tax, permits Washington residents exemption from otherwise taxable
15 sales by reason of their residence, and (b) agrees, when requested, to
16 grant the department of revenue access to such records and other forms
17 of verification at his or her place of residence to assure that such
18 purchases are not first used substantially in the state of Washington.

19 (2) Notwithstanding anything to the contrary in this chapter, if
20 parts or other tangible personal property are installed by the seller
21 during the course of repairing, cleaning, altering, or improving motor
22 vehicles, trailers, or campers and the seller makes a separate charge
23 for the tangible personal property, the tax levied by RCW 82.08.020
24 does not apply to the separately stated charge to a nonresident
25 purchaser for the tangible personal property but only if the separately
26 stated charge does not exceed either the seller's current publicly
27 stated retail price for the tangible personal property or, if no
28 (~~separately~~) publicly stated retail price is available, the seller's
29 cost for the tangible personal property. However, the exemption
30 provided by this section does not apply if tangible personal property
31 is installed by the seller during the course of repairing, cleaning,
32 altering, or improving motor vehicles, trailers, or campers and the
33 seller makes a single nonitemized charge for providing the tangible
34 personal property and service. All of the requirements in subsections
35 (1) and (3) through (6) of this section apply to this subsection.

36 (3)(a) Any person claiming exemption from retail sales tax under

1 the provisions of this section must display proof of his or her current
2 nonresident status as provided in this section.

3 (b) Acceptable proof of a nonresident person's status (~~shall~~)
4 includes one piece of identification such as a valid driver's license
5 from the jurisdiction in which the out-of-state residency is claimed or
6 a valid identification card which has a photograph of the holder and is
7 issued by the out-of-state jurisdiction. Identification under this
8 subsection (3)(b) must show the holder's residential address and have
9 as one of its legal purposes the establishment of residency in that
10 out-of-state jurisdiction.

11 (4) Nothing in this section requires the vendor to make tax exempt
12 retail sales to nonresidents. A vendor may choose to make sales to
13 nonresidents, collect the sales tax, and remit the amount of sales tax
14 collected to the state as otherwise provided by law. If the vendor
15 chooses to make a sale to a nonresident without collecting the sales
16 tax, the vendor shall, in good faith, examine the proof of
17 nonresidence, determine whether the proof is acceptable under
18 subsection (3)(b) of this section, and maintain records for each
19 nontaxable sale which shall show the type of proof accepted, including
20 any identification numbers where appropriate, and the expiration date,
21 if any.

22 (5)(a) Any person making fraudulent statements, which includes the
23 offer of fraudulent identification or fraudulently procured
24 identification to a vendor, in order to purchase goods without paying
25 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

26 (b) Any person making tax exempt purchases under this section by
27 displaying proof of identification not his or her own, or counterfeit
28 identification, with intent to violate the provisions of this section,
29 is guilty of a misdemeanor and, in addition, (~~shall be~~) is liable for
30 the tax and subject to a penalty equal to the greater of one hundred
31 dollars or the tax due on such purchases.

32 (6)(a) Any vendor who makes sales without collecting the tax to a
33 person who does not hold valid identification establishing out-of-state
34 residency, and any vendor who fails to maintain records of sales to
35 nonresidents as provided in this section, (~~shall be~~) is personally
36 liable for the amount of tax due.

37 (b) Any vendor who makes sales without collecting the retail sales
38 tax under this section and who has actual knowledge that the

1 purchaser's proof of identification establishing out-of-state residency
2 is fraudulent is guilty of a misdemeanor and, in addition, (~~shall be~~)
3 is liable for the tax and subject to a penalty equal to the greater of
4 one thousand dollars or the tax due on such sales. In addition, both
5 the purchaser and the vendor (~~shall be~~) are liable for any penalties
6 and interest assessable under chapter 82.32 RCW.

7 **Sec. 511.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to
8 read as follows:

9 (1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~)
10 personal property used at an aluminum smelter, tangible personal
11 property that will be incorporated as an ingredient or component of
12 buildings or other structures at an aluminum smelter, or for labor and
13 services rendered with respect to such buildings, structures, or
14 (~~tangible~~) personal property, is eligible for an exemption from the
15 state share of the tax in the form of a credit, as provided in this
16 section. A person claiming an exemption must pay the tax and may then
17 take a credit equal to the state share of retail sales tax paid under
18 RCW 82.08.020. The person shall submit information, in a form and
19 manner prescribed by the department, specifying the amount of
20 qualifying purchases or acquisitions for which the exemption is claimed
21 and the amount of exempted tax.

22 (2) For the purposes of this section, "aluminum smelter" has the
23 same meaning as provided in RCW 82.04.217.

24 (3) Credits may not be claimed under this section for taxable
25 events occurring on or after January 1, 2012.

26 **Sec. 512.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to
27 read as follows:

28 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
29 (~~tangible~~) personal property and services provided by a public
30 corporation, commission, or authority created under RCW 35.21.660 or
31 35.21.730 to an eligible entity.

32 (2) For purposes of this section, "eligible entity" means a limited
33 liability company, a limited partnership, or a single asset entity,
34 described in RCW 82.04.615.

PART VI
USE TAX EXEMPTIONS

NEW SECTION. **Sec. 601.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of a digital code for one or more digital goods, if the use of the digital goods to which the digital code relates is exempt from the tax levied by RCW 82.12.020.

NEW SECTION. **Sec. 602.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use of digital products for purposes of consuming the digital products in producing for sale a new product, where the digital products become an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good acquired through the use of the digital code becomes an ingredient or component of a new product.

NEW SECTION. **Sec. 603.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of digital goods that are:

(a) Of a noncommercial nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

(2) This section does not apply to the use of any digital goods purchased by the user, the user's donor, or anybody on the user's behalf.

Sec. 604. RCW 82.12.0251 and 2005 c 514 s 106 are each amended to read as follows:

The provisions of this chapter (~~shall~~) do not apply in respect to the use:

1 (1) Of any article of tangible personal property, (~~and~~) or
2 digital product, and any services that were rendered in respect to such
3 property, brought into the state of Washington by a nonresident thereof
4 for his or her use or enjoyment while temporarily within the state of
5 Washington unless such property is used in conducting a nontransitory
6 business activity within the state of Washington;

7 (2) By a nonresident of Washington of a motor vehicle or trailer
8 which is registered or licensed under the laws of the state of his or
9 her residence, and which is not required to be registered or licensed
10 under the laws of Washington, including motor vehicles or trailers
11 exempt pursuant to a declaration issued by the department of licensing
12 under RCW 46.85.060, and services rendered outside the state of
13 Washington in respect to such property;

14 (3) Of household goods, including digital products, personal
15 effects, (~~and~~) private motor vehicles, and services rendered in
16 respect to such property, by a bona fide resident of Washington, or
17 nonresident members of the armed forces who are stationed in Washington
18 pursuant to military orders, if such articles and services were
19 acquired and used by such person in another state while a bona fide
20 resident thereof and such acquisition and use occurred more than ninety
21 days prior to the time he or she entered Washington. For purposes of
22 this subsection, private motor vehicles do not include motor homes;

23 (4) Of an extended warranty, to the extent that the property
24 covered by the extended warranty is exempt under this section from the
25 tax imposed under this chapter.

26 For purposes of this section, "state" means a state of the United
27 States, any political subdivision thereof, the District of Columbia,
28 and any foreign country or political subdivision thereof, and
29 "services" means services defined as retail sales in RCW 82.04.050(2)
30 (a) or (g).

31 **Sec. 605.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to
32 read as follows:

33 The provisions of this chapter (~~shall~~) do not apply with respect
34 to the use of public records sold by state and local agencies, as the
35 terms are defined in RCW 42.17.020, including public records
36 transferred electronically that are obtained under a request for the
37 record for which no fee is charged other than a statutorily set fee or

1 a fee to reimburse the agency for its actual costs directly incident to
2 the copying. A request for a record includes a request for a document
3 not available to the public but available to those persons who by law
4 are allowed access to the document, such as requests for fire reports,
5 law enforcement reports, taxpayer information, and academic
6 transcripts.

7 **Sec. 606.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to
8 read as follows:

9 The provisions of this chapter (~~(shall)~~) do not apply in respect to
10 the use of any article of tangible personal property, extended
11 warranty, digital product, or service which the state is prohibited
12 from taxing under the Constitution of the state or under the
13 Constitution or laws of the United States.

14 **Sec. 607.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to
15 read as follows:

16 The provisions of this chapter (~~(shall)~~) do not apply in respect to
17 the use of any article of (~~(tangible)~~) personal property included
18 within the transfer of the title to the entire operating property of a
19 publicly or privately owned public utility, or of a complete operating
20 integral section thereof, by the state or a political subdivision
21 thereof in conducting any business defined in RCW 82.16.010 (1), (2),
22 (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of
23 this section, "operating property" includes digital products.

24 **Sec. 608.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to
25 read as follows:

26 The provisions of this chapter (~~(shall)~~) do not apply in respect to
27 the use of (~~(tangible)~~) personal property (including household goods)
28 (~~(which have)~~) that has been used in conducting a farm activity, if
29 such property was purchased from a farmer at an auction sale held or
30 conducted by an auctioneer upon a farm and not otherwise.

31 **Sec. 609.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read
32 as follows:

33 The provisions of this chapter (~~(shall)~~) do not apply in respect to
34 the use of (~~(tangible)~~) personal property or the use of services

1 defined in RCW 82.04.050(2) (a) or (g) by corporations (~~(which)~~) that
2 have been incorporated under any act of the congress of the United
3 States and whose principal purposes are to furnish volunteer aid to
4 members of the armed forces of the United States and also to carry on
5 a system of national and international relief and to apply the same in
6 mitigating the sufferings caused by pestilence, famine, fire, flood,
7 and other national calamities and to devise and carry on measures for
8 preventing the same.

9 **Sec. 610.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to
10 read as follows:

11 (1) This chapter does not apply to the use by a nonprofit
12 charitable organization or state or local governmental entity of (~~any~~
13 ~~item of tangible~~) personal property that has been donated to the
14 nonprofit charitable organization or state or local governmental
15 entity, or to the subsequent use of the property by a person to whom
16 the property is donated or bailed in furtherance of the purpose for
17 which the property was originally donated.

18 (2) This chapter does not apply to the donation of (~~tangible~~)
19 personal property without intervening use to a nonprofit charitable
20 organization, or to the incorporation of tangible personal property
21 without intervening use into real or personal property of or for a
22 nonprofit charitable organization in the course of installing,
23 repairing, cleaning, altering, imprinting, improving, constructing, or
24 decorating the real or personal property for no charge.

25 (3) This chapter does not apply to the use by a nonprofit
26 charitable organization of labor and services rendered in respect to
27 installing, repairing, cleaning, altering, imprinting, or improving
28 personal property provided to the charitable organization at no charge,
29 or to the donation of such services.

30 (4) This chapter does not apply to the donation of amusement and
31 recreation services without intervening use to a nonprofit organization
32 or state or local governmental entity, to the use by a nonprofit
33 organization or state or local governmental entity of amusement and
34 recreation services, or to the subsequent use of the services by a
35 person to whom the services are donated or bailed in furtherance of the
36 purpose for which the services were originally donated. As used in

1 this subsection, "amusement and recreation services" has the meaning in
2 RCW 82.04.050(3)(a).

3 **Sec. 611.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to
4 read as follows:

5 The provisions of this chapter (~~(shall)~~) do not apply in respect to
6 the use of (~~tangible~~) personal property held for sale and displayed
7 in single trade shows for a period not in excess of thirty days, the
8 primary purpose of which is to promote the sale of products or
9 services.

10 **Sec. 612.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to
11 read as follows:

12 The provisions of this chapter (~~(shall)~~) do not apply in respect to
13 the use of computers, computer components, computer accessories, (~~or~~)
14 computer software, or digital products, irrevocably donated to any
15 public or private nonprofit school or college, as defined under chapter
16 84.36 RCW, in this state. For purposes of this section, "computer" and
17 "computer software" have the same meaning as in RCW 82.04.215.

18 **Sec. 613.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to
19 read as follows:

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

22 (a) Production equipment rented to a motion picture or video
23 production business;

24 (b) Production equipment acquired and used by a motion picture or
25 video production business in another state, if the acquisition and use
26 occurred more than ninety days before the time the motion picture or
27 video production business entered this state; and

28 (c) Production services that are within the scope of RCW
29 82.04.050(2) (a) or (g) and are sold to a motion picture or video
30 production business.

31 (2) As used in this section, "production equipment," "production
32 services," and "motion picture or video production business" have the
33 meanings given in RCW 82.08.0315.

34 (3) The exemption provided for in this section shall not apply to
35 the use of production equipment rented to, or production equipment or

1 production services that are within the scope of RCW 82.04.050(2) (a)
2 or (g) acquired and used by, a motion picture or video production
3 business that is engaged, to any degree, in the production of erotic
4 material, as defined in RCW 9.68.050.

5 **Sec. 614.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to
6 read as follows:

7 The tax imposed by RCW 82.12.020 (~~shall~~) does not apply in
8 respect to the use of:

9 (1) Printed newspapers as defined in RCW 82.08.0253; and

10 (2) Newspapers transferred electronically, provided that the
11 electronic version of a printed newspaper:

12 (a) Shares content with the printed newspaper; and

13 (b) Is prominently identified by the same name as the printed
14 newspaper or otherwise conspicuously indicates that it is a complement
15 to the printed newspaper.

16 **Sec. 615.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to
17 read as follows:

18 The provisions of this chapter (~~shall~~) do not apply in respect to
19 the use of academic transcripts, including academic transcripts
20 transferred electronically.

21 **Sec. 616.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to
22 read as follows:

23 (1) A person who is subject to tax under RCW 82.12.020 for
24 (~~tangible~~) personal property used at an aluminum smelter, or for
25 tangible personal property that will be incorporated as an ingredient
26 or component of buildings or other structures at an aluminum smelter,
27 or for labor and services rendered with respect to such buildings,
28 structures, or (~~tangible~~) personal property, is eligible for an
29 exemption from the state share of the tax in the form of a credit, as
30 provided in this section. The amount of the credit shall be equal to
31 the state share of use tax computed to be due under RCW 82.12.020. The
32 person shall submit information, in a form and manner prescribed by the
33 department, specifying the amount of qualifying purchases or
34 acquisitions for which the exemption is claimed and the amount of
35 exempted tax.

1 (2) For the purposes of this section, "aluminum smelter" has the
2 same meaning as provided in RCW 82.04.217.

3 (3) Credits may not be claimed under this section for taxable
4 events occurring on or after January 1, 2012.

5 **Sec. 617.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read
6 as follows:

7 (1) This chapter does not apply to state credit unions with respect
8 to the use of any article of tangible personal property, digital
9 product, service defined as a retail sale in RCW 82.04.050 (2)(a) or
10 (g) or (3)(a), or extended warranty, acquired from a federal credit
11 union, foreign credit union, or out-of-state credit union as a result
12 of a merger or conversion.

13 (2) For purposes of this section, the following definitions apply:

14 (a) "Federal credit union" means a credit union organized and
15 operating under the laws of the United States.

16 (b) "Foreign credit union" means a credit union organized and
17 operating under the laws of another country or other foreign
18 jurisdiction.

19 (c) "Out-of-state credit union" means a credit union organized and
20 operating under the laws of another state or United States territory or
21 possession.

22 (d) "State credit union" means a credit union organized and
23 operating under the laws of this state.

24 **Sec. 618.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to
25 read as follows:

26 (1) The provisions of this chapter do not apply with respect to the
27 use of (~~tangible~~) personal property and services provided by a public
28 corporation, commission, or authority created under RCW 35.21.660 or
29 35.21.730 to an eligible entity.

30 (2) For purposes of this section, "eligible entity" means a limited
31 liability company, a limited partnership, or a single asset entity,
32 described in RCW 82.04.615.

33 **PART VII**

34 **SOURCING AND SALES/USE TAX APPORTIONMENT**

1 **Sec. 701.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to
2 read as follows:

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

8 (a) When tangible personal property, an extended warranty, a
9 digital product, or a service defined as a retail sale under RCW
10 82.04.050 is received by the purchaser at a business location of the
11 seller, the sale is sourced to that business location.

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

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

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

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

1 (2) The lease or rental of tangible personal property, other than
2 property identified in subsection (3) or (4) of this section, shall be
3 sourced as provided in this subsection.

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

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

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

22 (3) The lease or rental of motor vehicles, trailers, semitrailers,
23 or aircraft that do not qualify as transportation equipment shall be
24 sourced as provided in this subsection.

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

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

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

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

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

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

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

21 (b) If the purchaser of direct mail does not have a direct pay
22 permit and does not provide the seller with either a direct mail form
23 or delivery information as required by (a) of this subsection, the
24 seller shall collect the tax according to subsection (1)(e) of this
25 section. This subsection does not limit a purchaser's obligation for
26 sales or use tax to any state to which the direct mail is delivered.

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

30 (6) The following are sourced to the location at or from which
31 delivery is made to the consumer:

32 (a) A retail sale of watercraft;

33 (b) A retail sale of a modular home, manufactured home, or mobile
34 home;

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

1 (d) Florist sales. In the case of a sale in which one florist
2 takes an order from a customer and then communicates that order to
3 another florist who delivers the items purchased to the place
4 designated by the customer, the location at or from which the delivery
5 is made to the consumer is deemed to be the location of the florist
6 originally taking the order.

7 (7) A retail sale of the providing of telecommunications services
8 or ancillary services, as those terms are defined in RCW 82.04.065,
9 shall be sourced in accordance with RCW 82.32.520.

10 (8) The definitions in this subsection apply throughout this
11 section.

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

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

23 (c) "Florist sales" means the retail sale of tangible personal
24 property by a florist. For purposes of this subsection (8)(c),
25 "florist" means a person whose primary business activity is the retail
26 sale of fresh cut flowers, potted ornamental plants, floral
27 arrangements, floral bouquets, wreaths, or any similar products, used
28 for decorative and not landscaping purposes.

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

34 (e) "Transportation equipment" means:

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

37 (ii) Trucks and truck tractors with a gross vehicle weight rating

1 of ten thousand one pounds or greater, trailers, semitrailers, or
2 passenger buses that are:

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

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

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

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

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

20 **PART VIII**
21 **MISCELLANEOUS AMENDMENTS**

22 **Sec. 801.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to
23 read as follows:

24 ~~((Until July 1, 2006, a city or town may not impose any new taxes~~
25 ~~or fees specific to internet service providers.))~~ A city or town may
26 tax internet ((~~service~~)) access providers under generally applicable
27 business taxes or fees, at a rate not to exceed the rate applied to a
28 general service classification. For the purposes of this section,
29 "internet ((~~service~~)) access" has the same meaning as in RCW 82.04.297.

30 **Sec. 802.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to
31 read as follows:

32 (1) As to insurers, other than title insurers and taxpayers under
33 RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all
34 other taxes, except as otherwise provided in this section.

35 (2) Subsection (1) of this section does not apply with respect to:

1 (a) Taxes on real and tangible personal property;

2 (b) Excise taxes on the sale, purchase, use, or possession of (i)
3 real property; (ii) tangible personal property; (iii) extended
4 warranties; ~~((and))~~ (iv) services; and (v) digital products as defined
5 in section 201 of this act; and

6 (c) The tax imposed in RCW 82.04.260(10), regarding public and
7 nonprofit hospitals.

8 (3) For the purposes of this section, the term "taxes" includes
9 taxes imposed by the state or any county, city, town, municipal
10 corporation, quasi-municipal corporation, or other political
11 subdivision.

12 **Sec. 803.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to
13 read as follows:

14 Except only as expressly provided in chapters 67.28, 81.104, and
15 82.14 RCW, the state preempts the field of imposing retail sales and
16 use taxes and taxes upon (~~(retail sales of tangible personal property,~~
17 ~~the use of tangible personal property,)) parimutuel wagering authorized
18 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
19 town, or other municipal subdivision shall have the right to impose
20 taxes of that nature. Except as provided in RCW 64.34.440 and
21 82.02.050 through 82.02.090, no county, city, town, or other municipal
22 corporation shall impose any tax, fee, or charge, either direct or
23 indirect, on the construction or reconstruction of residential
24 buildings, commercial buildings, industrial buildings, or on any other
25 building or building space or appurtenance thereto, or on the
26 development, subdivision, classification, or reclassification of land.
27 However, this section does not preclude dedications of land or
28 easements within the proposed development or plat which the county,
29 city, town, or other municipal corporation can demonstrate are
30 reasonably necessary as a direct result of the proposed development or
31 plat to which the dedication of land or easement is to apply.~~

32 This section does not prohibit voluntary agreements with counties,
33 cities, towns, or other municipal corporations that allow a payment in
34 lieu of a dedication of land or to mitigate a direct impact that has
35 been identified as a consequence of a proposed development,
36 subdivision, or plat. A local government shall not use such voluntary
37 agreements for local off-site transportation improvements within the

1 geographic boundaries of the area or areas covered by an adopted
2 transportation program authorized by chapter 39.92 RCW. Any such
3 voluntary agreement is subject to the following provisions:

4 (1) The payment shall be held in a reserve account and may only be
5 expended to fund a capital improvement agreed upon by the parties to
6 mitigate the identified, direct impact;

7 (2) The payment shall be expended in all cases within five years of
8 collection; and

9 (3) Any payment not so expended shall be refunded with interest to
10 be calculated from the original date the deposit was received by the
11 county and at the same rate applied to tax refunds pursuant to RCW
12 84.69.100; however, if the payment is not expended within five years
13 due to delay attributable to the developer, the payment shall be
14 refunded without interest.

15 No county, city, town, or other municipal corporation shall require
16 any payment as part of such a voluntary agreement which the county,
17 city, town, or other municipal corporation cannot establish is
18 reasonably necessary as a direct result of the proposed development or
19 plat.

20 Nothing in this section prohibits cities, towns, counties, or other
21 municipal corporations from collecting reasonable fees from an
22 applicant for a permit or other governmental approval to cover the cost
23 to the city, town, county, or other municipal corporation of processing
24 applications, inspecting and reviewing plans, or preparing detailed
25 statements required by chapter 43.21C RCW.

26 This section does not limit the existing authority of any county,
27 city, town, or other municipal corporation to impose special
28 assessments on property specifically benefitted thereby in the manner
29 prescribed by law.

30 Nothing in this section prohibits counties, cities, or towns from
31 imposing or permits counties, cities, or towns to impose water, sewer,
32 natural gas, drainage utility, and drainage system charges(~~(+
33 PROVIDED, That))~~). However, no such charge shall exceed the
34 proportionate share of such utility or system's capital costs which the
35 county, city, or town can demonstrate are attributable to the property
36 being charged(~~(+ PROVIDED FURTHER, That))~~). Furthermore, these
37 provisions (~~(shall)~~) may not be interpreted to expand or contract any

1 existing authority of counties, cities, or towns to impose such
2 charges.

3 Nothing in this section prohibits a transportation benefit district
4 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
5 the legislative authority of a county, city, or town from approving the
6 imposition of such fees within a transportation benefit district.

7 Nothing in this section prohibits counties, cities, or towns from
8 imposing transportation impact fees authorized pursuant to chapter
9 39.92 RCW.

10 Nothing in this section prohibits counties, cities, or towns from
11 requiring property owners to provide relocation assistance to tenants
12 under RCW 59.18.440 and 59.18.450.

13 Nothing in this section limits the authority of counties, cities,
14 or towns to implement programs consistent with RCW 36.70A.540, nor to
15 enforce agreements made pursuant to such programs.

16 This section does not apply to special purpose districts formed and
17 acting pursuant to Title(~~s~~) 54, 57, or 87 RCW, nor is the authority
18 conferred by these titles affected.

19 **Sec. 804.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to
20 read as follows:

21 (1) Subject to the limits in this section, an eligible person is
22 allowed a credit against the tax due under this chapter. The credit is
23 based on qualified employment positions in eligible areas. The credit
24 is available to persons who are engaged in international services as
25 defined in this section. In order to receive the credit, the
26 international service activities must take place at a business within
27 the eligible area.

28 (2)(a) The credit shall equal three thousand dollars for each
29 qualified employment position created after July 1, 1998, in an
30 eligible area. A credit is earned for the calendar year the person is
31 hired to fill the position, plus the four subsequent consecutive years,
32 if the position is maintained for those four years.

33 (b) Credit may not be taken for hiring of persons into positions
34 that exist on July 1, 1998. Credit is authorized for new employees
35 hired for new positions created after July 1, 1998. New positions
36 filled by existing employees are eligible for the credit under this

1 section only if the position vacated by the existing employee is filled
2 by a new hire.

3 (c) When a position is newly created, if it is filled before July
4 1st, this position is eligible for the full yearly credit. If it is
5 filled after June 30th, this position is eligible for half of the
6 credit.

7 (d) Credit may be accrued and carried over until it is used. No
8 refunds may be granted for credits under this section.

9 (3) For the purposes of this section:

10 (a) "Eligible area" means: (i) A community empowerment zone under
11 RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets
12 the unemployment and poverty criteria of RCW 43.31C.030 and is
13 designated under subsection (4) of this section;

14 (b) "Eligible person" means a person, as defined in RCW 82.04.030,
15 who in an eligible area at a specific location is engaged in the
16 business of providing international services;

17 (c)(i) "International services" means the provision of a service,
18 as defined under (c)(iii) of this subsection, that is subject to tax
19 under RCW 82.04.290 (2) or (3), and either:

20 (A) Is for a person domiciled outside the United States; or

21 (B) The service itself is for use primarily outside of the United
22 States.

23 (ii) "International services" excludes any service taxable under
24 RCW 82.04.290(1).

25 (iii) Eligible services are: Computer; data processing;
26 information; legal; accounting and tax preparation; engineering;
27 architectural; business consulting; business management; public
28 relations and advertising; surveying; geological consulting; real
29 estate appraisal; or financial services. For the purposes of this
30 section these services mean the following:

31 (A) "Computer services" are services such as computer programming,
32 custom software modification, customization of canned software, custom
33 software installation, custom software maintenance, custom software
34 repair, training in the use of software, computer systems design, and
35 custom software update services;

36 (B) "Data processing services" are services such as word
37 processing, data entry, data retrieval, data search, information
38 compilation, payroll processing, business accounts processing, data

1 production, and other computerized data and information storage or
2 manipulation. "Data processing services" also includes the use of a
3 computer or computer time for data processing whether the processing is
4 performed by the provider of the computer or by the purchaser or other
5 beneficiary of the service;

6 (C) "Information services" are services such as electronic data
7 retrieval or research that entails furnishing financial or legal
8 information, data or research, internet (~~service~~) access as defined
9 in RCW 82.04.297, general or specialized news, or current information;

10 (D) "Legal services" are services such as representation by an
11 attorney, or other person when permitted, in an administrative or legal
12 proceeding, legal drafting, paralegal services, legal research
13 services, and court reporting services, arbitration, and mediation
14 services;

15 (E) "Accounting and tax preparation services" are services such as
16 accounting, auditing, actuarial, bookkeeping, or tax preparation
17 services;

18 (F) "Engineering services" are services such as civil, electrical,
19 mechanical, petroleum, marine, nuclear, and design engineering, machine
20 designing, machine tool designing, and sewage disposal system designing
21 services;

22 (G) "Architectural services" are services such as structural or
23 landscape design or architecture, interior design, building design,
24 building program management, and space planning services;

25 (H) "Business consulting services" are services such as primarily
26 providing operating counsel, advice, or assistance to the management or
27 owner of any business, private, nonprofit, or public organization,
28 including but not limited to those in the following areas:
29 Administrative management consulting; general management consulting;
30 human resource consulting or training; management engineering
31 consulting; management information systems consulting; manufacturing
32 management consulting; marketing consulting; operations research
33 consulting; personnel management consulting; physical distribution
34 consulting; site location consulting; economic consulting; motel,
35 hotel, and resort consulting; restaurant consulting; government affairs
36 consulting; and lobbying;

37 (I) "Business management services" are services such as
38 administrative management, business management, and office management.

1 "Business management services" does not include property management or
2 property leasing, motel, hotel, and resort management, or automobile
3 parking management;

4 (J) "Public relations and advertising services" are services such
5 as layout, art direction, graphic design, copy writing, mechanical
6 preparation, opinion research, marketing research, marketing, or
7 production supervision;

8 (K) "Surveying services" are services such as land surveying;

9 (L) "Geological consulting services" are services rendered for the
10 oil, gas, and mining industry and other earth resource industries, and
11 other services such as soil testing;

12 (M) "Real estate appraisal services" are services such as market
13 appraisal and other real estate valuation; and

14 (N) "Financial services" are services such as banking, loan,
15 security, investment management, investment advisory, mortgage
16 servicing, contract collection, and finance leasing services, engaged
17 in by financial businesses, or businesses similar to or in competition
18 with financial businesses; and

19 (d) "Qualified employment position" means a permanent full-time
20 position to provide international services. If an employee is either
21 voluntarily or involuntarily separated from employment, the employment
22 position is considered filled on a full-time basis if the employer is
23 either training or actively recruiting a replacement employee.

24 (4) By ordinance, the legislative authority of a city, or
25 legislative authorities of contiguous cities by ordinance of each
26 city's legislative authority, with population greater than eighty
27 thousand, located in a county containing no community empowerment zones
28 as designated under RCW 43.31C.020, may designate a contiguous group of
29 census tracts within the city or cities as an eligible area under this
30 section. Each of the census tracts must meet the unemployment and
31 poverty criteria of RCW 43.31C.030. Upon making the designation, the
32 city or cities shall transmit to the department of revenue a
33 certification letter and a map, each explicitly describing the
34 boundaries of the census tract. This designation must be made by
35 December 31, 1998.

36 (5) No application is necessary for the tax credit. The person
37 must keep records necessary for the department to verify eligibility
38 under this section. This information includes:

1 (a) Employment records for the previous six years;

2 (b) Information relating to description of international service
3 activity engaged in at the eligible location by the person; and

4 (c) Information relating to customers of international service
5 activity engaged in at that location by the person.

6 (6) If at any time the department finds that a person is not
7 eligible for tax credit under this section, the amount of taxes for
8 which a credit has been used shall be immediately due. The department
9 shall assess interest, but not penalties, on the credited taxes for
10 which the person is not eligible. The interest shall be assessed at
11 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
12 shall be assessed retroactively to the date the tax credit was taken,
13 and shall accrue until the taxes for which a credit has been used are
14 repaid.

15 (7) The employment security department shall provide to the
16 department of revenue such information needed by the department of
17 revenue to verify eligibility under this section.

18 **Sec. 805.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each
19 amended to read as follows:

20 (1) Every consignee, bailee, factor, or auctioneer (~~((authorized,~~
21 ~~engaged, or employed to sell or call))~~) selling or calling for bids on
22 (~~((tangible))~~) personal property belonging to another, (~~((and so selling~~
23 ~~or calling, shall be))~~) is deemed the seller of such (~~((tangible))~~)
24 personal property within the meaning of this chapter (~~((and))~~). All
25 sales made by such persons are subject to (~~((its))~~) the provisions of
26 this chapter even though the sale would have been exempt from the tax
27 (~~((hereunder))~~) imposed in this chapter had it been made directly by the
28 owner of the property sold.

29 (2)(a) Except as provided in (b) of this subsection (2), every
30 consignee, bailee, factor, or auctioneer (~~((shall))~~) must collect and
31 remit the amount of tax due under this chapter with respect to sales
32 made or called by (~~((him:—PROVIDED,))~~) that seller.

33 (b) If the owner of the property sold is engaged in the business of
34 (~~((selling tangible personal property))~~) making sales at retail in this
35 state, the tax imposed under this chapter may be remitted by such owner
36 under such rules (~~((and regulations))~~) as the department (~~((of revenue~~
37 ~~shall prescribe))~~) may adopt.

1 **Sec. 806.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended
2 to read as follows:

3 (1) If a buyer normally is engaged in both consuming and reselling
4 certain types of (~~(articles of tangible)~~) personal property, the retail
5 sale of which is taxable under this chapter, and the buyer is not able
6 to determine at the time of purchase whether the particular property
7 acquired will be consumed or resold, the buyer may use a resale
8 certificate for the entire purchase if the buyer principally resells
9 the articles according to the general nature of the buyer's business.
10 The buyer shall account for the value of any articles purchased with a
11 resale certificate that are used by the buyer and remit the sales tax
12 on the articles to the department.

13 (2) A buyer who pays a tax on all purchases and subsequently
14 resells an article at retail, without intervening use by the buyer,
15 shall collect the tax from the purchaser as otherwise provided by law
16 and is entitled to a deduction on the buyer's tax return equal to the
17 cost to the buyer of the property resold upon which retail sales tax
18 has been paid. The deduction is allowed only if the taxpayer keeps and
19 preserves records that show the names of the persons from whom the
20 articles were purchased, the date of the purchase, the type of
21 articles, the amount of the purchase, and the tax that was paid. The
22 department shall provide by rule for the refund or credit of retail
23 sales tax paid by a buyer for purchases that are later sold at
24 wholesale without intervening use by the buyer.

25 **Sec. 807.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to
26 read as follows:

27 A credit (~~(shall be)~~) is allowed against the taxes imposed by this
28 chapter upon the use in this state of tangible personal property,
29 extended warranty, digital product, or services (~~(taxable under)~~)
30 defined as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), in
31 the (~~(state of Washington in the)~~) amount that the present user thereof
32 or his or her bailor or donor has paid a legally imposed retail sales
33 or use tax with respect to such property, extended warranty, digital
34 product, or service defined as a retail sale in RCW 82.04.050 (2)(a) or
35 (g) or (3)(a) to any other state, possession, territory, or
36 commonwealth of the United States, any political subdivision thereof,

1 the District of Columbia, and any foreign country or political
2 subdivision thereof(~~(, prior to the use of such property, extended~~
3 ~~warranty, or service in Washington)~~).

4 **Sec. 808.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to
5 read as follows:

6 (1) Every person who maintains in this state a place of business or
7 a stock of goods, or engages in business activities within this state,
8 shall obtain from the department a certificate of registration, and
9 shall, at the time of making sales of tangible personal property,
10 digital products, extended warranties, or sales of any service defined
11 as a retail sale in RCW 82.04.050 (2)(a) or (g) or (3)(a), or making
12 transfers of either possession or title, or both, of tangible personal
13 property for use in this state, collect from the purchasers or
14 transferees the tax imposed under this chapter. The tax to be
15 collected under this section (~~(shall)~~) must be in an amount equal to
16 the purchase price multiplied by the rate in effect for the retail
17 sales tax under RCW 82.08.020. For the purposes of this chapter, the
18 phrase "maintains in this state a place of business" shall include the
19 solicitation of sales and/or taking of orders by sales agents or
20 traveling representatives. For the purposes of this chapter, "engages
21 in business activity within this state" includes every activity which
22 is sufficient under the Constitution of the United States for this
23 state to require collection of tax under this chapter. The department
24 (~~(shall)~~) must in rules specify activities which constitute engaging in
25 business activity within this state, and (~~(shall)~~) must keep the rules
26 current with future court interpretations of the Constitution of the
27 United States.

28 (2) Every person who engages in this state in the business of
29 acting as an independent selling agent for persons who do not hold a
30 valid certificate of registration, and who receives compensation by
31 reason of sales of tangible personal property, digital products,
32 extended warranties, or sales of any service defined as a retail sale
33 in RCW 82.04.050 (2)(a) or (g) or (3)(a), of his or her principals for
34 use in this state, (~~(shall)~~) must, at the time such sales are made,
35 collect from the purchasers the tax imposed on the purchase price under
36 this chapter, and for that purpose shall be deemed a retailer as
37 defined in this chapter.

1 (3) The tax required to be collected by this chapter (~~shall be~~)
2 is deemed to be held in trust by the retailer until paid to the
3 department, and any retailer who appropriates or converts the tax
4 collected to the retailer's own use or to any use other than the
5 payment of the tax provided herein to the extent that the money
6 required to be collected is not available for payment on the due date
7 as prescribed (~~shall be~~) is guilty of a misdemeanor. In case any
8 seller fails to collect the tax herein imposed or having collected the
9 tax, fails to pay the same to the department in the manner prescribed,
10 whether such failure is the result of the seller's own acts or the
11 result of acts or conditions beyond the seller's control, the seller
12 (~~shall~~) is nevertheless(~~, be~~) personally liable to the state for
13 the amount of such tax, unless the seller has taken from the buyer in
14 good faith a copy of a direct pay permit issued under RCW 82.32.087.

15 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
16 transferee, either directly or indirectly, and by whatever means, all
17 or any part of the tax levied by this chapter (~~shall be~~) is guilty of
18 a misdemeanor.

19 (5) Notwithstanding subsections (1) through (4) of this section,
20 any person making sales is not obligated to collect the tax imposed by
21 this chapter if:

22 (a) The person's activities in this state, whether conducted
23 directly or through another person, are limited to:

24 (i) The storage, dissemination, or display of advertising;

25 (ii) The taking of orders; or

26 (iii) The processing of payments; and

27 (b) The activities are conducted electronically via a web site on
28 a server or other computer equipment located in Washington that is not
29 owned or operated by the person making sales into this state nor owned
30 or operated by an affiliated person. "Affiliated persons" has the same
31 meaning as provided in RCW 82.04.424.

32 (6) Subsection (5) of this section expires when: (a) The United
33 States congress grants individual states the authority to impose sales
34 and use tax collection duties on remote sellers; or (b) it is
35 determined by a court of competent jurisdiction, in a judgment not
36 subject to review, that a state can impose sales and use tax collection
37 duties on remote sellers.

1 **Sec. 809.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to
2 read as follows:

3 (1) A city, town, or county that creates a benefit zone and
4 finances public improvements pursuant to chapter 39.100 RCW may impose
5 a sales and use tax in accordance with the terms of this chapter and
6 subject to the criteria set forth in this section. Except as provided
7 in this section, the tax is in addition to other taxes authorized by
8 law and shall be collected from those persons who are taxable by the
9 state under chapters 82.08 and 82.12 RCW upon the occurrence of any
10 taxable event within the taxing jurisdiction of the city, town, or
11 county. The rate of tax shall not exceed the rate provided in RCW
12 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~
13 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of
14 any other taxes imposed on the same events that are credited against
15 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax
16 rate shall be no higher than what is reasonably necessary for the local
17 government to receive its entire annual state contribution in a ten-
18 month period of time.

19 (2) The tax imposed under subsection (1) of this section shall be
20 deducted from the amount of tax otherwise required to be collected or
21 paid over to the department under chapter 82.08 or 82.12 RCW. The
22 department shall perform the collection of such taxes on behalf of the
23 city, town, or county at no cost to the city, town, or county.

24 (3) No tax may be imposed under this section before July 1, 2007.
25 Before imposing a tax under this section, the city, town, or county
26 shall first have received tax allocation revenues during the preceding
27 calendar year. The tax imposed under this section shall expire on the
28 earlier of the date: (a) The tax allocation revenues are no longer
29 used for public improvements and public improvement costs; (b) the
30 bonds issued under the authority of chapter 39.100 RCW are retired, if
31 the bonds are issued; or (c) that is thirty years after the tax is
32 first imposed.

33 (4) An ordinance adopted by the legislative authority of a city,
34 town, or county imposing a tax under this section shall provide that:

35 (a) The tax shall first be imposed on the first day of a fiscal
36 year;

37 (b) The amount of tax received by the local government in any
38 fiscal year shall not exceed the amount of the state contribution;

1 (c) The tax shall cease to be distributed for the remainder of any
2 fiscal year in which either:

3 (i) The amount of tax distributions totals the amount of the state
4 contribution;

5 (ii) The amount of tax distributions totals the amount of local
6 public sources, dedicated in the previous calendar year to finance
7 public improvements authorized under chapter 39.100 RCW, expended in
8 the previous year for public improvement costs or used to pay for other
9 bonds issued to pay for public improvements; or

10 (iii) The amount of revenue from taxes imposed under this section
11 by all cities, towns, and counties totals the annual state credit limit
12 as provided in RCW 82.32.700(3);

13 (d) The tax shall be distributed again, should it cease to be
14 distributed for any of the reasons provided in (c) of this subsection,
15 at the beginning of the next fiscal year, subject to the restrictions
16 in this section; and

17 (e) Any revenue generated by the tax in excess of the amounts
18 specified in (b) and (c) of this subsection shall belong to the state
19 of Washington.

20 (5) If both a county and a city or town impose a tax under this
21 section, the tax imposed by the city, town, or county shall be credited
22 as follows:

23 (a) If the county has created a benefit zone before the city or
24 town, the tax imposed by the county shall be credited against the tax
25 imposed by the city or town, the purpose of such credit is to give
26 priority to the county tax; and

27 (b) If the city or town has created a benefit zone before the
28 county, the tax imposed by the city or town shall be credited against
29 the tax imposed by the county, the purpose of such credit is to give
30 priority to the city or town tax.

31 (6) The department shall determine the amount of tax distributions
32 attributable to each city, town, and county imposing a sales and use
33 tax under this section and shall advise a city, town, or county when
34 the tax will cease to be distributed for the remainder of the fiscal
35 year as provided in subsection (4)(c) of this section. Determinations
36 by the department of the amount of taxes attributable to a city, town,
37 or county are final and shall not be used to challenge the validity of
38 any tax imposed under this section. The department shall remit any tax

1 revenues in excess of the amounts specified in subsection (4)(b) and
2 (c) of this section to the state treasurer who shall deposit the moneys
3 in the general fund.

4 (7) The definitions in this subsection apply throughout this
5 section and RCW 82.14.470 unless the context clearly requires
6 otherwise.

7 (a) "Base year" means the calendar year immediately following the
8 creation of a benefit zone.

9 (b) "Benefit zone" has the same meaning as provided in RCW
10 39.100.010.

11 (c) "Excess local excise taxes" has the same meaning as provided in
12 RCW 39.100.050.

13 (d) "Excess state excise taxes" means the amount of excise taxes
14 received by the state during the measurement year from taxable activity
15 within the benefit zone over and above the amount of excise taxes
16 received by the state during the base year from taxable activity within
17 the benefit zone. However, if a local government creates the benefit
18 zone and reasonably determines that no activity subject to tax under
19 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
20 preceding the creation of the benefit zone within the boundaries of the
21 area that became the benefit zone, "excess state excise taxes" means
22 the entire amount of state excise taxes the state receives during a
23 calendar year period beginning with the calendar year immediately
24 following the creation of the benefit zone and continuing with each
25 measurement year thereafter.

26 (e) "State excise taxes" means revenues derived from state retail
27 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
28 of tax distributions from all local retail sales and use taxes imposed
29 on the same taxable events that are credited against the state retail
30 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
31 local tax authorized in this section.

32 (f) "Fiscal year" has the same meaning as provided in RCW
33 39.100.030.

34 (g) "Measurement year" means a calendar year, beginning with the
35 calendar year following the base year and each calendar year
36 thereafter, that is used annually to measure the amount of excess state
37 excise taxes and excess local excise taxes.

1 (h) "State contribution" means the lesser of two million dollars or
2 an amount equal to excess state excise taxes received by the state
3 during the preceding calendar year.

4 (i) "Tax allocation revenues" has the same meaning as provided in
5 RCW 39.100.010.

6 (j) "Public improvements" and "public improvement costs" have the
7 same meanings as provided in RCW 39.100.010.

8 (k) "Local public sources" includes, but is not limited to, private
9 monetary contributions, assessments, dedicated local government funds,
10 and tax allocation revenues. "Local public sources" does not include
11 local government funds derived from any state loan or state grant, any
12 local tax that is credited against the state sales and use taxes, or
13 any other state funds.

14 **Sec. 810.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to
15 read as follows:

16 For the purposes of this chapter, unless otherwise required by the
17 context:

18 (1) "Railroad business" means the business of operating any
19 railroad, by whatever power operated, for public use in the conveyance
20 of persons or property for hire. It shall not, however, include any
21 business herein defined as an urban transportation business.

22 (2) "Express business" means the business of carrying property for
23 public hire on the line of any common carrier operated in this state,
24 when such common carrier is not owned or leased by the person engaging
25 in such business.

26 (3) "Railroad car business" means the business of operating stock
27 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
28 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
29 other kinds of cars used for transportation of property or persons upon
30 the line of any railroad operated in this state when such railroad is
31 not owned or leased by the person engaging in such business.

32 (4) "Water distribution business" means the business of operating
33 a plant or system for the distribution of water for hire or sale.

34 (5) "Light and power business" means the business of operating a
35 plant or system for the generation, production or distribution of
36 electrical energy for hire or sale and/or for the wheeling of
37 electricity for others.

1 (6) "Telegraph business" means the business of affording
2 telegraphic communication for hire.

3 (7) "Gas distribution business" means the business of operating a
4 plant or system for the production or distribution for hire or sale of
5 gas, whether manufactured or natural.

6 (8) "Motor transportation business" means the business (except
7 urban transportation business) of operating any motor propelled vehicle
8 by which persons or property of others are conveyed for hire, and
9 includes, but is not limited to, the operation of any motor propelled
10 vehicle as an auto transportation company (except urban transportation
11 business), common carrier, or contract carrier as defined by RCW
12 81.68.010 and 81.80.010(~~(+---PROVIDED, That)~~). However, "motor
13 transportation business" (~~shall~~) does not mean or include the
14 transportation of logs or other forest products exclusively upon
15 private roads or private highways.

16 (9) "Urban transportation business" means the business of operating
17 any vehicle for public use in the conveyance of persons or property for
18 hire, insofar as (a) operating entirely within the corporate limits of
19 any city or town, or within five miles of the corporate limits thereof,
20 or (b) operating entirely within and between cities and towns whose
21 corporate limits are not more than five miles apart or within five
22 miles of the corporate limits of either thereof. Included herein, but
23 without limiting the scope hereof, is the business of operating
24 passenger vehicles of every type and also the business of operating
25 cartage, pickup, or delivery services, including in such services the
26 collection and distribution of property arriving from or destined to a
27 point within or without the state, whether or not such collection or
28 distribution be made by the person performing a local or interstate
29 line-haul of such property.

30 (10)(a) "Public service business" means any of the businesses
31 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)
32 of this section or any business subject to control by the state, or
33 having the powers of eminent domain and the duties incident thereto, or
34 any business hereafter declared by the legislature to be of a public
35 service nature, except telephone business and low-level radioactive
36 waste site operating companies as redefined in RCW 81.04.010. It
37 includes, among others, without limiting the scope hereof: Airplane

1 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
2 road, water transportation and wharf businesses.

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

5 (i) "Competitive telephone service" has the same meaning as in RCW
6 82.04.065.

7 (ii) "Network telephone service" means the providing by any person
8 of access to a telephone network, telephone network switching service,
9 toll service, or coin telephone services, or the providing of
10 telephonic, video, data, or similar communication or transmission for
11 hire, via a telephone network, toll line or channel, cable, microwave,
12 or similar communication or transmission system. "Network telephone
13 service" includes the provision of transmission to and from the site of
14 an internet provider via a telephone network, toll line or channel,
15 cable, microwave, or similar communication or transmission system.
16 "Network telephone service" does not include the providing of
17 competitive telephone service, the providing of cable television
18 service, the providing of broadcast services by radio or television
19 stations, nor the provision of internet (~~service~~) access as defined
20 in RCW 82.04.297, including the reception of dial-in connection,
21 provided at the site of the internet service provider.

22 (iii) "Telephone business" means the business of providing network
23 telephone service. It includes cooperative or farmer line telephone
24 companies or associations operating an exchange.

25 (iv) "Telephone service" means competitive telephone service or
26 network telephone service, or both, as defined in (b)(i) and (ii) of
27 this subsection.

28 (11) "Tugboat business" means the business of operating tugboats,
29 towboats, wharf boats or similar vessels in the towing or pushing of
30 vessels, barges or rafts for hire.

31 (12) "Gross income" means the value proceeding or accruing from the
32 performance of the particular public service or transportation business
33 involved, including operations incidental thereto, but without any
34 deduction on account of the cost of the commodity furnished or sold,
35 the cost of materials used, labor costs, interest, discount, delivery
36 costs, taxes, or any other expense whatsoever paid or accrued and
37 without any deduction on account of losses.

1 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
2 year," "person," "value proceeding or accruing," "business," "engaging
3 in business," "in this state," "within this state," "cash discount" and
4 "successor" shall apply equally in the provisions of this chapter.

5 **Sec. 811.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to
6 read as follows:

7 For the purposes of this chapter:

8 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
9 the words and phrases "tax year," "taxable year," "person," "company,"
10 "gross proceeds of sales," "gross income of the business," "business,"
11 "engaging in business," "successor," "gross operating revenue," "gross
12 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
13 "extended warranty," and "value of products" shall apply equally to the
14 provisions of this chapter.

15 (2) Whenever "property" or "personal property" is used, those terms
16 must be construed to include digital products unless: (a) It is clear
17 from the context that the term "personal property" is intended only to
18 refer to tangible personal property; (b) it is clear from the context
19 that the term "property" is intended only to refer to tangible personal
20 property, real property, or both; or (c) to construe the term
21 "property" or "personal property" as including digital products would
22 yield unlikely, absurd, or strained consequences.

23 (3) The definitions in this subsection apply throughout this
24 chapter, unless the context clearly requires otherwise.

25 (a) "Agreement" means the streamlined sales and use tax agreement.

26 (b) "Associate member" means a petitioning state that is found to
27 be in compliance with the agreement and changes to its laws, rules, or
28 other authorities necessary to bring it into compliance are not in
29 effect, but are scheduled to take effect on or before January 1, 2008.
30 The petitioning states, by majority vote, may also grant associate
31 member status to a petitioning state that does not receive an
32 affirmative vote of three-fourths of the petitioning states upon a
33 finding that the state has achieved substantial compliance with the
34 terms of the agreement as a whole, but not necessarily each required
35 provision, measured qualitatively, and there is a reasonable
36 expectation that the state will achieve compliance by January 1, 2008.

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

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

8 (e)(i) "Member state" means a state that:

9 (A) Has petitioned for membership in the agreement and submitted a
10 certificate of compliance; and

11 (B) Before the effective date of the agreement, has been found to
12 be in compliance with the requirements of the agreement by an
13 affirmative vote of three-fourths of the other petitioning states; or

14 (C) After the effective date of the agreement, has been found to be
15 in compliance with the agreement by a three-fourths vote of the entire
16 governing board of the agreement.

17 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
18 is effective on the first day of a calendar quarter at least sixty days
19 after at least ten states comprising at least twenty percent of the
20 total population, as determined by the 2000 federal census, of all
21 states imposing a state sales tax have petitioned for membership and
22 have either been found in compliance with the agreement or have been
23 found to be an associate member under section 704 of the agreement.

24 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection
25 is effective on the state's proposed date of entry or the first day of
26 the calendar quarter after its petition is approved by the governing
27 board, whichever is later, and is at least sixty days after its
28 petition is approved.

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

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

36 (h) "Model 3 seller" means a seller that has sales in at least five
37 member states, has total annual sales revenue of at least five hundred
38 million dollars, has a proprietary system that calculates the amount of

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

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

10 **Sec. 812.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to
11 read as follows:

12 For purposes of (~~(compliance with the requirements of the agreement~~
13 ~~only)~~) construing those provisions of the streamlined sales and use tax
14 agreement that have been incorporated into this title, and unless the
15 context requires otherwise, the terms "product" and "products" refer to
16 tangible personal property, digital products, services, extended
17 warranties, and anything else that can be sold or used.

18 **PART IX**
19 **MISCELLANEOUS**

20 NEW SECTION. **Sec. 901.** This act does not have any impact
21 whatsoever on the characterization of digital products, as defined in
22 section 201 of this act, as tangible or intangible personal property
23 for purposes of property taxation and may not be used in any way in
24 construing any provision of Title 84 RCW.

25 NEW SECTION. **Sec. 902.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 903.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 July 1, 2009.

1 NEW SECTION. **Sec. 904.** Part headings used in this act are not any
2 part of the law.

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