

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2075

Chapter 535, Laws of 2009

61st Legislature
2009 Regular Session

TAXATION--ELECTRONICALLY TRANSFERRED GOODS AND SERVICES

EFFECTIVE DATE: 07/26/09

Passed by the House April 13, 2009
Yeas 52 Nays 46

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 21, 2009
Yeas 28 Nays 20

BRAD OWEN

President of the Senate

Approved May 18, 2009, 3:40 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2075** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 20, 2009

**Secretary of State
State of Washington**

1 NEW SECTION. **Sec. 101.** (1) In 2007, the legislature directed the
2 department of revenue (department) to conduct a study of the taxation
3 of electronically delivered products (digital products). In conducting
4 the study, the department was assisted by a committee comprised of
5 legislators, academics, and individuals representing different segments
6 of government and industry (the "study committee").

7 (2) At the conclusion of the study, the department issued its final
8 report December 5, 2008. The final report noted that any
9 recommendations to the legislature should promote the following goals:
10 (a) Simplicity and fairness; (b) conformity with the streamlined sales
11 and use tax agreement; (c) neutrality regardless of industry, content,
12 and delivery method while taking the purchaser's underlying property
13 rights into account; (d) consideration given to the revenue impact of
14 potential changes to the tax base; (e) consideration given to the
15 impact caused by the pyramiding of business inputs; (f) maintaining or
16 enhancing the competitiveness of businesses located in Washington; and
17 (g) maintaining certainty, consistency, durability, and equity despite
18 changes in technology and business models.

19 (3) While the department's final report did not contain
20 recommendations for the legislature, the report's conclusion notes that
21 the study committee found that legislation implementing digital
22 products tax policy is necessary in 2009 to: (a) Protect the sales and
23 use tax base; (b) establish certainty in our tax code; (c) maintain
24 conformity with the streamlined sales and use tax agreement; and (d)
25 encourage economic development.

26 (4) This act is the outgrowth of the work of the department and the
27 study committee. The purpose of this act is to implement those
28 findings of the study committee noted in subsection (3) of this
29 section. This act also takes into account the goals noted in
30 subsection (2) of this section. Moreover, this act contains specific
31 provisions to: (a) Provide protections for taxpayers who failed to pay
32 or collect tax on digital products for periods before the effective
33 date of this act; and (b) promote the location of server farms and data
34 centers in this state by preventing the department from considering a
35 person's ownership of, or rights in, digital goods or digital codes
36 residing on servers located in this state in determining whether the
37 person has nexus with this state for purposes of the taxes imposed in
38 Title 82 RCW.

1 (v) Parimutuel wagering and handicapping contests as authorized by
2 chapter 67.16 RCW;

3 (vi) Telecommunications services and ancillary services as those
4 terms are defined in RCW 82.04.065;

5 (vii) The internet and internet access as those terms are defined
6 in RCW 82.04.297;

7 (viii) The service described in RCW 82.04.050(6)(b);

8 (ix) Online educational programs provided by a:

9 (A) Public or private elementary or secondary school; or

10 (B) An institution of higher education as defined in sections 1001
11 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C.
12 Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of
13 this subsection (5)(b)(ix)(B), an online educational program must be
14 encompassed within the institution's accreditation;

15 (x) Travel agent services, including online travel services, and
16 automated systems used by travel agents to book reservations;

17 (xi) A service that allows the person receiving the service to make
18 online sales of products or services, digital or otherwise, using the
19 service provider's web site. The service described in this subsection
20 (5)(b)(xi) does not include the underlying sale of the products or
21 services, digital or otherwise, by the person receiving the service;
22 and

23 (xii) Online classified advertising services.

24 (6)(a) "Digital goods," except as provided in (b) of this
25 subsection (6), means sounds, images, data, facts, or information, or
26 any combination thereof, transferred electronically, including, but not
27 limited to, specified digital products and other products transferred
28 electronically not included within the definition of specified digital
29 products.

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

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

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

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

35 (iv) The representation of a personal service in electronic form,
36 such as an electronic copy of an engineering report prepared by an
37 engineer, that primarily involves the application of human effort, and

1 the human effort originated after the customer requested the service;
2 and

3 (v) Digital automated services and services and activities excluded
4 from the definition of digital automated services in subsection (5)(b)
5 of this section.

6 (7) "Digital products" means digital goods and digital automated
7 services.

8 (8) "Electronically transferred" or "transferred electronically"
9 means obtained by the purchaser by means other than tangible storage
10 media. It is not necessary that a copy of the product be physically
11 transferred to the purchaser. So long as the purchaser may access the
12 product, it will be considered to have been electronically transferred
13 to the purchaser.

14 (9) "Specified digital products" means electronically transferred
15 digital audio-visual works, digital audio works, and digital books.

16 PART III

17 IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS

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

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

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

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

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

7 (d) Purchases for the purpose of consuming the property purchased
8 in producing ferrosilicon which is subsequently used in producing
9 magnesium for sale, if the primary purpose of such property is to
10 create a chemical reaction directly through contact with an ingredient
11 of ferrosilicon; or

12 (e) Purchases for the purpose of providing the property to
13 consumers as part of competitive telephone service, as defined in RCW
14 82.04.065. The term shall include every sale of tangible personal
15 property which is used or consumed or to be used or consumed in the
16 performance of any activity classified as a "sale at retail" or "retail
17 sale" even though such property is resold or utilized as provided in
18 (a), (b), (c), (d), or (e) of this subsection following such use. The
19 term also means every sale of tangible personal property to persons
20 engaged in any business which is taxable under RCW 82.04.280 (2) and
21 (7), 82.04.290, and 82.04.2908; or

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

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

31 (a) The installing, repairing, cleaning, altering, imprinting, or
32 improving of tangible personal property of or for consumers, including
33 charges made for the mere use of facilities in respect thereto, but
34 excluding charges made for the use of self-service laundry facilities,
35 and also excluding sales of laundry service to nonprofit health care
36 facilities, and excluding services rendered in respect to live animals,
37 birds and insects;

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

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

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

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

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

1 to a person is a rental or lease of real property and not a mere
2 license to enjoy the same;

3 (g) The installing, repairing, altering, or improving of digital
4 goods for consumers;

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

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

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

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

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

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

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

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

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

36 (i) The renting or leasing of tangible personal property to
37 consumers; and

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

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

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

13 (6)(a) The term (~~shall~~) also includes the sale of prewritten
14 computer software other than a sale to a person who presents a resale
15 certificate under RCW 82.04.470, regardless of the method of delivery
16 to the end user(~~, but shall~~). For purposes of this subsection
17 (6)(a), the sale of prewritten computer software includes the sale of
18 or charge made for a key or an enabling or activation code, where the
19 key or code is required to activate prewritten computer software and
20 put the software into use. There is no separate sale of the key or
21 code from the prewritten computer software, regardless of how the sale
22 may be characterized by the vendor or by the purchaser.

23 The term "retail sale" does not include the sale of or charge made
24 for:

25 (i) Custom software; or

26 (ii) The customization of prewritten computer software.

27 (b) The term also includes the charge made to consumers for the
28 right to access and use prewritten computer software, where possession
29 of the software is maintained by the seller or a third party,
30 regardless of whether the charge for the service is on a per use, per
31 user, per license, subscription, or some other basis.

32 (7) The term (~~shall~~) also includes the sale of or charge made for
33 an extended warranty to a consumer. For purposes of this subsection,
34 "extended warranty" means an agreement for a specified duration to
35 perform the replacement or repair of tangible personal property at no
36 additional charge or a reduced charge for tangible personal property,
37 labor, or both, or to provide indemnification for the replacement or
38 repair of tangible personal property, based on the occurrence of

1 specified events. The term "extended warranty" does not include an
2 agreement, otherwise meeting the definition of extended warranty in
3 this subsection, if no separate charge is made for the agreement and
4 the value of the agreement is included in the sales price of the
5 tangible personal property covered by the agreement. For purposes of
6 this subsection, "sales price" has the same meaning as in RCW
7 82.08.010.

8 (8)(a) The term also includes the following sales to consumers of
9 digital goods, digital codes, and digital automated services:

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

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

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

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

18 (b) A retail sale of digital goods, digital codes, or digital
19 automated services under this subsection (8) includes any services
20 provided by the seller exclusively in connection with the digital
21 goods, digital codes, or digital automated services, whether or not a
22 separate charge is made for such services.

23 (c) For purposes of this subsection, "permanent" means perpetual or
24 for an indefinite or unspecified length of time. A right of permanent
25 use is presumed to have been granted unless the agreement between the
26 seller and the purchaser specifies or the circumstances surrounding the
27 transaction suggest or indicate that the right to use terminates on the
28 occurrence of a condition subsequent.

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

37 ((+9)) (10) The term ((shall)) also does not include sales of
38 chemical sprays or washes to persons for the purpose of postharvest

1 treatment of fruit for the prevention of scald, fungus, mold, or decay,
2 nor (~~shall~~) does it include sales of feed, seed, seedlings,
3 fertilizer, agents for enhanced pollination including insects such as
4 bees, and spray materials to: (a) Persons who participate in the
5 federal conservation reserve program, the environmental quality
6 incentives program, the wetlands reserve program, and the wildlife
7 habitat incentives program, or their successors administered by the
8 United States department of agriculture; (b) farmers for the purpose of
9 producing for sale any agricultural product; and (c) farmers acting
10 under cooperative habitat development or access contracts with an
11 organization exempt from federal income tax under Title 26 U.S.C. Sec.
12 501(c)(3) or the Washington state department of fish and wildlife to
13 produce or improve wildlife habitat on land that the farmer owns or
14 leases.

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

31 (~~(11)~~) (12) The term (~~shall~~) does not include the sale of or
32 charge made for labor, services, or tangible personal property pursuant
33 to agreements providing maintenance services for bus, rail, or rail
34 fixed guideway equipment when a regional transit authority is the
35 recipient of the labor, services, or tangible personal property, and a
36 transit agency, as defined in RCW 81.104.015, performs the labor or
37 services.

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

3 "Consumer" means the following:

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

28 (2)(a) Any person engaged in any business activity taxable under
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
30 uses any competitive telephone service, ancillary services, or
31 telecommunications service as those terms are defined in RCW 82.04.065,
32 other than for resale in the regular course of business; (c) any person
33 who purchases, acquires, or uses any service defined in RCW
34 82.04.050(2) (a) or (g), other than for resale in the regular course of
35 business or for the purpose of satisfying the person's obligations
36 under an extended warranty as defined in RCW 82.04.050(7); (d) any
37 person who purchases, acquires, or uses any amusement and recreation
38 service defined in RCW 82.04.050(3)(a), other than for resale in the

1 regular course of business; (e) (~~any person who is an end user of~~
2 ~~software; and (f))~~) any person who purchases or acquires an extended
3 warranty as defined in RCW 82.04.050(7) other than for resale in the
4 regular course of business; and (f) any person who is an end user of
5 software. For purposes of this subsection (2)(f) and RCW 82.04.050(6),
6 a person who purchases or otherwise acquires prewritten computer
7 software, who provides services described in RCW 82.04.050(6)(b) and
8 who will charge consumers for the right to access and use the
9 prewritten computer software, is not an end user of the prewritten
10 computer software;

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

26 (4) Any person who is an owner, lessee or has the right of
27 possession to or an easement in real property which is being
28 constructed, repaired, decorated, improved, or otherwise altered by a
29 person engaged in business, excluding only (a) municipal corporations
30 or political subdivisions of the state in respect to labor and services
31 rendered to their real property which is used or held for public road
32 purposes, and (b) the United States, instrumentalities thereof, and
33 county and city housing authorities created pursuant to chapter 35.82
34 RCW in respect to labor and services rendered to their real property.
35 Nothing contained in this or any other subsection of this definition
36 shall be construed to modify any other definition of "consumer";

37 (5) Any person who is an owner, lessee, or has the right of

1 possession to personal property which is being constructed, repaired,
2 improved, cleaned, imprinted, or otherwise altered by a person engaged
3 in business;

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

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

32 (8) Any person engaged in the business of cleaning up for the
33 United States, or its instrumentalities, radioactive waste and other
34 byproducts of weapons production and nuclear research and development;
35 ((and))

36 (9) Any person who is an owner, lessee, or has the right of
37 possession of tangible personal property that, under the terms of an
38 extended warranty as defined in RCW 82.04.050(7), has been repaired or

1 is replacement property, but only with respect to the sale of or charge
2 made for the repairing of the tangible personal property or the
3 replacement property;

4 (10) Any person who purchases, acquires, or uses services described
5 in RCW 82.04.050(6)(b) other than for resale in the regular course of
6 business; and

7 (11)(a) Any end user of a digital product or digital code.

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

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

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

32 For the purposes of this chapter:

33 (1)(a) "Selling price" includes "sales price." "Sales price" means
34 the total amount of consideration, except separately stated trade-in
35 property of like kind, including cash, credit, property, and services,
36 for which tangible personal property, extended warranties, digital
37 goods, digital codes, digital automated services, or other services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 institutions and all political subdivisions thereof, irrespective of
2 the nature of the activities engaged in or functions performed, and
3 also the United States or any instrumentality thereof;

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

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

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

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

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

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

34 (10) For the purposes of the taxes imposed under this chapter and
35 chapter 82.12 RCW, whenever the terms "property" or "personal property"
36 are used, those terms must be construed to include digital goods and
37 digital codes 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 goods and digital codes would yield unlikely, absurd,
8 or strained 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 digital automated service or other service, the use of which is taxable
37 under this chapter. If the service is received by gift or under
38 conditions wherein the purchase price does not represent the true value

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

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

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

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

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

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

37 (c) With respect to an extended warranty, the first act within this
38 state after the extended warranty has been acquired by which the

1 taxpayer takes or assumes dominion or control over the article of
2 tangible personal property to which the extended warranty applies, and
3 includes installation, storage, withdrawal from storage, distribution,
4 or any other act preparatory to subsequent actual use or consumption of
5 the article within this state;

6 (d) With respect to a digital good or digital code, the first act
7 within this state by which the taxpayer, as a consumer, views,
8 accesses, downloads, possesses, stores, opens, manipulates, or
9 otherwise uses or enjoys the digital good or digital code;

10 (e) With respect to a digital automated service, the first act
11 within this state by which the taxpayer, as a consumer, uses, enjoys,
12 or otherwise receives the benefit of the service;

13 (f) With respect to a service defined as a retail sale in RCW
14 82.04.050(6)(b), the first act within this state by which the taxpayer,
15 as a consumer, accesses the prewritten computer software; and

16 (g) With respect to a service defined as a retail sale in RCW
17 82.04.050(2)(g), the first act within this state after the service has
18 been performed by which the taxpayer, as a consumer, views, accesses,
19 downloads, possesses, stores, opens, manipulates, or otherwise uses or
20 enjoys the digital good upon which the service was performed;

21 ~~((+6))~~ (7) "Taxpayer" and "purchaser" include all persons included
22 within the meaning of the word "buyer" and the word "consumer" as
23 defined in chapters 82.04 and 82.08 RCW;

24 ~~((+7))~~ (8)(a)(i) Except as provided in (a)(ii) of this subsection
25 ~~((+7))~~ (8), "retailer" means every seller as defined in RCW 82.08.010
26 and every person engaged in the business of selling tangible personal
27 property at retail and every person required to collect from purchasers
28 the tax imposed under this chapter.

29 (ii) "Retailer" does not include a professional employer
30 organization when a covered employee coemployed with the client under
31 the terms of a professional employer agreement engages in activities
32 that constitute a sale of tangible personal property, extended
33 warranty, digital good, digital code, or a sale of any digital
34 automated service or service defined as a retail sale in RCW 82.04.050
35 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
36 this chapter. In such cases, the client, and not the professional
37 employer organization, is deemed to be the retailer and is responsible
38 for collecting and remitting the tax imposed by this chapter.

1 (b) For the purposes of (a) of this subsection, the terms "client,"
2 "covered employee," "professional employer agreement," and
3 "professional employer organization" have the same meanings as in RCW
4 82.04.540;

5 ~~((8))~~ (9) "Extended warranty" has the same meaning as in RCW
6 82.04.050(7);

7 ~~((9))~~ (10) The meaning ascribed to words and phrases in chapters
8 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
9 effect with respect to taxes imposed under the provisions of this
10 chapter. "Consumer," in addition to the meaning ascribed to it in
11 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
12 person who distributes or displays, or causes to be distributed or
13 displayed, any article of tangible personal property, except
14 newspapers, the primary purpose of which is to promote the sale of
15 products or services. With respect to property distributed to persons
16 within this state by a consumer as defined in this subsection ~~((9))~~
17 (10), the use of the property shall be deemed to be by such consumer.

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

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

23 (a) ~~((Any))~~ Article of tangible personal property purchased at
24 retail, or acquired by lease, gift, repossession, or bailment, or
25 extracted or produced or manufactured by the person so using the same,
26 or otherwise furnished to a person engaged in any business taxable
27 under RCW 82.04.280 (2) or (7), including tangible personal property
28 acquired at a casual or isolated sale, and including byproducts used by
29 the manufacturer thereof, except as otherwise provided in this chapter,
30 irrespective of whether the article or similar articles are
31 manufactured or are available for purchase within this state;

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

36 (c) ~~((any))~~ Services defined as a retail sale in RCW 82.04.050(2)

1 (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail
2 sale in RCW 82.04.050(6)(b) that are provided free of charge;

3 (d) Extended warranty; or

4 (e)(i) Digital good, digital code, or digital automated service,
5 including the use of any services provided by a seller exclusively in
6 connection with digital goods, digital codes, or digital automated
7 services, whether or not a separate charge is made for such services.

8 (ii) With respect to the use of digital goods, digital automated
9 services, and digital codes acquired by purchase, the tax imposed in
10 this subsection (1)(e) applies in respect to:

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

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

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

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

19 (iii) With respect to digital goods, digital automated services,
20 and digital codes acquired other than by purchase, the tax imposed in
21 this subsection (1)(e) applies regardless of whether or not the
22 consumer has a right of permanent use or is obligated to make continued
23 payment as a condition of use..

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

31 ~~(3))~~ The provisions of this chapter do not apply in respect to the
32 use of any article of tangible personal property, extended warranty,
33 digital good, digital code, digital automated service, or service
34 taxable under RCW 82.04.050(2) (a) or (g), (3)(a), ~~((purchased at~~
35 ~~retail or acquired by lease, gift, or bailment))~~ or (6)(b), if the sale
36 to, or the use by, the present user or ~~((his))~~ the present user's
37 bailor or donor has already been subjected to the tax under chapter

1 82.08 RCW or this chapter and the tax has been paid by the present user
2 or by ~~((his))~~ the present user's bailor or donor.

3 ~~((4))~~ (3)(a) Except as provided in this section, payment of the
4 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or
5 user of tangible personal property, extended warranty, digital good,
6 digital code, digital automated service, or other service ~~((of the tax~~
7 ~~imposed by chapter 82.08 or 82.12 RCW shall))~~ does not have the effect
8 of exempting any other purchaser or user of the same property, extended
9 warranty, digital good, digital code, digital automated service, or
10 other service from the taxes imposed by such chapters.

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

12 (i) If the sale to, or the use by, the present user or his or her
13 bailor or donor has already been subjected to the tax under chapter
14 82.08 RCW or this chapter and the tax has been paid by the present user
15 or by his or her bailor or donor; ~~((or))~~

16 (ii) In respect to the use of any article of tangible personal
17 property acquired by bailment and the tax has once been paid based on
18 reasonable rental as determined by RCW 82.12.060 measured by the value
19 of the article at time of first use multiplied by the tax rate imposed
20 by chapter 82.08 RCW or this chapter as of the time of first use;
21 ~~((or))~~

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

27 (iv) To the use of digital goods or digital automated services,
28 which were obtained through the use of a digital code, if the sale of
29 the digital code to, or the use of the digital code by, the present
30 user or the present user's bailor or donor has already been subjected
31 to the tax under chapter 82.08 RCW or this chapter and the tax has been
32 paid by the present user or by the present user's bailor or donor.

33 ~~((5))~~ (4)(a) Except as provided in (b) of this subsection (4),
34 the tax ~~((shall be))~~ is levied and must be collected in an amount equal
35 to the value of the article used, value of the digital good or digital
36 code used, value of the extended warranty used, or value of the service
37 used by the taxpayer, multiplied by the applicable rates in effect for
38 the retail sales tax under RCW 82.08.020 ~~((, except))~~.

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

5 **PART IV**
6 **BUSINESS AND OCCUPATION TAX CHANGES**

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

10 (1) Upon every person engaging within this state in the business of
11 making sales at retail or wholesale of digital goods, digital codes,
12 digital automated services, or services described in RCW 82.04.050
13 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to
14 such business is equal to the gross proceeds of sales of the business,
15 multiplied by the rate of 0.471 percent in the case of retail sales and
16 by the rate of 0.484 percent in the case of wholesale sales.

17 (2) For purposes of this section, a person is considered to be
18 engaging within this state in the business of making sales of digital
19 goods, digital codes, digital automated services, or services described
20 in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital
21 goods, digital codes, digital automated services, or services described
22 in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this
23 state under RCW 82.32.730 for sales tax purposes or would have been
24 sourced to this state under RCW 82.32.730 if the sale had been taxable
25 under chapter 82.08 RCW.

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

29 NEW SECTION. Sec. 402. A new section is added to chapter 82.04
30 RCW to read as follows:

31 (1)(a) Any person subject to tax under section 401 of this act
32 engaging both within and outside this state in the business of making
33 sales at retail or wholesale of digital goods, digital codes, digital
34 automated services, or services described in RCW 82.04.050 (2)(g) or

1 (6)(b), must apportion to this state that portion of apportionable
2 income derived from activity performed within this state as provided in
3 subsection (2) of this section.

4 (b) For purposes of this subsection, a person is considered to be
5 engaging outside this state in the business of making sales of digital
6 goods, digital codes, digital automated services, or services described
7 in RCW 82.04.050 (2)(g) or (6)(b) if the person makes any sales of
8 digital goods, digital codes, digital automated services, or services
9 described in RCW 82.04.050 (2)(g) or (6)(b) that are sourced to a
10 jurisdiction other than Washington under RCW 82.32.730 for sales tax
11 purposes or would have been sourced to a jurisdiction other than
12 Washington under RCW 82.32.730 if the sale had been a retail sale.

13 (2) Apportionable income must be apportioned to Washington by
14 multiplying the apportionable income by the sales factor.

15 (3)(a) The sales factor is a fraction, the numerator of which is
16 the total receipts of the taxpayer from making sales of digital goods,
17 digital codes, digital automated services, and services described in
18 RCW 82.04.050 (2)(g) or (6)(b) in this state during the tax period, and
19 the denominator of which is the total receipts of the taxpayer derived
20 from such activity everywhere during the tax period.

21 (b) For purposes of computing the sales factor, sales are
22 considered in this state if the sale was sourced to this state under
23 RCW 82.32.730 for sales tax purposes or would have been sourced to this
24 state under RCW 82.32.730 if the sale had been taxable under chapter
25 82.08 RCW.

26 (4) For purposes of this section, "apportionable income" means the
27 gross income of the business taxable under section 401 of this act,
28 including income received from activities outside this state if the
29 income would be taxable under section 401 of this act if received from
30 activities in this state.

31 **Sec. 403.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to
32 read as follows:

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

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

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

36 (b) Services defined as a retail sale in RCW 82.04.050(2) (a)~~((, any sale of))~~ or (g);

1 (c) Amusement or recreation services as defined in RCW
2 82.04.050(3)(a)(~~, any sale of canned software, any sale of an~~);
3 (d) Prewritten computer software;
4 (e) Services described in RCW 82.04.050(6)(b);
5 (f) Extended ((warranty)) warranties as defined in RCW
6 82.04.050(7)(~~, or any sale of~~);
7 (g) Competitive telephone service, ancillary services, or
8 telecommunications service as those terms are defined in RCW
9 82.04.065(~~, which is not a sale at retail~~);
10 (h) Digital goods, digital codes, or digital automated services;
11 and

12 (2) Any charge made for labor and services rendered for persons who
13 are not consumers, in respect to real or personal property, if such
14 charge is expressly defined as a retail sale by RCW 82.04.050 when
15 rendered to or for consumers(~~:- PROVIDED, That the term~~). For the
16 purposes of this subsection (2), "real or personal property" (~~as used~~
17 in this subsection shall)) does not include any natural products named
18 in RCW 82.04.100.

19 **Sec. 404.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended
20 to read as follows:

21 "Gross proceeds of sales" means the value proceeding or accruing
22 from the sale of tangible personal property, digital goods, digital
23 codes, digital automated services, and/or for other services rendered,
24 without any deduction on account of the cost of property sold, the cost
25 of materials used, labor costs, interest, discount paid, delivery
26 costs, taxes, or any other expense whatsoever paid or accrued and
27 without any deduction on account of losses.

28 **Sec. 405.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to
29 read as follows:

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

35 (2)(a) When the owner of equipment or facilities furnishes, or
36 sells to the customer prior to manufacture, all or a portion of the

1 materials that become a part or whole of the manufactured article, the
2 department shall prescribe equitable rules for determining tax
3 liability(~~(: PROVIDED, That)~~).

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

11 (3) A nonresident of this state who is the owner of materials
12 processed for it in this state by a processor for hire shall not be
13 deemed to be engaged in business in this state as a manufacturer
14 because of the performance of such processing work for it in this
15 state(~~(: PROVIDED FURTHER, That)~~).

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

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

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

26 **Sec. 406.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to
27 read as follows:

28 "To manufacture" embraces all activities of a commercial or
29 industrial nature wherein labor or skill is applied, by hand or
30 machinery, to materials so that as a result thereof a new, different or
31 useful substance or article of tangible personal property is produced
32 for sale or commercial or industrial use, and shall include: (1) The
33 production or fabrication of special made or custom made articles; (2)
34 the production or fabrication of dental appliances, devices,
35 restorations, substitutes, or other dental laboratory products by a
36 dental laboratory or dental technician; (3) cutting, delimiting, and

1 measuring of felled, cut, or taken trees; and (4) crushing and/or
2 blending of rock, sand, stone, gravel, or ore.

3 "To manufacture" shall not include: Conditioning of seed for use
4 in planting; cubing hay or alfalfa; activities which consist of
5 cutting, grading, or ice glazing seafood which has been cooked, frozen,
6 or canned outside this state; the growing, harvesting, or producing of
7 agricultural products; packing of agricultural products, including
8 sorting, washing, rinsing, grading, waxing, treating with fungicide,
9 packaging, chilling, or placing in controlled atmospheric storage; the
10 production of digital goods; or the production of computer software if
11 the computer software is delivered from the seller to the purchaser by
12 means other than tangible storage media, including the delivery by use
13 of a tangible storage media where the tangible storage media is not
14 physically transferred to the purchaser.

15 **Sec. 407.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to
16 read as follows:

17 (1) Upon every person engaging within this state in the business of
18 receiving income from royalties or charges in the nature of royalties
19 for the granting of intangible rights, such as copyrights, licenses,
20 patents, or franchise fees, the amount of tax with respect to such
21 business shall be equal to the gross income from royalties or charges
22 in the nature of royalties from the business multiplied by the rate of
23 0.484 percent.

24 (2) For the purposes of this section, "royalties" means
25 compensation for the use of intangible property, such as copyrights,
26 patents, licenses, franchises, trademarks, trade names, and similar
27 items. It does not include compensation for any natural resource
28 ((or)), the licensing of ((earned)) prewritten computer software to the
29 end user, or the licensing or use of digital goods, digital codes, or
30 digital automated services.

31 **Sec. 408.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to
32 read as follows:

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

35 (2) "Internet" ~~((means the international computer network of both~~
36 ~~federal and nonfederal interoperable packet-switched data networks,~~

1 ~~including the graphical subnetwork called the world wide web)) and~~
2 "internet access" have the same meaning as those terms are defined in
3 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
4 existing on July 1, 2009.

5 (3) (~~"Internet service" means a service that includes computer~~
6 ~~processing applications, provides the user with additional or~~
7 ~~restructured information, or permits the user to interact with stored~~
8 ~~information through the internet or a proprietary subscriber network.~~
9 ~~"Internet service" includes provision of internet electronic mail,~~
10 ~~access to the internet for information retrieval, and hosting of~~
11 ~~information for retrieval over the internet or the graphical subnetwork~~
12 ~~called the world wide web)) Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.~~

15 **Sec. 409.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to
16 read as follows:

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

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

23 (2) Food and meals;

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

28 **Sec. 410.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to
29 read as follows:

30 In computing tax there may be deducted from the measure of tax
31 amounts derived from bona fide (1) initiation fees, (2) dues, (3)
32 contributions, (4) donations, (5) tuition fees, (6) charges made by a
33 nonprofit trade or professional organization for attending or occupying
34 space at a trade show, convention, or educational seminar sponsored by
35 the nonprofit trade or professional organization, which trade show,
36 convention, or educational seminar is not open to the general public,

1 (7) charges made for operation of privately operated kindergartens, and
2 (8) endowment funds. This section (~~shall~~) may not be construed to
3 exempt any person, association, or society from tax liability upon
4 selling tangible personal property, digital goods, digital codes, or
5 digital automated services, or upon providing facilities or other
6 services for which a special charge is made to members or others. If
7 dues are in exchange for any significant amount of goods or services
8 rendered by the recipient thereof to members without any additional
9 charge to the member, or if the dues are graduated upon the amount of
10 goods or services rendered, the value of such goods or services shall
11 not be considered as a deduction under this section.

12 **Sec. 411.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
13 read as follows:

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

18 (2) If a seller does not receive a resale certificate at the time
19 of the sale, have a resale certificate on file at the time of the sale,
20 or obtain a resale certificate from the buyer within a reasonable time
21 after the sale, the seller shall remain liable for the tax as provided
22 in RCW 82.08.050, unless the seller can demonstrate facts and
23 circumstances according to rules adopted by the department of revenue
24 that show the sale was properly made without payment of sales tax.

25 (3) The department may provide by rule for suggested forms for
26 resale certificates or equivalent documents containing the information
27 that will be accepted as resale certificates. The department shall
28 provide by rule the categories of items or services that must be
29 specified on resale certificates and the business classifications that
30 may use a blanket resale certificate.

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

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

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

- 1 (c) The type of business engaged in;
- 2 (d) The categories of items or services to be purchased for resale
3 or that are exempt, unless the buyer presents a blanket resale
4 certificate;
- 5 (e) The date on which the certificate was provided;
- 6 (f) A statement that the items or services purchased either: (i)
7 Are purchased for resale in the regular course of business; or (ii) are
8 exempt from tax pursuant to statute;
- 9 (g) A statement that the buyer acknowledges that the buyer is
10 solely responsible for purchasing within the categories specified on
11 the certificate and that misuse of the resale or exemption privilege
12 claimed on the certificate subjects the buyer to a penalty of fifty
13 percent of the tax due, in addition to the tax, interest, and any other
14 penalties imposed by law;
- 15 (h) The name of the individual authorized to sign the certificate,
16 printed in a legible fashion;
- 17 (i) The signature of the authorized individual; and
- 18 (j) The name of the seller.
- 19 (5) Subsection (4)(h), (i), and (j) of this section does not apply
20 if the certificate is provided in a format other than paper. If the
21 certificate is provided in a format other than paper, the name of the
22 individual providing the certificate must be included in the
23 certificate.

24 **Sec. 412.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each
25 amended to read as follows:

26 (1) Every consignee, bailee, factor, or auctioneer having either
27 actual or constructive possession of (~~tangible~~) personal property, or
28 having possession of the documents of title thereto, with power to sell
29 such (~~tangible~~) personal property in (~~his or its~~) that person's own
30 name and actually so selling, (~~shall be~~) is deemed the seller of such
31 (~~tangible~~) personal property within the meaning of this chapter(~~and further~~). Furthermore, the consignor, bailor, principal, or
32 owner (~~shall be~~) is deemed a seller of such property to the
33 consignee, bailee, factor, or auctioneer.

34
35 (2) The burden (~~shall be upon~~) is on the taxpayer in every case
36 to establish the fact that (~~he~~) the taxpayer is not engaged in the
37 business of (~~selling tangible personal property~~) making retail sales

1 or wholesale sales but is acting merely as broker or agent in promoting
2 sales for a principal. Such claim will be allowed only when the
3 taxpayer's accounting records are kept in such manner as required by
4 rule by the department (~~of revenue shall by general regulation~~
5 ~~provide~~)).

6 (3) For purposes of this section, "personal property" means
7 tangible personal property, digital goods, digital codes, and extended
8 warranties.

9 **Sec. 413.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to
10 read as follows:

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

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

21 (3) "Conference-bridging service" means an ancillary service that
22 links two or more participants of an audio or video conference call and
23 may include the provision of a telephone number. "Conference-bridging
24 service" does not include the telecommunications services used to reach
25 the conference bridge.

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

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

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

36 (7) "Voice mail service" means an ancillary service that enables

1 the customer to store, send, or receive recorded messages. "Voice mail
2 service" does not include any vertical services that the customer may
3 be required to have in order to use the voice mail service.

4 (8) "Telecommunications service" means the electronic transmission,
5 conveyance, or routing of voice, data, audio, video, or any other
6 information or signals to a point, or between or among points.
7 "Telecommunications service" includes such transmission, conveyance, or
8 routing in which computer processing applications are used to act on
9 the form, code, or protocol of the content for purposes of
10 transmission, conveyance, or routing without regard to whether such
11 service is referred to as voice over internet protocol services or is
12 classified by the federal communications commission as enhanced or
13 value added. "Telecommunications service" does not include:

14 (a) Data processing and information services that allow data to be
15 generated, acquired, stored, processed, or retrieved and delivered by
16 an electronic transmission to a purchaser where such purchaser's
17 primary purpose for the underlying transaction is the processed data or
18 information;

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

21 (c) Tangible personal property;

22 (d) Advertising, including but not limited to directory
23 advertising;

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

25 (f) Internet access service;

26 (g) Radio and television audio and video programming services,
27 regardless of the medium, including the furnishing of transmission,
28 conveyance, and routing of such services by the programming service
29 provider. Radio and television audio and video programming services
30 include but are not limited to cable service as defined in 47 U.S.C.
31 Sec. 522(6) and audio and video programming services delivered by
32 commercial mobile radio service providers, as defined in section 20.3,
33 Title 47 C.F.R.;

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

35 (i) Digital products delivered electronically, including but not
36 limited to (~~software,~~) music, video, reading materials, or ring
37 tones; or

38 (j) Software delivered electronically.

1 (9) "800 service" means a telecommunications service that allows a
2 caller to dial a toll-free number without incurring a charge for the
3 call. The service is typically marketed under the name "800," "855,"
4 "866," "877," and "888" toll-free calling, and any subsequent numbers
5 designated by the federal communications commission.

6 (10) "900 service" means an inbound toll "telecommunications
7 service" purchased by a subscriber that allows the subscriber's
8 customers to call in to the subscriber's prerecorded announcement or
9 live service. "900 service" does not include the charge for:
10 Collection services provided by the seller of the telecommunications
11 services to the subscriber, or services or products sold by the
12 subscriber to the subscriber's customer. The service is typically
13 marketed under the name "900" service, and any subsequent numbers
14 designated by the federal communications commission.

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

17 (12) "Mobile wireless service" means a telecommunications service
18 that is transmitted, conveyed, or routed regardless of the technology
19 used, whereby the origination and/or termination points of the
20 transmission, conveyance, or routing are not fixed, including, by way
21 of example only, telecommunications services that are provided by a
22 commercial mobile radio service provider.

23 (13) "Paging service" means a telecommunications service that
24 provides transmission of coded radio signals for the purpose of
25 activating specific pagers; these transmissions may include messages
26 and/or sounds.

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

33 (15) "Prepaid wireless calling service" means a telecommunications
34 service that provides the right to use mobile wireless service as well
35 as other nontelecommunications services including the download of
36 digital products delivered electronically, content, and ancillary
37 services, which must be paid for in advance and that is sold in

1 predetermined units or dollars of which the number declines with use in
2 a known amount.

3 (16) "Private communications service" means a telecommunications
4 service that entitles the customer to exclusive or priority use of a
5 communications channel or group of channels between or among
6 termination points, regardless of the manner in which the channel or
7 channels are connected, and includes switching capacity, extension
8 lines, stations, and any other associated services that are provided in
9 connection with the use of the channel or channels.

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

15 (18) "Charges for mobile telecommunications services" means any
16 charge for, or associated with, the provision of commercial mobile
17 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
18 on June 1, 1999, or any charge for, or associated with, a service
19 provided as an adjunct to a commercial mobile radio service, regardless
20 of whether individual transmissions originate or terminate within the
21 licensed service area of the mobile telecommunications service
22 provider.

23 (19) "Customer" means: (a) The person or entity that contracts
24 with the home service provider for mobile telecommunications services;
25 or (b) the end user of the mobile telecommunications service, if the
26 end user of mobile telecommunications services is not the contracting
27 party, but this subsection (19)(b) applies only for the purpose of
28 determining the place of primary use. The term does not include a
29 reseller of mobile telecommunications service, or a serving carrier
30 under an arrangement to serve the customer outside the home service
31 provider's licensed service area.

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

34 (a) Responsible for providing an electronic database prescribed in
35 4 U.S.C. Sec. 119(a) if the state has not provided an electronic
36 database; and

37 (b) Approved by municipal and county associations or leagues of the

1 state whose responsibility it would otherwise be to provide a database
2 prescribed by 4 U.S.C. Secs. 116 through 126.

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

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

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

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

14 (25) "Mobile telecommunications service provider" means a home
15 service provider or a serving carrier.

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

19 (a) The residential street address or the primary business street
20 address of the customer; and

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

22 (27) "Prepaid telephone calling service" means the right to
23 purchase exclusively telecommunications services that must be paid for
24 in advance, that enables the origination of calls using an access
25 number, authorization code, or both, whether manually or electronically
26 dialed, if the remaining amount of units of service that have been
27 prepaid is known by the provider of the prepaid service on a continuous
28 basis.

29 (28) "Reseller" means a provider who purchases telecommunications
30 services from another telecommunications service provider and then
31 resells, uses as a component part of, or integrates the purchased
32 services into a mobile telecommunications service. "Reseller" does not
33 include a serving carrier with whom a home service provider arranges
34 for the services to its customers outside the home service provider's
35 licensed service area.

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

1 (30) "Taxing jurisdiction" means any of the several states, the
2 District of Columbia, or any territory or possession of the United
3 States, any municipality, city, county, township, parish,
4 transportation district, or assessment jurisdiction, or other political
5 subdivision within the territorial limits of the United States with the
6 authority to impose a tax, charge, or fee.

7 **PART V**

8 **SALES TAX EXEMPTIONS**

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

11 The tax imposed by RCW 82.08.020 does not apply to the sale of a
12 digital code for one or more digital products if the sale of the
13 digital products to which the digital code relates is exempt from the
14 tax levied by RCW 82.08.020.

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

17 (1) Except as provided in subsection (2) of this section, the tax
18 imposed by RCW 82.08.020 does not apply to sales of audio or video
19 programming by a radio or television broadcaster.

20 (2)(a) Except as provided in (b) of this subsection, the exemption
21 provided in subsection (1) of this section does not apply in respect to
22 programming that is sold on a pay-per-program basis or that allows the
23 buyer to access a library of programs at any time for a specific charge
24 for that service.

25 (b) Notwithstanding (a) of this subsection, the exemption provided
26 in this section applies to the sale of programming described in (a) of
27 this subsection if the seller is subject to a franchise fee in this
28 state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross
29 revenue derived from the sale.

30 (3) For purposes of this section, "radio or television broadcaster"
31 includes satellite radio providers, satellite television providers,
32 cable television providers, and providers of subscription internet
33 television.

1 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.08
2 RCW to read as follows:

3 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
4 digital goods, digital codes, digital automated services, or services
5 defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

6 (a) Consuming the digital good, digital code, digital automated
7 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in
8 producing for sale a new product, where the digital good, digital code,
9 digital automated service, or service defined as a retail sale in RCW
10 82.04.050(6)(b) becomes an ingredient or component of the new product.
11 A digital code becomes an ingredient or component of a new product if
12 the digital good or digital automated service acquired through the use
13 of the digital code becomes an ingredient or component of a new
14 product; or

15 (b) Making the digital good or digital automated service, including
16 a digital good or digital automated service acquired through the use of
17 a digital code, or service defined as a retail sale in RCW
18 82.04.050(6)(b) available free of charge for the use or enjoyment of
19 others.

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

24 NEW SECTION. **Sec. 504.** A new section is added to chapter 82.08
25 RCW to read as follows:

26 (1) The tax imposed by RCW 82.08.020 does not apply to the sale to
27 a business of standard digital information and services rendered in
28 respect to standard digital information, where the standard digital
29 information and services are purchased solely for business purposes.

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

34 (3) For purposes of this section, the following definitions apply:

35 (a) "Business purposes" means any purpose relevant to the business
36 needs of the taxpayer claiming an exemption under this section.

1 Business purposes do not include any personal, family, or household
2 purpose. The term also does not include any activity conducted by a
3 government entity as that term is defined in RCW 7.25.005; and

4 (b) "Standard digital information" means a digital good consisting
5 primarily of data, facts, or information, or any combination thereof,
6 not generated or compiled for a specific client or customer.

7 **Sec. 505.** 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. 506.** 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. 507.** 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. 508.** 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. 509.** 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 goods
23 and digital codes.

24 **Sec. 510.** 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 goods.

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. 511.** 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. 512.** 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,
9 digital goods, and digital codes, when such property is for use outside
10 this state (~~when~~), and the purchaser (a) is a bona fide resident of
11 a state or possession or Province of Canada other than the state of
12 Washington and such state, possession, or Province of Canada does not
13 impose a retail sales tax or use tax of three percent or more or, if
14 imposing such a tax, permits Washington residents exemption from
15 otherwise taxable sales by reason of their residence, and (b) agrees,
16 when requested, to grant the department of revenue access to such
17 records and other forms of verification at his or her place of
18 residence to assure that such purchases are not first used
19 substantially in the state of Washington.

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

1 (3)(a) Any person claiming exemption from retail sales tax under
2 the provisions of this section must display proof of his or her current
3 nonresident status as provided in this section.

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

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

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

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

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

1 (b) Any vendor who makes sales without collecting the retail sales
2 tax under this section and who has actual knowledge that the
3 purchaser's proof of identification establishing out-of-state residency
4 is fraudulent is guilty of a misdemeanor and, in addition, (~~shall be~~)
5 is liable for the tax and subject to a penalty equal to the greater of
6 one thousand dollars or the tax due on such sales. In addition, both
7 the purchaser and the vendor (~~shall be~~) are liable for any penalties
8 and interest assessable under chapter 82.32 RCW.

9 **Sec. 513.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to
10 read as follows:

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

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

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

28 **Sec. 514.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to
29 read as follows:

30 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
31 (~~tangible~~) personal property and services provided by a public
32 corporation, commission, or authority created under RCW 35.21.660 or
33 35.21.730 to an eligible entity.

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

1 NEW SECTION. **Sec. 515.** RCW 82.08.705 (Exemptions--Financial
2 information delivered electronically) and 2007 c 182 s 1 are each
3 repealed.

4 **PART VI**
5 **USE TAX EXEMPTIONS**

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

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

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

14 (1) Except as provided in subsection (2) of this section, the
15 provisions of this chapter do not apply to the use of audio or video
16 programming provided by a radio or television broadcaster.

17 (2)(a) Except as provided in (b) of this subsection, the exemption
18 provided in subsection (1) of this section does not apply in respect to
19 programming that is sold on a pay-per-program basis or that allows the
20 buyer to access a library of programs at any time for a specific charge
21 for that service.

22 (b) Notwithstanding (a) of this subsection, the exemption provided
23 in this section applies to the sale of programming described in (a) of
24 this subsection if the seller is subject to a franchise fee in this
25 state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross
26 revenue derived from the sale.

27 (3) For purposes of this section, "radio or television broadcaster"
28 includes satellite radio providers, satellite television providers,
29 cable television providers, providers of subscription internet
30 television, and persons who provide radio or television broadcasting to
31 listeners or viewers for no charge.

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

1 The provisions of this chapter do not apply to the use of digital
2 goods, digital codes, digital automated services, or services defined
3 as a retail sale in RCW 82.04.050(6)(b) for purposes of:

4 (1) Consuming the digital good, digital code, digital automated
5 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in
6 producing for sale a new product, where the digital good, digital code,
7 digital automated service, or service defined as a retail sale in RCW
8 82.04.050(6)(b) becomes an ingredient or component of the new product.
9 A digital code becomes an ingredient or component of a new product if
10 the digital good or digital automated service acquired through the use
11 of the digital code becomes an ingredient or component of a new
12 product; or

13 (2) Making the digital good or digital automated service, including
14 a digital good or digital automated service acquired through the use of
15 a digital code, or service defined as a retail sale in RCW
16 82.04.050(6)(b) available free of charge for the use or enjoyment of
17 others.

18 NEW SECTION. **Sec. 604.** A new section is added to chapter 82.12
19 RCW to read as follows:

20 The provisions of this chapter do not apply to the use by students
21 of digital goods furnished by a public or private elementary or
22 secondary school, or an institution of higher education as defined in
23 sections 1001 or 1002 of the federal higher education act of 1965
24 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009.

25 NEW SECTION. **Sec. 605.** A new section is added to chapter 82.12
26 RCW to read as follows:

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

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

31 (b) Created solely for an internal audience; or

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

35 (2) This section does not apply to the use of any digital goods

1 purchased by the user, the user's donor, or anybody on the user's
2 behalf.

3 NEW SECTION. **Sec. 606.** A new section is added to chapter 82.12
4 RCW to read as follows:

5 The provisions of this chapter do not apply in respect to the use
6 of digital products or digital codes obtained by the end user free of
7 charge.

8 NEW SECTION. **Sec. 607.** A new section is added to chapter 82.12
9 RCW to read as follows:

10 (1) The provisions of this chapter do not apply to the use by a
11 business of standard digital information and services rendered in
12 respect to standard digital information, where the standard digital
13 information and services are used solely for business purposes.

14 (2) For purposes of this section, the definitions in section 504 of
15 this act apply.

16 **Sec. 608.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to
17 read as follows:

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

20 (1) Of any article of tangible personal property or any digital
21 good or digital code, and any services that were rendered in respect to
22 such property, brought into the state of Washington by a nonresident
23 thereof for his or her use or enjoyment while temporarily within the
24 state of Washington unless such property is used in conducting a
25 nontransitory business activity within the state of Washington;

26 (2) By a nonresident of Washington of a motor vehicle or trailer
27 which is registered or licensed under the laws of the state of his or
28 her residence, and which is not required to be registered or licensed
29 under the laws of Washington, including motor vehicles or trailers
30 exempt pursuant to a declaration issued by the department of licensing
31 under RCW 46.85.060, and services rendered outside the state of
32 Washington in respect to such property;

33 (3) Of household goods, including digital goods, and digital codes,
34 personal effects, (~~and~~) private motor vehicles, and services rendered
35 in respect to such property, by a bona fide resident of Washington, or

1 nonresident members of the armed forces who are stationed in Washington
2 pursuant to military orders, if such articles and services were
3 acquired and used by such person in another state while a bona fide
4 resident thereof and such acquisition and use occurred more than ninety
5 days prior to the time he or she entered Washington. For purposes of
6 this subsection, private motor vehicles do not include motor homes;

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

10 For purposes of this section, "state" means a state of the United
11 States, any political subdivision thereof, the District of Columbia,
12 and any foreign country or political subdivision thereof, and
13 "services" means services defined as retail sales in RCW 82.04.050(2)
14 (a) or (g).

15 **Sec. 609.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to
16 read as follows:

17 The provisions of this chapter (~~shall~~) do not apply with respect
18 to the use of public records sold by state and local agencies, as the
19 terms are defined in RCW 42.17.020, including public records
20 transferred electronically that are obtained under a request for the
21 record for which no fee is charged other than a statutorily set fee or
22 a fee to reimburse the agency for its actual costs directly incident to
23 the copying. A request for a record includes a request for a document
24 not available to the public but available to those persons who by law
25 are allowed access to the document, such as requests for fire reports,
26 law enforcement reports, taxpayer information, and academic
27 transcripts.

28 **Sec. 610.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to
29 read as follows:

30 The provisions of this chapter (~~shall~~) do not apply in respect to
31 the use of any article of tangible personal property, extended
32 warranty, digital good, digital code, digital automated service, or
33 other service which the state is prohibited from taxing under the
34 Constitution of the state or under the Constitution or laws of the
35 United States.

1 **Sec. 611.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to
2 read as follows:

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

12 **Sec. 612.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to
13 read as follows:

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

19 **Sec. 613.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read
20 as follows:

21 The provisions of this chapter (~~shall~~) do not apply in respect to
22 the use of (~~tangible~~) personal property or the use of digital
23 automated services or services defined in RCW 82.04.050 (2)(a) or
24 (6)(b) by corporations (~~which~~) that have been incorporated under any
25 act of the congress of the United States and whose principal purposes
26 are to furnish volunteer aid to members of the armed forces of the
27 United States and also to carry on a system of national and
28 international relief and to apply the same in mitigating the sufferings
29 caused by pestilence, famine, fire, flood, and other national
30 calamities and to devise and carry on measures for preventing the same.

31 **Sec. 614.** RCW 82.12.0315 and 2003 c 5 s 10 are each amended to
32 read as follows:

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

1 (a) Production equipment rented to a motion picture or video
2 production business;

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

7 (c) Production services that are within the scope of RCW
8 82.04.050(2) (a) or (g) and are sold to a motion picture or video
9 production business.

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

13 (3) The exemption provided for in this section shall not apply to
14 the use of production equipment rented to, or production equipment or
15 production services that are within the scope of RCW 82.04.050(2) (a)
16 or (g) acquired and used by, a motion picture or video production
17 business that is engaged, to any degree, in the production of erotic
18 material, as defined in RCW 9.68.050.

19 **Sec. 615.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to
20 read as follows:

21 (1) This chapter does not apply to the use by a nonprofit
22 charitable organization or state or local governmental entity of (~~any~~
23 ~~item of tangible~~) personal property that has been donated to the
24 nonprofit charitable organization or state or local governmental
25 entity, or to the subsequent use of the property by a person to whom
26 the property is donated or bailed in furtherance of the purpose for
27 which the property was originally donated.

28 (2) This chapter does not apply to the donation of (~~tangible~~)
29 personal property without intervening use to a nonprofit charitable
30 organization, or to the incorporation of tangible personal property
31 without intervening use into real or personal property of or for a
32 nonprofit charitable organization in the course of installing,
33 repairing, cleaning, altering, imprinting, improving, constructing, or
34 decorating the real or personal property for no charge.

35 (3) This chapter does not apply to the use by a nonprofit
36 charitable organization of labor and services rendered in respect to

1 installing, repairing, cleaning, altering, imprinting, or improving
2 personal property provided to the charitable organization at no charge,
3 or to the donation of such services.

4 (4) This chapter does not apply to the donation of amusement and
5 recreation services without intervening use to a nonprofit organization
6 or state or local governmental entity, to the use by a nonprofit
7 organization or state or local governmental entity of amusement and
8 recreation services, or to the subsequent use of the services by a
9 person to whom the services are donated or bailed in furtherance of the
10 purpose for which the services were originally donated. As used in
11 this subsection, "amusement and recreation services" has the meaning in
12 RCW 82.04.050(3)(a).

13 **Sec. 616.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to
14 read as follows:

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

20 **Sec. 617.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to
21 read as follows:

22 The provisions of this chapter (~~((shall))~~) do not apply in respect to
23 the use of computers, computer components, computer accessories, (~~((or))~~)
24 computer software, digital goods, or digital codes, irrevocably donated
25 to any public or private nonprofit school or college, as defined under
26 chapter 84.36 RCW, in this state. For purposes of this section,
27 "computer" and "computer software" have the same meaning as in RCW
28 82.04.215.

29 **Sec. 618.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to
30 read as follows:

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

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

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

- 1 (a) Shares content with the printed newspaper; and
2 (b) Is prominently identified by the same name as the printed
3 newspaper or otherwise conspicuously indicates that it is a complement
4 to the printed newspaper.

5 **Sec. 619.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to
6 read as follows:

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

10 **Sec. 620.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to
11 read as follows:

12 (1) A person who is subject to tax under RCW 82.12.020 for
13 (~~(tangible)~~) personal property used at an aluminum smelter, or for
14 tangible personal property that will be incorporated as an ingredient
15 or component of buildings or other structures at an aluminum smelter,
16 or for labor and services rendered with respect to such buildings,
17 structures, or (~~(tangible)~~) personal property, is eligible for an
18 exemption from the state share of the tax in the form of a credit, as
19 provided in this section. The amount of the credit shall be equal to
20 the state share of use tax computed to be due under RCW 82.12.020. The
21 person shall submit information, in a form and manner prescribed by the
22 department, specifying the amount of qualifying purchases or
23 acquisitions for which the exemption is claimed and the amount of
24 exempted tax.

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

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

29 **Sec. 621.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read
30 as follows:

31 (1) This chapter does not apply to state credit unions with respect
32 to the use of any article of tangible personal property, digital good,
33 digital code, digital automated service, service defined as a retail
34 sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or extended

1 warranty, acquired from a federal credit union, foreign credit union,
2 or out-of-state credit union as a result of a merger or conversion.

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

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

6 (b) "Foreign credit union" means a credit union organized and
7 operating under the laws of another country or other foreign
8 jurisdiction.

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

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

14 **Sec. 622.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to
15 read as follows:

16 (1) The provisions of this chapter do not apply with respect to the
17 use of (~~tangible~~) personal property and services provided by a public
18 corporation, commission, or authority created under RCW 35.21.660 or
19 35.21.730 to an eligible entity.

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

23 NEW SECTION. **Sec. 623.** RCW 82.12.705 (Exemptions--Financial
24 information delivered electronically) and 2007 c 182 s 2 are each
25 repealed.

26 PART VII

27 SOURCING AND SALES/USE TAX APPORTIONMENT

28 NEW SECTION. **Sec. 701.** 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 the sale of
31 digital goods, digital codes, digital automated services, prewritten
32 computer software, or services defined as a retail sale in RCW
33 82.04.050(6)(b) to a buyer that provides the seller with an exemption

1 certificate claiming multiple points of use. An exemption certificate
2 claiming multiple points of use must be in a form and contain such
3 information as required by the department.

4 (2) A buyer is entitled to use an exemption certificate claiming
5 multiple points of use only if the buyer is a business or other
6 organization and the digital goods or digital automated services
7 purchased, or the digital goods or digital automated services to be
8 obtained by the digital code purchased, or the prewritten computer
9 software or services defined as a retail sale in RCW 82.04.050(6)(b)
10 purchased will be concurrently available for use within and outside
11 this state. A buyer is not entitled to use an exemption certificate
12 claiming multiple points of use for digital goods, digital codes,
13 digital automated services, prewritten computer software, or services
14 defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal
15 use.

16 (3) A buyer claiming an exemption under this section must report
17 and pay the tax imposed in RCW 82.12.020 and any local use taxes
18 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
19 directly to the department in accordance with sections 702 and 703 of
20 this act.

21 (4) For purposes of this section, "concurrently available for use
22 within and outside this state" means that employees or other agents of
23 the buyer may use the digital goods, digital automated services,
24 prewritten computer software, or services defined as a retail sale in
25 RCW 82.04.050(6)(b) simultaneously from one or more locations within
26 this state and one or more locations outside this state. A digital
27 code is concurrently available for use within and outside this state if
28 employees or other agents of the buyer may use the digital goods or
29 digital automated services to be obtained by the code simultaneously at
30 one or more locations within this state and one or more locations
31 outside this state.

32 NEW SECTION. **Sec. 702.** A new section is added to chapter 82.12
33 RCW to read as follows:

34 (1) A business or other organization subject to the tax imposed in
35 RCW 82.12.020 on the use of digital goods, digital codes, digital
36 automated services, prewritten computer software, or services defined
37 as a retail sale in RCW 82.04.050(6)(b) that are concurrently available

1 for use within and outside this state is entitled to apportion the
2 amount of tax due this state based on users in this state compared to
3 users everywhere. The department may authorize or require an
4 alternative method of apportionment supported by the taxpayer's records
5 that fairly reflects the proportion of in-state to out-of-state use by
6 the taxpayer of the digital goods, digital automated services,
7 prewritten computer software, or services defined as a retail sale in
8 RCW 82.04.050(6)(b).

9 (2) No apportionment under this section is allowed unless the
10 apportionment method is supported by the taxpayer's records kept in the
11 ordinary course of business.

12 (3) For purposes of this section, the following definitions apply:

13 (a) "Concurrently available for use within and outside this state"
14 means that employees or other agents of the taxpayer may use the
15 digital goods, digital automated services, prewritten computer
16 software, or services defined as a retail sale in RCW 82.04.050(6)(b)
17 simultaneously at one or more locations within this state and one or
18 more locations outside this state. A digital code is concurrently
19 available for use within and outside this state if employees or other
20 agents of the taxpayer may use the digital goods or digital automated
21 services to be obtained by the code simultaneously at one or more
22 locations within this state and one or more locations outside this
23 state.

24 (b) "User" means an employee or agent of the taxpayer who is
25 authorized by the taxpayer to use the digital goods, digital automated
26 services, prewritten computer software, or services defined as a retail
27 sale in RCW 82.04.050(6)(b) in the performance of his or her duties as
28 an employee or other agent of the taxpayer.

29 NEW SECTION. **Sec. 703.** A new section is added to chapter 82.14
30 RCW to read as follows:

31 (1) A business or other organization that is entitled under section
32 702 of this act to apportion the amount of state use tax on the use of
33 digital goods, digital codes, digital automated services, prewritten
34 computer software, or services defined as a retail sale in RCW
35 82.04.050(6)(b) is also entitled to apportion the amount of local use
36 taxes imposed under the authority of this chapter and RCW 81.104.170 on
37 the use of such products or services.

1 (2) To ensure that the tax base for state and local use taxes is
2 identical, the measure of local use taxes apportioned under this
3 section must be the same as the measure of state use tax apportioned
4 under section 702 of this act.

5 (3) This section does not affect the sourcing of local use taxes.

6 **Sec. 704.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to
7 read as follows:

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

13 (a) When tangible personal property, an extended warranty, a
14 digital good, digital code, digital automated service, or ((a)) other
15 service defined as a retail sale under RCW 82.04.050 is received by the
16 purchaser at a business location of the seller, the sale is sourced to
17 that business location.

18 (b) When the tangible personal property, extended warranty, digital
19 good, digital code, digital automated service, or ((a)) other service
20 defined as a retail sale under RCW 82.04.050 is not received by the
21 purchaser at a business location of the seller, the sale is sourced to
22 the location where receipt by the purchaser or the purchaser's donee,
23 designated as such by the purchaser, occurs, including the location
24 indicated by instructions for delivery to the purchaser or donee, known
25 to the seller.

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

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

36 (e) When (a), (b), (c), or (d) of this subsection do not apply,
37 including the circumstance where the seller is without sufficient

1 information to apply those provisions, then the location shall be
2 determined by the address from which tangible personal property was
3 shipped, from which the digital good or digital code or the computer
4 software delivered electronically was first available for transmission
5 by the seller, or from which the extended warranty or digital automated
6 service or other service defined as a retail sale under RCW 82.04.050
7 was provided, disregarding for these purposes any location that merely
8 provided the digital transfer of the product sold.

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

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

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

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

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

33 (a) For a lease or rental that requires recurring periodic
34 payments, each periodic payment is sourced to the primary property
35 location. The primary property location is as indicated by an address
36 for the property provided by the lessee that is available to the lessor
37 from its records maintained in the ordinary course of business, when

1 use of this address does not constitute bad faith. This location is
2 not altered by intermittent use at different locations.

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

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

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

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

16 (i) Upon receipt of the direct mail form, the seller is relieved of
17 all obligations to collect, pay, or remit the applicable tax and the
18 purchaser is obligated to pay or remit the applicable tax on a direct
19 pay basis. A direct mail form shall remain in effect for all future
20 sales of direct mail by the seller to the purchaser until it is revoked
21 in writing.

22 (ii) Upon receipt of information from the purchaser showing the
23 jurisdictions to which the direct mail is delivered to recipients, the
24 seller shall collect the tax according to the delivery information
25 provided by the purchaser. In the absence of bad faith, the seller is
26 relieved of any further obligation to collect tax on any transaction
27 where the seller has collected tax pursuant to the delivery information
28 provided by the purchaser.

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

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

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

3 (a) A retail sale of watercraft;

4 (b) A retail sale of a modular home, manufactured home, or mobile
5 home;

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

9 (d) Florist sales. In the case of a sale in which one florist
10 takes an order from a customer and then communicates that order to
11 another florist who delivers the items purchased to the place
12 designated by the customer, the location at or from which the delivery
13 is made to the consumer is deemed to be the location of the florist
14 originally taking the order.

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

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

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

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

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

37 (d) "Receive" and "receipt" mean taking possession of tangible
38 personal property, making first use of digital automated services or

1 other services, or taking possession or making first use of digital
2 goods or digital codes, whichever comes first. "Receive" and "receipt"
3 do not include possession by a shipping company on behalf of the
4 purchaser.

5 (e) "Transportation equipment" means:

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

8 (ii) Trucks and truck tractors with a gross vehicle weight rating
9 of ten thousand one pounds or greater, trailers, semitrailers, or
10 passenger buses that are:

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

12 (B) Operated under authority of a carrier authorized and
13 certificated by the United States department of transportation or
14 another federal authority to engage in the carriage of persons or
15 property in interstate commerce;

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

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

23 (9) In those instances where there is no obligation on the part of
24 a seller to collect or remit this state's sales or use tax, the use of
25 tangible personal property, digital good, digital code, or of a digital
26 automated service or other service, subject to use tax, is sourced to
27 the place of first use in this state. The definition of use in RCW
28 82.12.010 applies to this subsection.

29 **PART VIII**

30 **BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED THROUGH THE**
31 **USE OF A CODE THAT DOES NOT MEET THE DEFINITION OF DIGITAL CODE**

32 **Sec. 801.** RCW 82.08.195 and 2007 c 6 s 1402 are each amended to
33 read as follows:

34 (1) A bundled transaction is subject to the tax imposed by RCW
35 82.08.020 if the retail sale of any of its component products would be
36 subject to the tax imposed by RCW 82.08.020.

1 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are
2 subject to the tax imposed by RCW 82.08.020 if the service that is the
3 true object of the transaction is subject to the tax imposed by RCW
4 82.08.020. If the service that is the true object of the transaction
5 is not subject to the tax imposed by RCW 82.08.020, the transaction is
6 not subject to the tax imposed by RCW 82.08.020.

7 (3) The transaction described in RCW 82.08.190(4)(c) is not subject
8 to the tax imposed by RCW 82.08.020.

9 (4) The transaction described in RCW 82.08.190(4)(d) is not subject
10 to the tax imposed by RCW 82.08.020.

11 (5) In the case of a bundled transaction that includes any of the
12 following: Telecommunications service, ancillary service, internet
13 access, or audio or video programming service:

14 (a) If the price is attributable to products that are taxable and
15 products that are not taxable, the portion of the price attributable to
16 the nontaxable products are subject to the tax imposed by RCW 82.08.020
17 unless the seller can identify by reasonable and verifiable standards
18 the portion from its books and records that are kept in the regular
19 course of business for other purposes including, but not limited to,
20 nontax purposes;

21 (b) If the price is attributable to products that are subject to
22 tax at different tax rates, the total price is attributable to the
23 products subject to the tax at the highest tax rate unless the seller
24 can identify by reasonable and verifiable standards the portion of the
25 price attributable to the products subject to the tax imposed by RCW
26 82.08.020 at the lower rate from its books and records that are kept in
27 the regular course of business for other purposes including, but not
28 limited to, nontax purposes.

29 (6) In the case of the sale of a code that provides a purchaser
30 with the right to obtain more than one digital product, and which may
31 also include the right to obtain other products or services, and all of
32 the products and services, digital or otherwise, to be obtained through
33 the use of the code do not have the same sales and use tax treatment,
34 for purposes of the tax imposed by RCW 82.08.020:

35 (a) The transaction is deemed to be the sale of the products and
36 services to be obtained through the use of the code; and

37 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire

1 selling price of the code, except as provided in (b)(ii) of this
2 subsection (6).

3 (ii) If the seller can identify by reasonable and verifiable
4 standards the portion of the selling price attributable to the products
5 and services that are not subject to the tax imposed by RCW 82.08.020
6 from its books and records that are kept in the regular course of
7 business for other purposes including, but not limited to, nontax
8 purposes, the tax imposed by RCW 82.08.020 does not apply to that
9 portion of the selling price of the code attributable to the products
10 and services that are not subject to the tax imposed by RCW 82.08.020.

11 **PART IX**
12 **NEXUS**

13 NEW SECTION. Sec. 901. A new section is added to chapter 82.32
14 RCW to read as follows:

15 For purposes of the taxes imposed in this title, the department of
16 revenue may not consider a person's ownership of, or rights in, digital
17 goods or digital codes residing on servers located in this state in
18 determining whether the person has substantial nexus with this state.
19 For purposes of this section, "substantial nexus" means the requisite
20 connection that a person has with a state to allow the state to subject
21 the person to the state's taxing authority, consistent with the
22 commerce clause of the United States Constitution.

23 **PART X**
24 **AMNESTY**

25 NEW SECTION. Sec. 1001. (1) Except as provided in subsection (2)
26 of this section, no person may be held liable for the failure to
27 collect or pay state and local sales and use taxes accrued before the
28 effective date of this act on the sale or use of digital goods.

29 (2) Subsection (1) of this section does not relieve any person from
30 liability for state and local sales taxes that the person collected
31 from buyers but did not remit to the department of revenue.

32 (3) Nothing in this section may be construed as authorizing the
33 refund of state and local sales and use taxes properly paid on the sale
34 or use of digital goods before the effective date of this act.

1 (4) For purposes of this section, "digital goods" has the same
2 meaning as in section 201 of this act.

3 **PART XI**

4 **MISCELLANEOUS AMENDMENTS**

5 **Sec. 1101.** RCW 35.21.717 and 2004 c 154 s 1 are each amended to
6 read as follows:

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

13 **Sec. 1102.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to
14 read as follows:

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

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

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

20 (b) Excise taxes on the sale, purchase, use, or possession of (i)
21 real property; (ii) tangible personal property; (iii) extended
22 warranties; ~~((and))~~ (iv) services, including digital automated services
23 as defined in section 201 of this act; and (v) digital goods and
24 digital codes as those terms are defined in section 201 of this act;
25 and

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

28 (3) For the purposes of this section, the term "taxes" includes
29 taxes imposed by the state or any county, city, town, municipal
30 corporation, quasi-municipal corporation, or other political
31 subdivision.

32 **Sec. 1103.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to
33 read as follows:

34 Except only as expressly provided in chapters 67.28, 81.104, and

1 82.14 RCW, the state preempts the field of imposing retail sales and
2 use taxes and taxes upon (~~retail sales of tangible personal property,~~
3 ~~the use of tangible personal property,~~) parimutuel wagering authorized
4 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
5 town, or other municipal subdivision shall have the right to impose
6 taxes of that nature. Except as provided in RCW 64.34.440 and
7 82.02.050 through 82.02.090, no county, city, town, or other municipal
8 corporation shall impose any tax, fee, or charge, either direct or
9 indirect, on the construction or reconstruction of residential
10 buildings, commercial buildings, industrial buildings, or on any other
11 building or building space or appurtenance thereto, or on the
12 development, subdivision, classification, or reclassification of land.
13 However, this section does not preclude dedications of land or
14 easements within the proposed development or plat which the county,
15 city, town, or other municipal corporation can demonstrate are
16 reasonably necessary as a direct result of the proposed development or
17 plat to which the dedication of land or easement is to apply.

18 This section does not prohibit voluntary agreements with counties,
19 cities, towns, or other municipal corporations that allow a payment in
20 lieu of a dedication of land or to mitigate a direct impact that has
21 been identified as a consequence of a proposed development,
22 subdivision, or plat. A local government shall not use such voluntary
23 agreements for local off-site transportation improvements within the
24 geographic boundaries of the area or areas covered by an adopted
25 transportation program authorized by chapter 39.92 RCW. Any such
26 voluntary agreement is subject to the following provisions:

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

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

32 (3) Any payment not so expended shall be refunded with interest to
33 be calculated from the original date the deposit was received by the
34 county and at the same rate applied to tax refunds pursuant to RCW
35 84.69.100; however, if the payment is not expended within five years
36 due to delay attributable to the developer, the payment shall be
37 refunded without interest.

1 No county, city, town, or other municipal corporation shall require
2 any payment as part of such a voluntary agreement which the county,
3 city, town, or other municipal corporation cannot establish is
4 reasonably necessary as a direct result of the proposed development or
5 plat.

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

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

16 Nothing in this section prohibits counties, cities, or towns from
17 imposing or permits counties, cities, or towns to impose water, sewer,
18 natural gas, drainage utility, and drainage system charges(~~(+
19 PROVIDED, — That~~)). However, no such charge shall exceed the
20 proportionate share of such utility or system's capital costs which the
21 county, city, or town can demonstrate are attributable to the property
22 being charged(~~(+ — PROVIDED — FURTHER, — That~~)). Furthermore, these
23 provisions (~~(shall)~~) may not be interpreted to expand or contract any
24 existing authority of counties, cities, or towns to impose such
25 charges.

26 Nothing in this section prohibits a transportation benefit district
27 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
28 the legislative authority of a county, city, or town from approving the
29 imposition of such fees within a transportation benefit district.

30 Nothing in this section prohibits counties, cities, or towns from
31 imposing transportation impact fees authorized pursuant to chapter
32 39.92 RCW.

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

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

1 This section does not apply to special purpose districts formed and
2 acting pursuant to Title((§)) 54, 57, or 87 RCW, nor is the authority
3 conferred by these titles affected.

4 **Sec. 1104.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to
5 read as follows:

6 (1) Subject to the limits in this section, an eligible person is
7 allowed a credit against the tax due under this chapter. The credit is
8 based on qualified employment positions in eligible areas. The credit
9 is available to persons who are engaged in international services as
10 defined in this section. In order to receive the credit, the
11 international service activities must take place at a business within
12 the eligible area.

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

18 (b) Credit may not be taken for hiring of persons into positions
19 that exist on July 1, 1998. Credit is authorized for new employees
20 hired for new positions created after July 1, 1998. New positions
21 filled by existing employees are eligible for the credit under this
22 section only if the position vacated by the existing employee is filled
23 by a new hire.

24 (c) When a position is newly created, if it is filled before July
25 1st, this position is eligible for the full yearly credit. If it is
26 filled after June 30th, this position is eligible for half of the
27 credit.

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

30 (3) For the purposes of this section:

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

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

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

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

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

7 (ii) "International services" excludes any service taxable under
8 RCW 82.04.290(1).

9 (iii) Eligible services are: Computer; data processing;
10 information; legal; accounting and tax preparation; engineering;
11 architectural; business consulting; business management; public
12 relations and advertising; surveying; geological consulting; real
13 estate appraisal; or financial services. For the purposes of this
14 section these services mean the following:

15 (A) "Computer services" are services such as computer programming,
16 custom software modification, customization of canned software, custom
17 software installation, custom software maintenance, custom software
18 repair, training in the use of software, computer systems design, and
19 custom software update services;

20 (B) "Data processing services" are services such as word
21 processing, data entry, data retrieval, data search, information
22 compilation, payroll processing, business accounts processing, data
23 production, and other computerized data and information storage or
24 manipulation. "Data processing services" also includes the use of a
25 computer or computer time for data processing whether the processing is
26 performed by the provider of the computer or by the purchaser or other
27 beneficiary of the service;

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

32 (D) "Legal services" are services such as representation by an
33 attorney, or other person when permitted, in an administrative or legal
34 proceeding, legal drafting, paralegal services, legal research
35 services, and court reporting services, arbitration, and mediation
36 services;

37 (E) "Accounting and tax preparation services" are services such as

1 accounting, auditing, actuarial, bookkeeping, or tax preparation
2 services;

3 (F) "Engineering services" are services such as civil, electrical,
4 mechanical, petroleum, marine, nuclear, and design engineering, machine
5 designing, machine tool designing, and sewage disposal system designing
6 services;

7 (G) "Architectural services" are services such as structural or
8 landscape design or architecture, interior design, building design,
9 building program management, and space planning services;

10 (H) "Business consulting services" are services such as primarily
11 providing operating counsel, advice, or assistance to the management or
12 owner of any business, private, nonprofit, or public organization,
13 including but not limited to those in the following areas:
14 Administrative management consulting; general management consulting;
15 human resource consulting or training; management engineering
16 consulting; management information systems consulting; manufacturing
17 management consulting; marketing consulting; operations research
18 consulting; personnel management consulting; physical distribution
19 consulting; site location consulting; economic consulting; motel,
20 hotel, and resort consulting; restaurant consulting; government affairs
21 consulting; and lobbying;

22 (I) "Business management services" are services such as
23 administrative management, business management, and office management.
24 "Business management services" does not include property management or
25 property leasing, motel, hotel, and resort management, or automobile
26 parking management;

27 (J) "Public relations and advertising services" are services such
28 as layout, art direction, graphic design, copy writing, mechanical
29 preparation, opinion research, marketing research, marketing, or
30 production supervision;

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

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

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

37 (N) "Financial services" are services such as banking, loan,
38 security, investment management, investment advisory, mortgage

1 servicing, contract collection, and finance leasing services, engaged
2 in by financial businesses, or businesses similar to or in competition
3 with financial businesses; and

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

9 (4) By ordinance, the legislative authority of a city, or
10 legislative authorities of contiguous cities by ordinance of each
11 city's legislative authority, with population greater than eighty
12 thousand, located in a county containing no community empowerment zones
13 as designated under RCW 43.31C.020, may designate a contiguous group of
14 census tracts within the city or cities as an eligible area under this
15 section. Each of the census tracts must meet the unemployment and
16 poverty criteria of RCW 43.31C.030. Upon making the designation, the
17 city or cities shall transmit to the department of revenue a
18 certification letter and a map, each explicitly describing the
19 boundaries of the census tract. This designation must be made by
20 December 31, 1998.

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

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

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

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

29 (6) If at any time the department finds that a person is not
30 eligible for tax credit under this section, the amount of taxes for
31 which a credit has been used shall be immediately due. The department
32 shall assess interest, but not penalties, on the credited taxes for
33 which the person is not eligible. The interest shall be assessed at
34 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
35 shall be assessed retroactively to the date the tax credit was taken,
36 and shall accrue until the taxes for which a credit has been used are
37 repaid.

1 (7) The employment security department shall provide to the
2 department of revenue such information needed by the department of
3 revenue to verify eligibility under this section.

4 **Sec. 1105.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each
5 amended to read as follows:

6 (1) Every consignee, bailee, factor, or auctioneer (~~authorized,~~
7 ~~engaged, or employed to sell or call~~) selling or calling for bids on
8 (~~tangible~~) personal property belonging to another, (~~and so selling~~
9 ~~or calling, shall be~~) is deemed the seller of such (~~tangible~~)
10 personal property within the meaning of this chapter (~~and~~). All
11 sales made by such persons are subject to (~~its~~) the provisions of
12 this chapter even though the sale would have been exempt from the tax
13 (~~hereunder~~) imposed in this chapter had it been made directly by the
14 owner of the property sold.

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

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

24 **Sec. 1106.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each
25 amended to read as follows:

26 (1) If a buyer normally is engaged in both consuming and reselling
27 certain types of (~~articles of tangible~~) personal property, the retail
28 sale of which is taxable under this chapter, and the buyer is not able
29 to determine at the time of purchase whether the particular property
30 acquired will be consumed or resold, the buyer may use a resale
31 certificate for the entire purchase if the buyer principally resells
32 the articles according to the general nature of the buyer's business.
33 The buyer shall account for the value of any articles purchased with a
34 resale certificate that are used by the buyer and remit the sales tax
35 on the articles to the department.

1 (2) A buyer who pays a tax on all purchases and subsequently
2 resells an article at retail, without intervening use by the buyer,
3 shall collect the tax from the purchaser as otherwise provided by law
4 and is entitled to a deduction on the buyer's tax return equal to the
5 cost to the buyer of the property resold upon which retail sales tax
6 has been paid. The deduction is allowed only if the taxpayer keeps and
7 preserves records that show the names of the persons from whom the
8 articles were purchased, the date of the purchase, the type of
9 articles, the amount of the purchase, and the tax that was paid. The
10 department shall provide by rule for the refund or credit of retail
11 sales tax paid by a buyer for purchases that are later sold at
12 wholesale without intervening use by the buyer.

13 **Sec. 1107.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to
14 read as follows:

15 A credit (~~shall be~~) is allowed against the taxes imposed by this
16 chapter upon the use in this state of tangible personal property,
17 extended warranty, digital good, digital code, digital automated
18 service, or services (~~(taxable under)~~) defined as a retail sale in RCW
19 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the (~~(state of~~
20 ~~Washington in the)~~) amount that the present user thereof or his or her
21 bailor or donor has paid a legally imposed retail sales or use tax with
22 respect to such property, extended warranty, digital good, digital
23 code, digital automated service, or service defined as a retail sale in
24 RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state,
25 possession, territory, or commonwealth of the United States, any
26 political subdivision thereof, the District of Columbia, and any
27 foreign country or political subdivision thereof (~~(, prior to the use of~~
28 ~~such property, extended warranty, or service in Washington)~~).

29 **Sec. 1108.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to
30 read as follows:

31 (1) Every person who maintains in this state a place of business or
32 a stock of goods, or engages in business activities within this state,
33 shall obtain from the department a certificate of registration, and
34 shall, at the time of making sales of tangible personal property,
35 digital goods, digital codes, digital automated services, extended
36 warranties, or sales of any service defined as a retail sale in RCW

1 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
2 either possession or title, or both, of tangible personal property for
3 use in this state, collect from the purchasers or transferees the tax
4 imposed under this chapter. The tax to be collected under this section
5 (~~shall~~) must be in an amount equal to the purchase price multiplied
6 by the rate in effect for the retail sales tax under RCW 82.08.020.
7 For the purposes of this chapter, the phrase "maintains in this state
8 a place of business" shall include the solicitation of sales and/or
9 taking of orders by sales agents or traveling representatives. For the
10 purposes of this chapter, "engages in business activity within this
11 state" includes every activity which is sufficient under the
12 Constitution of the United States for this state to require collection
13 of tax under this chapter. The department (~~shall~~) must in rules
14 specify activities which constitute engaging in business activity
15 within this state, and (~~shall~~) must keep the rules current with
16 future court interpretations of the Constitution of the United States.

17 (2) Every person who engages in this state in the business of
18 acting as an independent selling agent for persons who do not hold a
19 valid certificate of registration, and who receives compensation by
20 reason of sales of tangible personal property, digital goods, digital
21 codes, digital automated services, extended warranties, or sales of any
22 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),
23 (3)(a), or (6)(b), of his or her principals for use in this state,
24 (~~shall~~) must, at the time such sales are made, collect from the
25 purchasers the tax imposed on the purchase price under this chapter,
26 and for that purpose shall be deemed a retailer as defined in this
27 chapter.

28 (3) The tax required to be collected by this chapter (~~shall be~~)
29 is deemed to be held in trust by the retailer until paid to the
30 department, and any retailer who appropriates or converts the tax
31 collected to the retailer's own use or to any use other than the
32 payment of the tax provided herein to the extent that the money
33 required to be collected is not available for payment on the due date
34 as prescribed (~~shall be~~) is guilty of a misdemeanor. In case any
35 seller fails to collect the tax herein imposed or having collected the
36 tax, fails to pay the same to the department in the manner prescribed,
37 whether such failure is the result of the seller's own acts or the
38 result of acts or conditions beyond the seller's control, the seller

1 (~~shall~~) is nevertheless(~~, be~~) personally liable to the state for
2 the amount of such tax, unless the seller has taken from the buyer in
3 good faith a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

14 (ii) The taking of orders; or

15 (iii) The processing of payments; and

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

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

27 **Sec. 1109.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to
28 read as follows:

29 (1) A city, town, or county that creates a benefit zone and
30 finances public improvements pursuant to chapter 39.100 RCW may impose
31 a sales and use tax in accordance with the terms of this chapter and
32 subject to the criteria set forth in this section. Except as provided
33 in this section, the tax is in addition to other taxes authorized by
34 law and shall be collected from those persons who are taxable by the
35 state under chapters 82.08 and 82.12 RCW upon the occurrence of any
36 taxable event within the taxing jurisdiction of the city, town, or
37 county. The rate of tax shall not exceed the rate provided in RCW

1 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~
2 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of
3 any other taxes imposed on the same events that are credited against
4 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax
5 rate shall be no higher than what is reasonably necessary for the local
6 government to receive its entire annual state contribution in a ten-
7 month period of time.

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

13 (3) No tax may be imposed under this section before July 1, 2007.
14 Before imposing a tax under this section, the city, town, or county
15 shall first have received tax allocation revenues during the preceding
16 calendar year. The tax imposed under this section shall expire on the
17 earlier of the date: (a) The tax allocation revenues are no longer
18 used for public improvements and public improvement costs; (b) the
19 bonds issued under the authority of chapter 39.100 RCW are retired, if
20 the bonds are issued; or (c) that is thirty years after the tax is
21 first imposed.

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

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

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

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

30 (i) The amount of tax distributions totals the amount of the state
31 contribution;

32 (ii) The amount of tax distributions totals the amount of local
33 public sources, dedicated in the previous calendar year to finance
34 public improvements authorized under chapter 39.100 RCW, expended in
35 the previous year for public improvement costs or used to pay for other
36 bonds issued to pay for public improvements; or

37 (iii) The amount of revenue from taxes imposed under this section

1 by all cities, towns, and counties totals the annual state credit limit
2 as provided in RCW 82.32.700(3);

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

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

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

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

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

21 (6) The department shall determine the amount of tax distributions
22 attributable to each city, town, and county imposing a sales and use
23 tax under this section and shall advise a city, town, or county when
24 the tax will cease to be distributed for the remainder of the fiscal
25 year as provided in subsection (4)(c) of this section. Determinations
26 by the department of the amount of taxes attributable to a city, town,
27 or county are final and shall not be used to challenge the validity of
28 any tax imposed under this section. The department shall remit any tax
29 revenues in excess of the amounts specified in subsection (4)(b) and
30 (c) of this section to the state treasurer who shall deposit the moneys
31 in the general fund.

32 (7) The definitions in this subsection apply throughout this
33 section and RCW 82.14.470 unless the context clearly requires
34 otherwise.

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

37 (b) "Benefit zone" has the same meaning as provided in RCW
38 39.100.010.

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

3 (d) "Excess state excise taxes" means the amount of excise taxes
4 received by the state during the measurement year from taxable activity
5 within the benefit zone over and above the amount of excise taxes
6 received by the state during the base year from taxable activity within
7 the benefit zone. However, if a local government creates the benefit
8 zone and reasonably determines that no activity subject to tax under
9 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
10 preceding the creation of the benefit zone within the boundaries of the
11 area that became the benefit zone, "excess state excise taxes" means
12 the entire amount of state excise taxes the state receives during a
13 calendar year period beginning with the calendar year immediately
14 following the creation of the benefit zone and continuing with each
15 measurement year thereafter.

16 (e) "State excise taxes" means revenues derived from state retail
17 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
18 of tax distributions from all local retail sales and use taxes imposed
19 on the same taxable events that are credited against the state retail
20 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
21 local tax authorized in this section.

22 (f) "Fiscal year" has the same meaning as provided in RCW
23 39.100.030.

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

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

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

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

35 (k) "Local public sources" includes, but is not limited to, private
36 monetary contributions, assessments, dedicated local government funds,
37 and tax allocation revenues. "Local public sources" does not include

1 local government funds derived from any state loan or state grant, any
2 local tax that is credited against the state sales and use taxes, or
3 any other state funds.

4 **Sec. 1110.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to
5 read as follows:

6 For the purposes of this chapter, unless otherwise required by the
7 context:

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

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

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

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

24 (5) "Light and power business" means the business of operating a
25 plant or system for the generation, production or distribution of
26 electrical energy for hire or sale and/or for the wheeling of
27 electricity for others.

28 (6) "Telegraph business" means the business of affording
29 telegraphic communication for hire.

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

33 (8) "Motor transportation business" means the business (except
34 urban transportation business) of operating any motor propelled vehicle
35 by which persons or property of others are conveyed for hire, and
36 includes, but is not limited to, the operation of any motor propelled
37 vehicle as an auto transportation company (except urban transportation

1 business), common carrier, or contract carrier as defined by RCW
2 81.68.010 and 81.80.010(~~(:—PROVIDED, — That)~~). However, "motor
3 transportation business" (~~(shall)~~) does not mean or include the
4 transportation of logs or other forest products exclusively upon
5 private roads or private highways.

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

20 (10)(a) "Public service business" means any of the businesses
21 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)
22 of this section or any business subject to control by the state, or
23 having the powers of eminent domain and the duties incident thereto, or
24 any business hereafter declared by the legislature to be of a public
25 service nature, except telephone business and low-level radioactive
26 waste site operating companies as redefined in RCW 81.04.010. It
27 includes, among others, without limiting the scope hereof: Airplane
28 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
29 road, water transportation and wharf businesses.

30 (b) The definitions in this subsection (10)(b) apply throughout
31 this subsection (10).

32 (i) "Competitive telephone service" has the same meaning as in RCW
33 82.04.065.

34 (ii) "Network telephone service" means the providing by any person
35 of access to a telephone network, telephone network switching service,
36 toll service, or coin telephone services, or the providing of
37 telephonic, video, data, or similar communication or transmission for
38 hire, via a telephone network, toll line or channel, cable, microwave,

1 or similar communication or transmission system. "Network telephone
2 service" includes the provision of transmission to and from the site of
3 an internet provider via a telephone network, toll line or channel,
4 cable, microwave, or similar communication or transmission system.
5 "Network telephone service" does not include the providing of
6 competitive telephone service, the providing of cable television
7 service, the providing of broadcast services by radio or television
8 stations, nor the provision of internet ((~~service~~)) access as defined
9 in RCW 82.04.297, including the reception of dial-in connection,
10 provided at the site of the internet service provider.

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

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

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

20 (12) "Gross income" means the value proceeding or accruing from the
21 performance of the particular public service or transportation business
22 involved, including operations incidental thereto, but without any
23 deduction on account of the cost of the commodity furnished or sold,
24 the cost of materials used, labor costs, interest, discount, delivery
25 costs, taxes, or any other expense whatsoever paid or accrued and
26 without any deduction on account of losses.

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

31 **Sec. 1111.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to
32 read as follows:

33 For the purposes of this chapter:

34 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
35 the words and phrases "tax year," "taxable year," "person," "company,"
36 "gross proceeds of sales," "gross income of the business," "business,"
37 "engaging in business," "successor," "gross operating revenue," "gross

1 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
2 "extended warranty," and "value of products" shall apply equally to the
3 provisions of this chapter.

4 (2) Whenever "property" or "personal property" is used, those terms
5 must be construed to include digital goods and digital codes unless:
6 (a) It is clear from the context that the term "personal property" is
7 intended only to refer to tangible personal property; (b) it is clear
8 from the context that the term "property" is intended only to refer to
9 tangible personal property, real property, or both; or (c) to construe
10 the term "property" or "personal property" as including digital goods
11 and _ digital _ codes _ would _ yield _ unlikely, _ absurd, _ or _ strained
12 consequences.

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

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

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

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

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

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

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

37 (B) Before the effective date of the agreement, has been found to

1 be in compliance with the requirements of the agreement by an
2 affirmative vote of three-fourths of the other petitioning states; or
3 (C) After the effective date of the agreement, has been found to be
4 in compliance with the agreement by a three-fourths vote of the entire
5 governing board of the agreement.
6 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
7 is effective on the first day of a calendar quarter at least sixty days
8 after at least ten states comprising at least twenty percent of the
9 total population, as determined by the 2000 federal census, of all
10 states imposing a state sales tax have petitioned for membership and
11 have either been found in compliance with the agreement or have been
12 found to be an associate member under section 704 of the agreement.
13 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection
14 is effective on the state's proposed date of entry or the first day of
15 the calendar quarter after its petition is approved by the governing
16 board, whichever is later, and is at least sixty days after its
17 petition is approved.
18 (f) "Model 1 seller" means a seller that has selected a certified
19 service provider as its agent to perform all the seller's sales and use
20 tax functions, other than the seller's obligation to remit tax on its
21 own purchases.
22 (g) "Model 2 seller" means a seller that has selected a certified
23 automated system to perform part of its sales and use tax functions,
24 but retains responsibility for remitting the tax.
25 (h) "Model 3 seller" means a seller that has sales in at least five
26 member states, has total annual sales revenue of at least five hundred
27 million dollars, has a proprietary system that calculates the amount of
28 tax due each jurisdiction, and has entered into a performance agreement
29 with the member states that establishes a tax performance standard for
30 the seller. As used in this subsection (~~((+2))~~) (3)(h), a seller
31 includes an affiliated group of sellers using the same proprietary
32 system.
33 (i) "Source" means the location in which the sale or use of
34 tangible personal property, a digital good or digital code, an extended
35 warranty, or a digital automated service or other service, subject to
36 tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
37 occur.

1 **Sec. 1112.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to
2 read as follows:

3 For purposes of (~~compliance with the requirements of the agreement~~
4 ~~only~~) construing those provisions of the streamlined sales and use tax
5 agreement that have been incorporated into this title, and unless the
6 context requires otherwise, the terms "product" and "products" refer to
7 tangible personal property, digital goods, digital codes, digital
8 automated services, other services, extended warranties, and anything
9 else that can be sold or used.

10
11

PART XII
MISCELLANEOUS

12 NEW SECTION. **Sec. 1201.** This act does not have any impact
13 whatsoever on the characterization of digital goods and digital codes
14 as tangible or intangible personal property for purposes of property
15 taxation and may not be used in any way in construing any provision of
16 Title 84 RCW.

17 NEW SECTION. **Sec. 1202.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 1203.** The repeals in sections 515 and 623 of
22 this act do not affect any existing right acquired or liability or
23 obligation incurred under the statutes repealed or under any rule or
24 order adopted under those statutes nor do they affect any proceedings
25 instituted under them.

26 NEW SECTION. **Sec. 1204.** Part headings used in this act are not
27 any part of the law.

 Passed by the House April 13, 2009.
 Passed by the Senate April 21, 2009.
 Approved by the Governor May 18, 2009.
 Filed in Office of Secretary of State May 20, 2009.