

HB 1550 - S COMM AMD
By Committee on Ways & Means

ADOPTED 4/15/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
4 amended to read as follows:

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

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

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

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

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

1 (v) Purchases for the purpose of providing the property to
2 consumers as part of competitive telephone service, as defined in RCW
3 82.04.065; or

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

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

14 (c) The term also means every sale of tangible personal property
15 to persons engaged in any business that is taxable under RCW
16 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

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

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

36 (c) The constructing, repairing, or improving of any structure
37 upon, above, or under any real property owned by an owner who conveys
38 the property by title, possession, or any other means to the person
39 performing such construction, repair, or improvement for the purpose
40 of performing such construction, repair, or improvement and the

1 property is then reconveyed by title, possession, or any other means
2 to the original owner;

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

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

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

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

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

38 (3) The term "sale at retail" or "retail sale" includes the sale
39 of or charge made for personal, business, or professional services
40 including amounts designated as interest, rents, fees, admission, and

1 other service emoluments however designated, received by persons
2 engaging in the following business activities:

3 ~~(a)((i) Amusement and recreation services including but not
4 limited to golf, pool, billiards, skating, bowling, ski lifts and
5 tows, day trips for sightseeing purposes, and others, when provided
6 to consumers.~~

7 ~~(ii) Until July 1, 2017, amusement and recreation services do not
8 include the opportunity to dance provided by an establishment in
9 exchange for a cover charge.~~

10 ~~(iii) For purposes of this subsection (3)(a):~~

11 ~~(A) "Cover charge" means a charge, regardless of its label, to
12 enter an establishment or added to the purchaser's bill by an
13 establishment or otherwise collected after entrance to the
14 establishment, and the purchaser is provided the opportunity to dance
15 in exchange for payment of the charge.~~

16 ~~(B) "Opportunity to dance" means that an establishment provides a
17 designated physical space, on either a temporary or permanent basis,
18 where customers are allowed to dance and the establishment either
19 advertises or otherwise makes customers aware that it has an area for
20 dancing;~~

21 ~~(b)) Abstract, title insurance, and escrow services;~~

22 ~~((c)) (b) Credit bureau services;~~

23 ~~((d)) (c) Automobile parking and storage garage services;~~

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

29 ~~((f)) (e) Service charges associated with tickets to
30 professional sporting events; (and~~

31 ~~(g)) (f) The following personal services: ((Physical fitness
32 services,)) Tanning salon services, tattoo parlor services, steam
33 bath services, turkish bath services, escort services, and dating
34 services; and~~

35 (g)(i) Operating an athletic or fitness facility, including all
36 charges for the use of such a facility or for any associated services
37 and amenities, except as provided in (g)(ii) of this subsection.

38 (ii) Notwithstanding anything to the contrary in (g)(i) of this
39 subsection (3), the term "sale at retail" and "retail sale" under
40 this subsection does not include:

1 (A) Separately stated charges for the use of an athletic or
2 fitness facility where such use is primarily for a purpose other than
3 engaging in or receiving instruction in a physical fitness activity;

4 (B) Separately stated charges for the use of a discrete portion
5 of an athletic or fitness facility, other than a pool, where such
6 discrete portion of the facility does not by itself meet the
7 definition of "athletic or fitness facility" in this subsection;

8 (C) Separately stated charges for services, such as advertising,
9 massage, nutritional consulting, and body composition testing, that
10 do not require the customer to engage in physical fitness activities
11 to receive the service. The exclusion in this subsection
12 (3)(g)(ii)(C) does not apply to personal training services and
13 instruction in a physical fitness activity;

14 (D) Separately stated charges for physical therapy provided by a
15 physical therapist, as those terms are defined in RCW 18.74.010, or
16 occupational therapy provided by an occupational therapy
17 practitioner, as those terms are defined in RCW 18.59.020, when
18 performed pursuant to a referral from an authorized health care
19 practitioner or in consultation with an authorized health care
20 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
21 authorized health care practitioner means a health care practitioner
22 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or
23 18.71A RCW;

24 (E) Rent or association fees charged by a landlord or residential
25 association to a tenant or residential owner with access to an
26 athletic or fitness facility maintained by the landlord or
27 residential association, unless the rent or fee varies depending on
28 whether the tenant or owner has access to the facility;

29 (F) Services provided in the regular course of employment by an
30 employee with access to an athletic or fitness facility maintained by
31 the employer for use without charge by its employees or their family
32 members;

33 (G) The provision of access to an athletic or fitness facility by
34 an educational institution to its students and staff. However,
35 charges made by an educational institution to its alumni or other
36 members of the public for the use of any of the educational
37 institution's athletic or fitness facilities are a retail sale under
38 this subsection (3)(g). For purposes of this subsection
39 (3)(g)(ii)(G), "educational institution" has the same meaning as in
40 RCW 82.04.170; and

1 (H) Yoga, tai chi, or chi gong classes held at a community
2 center, park, gymnasium, college or university, hospital or other
3 medical facility, private residence, or any facility that is not
4 primarily used for physical fitness activities other than yoga, tai
5 chi, or chi gong classes.

6 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
7 to affect the taxation of sales made by the operator of an athletic
8 or fitness facility, where such sales are defined as a retail sale
9 under any provision of this section other than this subsection (3).

10 (iv) For the purposes of this subsection (3)(g), the following
11 definitions apply:

12 (A) "Athletic or fitness facility" means an indoor or outdoor
13 facility or portion of a facility that is primarily used for:
14 Exercise classes; strength and conditioning programs; personal
15 training services; tennis, racquetball, handball, squash, or
16 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or
17 mixed martial arts training; or other activities requiring the use of
18 exercise or strength training equipment, such as treadmills,
19 elliptical machines, stair climbers, stationary cycles, rowing
20 machines, pilates equipment, balls, climbing ropes, jump ropes, and
21 weightlifting equipment.

22 (B) "Physical fitness activities" means activities that involve
23 physical exertion for the purpose of improving or maintaining the
24 general fitness, strength, flexibility, conditioning, or health of
25 the participant.

26 (4)(a) The term also includes the renting or leasing of tangible
27 personal property to consumers.

28 (b) The term does not include the renting or leasing of tangible
29 personal property where the lease or rental is for the purpose of
30 sublease or subrent.

31 (5) The term also includes the providing of "competitive
32 telephone service," "telecommunications service," or "ancillary
33 services," as those terms are defined in RCW 82.04.065, to consumers.

34 (6)(a) The term also includes the sale of prewritten computer
35 software to a consumer, regardless of the method of delivery to the
36 end user. For purposes of this subsection (6)(a), the sale of
37 prewritten computer software includes the sale of or charge made for
38 a key or an enabling or activation code, where the key or code is
39 required to activate prewritten computer software and put the
40 software into use. There is no separate sale of the key or code from

1 the prewritten computer software, regardless of how the sale may be
2 characterized by the vendor or by the purchaser.

3 The term "retail sale" does not include the sale of or charge
4 made for:

5 (i) Custom software; or

6 (ii) The customization of prewritten computer software.

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

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

15 (B) For purposes of this subsection (6)(b)(ii), "data processing"
16 means the systematic performance of operations on data to extract the
17 required information in an appropriate form or to convert the data to
18 usable information. Data processing includes check processing, image
19 processing, form processing, survey processing, payroll processing,
20 claim processing, and similar activities.

21 (7) The term also includes the sale of or charge made for an
22 extended warranty to a consumer. For purposes of this subsection,
23 "extended warranty" means an agreement for a specified duration to
24 perform the replacement or repair of tangible personal property at no
25 additional charge or a reduced charge for tangible personal property,
26 labor, or both, or to provide indemnification for the replacement or
27 repair of tangible personal property, based on the occurrence of
28 specified events. The term "extended warranty" does not include an
29 agreement, otherwise meeting the definition of extended warranty in
30 this subsection, if no separate charge is made for the agreement and
31 the value of the agreement is included in the sales price of the
32 tangible personal property covered by the agreement. For purposes of
33 this subsection, "sales price" has the same meaning as in RCW
34 82.08.010.

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

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

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

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

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

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

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

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

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

30 (11) The term also does not include sales of chemical sprays or
31 washes to persons for the purpose of postharvest treatment of fruit
32 for the prevention of scald, fungus, mold, or decay, nor does it
33 include sales of feed, seed, seedlings, fertilizer, agents for
34 enhanced pollination including insects such as bees, and spray
35 materials to: (a) Persons who participate in the federal conservation
36 reserve program, the environmental quality incentives program, the
37 wetlands reserve program, and the wildlife habitat incentives
38 program, or their successors administered by the United States
39 department of agriculture; (b) farmers for the purpose of producing
40 for sale any agricultural product; and (c) farmers acting under

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

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

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

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

31 (15)(a) The term "sale at retail" or "retail sale" includes
32 amounts charged, however labeled, to consumers to engage in any of
33 the activities listed in this subsection (15)(a), including the
34 furnishing of any associated equipment or, except as otherwise
35 provided in this subsection, providing instruction in such
36 activities, where such charges are not otherwise defined as a "sale
37 at retail" or "retail sale" in this section:

38 (i)(A) Golf, including any variant in which either golf balls or
39 golf clubs are used, such as miniature golf, hitting golf balls at a
40 driving range, and golf simulators, and including fees charged by a

1 golf course to a player for using his or her own cart. However,
2 charges for golf instruction are not a retail sale, provided that if
3 the instruction involves the use of a golfing facility that would
4 otherwise require the payment of a fee, such as green fees or driving
5 range fees, such fees, including the applicable retail sales tax,
6 must be separately identified and charged by the golfing facility
7 operator to the instructor or the person receiving the instruction.

8 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
9 as otherwise provided in this subsection (15)(a)(i)(B), the term
10 "sale at retail" or "retail sale" does not include amounts charged to
11 participate in, or conduct, a golf tournament or other competitive
12 event. However, amounts paid by event participants to the golf
13 facility operator are retail sales under this subsection (15)(a)(i).
14 Likewise, amounts paid by the event organizer to the golf facility
15 are retail sales under this subsection (15)(a)(i), if such amounts
16 vary based on the number of event participants;

17 (ii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
18 ping pong, and similar games;

19 (iii) Access to amusement park, theme park, and water park
20 facilities, including but not limited to charges for admission and
21 locker or cabana rentals. Discrete charges for rides or other
22 attractions or entertainment that are in addition to the charge for
23 admission are not a retail sale under this subsection (15)(a)(iii).
24 For the purposes of this subsection, an amusement park or theme park
25 is a location that provides permanently affixed amusement rides,
26 games, and other entertainment, but does not include parks or zoos
27 for which the primary purpose is the exhibition of wildlife, or
28 fairs, carnivals, and festivals as defined in (b)(i) of this
29 subsection;

30 (iv) Batting cage activities;

31 (v) Bowling, but not including competitive events, except that
32 amounts paid by the event participants to the bowling alley operator
33 are retail sales under this subsection (15)(a)(v). Likewise, amounts
34 paid by the event organizer to the operator of the bowling alley are
35 retail sales under this subsection (15)(a)(v), if such amounts vary
36 based on the number of event participants;

37 (vi) Climbing on artificial climbing structures, whether indoors
38 or outdoors;

39 (vii) Day trips for sightseeing purposes;

1 (viii) Bungee jumping, zip lining, and riding inside a ball,
2 whether inflatable or otherwise;

3 (ix) Horseback riding offered to the public, where the seller
4 furnishes the horse to the buyer and providing instruction is not the
5 primary focus of the activity, including guided rides, but not
6 including therapeutic horseback riding provided by an instructor
7 certified by a nonprofit organization that offers national or
8 international certification for therapeutic riding instructors;

9 (x) Fishing, including providing access to private fishing areas
10 and charter or guided fishing, except that fishing contests and
11 license fees imposed by a government entity are not a retail sale
12 under this subsection;

13 (xi) Guided hunting and hunting at game farms and shooting
14 preserves, except that hunting contests and license fees imposed by a
15 government entity are not a retail sale under this subsection;

16 (xii) Swimming, but only in respect to (A) recreational or
17 fitness swimming that is open to the public, such as open swim, lap
18 swimming, and special events like kids night out and pool parties
19 during open swim time, and (B) pool parties for private events, such
20 as birthdays, family gatherings, and employee outings. Fees for
21 swimming lessons, to participate in swim meets and other
22 competitions, or to join a swim team, club, or aquatic facility are
23 not retail sales under this subsection (15)(a)(xii);

24 (xiii) Go-karting, bumper cars, and other motorized activities
25 where the seller provides the vehicle and the premises where the
26 buyer will operate the vehicle;

27 (xiv) Indoor or outdoor playground activities, such as inflatable
28 bounce structures and other inflatables; mazes; trampolines; slides;
29 ball pits; games of tag, including laser tag and soft-dart tag; and
30 human gyroscope rides, regardless of whether such activities occur at
31 the seller's place of business, but not including playground
32 activities provided for children by a licensed child day care center
33 or licensed family day care provider as those terms are defined in
34 RCW 43.215.010;

35 (xv) Shooting sports and activities, such as target shooting,
36 skeet, trap, sporting clays, "5" stand, and archery, but only in
37 respect to discrete charges to members of the public to engage in
38 these activities, but not including fees to enter a competitive
39 event, instruction that is entirely or predominately classroom based,
40 or to join or renew a membership at a club, range, or other facility;

1 (xvi) Paintball and airsoft activities;

2 (xvii) Skating, including ice skating, roller skating, and inline
3 skating, but only in respect to discrete charges to members of the
4 public to engage in skating activities, but not including skating
5 lessons, competitive events, team activities, or fees to join or
6 renew a membership at a skating facility, club, or other
7 organization;

8 (xviii) Nonmotorized snow sports and activities, such as downhill
9 and cross-country skiing, snowboarding, ski jumping, sledding, snow
10 tubing, snowshoeing, and similar snow sports and activities, whether
11 engaged in outdoors or in an indoor facility with or without snow,
12 but only in respect to discrete charges to the public for the use of
13 land or facilities to engage in nonmotorized snow sports and
14 activities, such as fees, however labeled, for the use of ski lifts
15 and tows and daily or season passes for access to trails or other
16 areas where nonmotorized snow sports and activities are conducted.
17 However, fees for the following are not retail sales under this
18 subsection (15)(a)(xviii): (A) Instructional lessons; (B) permits
19 issued by a governmental entity to park a vehicle on or access public
20 lands; and (C) permits or leases granted by an owner of private
21 timberland for recreational access to areas used primarily for
22 growing and harvesting timber; and

23 (xix) Scuba diving; snorkeling; river rafting; surfing;
24 kiteboarding; flyboarding; water slides; inflatables, such as water
25 pillows, water trampolines, and water rollers; and similar water
26 sports and activities.

27 (b) Notwithstanding anything to the contrary in this subsection
28 (15), the term "sale at retail" or "retail sale" does not include
29 charges:

30 (i) Made for ballooning, hang gliding, indoor or outdoor sky
31 diving, paragliding, parasailing, and similar activities;

32 (ii) Made for admission to, and rides or attractions at, fairs,
33 carnivals, and festivals. For the purposes of this subsection, fairs,
34 carnivals, and festivals are events that do not exceed twenty-one
35 days and a majority of the amusement rides, if any, are not affixed
36 to real property;

37 (iii) Made by an educational institution to its students and
38 staff for activities defined as retail sales by (a)(i) through (xix)
39 of this subsection. However, charges made by an educational
40 institution to its alumni or other members of the general public for

1 these activities are a retail sale under this subsection (15). For
2 purposes of this subsection (15)(b)(iii), "educational institution"
3 has the same meaning as in RCW 82.04.170;

4 (iv) Made by a vocational school for commercial diver training
5 that is licensed by the workforce training and education coordinating
6 board under chapter 28C.10 RCW; or

7 (v) Made for day camps offered by a nonprofit organization or
8 state or local governmental entity that provide youth not older than
9 age eighteen, or that are focused on providing individuals with
10 disabilities or mental illness, the opportunity to participate in a
11 variety of supervised activities.

12 **Sec. 2.** RCW 82.04.060 and 2010 c 106 s 203 are each amended to
13 read as follows:

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

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

16 (a) Tangible personal property;

17 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
18 (g);

19 (c) (~~Amusement or recreation services as defined~~) Activities
20 defined as a retail sale in RCW 82.04.050(~~(3)~~(a)) (15);

21 (d) Prewritten computer software;

22 (e) Services described in RCW 82.04.050(6)(b);

23 (f) Extended warranties as defined in RCW 82.04.050(7);

24 (g) Competitive telephone service, ancillary services, or
25 telecommunications service as those terms are defined in RCW
26 82.04.065; or

27 (h) Digital goods, digital codes, or digital automated services;

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

34 (3) The sale of any service for resale, if the sale is excluded
35 from the definition of "sale at retail" and "retail sale" in RCW
36 82.04.050(14).

37 **Sec. 3.** RCW 82.04.190 and 2014 c 97 s 302 are each amended to
38 read as follows:

1 "Consumer" means the following:

2 (1) Any person who purchases, acquires, owns, holds, or uses any
3 article of tangible personal property irrespective of the nature of
4 the person's business and including, among others, without limiting
5 the scope hereof, persons who install, repair, clean, alter, improve,
6 construct, or decorate real or personal property of or for consumers
7 other than for the purpose of:

8 (a) Resale as tangible personal property in the regular course of
9 business;

10 (b) Incorporating such property as an ingredient or component of
11 real or personal property when installing, repairing, cleaning,
12 altering, imprinting, improving, constructing, or decorating such
13 real or personal property of or for consumers;

14 (c) Consuming such property in producing for sale as a new
15 article of tangible personal property or a new substance, of which
16 such property becomes an ingredient or component or as a chemical
17 used in processing, when the primary purpose of such chemical is to
18 create a chemical reaction directly through contact with an
19 ingredient of a new article being produced for sale;

20 (d) Consuming the property purchased in producing ferrosilicon
21 which is subsequently used in producing magnesium for sale, if the
22 primary purpose of such property is to create a chemical reaction
23 directly through contact with an ingredient of ferrosilicon; or

24 (e) Satisfying the person's obligations under an extended
25 warranty as defined in RCW 82.04.050(7), if such tangible personal
26 property replaces or becomes an ingredient or component of property
27 covered by the extended warranty without intervening use by such
28 person;

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

1 "retail sale" under RCW 82.04.050(15), other than for resale in the
2 regular course of business; (e) any person who purchases or acquires
3 an extended warranty as defined in RCW 82.04.050(7) other than for
4 resale in the regular course of business; and (f) any person who is
5 an end user of software. For purposes of this subsection (2)(f) and
6 RCW 82.04.050(6), a person who purchases or otherwise acquires
7 prewritten computer software, who provides services described in RCW
8 82.04.050(6)(b) and who will charge consumers for the right to access
9 and use the prewritten computer software, is not an end user of the
10 prewritten 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
14 parking facility, bridge, tunnel, or trestle which is owned by a
15 municipal corporation or political subdivision of the state of
16 Washington or by the United States and which is used or to be used
17 primarily for foot or vehicular traffic including mass transportation
18 vehicles of any kind as defined in RCW 82.04.280, in respect to
19 tangible personal property when such person incorporates such
20 property as an ingredient or component of such publicly owned street,
21 place, road, highway, easement, right-of-way, mass public
22 transportation terminal or parking facility, bridge, tunnel, or
23 trestle by installing, placing or spreading the property in or upon
24 the right-of-way of such street, place, road, highway, easement,
25 bridge, tunnel, or trestle or in or upon the site of such mass public
26 transportation terminal or parking facility;

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

39 (5) Any person who is an owner, lessee, or has the right of
40 possession to personal property which is being constructed, repaired,

1 improved, cleaned, imprinted, or otherwise altered by a person
2 engaged in business;

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

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

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

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

1 (10) Any person who purchases, acquires, or uses services
2 described in RCW 82.04.050(6)(b) other than:

3 (a) For resale in the regular course of business; or

4 (b) For purposes of consuming the service described in RCW
5 82.04.050(6)(b) in producing for sale a new product, but only if such
6 service becomes a component of the new product. For purposes of this
7 subsection (10), "product" means a digital product, an article of
8 tangible personal property, or the service described in RCW
9 82.04.050(6)(b);

10 (11)(a) Any end user of a digital product or digital code.
11 "Consumer" does not include any person who is not an end user of a
12 digital product or a digital code and purchases, acquires, owns,
13 holds, or uses any digital product or digital code for purposes of
14 consuming the digital product or digital code in producing for sale a
15 new product, but only if the digital product or digital code becomes
16 a component of the new product. A digital code becomes a component of
17 a new product if the digital good or digital automated service
18 acquired through the use of the digital code becomes incorporated
19 into a new product. For purposes of this subsection, "product" has
20 the same meaning as in subsection (10) of this section.

21 (b)(i) For purposes of this subsection, "end user" means any
22 taxpayer as defined in RCW 82.12.010 other than a taxpayer who
23 receives by contract a digital product for further commercial
24 broadcast, rebroadcast, transmission, retransmission, licensing,
25 relicensing, distribution, redistribution or exhibition of the
26 product, in whole or in part, to others. A person that purchases
27 digital products or digital codes for the purpose of giving away such
28 products or codes will not be considered to have engaged in the
29 distribution or redistribution of such products or codes and will be
30 treated as an end user;

31 (ii) If a purchaser of a digital code does not receive the
32 contractual right to further redistribute, after the digital code is
33 redeemed, the underlying digital product to which the digital code
34 relates, then the purchaser of the digital code is an end user. If
35 the purchaser of the digital code receives the contractual right to
36 further redistribute, after the digital code is redeemed, the
37 underlying digital product to which the digital code relates, then
38 the purchaser of the digital code is not an end user. A purchaser of
39 a digital code who has the contractual right to further redistribute
40 the digital code is an end user if that purchaser does not have the

1 right to further redistribute, after the digital code is redeemed,
2 the underlying digital product to which the digital code relates;

3 (12) Any person who provides services described in RCW
4 82.04.050(9). Any such person is a consumer with respect to the
5 purchase, acquisition, or use of the tangible personal property that
6 the person provides along with an operator in rendering services
7 defined as a retail sale in RCW 82.04.050(9). Any such person may
8 also be a consumer under other provisions of this section;

9 (13) Any person who purchases, acquires, owns, holds, or uses
10 chemical sprays or washes for the purpose of postharvest treatment of
11 fruit for the prevention of scald, fungus, mold, or decay, or who
12 purchases feed, seed, seedlings, fertilizer, agents for enhanced
13 pollination including insects such as bees, and spray materials, is
14 not a consumer of such items, but only to the extent that the items:

15 (a) Are used in relation to the person's participation in the
16 federal conservation reserve program, the environmental quality
17 incentives program, the wetlands reserve program, the wildlife
18 habitat incentives program, or their successors administered by the
19 United States department of agriculture;

20 (b) Are for use by a farmer for the purpose of producing for sale
21 any agricultural product; or

22 (c) Are for use by a farmer to produce or improve wildlife
23 habitat on land the farmer owns or leases while acting under
24 cooperative habitat development or access contracts with an
25 organization exempt from federal income tax under 26 U.S.C. Sec.
26 501(c)(3) of the federal internal revenue code or the Washington
27 state department of fish and wildlife; and

28 (14) A regional transit authority is not a consumer with respect
29 to labor, services, or tangible personal property purchased pursuant
30 to agreements providing maintenance services for bus, rail, or rail
31 fixed guideway equipment when a transit agency, as defined in RCW
32 81.104.015, performs the labor or services.

33 **Sec. 4.** RCW 82.08.0291 and 2000 c 103 s 8 are each amended to
34 read as follows:

35 The tax imposed by RCW 82.08.020 (~~shall~~) does not apply to
36 (~~the sale of amusement and recreation services, or personal services~~
37 ~~specified in RCW 82.04.050(3)(g))~~ sales defined as a sale at retail
38 and retail sale under RCW 82.04.050 (3)(g) or (15), by a nonprofit
39 youth organization, as defined in RCW 82.04.4271, to members of the

1 organization; (~~nor shall~~) and the tax does not apply to physical
2 fitness classes provided by a local government.

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

5 For the purposes of this chapter:

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

17 (2) "Extended warranty" has the same meaning as in RCW
18 82.04.050(7).

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

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

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

37 (b) For the purposes of (a) of this subsection, the terms
38 "client," "covered employee," "professional employer agreement," and

1 "professional employer organization" have the same meanings as in RCW
2 82.04.540.

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

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

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

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

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

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

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

37 (f) With respect to a service defined as a retail sale in RCW
38 82.04.050(6)(b), the first act within this state by which the
39 taxpayer, as a consumer, accesses the prewritten computer software;

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

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

13 (7)(a) "Value of the article used" is the purchase price for the
14 article of tangible personal property, the use of which is taxable
15 under this chapter. The term also includes, in addition to the
16 purchase price, the amount of any tariff or duty paid with respect to
17 the importation of the article used. In case the article used is
18 acquired by lease or by gift or is extracted, produced, or
19 manufactured by the person using the same or is sold under conditions
20 wherein the purchase price does not represent the true value thereof,
21 the value of the article used is determined as nearly as possible
22 according to the retail selling price at place of use of similar
23 products of like quality and character under such rules as the
24 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 must 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
29 places of use of similar products of like quality and character under
30 such rules as the department of revenue may prescribe. In case any
31 such articles of tangible personal property are used in respect to
32 the construction, repairing, decorating, or improving of, and which
33 become or are to become an ingredient or component of, new or
34 existing buildings or other structures under, upon, or above real
35 property of or for the United States, any instrumentality thereof, or
36 a county or city housing authority created pursuant to chapter 35.82
37 RCW, including the installing or attaching of any such articles
38 therein or thereto, whether or not such personal property becomes a
39 part of the realty by virtue of installation, then the value of the
40 use of such articles so used is determined according to the retail

1 selling price of such articles, or in the absence of such a selling
2 price, as nearly as possible according to the retail selling price at
3 place of use of similar products of like quality and character or, in
4 the absence of either of these selling price measures, such value may
5 be determined upon a cost basis, in any event under such rules as the
6 department of revenue may prescribe.

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

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

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

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

32 (8) "Value of the digital good or digital code used" means the
33 purchase price for the digital good or digital code, the use of which
34 is taxable under this chapter. If the digital good or digital code is
35 acquired other than by purchase, the value of the digital good or
36 digital code must be determined as nearly as possible according to
37 the retail selling price at place of use of similar digital goods or
38 digital codes of like quality and character under rules the
39 department may prescribe.

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

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

17 **Sec. 6.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each
18 amended to read as follows:

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

22 (a) Article of tangible personal property acquired by the user in
23 any manner, including tangible personal property acquired at a casual
24 or isolated sale, and including by-products used by the manufacturer
25 thereof, except as otherwise provided in this chapter, irrespective
26 of whether the article or similar articles are manufactured or are
27 available for purchase within this state;

28 (b) Prewritten computer software, regardless of the method of
29 delivery, but excluding prewritten computer software that is either
30 provided free of charge or is provided for temporary use in viewing
31 information, or both;

32 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
33 (g)(~~(3)(a)~~) or (6)(b), excluding services defined as a retail
34 sale in RCW 82.04.050(6)(b) that are provided free of charge;

35 (d) Extended warranty; or

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

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

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

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

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

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

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

17 (2) The provisions of this chapter do not apply in respect to the
18 use of any article of tangible personal property, extended warranty,
19 digital good, digital code, digital automated service, or service
20 taxable under RCW 82.04.050 (2) (a) or (g) (~~(3)(a)~~) or (6)(b), if
21 the sale to, or the use by, the present user or the present user's
22 bailor or donor has already been subjected to the tax under chapter
23 82.08 RCW or this chapter and the tax has been paid by the present
24 user or by the present user's bailor or donor.

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

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

34 (i) If the sale to, or the use by, the present user or his or her
35 bailor or donor has already been subjected to the tax under chapter
36 82.08 RCW or this chapter and the tax has been paid by the present
37 user or by his or her bailor or donor;

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

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

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

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

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

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

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

28 **Sec. 7.** RCW 82.12.02595 and 2009 c 535 s 615 are each amended to
29 read as follows:

30 (1) This chapter does not apply to the use by a nonprofit
31 charitable organization or state or local governmental entity of
32 personal property that has been donated to the nonprofit charitable
33 organization or state or local governmental entity, or to the
34 subsequent use of the property by a person to whom the property is
35 donated or bailed in furtherance of the purpose for which the
36 property was originally donated.

37 (2) This chapter does not apply to the donation of personal
38 property without intervening use to a nonprofit charitable
39 organization, or to the incorporation of tangible personal property

1 without intervening use into real or personal property of or for a
2 nonprofit charitable organization in the course of installing,
3 repairing, cleaning, altering, imprinting, improving, constructing,
4 or decorating the real or personal property for no charge.

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

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

19 **Sec. 8.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to
20 read as follows:

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

33 **Sec. 9.** RCW 82.12.040 and 2015 c 1 s 11 (Initiative Measure No.
34 594) are each amended to read as follows:

35 (1) Every person who maintains in this state a place of business
36 or a stock of goods, or engages in business activities within this
37 state, ~~((shall))~~ must obtain from the department a certificate of
38 registration, and ~~((shall))~~ must, at the time of making sales of

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

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

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

1 liable to the state for the amount of such tax, unless the seller has
2 taken from the buyer a copy of a direct pay permit issued under RCW
3 82.32.087.

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

8 (5) Notwithstanding subsections (1) through (4) of this section,
9 any person making sales is not obligated to collect the tax imposed
10 by 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
18 not owned or operated by the person making sales into this state nor
19 owned or operated by an affiliated person. "Affiliated persons" has
20 the same 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
23 sales 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
26 collection duties on remote sellers.

27 (7) Notwithstanding subsections (1) through (4) of this section,
28 any person making sales is not obligated to collect the tax imposed
29 by this chapter if the person would have been obligated to collect
30 retail sales tax on the sale absent a specific exemption provided in
31 chapter 82.08 RCW, and there is no corresponding use tax exemption in
32 this chapter. Nothing in this subsection (7) may be construed as
33 relieving purchasers from liability for reporting and remitting the
34 tax due under this chapter directly to the department.

35 (8) Notwithstanding subsections (1) through (4) of this section,
36 any person making sales is not obligated to collect the tax imposed
37 by this chapter if the state is prohibited under the Constitution or
38 laws of the United States from requiring the person to collect the
39 tax imposed by this chapter.

1 (9) Notwithstanding subsections (1) through (4) of this section,
2 any licensed dealer facilitating a firearm sale or transfer between
3 two unlicensed persons by conducting background checks under chapter
4 9.41 RCW is not obligated to collect the tax imposed by this chapter.

5 **Sec. 10.** RCW 82.12.860 and 2009 c 535 s 621 are each amended to
6 read as follows:

7 (1) This chapter does not apply to state credit unions with
8 respect to the use of any article of tangible personal property,
9 digital good, digital code, digital automated service, service
10 defined as a retail sale in RCW 82.04.050 (2) (a) or (g)((~~7~~-(3)(a)~~7~~))
11 or (6)(b), or extended warranty, acquired from a federal credit
12 union, foreign credit union, or out-of-state credit union as a result
13 of a merger or conversion.

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

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

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

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

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

26 **Sec. 11.** RCW 82.32.087 and 2010 c 112 s 10 are each amended to
27 read as follows:

28 (1) The director may grant a direct pay permit to a taxpayer who
29 demonstrates, to the satisfaction of the director, that the taxpayer
30 meets the requirements of this section. The direct pay permit allows
31 the taxpayer to accrue and remit directly to the department use tax
32 on the acquisition of tangible personal property or sales tax on the
33 sale of or charges made for labor and/or services, in accordance with
34 all of the applicable provisions of this title. Any taxpayer that
35 uses a direct pay permit ((~~shall~~)) must remit state and local sales
36 or use tax directly to the department. The agreement by the purchaser
37 to remit tax directly to the department, rather than pay sales or use
38 tax to the seller, relieves the seller of the obligation to collect

1 sales or use tax and requires the buyer to pay use tax on the
2 tangible personal property and sales tax on the sale of or charges
3 made for labor and/or services.

4 (2)(a) A taxpayer may apply for a permit under this section if:

5 (i) The taxpayer's cumulative tax liability is reasonably expected to
6 be two hundred forty thousand dollars or more in the current calendar
7 year; or (ii) the taxpayer makes purchases subject to the taxes
8 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
9 dollars per calendar year. For the purposes of this section, "tax
10 liability" means the amount required to be remitted to the department
11 for taxes administered under this chapter, except for the taxes
12 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,
13 82.29A, and 84.33 RCW.

14 (b) Application for a permit must be made in writing to the
15 director in a form and manner prescribed by the department. A
16 taxpayer who transacts business in two or more locations may submit
17 one application to cover the multiple locations.

18 (c) The director must review a direct pay permit application in a
19 timely manner and (~~shall~~) must notify the applicant, in writing, of
20 the approval or denial of the application. The department must
21 approve or deny an application based on the applicant's ability to
22 comply with local government use tax coding capabilities and
23 responsibilities; requirements for vendor notification; recordkeeping
24 obligations; electronic data capabilities; and tax reporting
25 procedures. Additionally, an application may be denied if the
26 director determines that denial would be in the best interest of
27 collecting taxes due under this title. The department must provide a
28 direct pay permit to an approved applicant with the notice of
29 approval. The direct pay permit (~~shall~~) must clearly state that the
30 holder is solely responsible for the accrual and payment of the tax
31 imposed under chapters 82.08 and 82.12 RCW and that the seller is
32 relieved of liability to collect tax imposed under chapters 82.08 and
33 82.12 RCW on all sales to the direct pay permit holder. The taxpayer
34 may petition the director for reconsideration of a denial.

35 (d) A taxpayer who uses a direct pay permit must continue to
36 maintain records that are necessary to a determination of the tax
37 liability in accordance with this title. A direct pay permit is not
38 transferable and the use of a direct pay permit may not be assigned
39 to a third party.

1 (3) Taxes for which the direct pay permit is used are due and
2 payable on the tax return for the reporting period in which the
3 taxpayer (a) receives the tangible personal property purchased or in
4 which the labor and/or services are performed or (b) receives an
5 invoice for such property or such labor and/or services, whichever
6 period is earlier.

7 (4) The holder of a direct pay permit must furnish a copy of the
8 direct pay permit to each vendor with whom the taxpayer has opted to
9 use a direct pay permit. Sellers who make sales upon which the sales
10 or use tax is not collected by reason of the provisions of this
11 section, in addition to existing requirements under this title, must
12 maintain a copy of the direct pay permit and any such records or
13 information as the department may specify.

14 (5) A direct pay permit is subject to revocation by the director
15 at any time the department determines that the taxpayer has violated
16 any provision of this section or that revocation would be in the best
17 interests of collecting the taxes due under this title. The notice of
18 revocation must be in writing and is effective either as of the end
19 of the taxpayer's next normal reporting period or a date deemed
20 appropriate by the director and identified in the revocation notice.
21 The taxpayer may petition the director for reconsideration of a
22 revocation and reinstatement of the permit.

23 (6) Any taxpayer who chooses to no longer use a direct pay permit
24 or whose permit is revoked by the department, must return the permit
25 to the department and immediately make a good faith effort to notify
26 all vendors to whom the permit was given, advising them that the
27 permit is no longer valid.

28 (7) Except as provided in this subsection, the direct pay permit
29 may be used for any purchase of tangible personal property and any
30 retail sale under RCW 82.04.050. The direct pay permit may not be
31 used for:

32 (a) Purchases of meals or beverages;

33 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
34 other property subject to requirements for title transactions by the
35 department of licensing;

36 (c) Purchases for which a reseller permit or other documentation
37 authorized under RCW 82.04.470 may be used;

38 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
39 and (f), (3) (a) through ~~((d))~~ (c), (e), (f), and (g), ~~((and))~~ (5),
40 and (15); or

1 (e) Other activities subject to tax under chapter 82.08 or 82.12
2 RCW that the department by rule designates, consistent with the
3 purposes of this section, as activities for which a direct pay permit
4 is not appropriate and may not be used.

5 NEW SECTION. **Sec. 12.** RCW 82.12.02917 (Exemptions--Use of
6 amusement and recreation services by nonprofit youth organization)
7 and 1999 c 358 s 7 are each repealed.

8 NEW SECTION. **Sec. 13.** The repeal in section 12 of this act does
9 not affect any existing right acquired or liability or obligation
10 incurred under the statute repealed or under any rule or order
11 adopted under that statute nor does it affect any proceedings
12 instituted under the statute repealed.

13 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2016."

HB 1550 - S COMM AMD
By Committee on Ways & Means

ADOPTED 4/15/2015

14 On page 1, line 2 of the title, after "services;" strike the
15 remainder of the title and insert "amending RCW 82.04.050, 82.04.060,
16 82.04.190, 82.08.0291, 82.12.020, 82.12.02595, 82.12.035, 82.12.040,
17 82.12.860, and 82.32.087; reenacting and amending RCW 82.12.010;
18 creating a new section; repealing RCW 82.12.02917; and providing an
19 effective date."

EFFECT: Removes ballooning, sky diving, and related activities
from the definition of retailing which exempts them from the sales
tax. This, in turn, makes these activities subject to the B&O service
rate at 1.5%.

--- END ---