
HOUSE BILL 2022

State of Washington

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By Representatives Reykdal, Billig, Cody, Fitzgibbon, Lias, Appleton, Dunshee, Dickerson, Jinkins, Ryu, McCoy, Ormsby, Hasegawa, Kirby, Ladenburg, Hunt, Roberts, Lytton, Frockt, Kagi, Tharinger, and Kenney

Read first time 03/18/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing additional funds for medicare by
2 extending sales and use taxes to elective cosmetic services; amending
3 RCW 82.12.020 and 82.12.035; reenacting and amending RCW 82.04.050 and
4 82.12.010; adding a new section to chapter 82.04 RCW; adding a new
5 section to chapter 82.32 RCW; adding a new section to chapter 43.135
6 RCW; and creating a new section.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that there is a need
9 to maintain funding assistance for Washington seniors who lack the
10 means to pay for the prescription drugs necessary for their health and
11 well-being. The legislature further finds that a tax preference
12 currently supporting a completely discretionary activity, such as
13 elective cosmetic surgery, should instead be used to support
14 Washington's seniors who cannot afford their prescription drug costs.
15 Therefore, it is the legislature's intent that the funds saved by the
16 termination of the tax preferences in this act be used to support
17 seniors dually eligible for both medicare and medicaid who are unable
18 to pay for the costs of their medicare part D copayments.

1 **Sec. 2.** RCW 82.04.050 and 2010 c 112 s 14, 2010 c 111 s 201, and
2 2010 c 106 s 202 are each reenacted and amended to read as follows:

3 (1)(a) "Sale at retail" or "retail sale" means every sale of
4 tangible personal property (including articles produced, fabricated, or
5 imprinted) to all persons irrespective of the nature of their business
6 and including, among others, without limiting the scope hereof, persons
7 who install, repair, clean, alter, improve, construct, or decorate real
8 or personal property of or for consumers other than a sale to a person
9 who:

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

14 (ii) Installs, repairs, cleans, alters, imprints, improves,
15 constructs, or decorates real or personal property of or for consumers,
16 if such tangible personal property becomes an ingredient or component
17 of such real or personal property without intervening use by such
18 person; or

19 (iii) Purchases for the purpose of consuming the property purchased
20 in producing for sale as a new article of tangible personal property or
21 substance, of which such property becomes an ingredient or component or
22 is a chemical used in processing, when the primary purpose of such
23 chemical is to create a chemical reaction directly through contact with
24 an ingredient of a new article being produced for sale; or

25 (iv) Purchases for the purpose of consuming the property purchased
26 in producing ferrosilicon which is subsequently used in producing
27 magnesium for sale, if the primary purpose of such property is to
28 create a chemical reaction directly through contact with an ingredient
29 of ferrosilicon; or

30 (v) Purchases for the purpose of providing the property to
31 consumers as part of competitive telephone service, as defined in RCW
32 82.04.065; or

33 (vi) Purchases for the purpose of satisfying the person's
34 obligations under an extended warranty as defined in subsection (7) of
35 this section, if such tangible personal property replaces or becomes an
36 ingredient or component of property covered by the extended warranty
37 without intervening use by such person.

1 (b) The term includes every sale of tangible personal property that
2 is used or consumed or to be used or consumed in the performance of any
3 activity defined as a "sale at retail" or "retail sale" even though
4 such property is resold or used as provided in (a)(i) through (vi) of
5 this subsection following such use.

6 (c) The term also means every sale of tangible personal property to
7 persons engaged in any business that is taxable under RCW 82.04.280
8 (1), (2), and (7), 82.04.290, and 82.04.2908.

9 (2) The term "sale at retail" or "retail sale" includes the sale of
10 or charge made for tangible personal property consumed and/or for labor
11 and services rendered in respect to the following:

12 (a) The installing, repairing, cleaning, altering, imprinting, or
13 improving of tangible personal property of or for consumers, including
14 charges made for the mere use of facilities in respect thereto, but
15 excluding charges made for the use of self-service laundry facilities,
16 and also excluding sales of laundry service to nonprofit health care
17 facilities, and excluding services rendered in respect to live animals,
18 birds and insects;

19 (b) The constructing, repairing, decorating, or improving of new or
20 existing buildings or other structures under, upon, or above real
21 property of or for consumers, including the installing or attaching of
22 any article of tangible personal property therein or thereto, whether
23 or not such personal property becomes a part of the realty by virtue of
24 installation, and also includes the sale of services or charges made
25 for the clearing of land and the moving of earth excepting the mere
26 leveling of land used in commercial farming or agriculture;

27 (c) The constructing, repairing, or improving of any structure
28 upon, above, or under any real property owned by an owner who conveys
29 the property by title, possession, or any other means to the person
30 performing such construction, repair, or improvement for the purpose of
31 performing such construction, repair, or improvement and the property
32 is then reconveyed by title, possession, or any other means to the
33 original owner;

34 (d) The cleaning, fumigating, razing, or moving of existing
35 buildings or structures, but does not include the charge made for
36 janitorial services; and for purposes of this section the term
37 "janitorial services" means those cleaning and caretaking services
38 ordinarily performed by commercial janitor service businesses

1 including, but not limited to, wall and window washing, floor cleaning
2 and waxing, and the cleaning in place of rugs, drapes and upholstery.
3 The term "janitorial services" does not include painting, papering,
4 repairing, furnace or septic tank cleaning, snow removal or
5 sandblasting;

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

9 (f) The furnishing of lodging and all other services by a hotel,
10 rooming house, tourist court, motel, trailer camp, and the granting of
11 any similar license to use real property, as distinguished from the
12 renting or leasing of real property, and it is presumed that the
13 occupancy of real property for a continuous period of one month or more
14 constitutes a rental or lease of real property and not a mere license
15 to use or enjoy the same. For the purposes of this subsection, it is
16 presumed that the sale of and charge made for the furnishing of lodging
17 for a continuous period of one month or more to a person is a rental or
18 lease of real property and not a mere license to enjoy the same;

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

21 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
22 this subsection when such sales or charges are for property, labor and
23 services which are used or consumed in whole or in part by such persons
24 in the performance of any activity defined as a "sale at retail" or
25 "retail sale" even though such property, labor and services may be
26 resold after such use or consumption. Nothing contained in this
27 subsection may be construed to modify subsection (1) of this section
28 and nothing contained in subsection (1) of this section may be
29 construed to modify this subsection.

30 (3) The term "sale at retail" or "retail sale" includes the sale of
31 or charge made for personal, business, or professional services
32 including amounts designated as interest, rents, fees, admission, and
33 other service emoluments however designated, received by persons
34 engaging in the following business activities:

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

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

1 (c) Credit bureau services;

2 (d) Automobile parking and storage garage services;

3 (e) Landscape maintenance and horticultural services but excluding

4 (i) horticultural services provided to farmers and (ii) pruning,

5 trimming, repairing, removing, and clearing of trees and brush near

6 electric transmission or distribution lines or equipment, if performed

7 by or at the direction of an electric utility;

8 (f) Service charges associated with tickets to professional

9 sporting events; (~~and~~)

10 (g) The following personal services: Physical fitness services,

11 tanning salon services, tattoo parlor services, steam bath services,

12 turkish bath services, escort services, and dating services; and

13 (h) Cosmetic medical services.

14 (4)(a) The term also includes the renting or leasing of tangible

15 personal property to consumers.

16 (b) The term does not include the renting or leasing of tangible

17 personal property where the lease or rental is for the purpose of

18 sublease or subrent.

19 (5) The term also includes the providing of "competitive telephone

20 service," "telecommunications service," or "ancillary services," as

21 those terms are defined in RCW 82.04.065, to consumers.

22 (6)(a) The term also includes the sale of prewritten computer

23 software to a consumer, regardless of the method of delivery to the end

24 user. For purposes of this subsection (6)(a), the sale of prewritten

25 computer software includes the sale of or charge made for a key or an

26 enabling or activation code, where the key or code is required to

27 activate prewritten computer software and put the software into use.

28 There is no separate sale of the key or code from the prewritten

29 computer software, regardless of how the sale may be characterized by

30 the vendor or by the purchaser.

31 The term "retail sale" does not include the sale of or charge made

32 for:

33 (i) Custom software; or

34 (ii) The customization of prewritten computer software.

35 (b)(i) The term also includes the charge made to consumers for the

36 right to access and use prewritten computer software, where possession

37 of the software is maintained by the seller or a third party,

1 regardless of whether the charge for the service is on a per use, per
2 user, per license, subscription, or some other basis.

3 (ii)(A) The service described in (b)(i) of this subsection (6)
4 includes the right to access and use prewritten computer software to
5 perform data processing.

6 (B) For purposes of this subsection (6)(b)(ii), "data processing"
7 means the systematic performance of operations on data to extract the
8 required information in an appropriate form or to convert the data to
9 usable information. Data processing includes check processing, image
10 processing, form processing, survey processing, payroll processing,
11 claim processing, and similar activities.

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

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

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

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

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

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

36 (b) A retail sale of digital goods, digital codes, or digital
37 automated services under this subsection (8) includes any services

1 provided by the seller exclusively in connection with the digital
2 goods, digital codes, or digital automated services, whether or not a
3 separate charge is made for such services.

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

10 (9) The term also includes the charge made for providing tangible
11 personal property along with an operator for a fixed or indeterminate
12 period of time. A consideration of this is that the operator is
13 necessary for the tangible personal property to perform as designed.
14 For the purpose of this subsection (9), an operator must do more than
15 maintain, inspect, or set up the tangible personal property.

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

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

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

33 (b) farmers for the purpose of producing for sale any agricultural
34 product; and (c) farmers acting under cooperative habitat development

35 or access contracts with an organization exempt from federal income tax
36 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
37 the Washington state department of fish and wildlife to produce or
38 improve wildlife habitat on land that the farmer owns or leases.

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

17 (13) The term does not include the sale of or charge made for
18 labor, services, or tangible personal property pursuant to agreements
19 providing maintenance services for bus, rail, or rail fixed guideway
20 equipment when a regional transit authority is the recipient of the
21 labor, services, or tangible personal property, and a transit agency,
22 as defined in RCW 81.104.015, performs the labor or services.

23 (14) The term does not include the sale for resale of any service
24 described in this section if the sale would otherwise constitute a
25 "sale at retail" and "retail sale" under this section.

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

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

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

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

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

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

29 **Sec. 4.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each
30 amended to read as follows:

31 (1) There is levied and collected from every person in this state
32 a tax or excise for the privilege of using within this state as a
33 consumer any:

34 (a) Article of tangible personal property acquired by the user in
35 any manner, including tangible personal property acquired at a casual
36 or isolated sale, and including by-products used by the manufacturer

1 thereof, except as otherwise provided in this chapter, irrespective of
2 whether the article or similar articles are manufactured or are
3 available for purchase within this state;

4 (b) Prewritten computer software, regardless of the method of
5 delivery, but excluding prewritten computer software that is either
6 provided free of charge or is provided for temporary use in viewing
7 information, or both;

8 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or
9 (g), (3)(a) or (h), or (6)(b), excluding services defined as a retail
10 sale in RCW 82.04.050(6)(b) that are provided free of charge;

11 (d) Extended warranty; or

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

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

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

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

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

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

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

32 (2) The provisions of this chapter do not apply in respect to the
33 use of any article of tangible personal property, extended warranty,
34 digital good, digital code, digital automated service, or service
35 taxable under RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), if
36 the sale to, or the use by, the present user or 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 the present user's bailor or donor.

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

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

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

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

20 (iii) In respect to the use of any article of tangible personal
21 property acquired by bailment, if the property was acquired by a
22 previous bailee from the same bailor for use in the same general
23 activity and the original bailment was prior to June 9, 1961; or

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

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

36 (b) In the case of a seller required to collect use tax from the
37 purchaser, the tax must be collected in an amount equal to the purchase

1 price multiplied by the applicable rate in effect for the retail sales
2 tax under RCW 82.08.020.

3 (5) For purposes of the tax imposed in this section, "person"
4 includes anyone within the definition of "buyer," "purchaser," and
5 "consumer" in RCW 82.08.010.

6 **Sec. 5.** RCW 82.12.010 and 2010 c 127 s 4 are each reenacted and
7 amended to read as follows:

8 For the purposes of this chapter:

9 (1) The meaning ascribed to words and phrases in chapters 82.04 and
10 82.08 RCW, insofar as applicable, has full force and effect with
11 respect to taxes imposed under the provisions of this chapter.
12 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
13 and 82.08 RCW insofar as applicable, also means any person who
14 distributes or displays, or causes to be distributed or displayed, any
15 article of tangible personal property, except newspapers, the primary
16 purpose of which is to promote the sale of products or services. With
17 respect to property distributed to persons within this state by a
18 consumer as defined in this subsection (1), the use of the property is
19 deemed to be by such consumer.

20 (2) "Extended warranty" has the same meaning as in RCW
21 82.04.050(7).

22 (3) "Purchase price" means the same as sales price as defined in
23 RCW 82.08.010.

24 (4)(a)(i) Except as provided in (a)(ii) of this subsection (4),
25 "retailer" means every seller as defined in RCW 82.08.010 and every
26 person engaged in the business of selling tangible personal property at
27 retail and every person required to collect from purchasers the tax
28 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

1 employer organization, is deemed to be the retailer and is responsible
2 for collecting and remitting the tax imposed by this chapter.

3 (b) For the purposes of (a) of this subsection, the terms "client,"
4 "covered employee," "professional employer agreement," and
5 "professional employer organization" have the same meanings as in RCW
6 82.04.540.

7 (5) "Taxpayer" and "purchaser" include all persons included within
8 the meaning of the word "buyer" and the word "consumer" as defined in
9 chapters 82.04 and 82.08 RCW.

10 (6) "Use," "used," "using," or "put to use" have their ordinary
11 meaning, and mean:

12 (a) With respect to tangible personal property, except for natural
13 gas and manufactured gas, the first act within this state by which the
14 taxpayer takes or assumes dominion or control over the article of
15 tangible personal property (as a consumer), and include installation,
16 storage, withdrawal from storage, distribution, or any other act
17 preparatory to subsequent actual use or consumption within this state;

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

25 (c) With respect to an extended warranty, the first act within this
26 state after the extended warranty has been acquired by which the
27 taxpayer takes or assumes dominion or control over the article of
28 tangible personal property to which the extended warranty applies, and
29 includes installation, storage, withdrawal from storage, distribution,
30 or any other act preparatory to subsequent actual use or consumption of
31 the article within this state;

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

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

1 (f) With respect to a service defined as a retail sale in RCW
2 82.04.050(6)(b), the first act within this state by which the taxpayer,
3 as a consumer, accesses the prewritten computer software;

4 (g) With respect to a service defined as a retail sale in RCW
5 82.04.050(2)(g), the first act within this state after the service has
6 been performed by which the taxpayer, as a consumer, views, accesses,
7 downloads, possesses, stores, opens, manipulates, or otherwise uses or
8 enjoys the digital good upon which the service was performed; (~~and~~)

9 (h) With respect to natural gas or manufactured gas, the use of
10 which is taxable under RCW 82.12.022, including gas that is also
11 taxable under the authority of RCW 82.14.230, the first act within this
12 state by which the taxpayer consumes the gas by burning the gas or
13 storing the gas in the taxpayer's own facilities for later consumption
14 by the taxpayer; and

15 (i) With respect to a service described in RCW 82.04.050(3)(h), the
16 first presence within this state by the taxpayer after the service has
17 been performed upon that taxpayer.

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

29 (b) In case the articles used are acquired by bailment, the value
30 of the use of the articles so used must be in an amount representing a
31 reasonable rental for the use of the articles so bailed, determined as
32 nearly as possible according to the value of such use at the places of
33 use of similar products of like quality and character under such rules
34 as the department of revenue may prescribe. In case any such articles
35 of tangible personal property are used in respect to the construction,
36 repairing, decorating, or improving of, and which become or are to
37 become an ingredient or component of, new or existing buildings or
38 other structures under, upon, or above real property of or for the

1 United States, any instrumentality thereof, or a county or city housing
2 authority created pursuant to chapter 35.82 RCW, including the
3 installing or attaching of any such articles therein or thereto,
4 whether or not such personal property becomes a part of the realty by
5 virtue of installation, then the value of the use of such articles so
6 used is determined according to the retail selling price of such
7 articles, or in the absence of such a selling price, as nearly as
8 possible according to the retail selling price at place of use of
9 similar products of like quality and character or, in the absence of
10 either of these selling price measures, such value may be determined
11 upon a cost basis, in any event under such rules as the department of
12 revenue may prescribe.

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

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

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

34 (f) In the case of an article purchased with a direct pay permit
35 under RCW 82.32.087, the value of the article used is determined by the
36 purchase price of such article if, but for the use of the direct pay
37 permit, the transaction would have been subject to sales tax.

1 (8) "Value of the digital good or digital code used" means the
2 purchase price for the digital good or digital code, the use of which
3 is taxable under this chapter. If the digital good or digital code is
4 acquired other than by purchase, the value of the digital good or
5 digital code must be determined as nearly as possible according to the
6 retail selling price at place of use of similar digital goods or
7 digital codes of like quality and character under rules the department
8 may prescribe.

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

17 (10) "Value of the service used" means the purchase price for the
18 digital automated service or other service, the use of which is taxable
19 under this chapter. If the service is received by gift or under
20 conditions wherein the purchase price does not represent the true value
21 thereof, the value of the service used is determined as nearly as
22 possible according to the retail selling price at place of use of
23 similar services of like quality and character under rules the
24 department may prescribe.

25 **Sec. 6.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to
26 read as follows:

27 A credit is allowed against the taxes imposed by this chapter upon
28 the use in this state of tangible personal property, extended warranty,
29 digital good, digital code, digital automated service, or services
30 defined as a retail sale in RCW 82.04.050(2) (a) or (g), (3) (a) or
31 (h), or (6)(b), in the amount that the present user thereof or his or
32 her bailor or donor has paid a legally imposed retail sales or use tax
33 with respect to such property, extended warranty, digital good, digital
34 code, digital automated service, or service defined as a retail sale in
35 RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state,
36 possession, territory, or commonwealth of the United States, any

1 political subdivision thereof, the District of Columbia, and any
2 foreign country or political subdivision thereof.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.32 RCW
4 to read as follows:

5 By May 1, 2012, and by May 1st of every year thereafter, the
6 department must annually estimate the increase in state revenue for the
7 prior calendar year resulting from the changes made to the excise
8 taxation of cosmetic medical services under this act and certify the
9 estimated amount to the state treasurer. By July 1, 2012, and by July
10 1st of every year thereafter, the state treasurer must transfer the
11 amount into the senior pharmacy assistance account hereby created in
12 the state treasury. Money in the account may only be appropriated to
13 fund medicare part D prescription drug copayment coverage for full
14 benefit dual eligible beneficiaries provided under RCW 74.09.515.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.135 RCW
16 to read as follows:

17 RCW 43.135.034(4) and 43.135.035(4) do not apply to the transfers
18 established in section 6 of this act.

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