

Proposed Substitute House Bill 2075

By Representative Hunter

Effect: Adds an intent section. Adds the streamlined agreement's definitions for the three specified digital products. Excludes from tax: online educational programs by private accredited schools, online travel agent services, online auctions and other market place creation services, and online classified advertising services. Adds amnesty language. Clarifies apportionment language. Makes technical corrections.

1 AN ACT Relating to the excise taxation of certain products and
2 services provided or furnished electronically; amending RCW 82.04.190,
3 82.08.010, 82.12.010, 82.12.020, 82.04.060, 82.04.070, 82.04.110,
4 82.04.120, 82.04.2907, 82.04.297, 82.04.363, 82.04.4282, 82.04.470,
5 82.04.480, 82.04.065, 82.08.02525, 82.08.0253, 82.08.02535,
6 82.08.02537, 82.08.0256, 82.08.02565, 82.08.0257, 82.08.0273,
7 82.08.805, 82.08.995, 82.12.0251, 82.12.02525, 82.12.0255, 82.12.0257,
8 82.12.0258, 82.12.0259, 82.12.0315, 82.12.02595, 82.12.0272,
9 82.12.0284, 82.12.0345, 82.12.0347, 82.12.805, 82.12.860, 82.12.995,
10 82.32.730, 82.08.195, 35.21.717, 48.14.080, 82.02.020, 82.04.44525,
11 82.08.040, 82.08.130, 82.12.035, 82.12.040, 82.14.465, 82.16.010,
12 82.32.020, and 82.32.023; reenacting and amending RCW 82.04.050; adding
13 new sections to chapter 82.04 RCW; adding new sections to chapter 82.08
14 RCW; adding new sections to chapter 82.12 RCW; adding a new section to
15 chapter 82.14 RCW; adding a new section to chapter 82.32 RCW; creating
16 new sections; repealing RCW 82.08.705 and 82.12.705; providing an
17 effective date; and declaring an emergency.

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

19 **PART I**

1 **BACKGROUND AND FINDINGS**

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

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

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

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

1 residing on servers located in this state in determining whether the
2 person has nexus with this state for purposes of the taxes imposed in
3 Title 82 RCW.

4 **PART II**

5 **DIGITAL PRODUCTS DEFINITIONS**

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

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

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

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

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

27 (5)(a) "Digital automated service," except as provided in (b) of
28 this subsection (5), means any service transferred electronically that
29 uses one or more software applications.

30 (b) "Digital automated service" does not include:

31 (i) Any service that primarily involves the application of human
32 effort, and the human effort originated after the customer requested
33 the service;

34 (ii) The loaning or transferring of money or the purchase, sale, or
35 transfer of financial instruments. For purposes of this subsection
36 (5)(b)(ii), "financial instruments" include cash, accounts receivable

1 and payable, loans and notes receivable and payable, debt securities,
2 equity securities, as well as derivative contracts such as forward
3 contracts, swap contracts, and options;

4 (iii) Dispensing cash or other physical items from a machine;

5 (iv) Payment processing services;

6 (v) Parimutuel wagering and handicapping contests as authorized by
7 chapter 67.16 RCW;

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

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

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

13 (ix) Online educational programs provided by a:

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

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

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

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

28 (xii) Online classified advertising services.

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

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

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

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

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

2 (iv) The representation of a personal service in electronic form,
3 such as an electronic copy of an engineering report prepared by an
4 engineer, that primarily involves the application of human effort, and
5 the human effort originated after the customer requested the service;
6 and

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

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

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

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

20 **PART III**

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

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

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

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

35 (b) Installs, repairs, cleans, alters, imprints, improves,
36 constructs, or decorates real or personal property of or for consumers,

1 if such tangible personal property becomes an ingredient or component
2 of such real or personal property without intervening use by such
3 person; or

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

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

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

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

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

34 (a) The installing, repairing, cleaning, altering, imprinting, or
35 improving of tangible personal property of or for consumers, including
36 charges made for the mere use of facilities in respect thereto, but
37 excluding charges made for the use of self-service laundry facilities,

1 and also excluding sales of laundry service to nonprofit health care
2 facilities, and excluding services rendered in respect to live animals,
3 birds and insects;

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

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

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

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

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

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

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

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

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

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

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

25 (c) Credit bureau services;

26 (d) Automobile parking and storage garage services;

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

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

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

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

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

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

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

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

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

25 The term "retail sale" does not include the sale of or charge made
26 for:

27 (i) Custom software (~~or~~);

28 (ii) The customization of prewritten computer software; or

29 (iii) Prewritten computer software sold to a buyer who provides
30 services described in (b) of this subsection and who will charge
31 consumers for the right to access and use the software.

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

37 (7) The term (~~shall~~) also includes the sale of or charge made for
38 an extended warranty to a consumer. For purposes of this subsection,

1 "extended warranty" means an agreement for a specified duration to
2 perform the replacement or repair of tangible personal property at no
3 additional charge or a reduced charge for tangible personal property,
4 labor, or both, or to provide indemnification for the replacement or
5 repair of tangible personal property, based on the occurrence of
6 specified events. The term "extended warranty" does not include an
7 agreement, otherwise meeting the definition of extended warranty in
8 this subsection, if no separate charge is made for the agreement and
9 the value of the agreement is included in the sales price of the
10 tangible personal property covered by the agreement. For purposes of
11 this subsection, "sales price" has the same meaning as in RCW
12 82.08.010.

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

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

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

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

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

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

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

34 (9) The term (~~shall~~) does not include the sale of or charge made
35 for labor and services rendered in respect to the building, repairing,
36 or improving of any street, place, road, highway, easement, right-of-
37 way, mass public transportation terminal or parking facility, bridge,
38 tunnel, or trestle which is owned by a municipal corporation or

1 political subdivision of the state or by the United States and which is
2 used or to be used primarily for foot or vehicular traffic including
3 mass transportation vehicles of any kind.

4 ~~((+9))~~ (10) The term ~~((shall))~~ also does not include sales of
5 chemical sprays or washes to persons for the purpose of postharvest
6 treatment of fruit for the prevention of scald, fungus, mold, or decay,
7 nor ~~((shall))~~ does it include sales of feed, seed, seedlings,
8 fertilizer, agents for enhanced pollination including insects such as
9 bees, and spray materials to: (a) Persons who participate in the
10 federal conservation reserve program, the environmental quality
11 incentives program, the wetlands reserve program, and the wildlife
12 habitat incentives program, or their successors administered by the
13 United States department of agriculture; (b) farmers for the purpose of
14 producing for sale any agricultural product; and (c) farmers acting
15 under cooperative habitat development or access contracts with an
16 organization exempt from federal income tax under Title 26 U.S.C. Sec.
17 501(c)(3) or the Washington state department of fish and wildlife to
18 produce or improve wildlife habitat on land that the farmer owns or
19 leases.

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

36 ~~((+11))~~ (12) The term ~~((shall))~~ does not include the sale of or
37 charge made for labor, services, or tangible personal property pursuant
38 to agreements providing maintenance services for bus, rail, or rail

1 fixed guideway equipment when a regional transit authority is the
2 recipient of the labor, services, or tangible personal property, and a
3 transit agency, as defined in RCW 81.104.015, performs the labor or
4 services.

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

7 "Consumer" means the following:

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

32 (2)(a) Any person engaged in any business activity taxable under
33 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
34 uses any competitive telephone service, ancillary services, or
35 telecommunications service as those terms are defined in RCW 82.04.065,
36 other than for resale in the regular course of business; (c) any person
37 who purchases, acquires, or uses any service defined in RCW

1 82.04.050(2) (a) or (g), other than for resale in the regular course of
2 business or for the purpose of satisfying the person's obligations
3 under an extended warranty as defined in RCW 82.04.050(7); (d) any
4 person who purchases, acquires, or uses any amusement and recreation
5 service defined in RCW 82.04.050(3)(a), other than for resale in the
6 regular course of business; (e) any person who is an end user of
7 software; and (f) any person who purchases or acquires an extended
8 warranty as defined in RCW 82.04.050(7) other than for resale in the
9 regular course of business;

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

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

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

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

3 (6) Any person engaged in the business of constructing, repairing,
4 decorating, or improving new or existing buildings or other structures
5 under, upon, or above real property of or for the United States, any
6 instrumentality thereof, or a county or city housing authority created
7 pursuant to chapter 35.82 RCW, including the installing or attaching of
8 any article of tangible personal property therein or thereto, whether
9 or not such personal property becomes a part of the realty by virtue of
10 installation; also, any person engaged in the business of clearing land
11 and moving earth of or for the United States, any instrumentality
12 thereof, or a county or city housing authority created pursuant to
13 chapter 35.82 RCW. Any such person shall be a consumer within the
14 meaning of this subsection in respect to tangible personal property
15 incorporated into, installed in, or attached to such building or other
16 structure by such person, except that consumer does not include any
17 person engaged in the business of constructing, repairing, decorating,
18 or improving new or existing buildings or other structures under, upon,
19 or above real property of or for the United States, or any
20 instrumentality thereof, if the investment project would qualify for
21 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
22 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 useful
28 life of less than one year. Nothing contained in this or any other
29 subsection of this section shall 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 byproducts of weapons production and nuclear research and development;
34 ((and))

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 or

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

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

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

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

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

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

32 For the purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 For the purposes of this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (d) Extended warranty; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 21 (1) Lodging, conference and meeting rooms, camping facilities,
22 parking, and similar licenses to use real property;
- 23 (2) Food and meals;
- 24 (3) Books, tapes, and other products, including books and other
25 products that are transferred electronically, that are available
26 exclusively to the participants at the camp, conference, or meeting and
27 are not available to the public at large.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c) Tangible personal property;

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

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

25 (f) Internet access service;

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

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

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

38 (j) Software delivered electronically.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **PART V**

8 **SALES TAX EXEMPTIONS**

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

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

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

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

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

24 (3) For purposes of this section, "radio or television broadcaster"
25 includes satellite radio providers, satellite television providers,
26 cable television providers, and providers of subscription internet
27 television.

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

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

33 (a) Consuming the digital good, digital code, digital automated
34 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in

1 producing for sale a new product, where the digital good, digital code,
2 digital automated service, or service defined as a retail sale in RCW
3 82.04.050(6)(b) becomes an ingredient or component of the new product.
4 A digital code becomes an ingredient or component of a new product if
5 the digital good or digital automated service acquired through the use
6 of the digital code becomes an ingredient or component of a new
7 product; or

8 (b) Making the digital good or digital automated service, including
9 a digital good or digital automated service acquired through the use of
10 a digital code, or service defined as a retail sale in RCW
11 82.04.050(6)(b) available free of charge on the buyer's web site for
12 the use or enjoyment of others.

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

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

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

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

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

28 (a) "Business purposes" means any purpose relevant to the business
29 needs of the taxpayer claiming an exemption under this section.
30 Business purposes do not include any personal, family, or household
31 purpose. The term also does not include any activity conducted by a
32 government entity as that term is defined in RCW 7.25.005; and

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

1 **Sec. 505.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to
2 read as follows:

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

13 **Sec. 506.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to
14 read as follows:

15 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to:

16 (a) The distribution and newsstand sale of printed newspapers; and

17 (b) The sale of newspapers transferred electronically, provided
18 that the electronic version of a printed newspaper:

19 (i) Shares content with the printed newspaper; and

20 (ii) Is prominently identified by the same name as the printed
21 newspaper or otherwise conspicuously indicates that it is a complement
22 to the printed newspaper.

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

28 **Sec. 507.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each
29 amended to read as follows:

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

1 pollution, or contamination that might otherwise result from the
2 manufacturing operation, testing operation, or research and development
3 operation. "Machinery and equipment" also includes digital goods.

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

5 (i) Hand-powered tools;

6 (ii) Property with a useful life of less than one year;

7 (iii) Buildings, other than machinery and equipment that is
8 permanently affixed to or becomes a physical part of a building; and

9 (iv) Building fixtures that are not integral to the manufacturing
10 operation, testing operation, or research and development operation
11 that are permanently affixed to and become a physical part of a
12 building, such as utility systems for heating, ventilation, air
13 conditioning, communications, plumbing, or electrical.

14 (c) Machinery and equipment is "used directly" in a manufacturing
15 operation, testing operation, or research and development operation if
16 the machinery and equipment:

17 (i) Acts upon or interacts with an item of tangible personal
18 property;

19 (ii) Conveys, transports, handles, or temporarily stores an item of
20 tangible personal property at the manufacturing site or testing site;

21 (iii) Controls, guides, measures, verifies, aligns, regulates, or
22 tests tangible personal property at the site or away from the site;

23 (iv) Provides physical support for or access to tangible personal
24 property;

25 (v) Produces power for, or lubricates machinery and equipment;

26 (vi) Produces another item of tangible personal property for use in
27 the manufacturing operation, testing operation, or research and
28 development operation;

29 (vii) Places tangible personal property in the container, package,
30 or wrapping in which the tangible personal property is normally sold or
31 transported; or

32 (viii) Is integral to research and development as defined in RCW
33 82.63.010.

34 (d) "Manufacturing operation" means the manufacturing of articles,
35 substances, or commodities for sale as tangible personal property. A
36 manufacturing operation begins at the point where the raw materials
37 enter the manufacturing site and ends at the point where the processed
38 material leaves the manufacturing site. The term also includes that

1 portion of a cogeneration project that is used to generate power for
2 consumption within the manufacturing site of which the cogeneration
3 project is an integral part. The term does not include the production
4 of electricity by a light and power business as defined in RCW
5 82.16.010 or the preparation of food products on the premises of a
6 person selling food products at retail.

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

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

12 (g) "Testing" means activities performed to establish or determine
13 the properties, qualities, and limitations of tangible personal
14 property.

15 (h) "Testing operation" means the testing of tangible personal
16 property for a manufacturer or processor for hire. A testing operation
17 begins at the point where the tangible personal property enters the
18 testing site and ends at the point where the tangible personal property
19 leaves the testing site. The term also includes that portion of a
20 cogeneration project that is used to generate power for consumption
21 within the site of which the cogeneration project is an integral part.
22 The term does not include the production of electricity by a light and
23 power business as defined in RCW 82.16.010 or the preparation of food
24 products on the premises of a person selling food products at retail.

25 **Sec. 511.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to
26 read as follows:

27 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to auction
28 sales made by or through auctioneers of (~~tangible~~) personal property
29 (including household goods) (~~which have~~) that has been used in
30 conducting a farm activity, when the seller thereof is a farmer and the
31 sale is held or conducted upon a farm and not otherwise.

32 **Sec. 512.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to
33 read as follows:

34 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
35 sales to nonresidents of this state of tangible personal property,
36 digital goods, and digital codes, when such property is for use outside

1 this state (~~when~~), and the purchaser (a) is a bona fide resident of
2 a state or possession or Province of Canada other than the state of
3 Washington and such state, possession, or Province of Canada does not
4 impose a retail sales tax or use tax of three percent or more or, if
5 imposing such a tax, permits Washington residents exemption from
6 otherwise taxable sales by reason of their residence, and (b) agrees,
7 when requested, to grant the department of revenue access to such
8 records and other forms of verification at his or her place of
9 residence to assure that such purchases are not first used
10 substantially in the state of Washington.

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

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

31 (b) Acceptable proof of a nonresident person's status (~~shall~~)
32 includes one piece of identification such as a valid driver's license
33 from the jurisdiction in which the out-of-state residency is claimed or
34 a valid identification card which has a photograph of the holder and is
35 issued by the out-of-state jurisdiction. Identification under this
36 subsection (3)(b) must show the holder's residential address and have
37 as one of its legal purposes the establishment of residency in that
38 out-of-state jurisdiction.

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

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

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

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

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

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

37 (1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~)

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

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

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

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

19 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
20 (~~tangible~~) personal property and services provided by a public
21 corporation, commission, or authority created under RCW 35.21.660 or
22 35.21.730 to an eligible entity.

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

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

29 **PART VI**
30 **USE TAX EXEMPTIONS**

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

33 The provisions of this chapter do not apply in respect to the use

1 of a digital code for one or more digital products, if the use of the
2 digital products to which the digital code relates is exempt from the
3 tax levied by RCW 82.12.020.

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

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

9 (2) The exemption provided in subsection (1) of this section does
10 not apply in respect to programming that is sold on a pay-per-program
11 basis or that allows the buyer to access a library of programs at any
12 time for a specific charge for that service.

13 (3) For purposes of this section, "radio or television broadcaster"
14 includes satellite radio providers, satellite television providers,
15 cable television providers, providers of subscription internet
16 television, and persons who provide radio or television broadcasting to
17 listeners or viewers for no charge.

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

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

23 (1) Consuming the digital good, digital code, digital automated
24 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in
25 producing for sale a new product, where the digital good, digital code,
26 digital automated service, or service defined as a retail sale in RCW
27 82.04.050(6)(b) becomes an ingredient or component of the new product.
28 A digital code becomes an ingredient or component of a new product if
29 the digital good or digital automated service acquired through the use
30 of the digital code becomes an ingredient or component of a new
31 product; or

32 (2) Making the digital good or digital automated service, including
33 a digital good or digital automated service acquired through the use of
34 a digital code, or service defined as a retail sale in RCW
35 82.04.050(6)(b) available free of charge on the web site of the person

1 claiming exemption under this section for the use or enjoyment of
2 others.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 For purposes of this section, "state" means a state of the United
33 States, any political subdivision thereof, the District of Columbia,
34 and any foreign country or political subdivision thereof, and
35 "services" means services defined as retail sales in RCW 82.04.050(2)
36 (a) or (g).

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

3 The provisions of this chapter (~~(shall)~~) do not apply with respect
4 to the use of public records sold by state and local agencies, as the
5 terms are defined in RCW 42.17.020, including public records
6 transferred electronically that are obtained under a request for the
7 record for which no fee is charged other than a statutorily set fee or
8 a fee to reimburse the agency for its actual costs directly incident to
9 the copying. A request for a record includes a request for a document
10 not available to the public but available to those persons who by law
11 are allowed access to the document, such as requests for fire reports,
12 law enforcement reports, taxpayer information, and academic
13 transcripts.

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

16 The provisions of this chapter (~~(shall)~~) do not apply in respect to
17 the use of any article of tangible personal property, extended
18 warranty, digital good, digital code, digital automated service, or
19 other service which the state is prohibited from taxing under the
20 Constitution of the state or under the Constitution or laws of the
21 United States.

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

24 The provisions of this chapter (~~(shall)~~) do not apply in respect to
25 the use of any article of (~~(tangible)~~) personal property included
26 within the transfer of the title to the entire operating property of a
27 publicly or privately owned public utility, or of a complete operating
28 integral section thereof, by the state or a political subdivision
29 thereof in conducting any business defined in RCW 82.16.010 (1), (2),
30 (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of
31 this section, "operating property" includes digital goods and digital
32 codes.

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

35 The provisions of this chapter (~~(shall)~~) do not apply in respect to

1 the use of (~~tangible~~) personal property (including household goods)
2 (~~which have~~) that has been used in conducting a farm activity, if
3 such property was purchased from a farmer at an auction sale held or
4 conducted by an auctioneer upon a farm and not otherwise.

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

7 The provisions of this chapter (~~shall~~) do not apply in respect to
8 the use of (~~tangible~~) personal property or the use of digital
9 automated services or services defined in RCW 82.04.050 (2)(a) or
10 (6)(b) by corporations (~~which~~) that have been incorporated under any
11 act of the congress of the United States and whose principal purposes
12 are to furnish volunteer aid to members of the armed forces of the
13 United States and also to carry on a system of national and
14 international relief and to apply the same in mitigating the sufferings
15 caused by pestilence, famine, fire, flood, and other national
16 calamities and to devise and carry on measures for preventing the same.

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

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

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

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

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

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

33 (3) The exemption provided for in this section shall not apply to
34 the use of production equipment rented to, or production equipment or
35 production services that are within the scope of RCW 82.04.050(2) (a)

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

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

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

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

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

25 (4) This chapter does not apply to the donation of amusement and
26 recreation services without intervening use to a nonprofit organization
27 or state or local governmental entity, to the use by a nonprofit
28 organization or state or local governmental entity of amusement and
29 recreation services, or to the subsequent use of the services by a
30 person to whom the services are donated or bailed in furtherance of the
31 purpose for which the services were originally donated. As used in
32 this subsection, "amusement and recreation services" has the meaning in
33 RCW 82.04.050(3)(a).

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

36 The provisions of this chapter (~~shall~~) do not apply in respect to

1 the use of (~~tangible~~) personal property held for sale and displayed
2 in single trade shows for a period not in excess of thirty days, the
3 primary purpose of which is to promote the sale of products or
4 services.

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

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

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

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

- 18 (1) Printed newspapers as defined in RCW 82.08.0253; and
19 (2) Newspapers transferred electronically, provided that the
20 electronic version of a printed newspaper:
21 (a) Shares content with the printed newspaper; and
22 (b) Is prominently identified by the same name as the printed
23 newspaper or otherwise conspicuously indicates that it is a complement
24 to the printed newspaper.

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

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

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

- 32 (1) A person who is subject to tax under RCW 82.12.020 for
33 (~~tangible~~) personal property used at an aluminum smelter, or for
34 tangible personal property that will be incorporated as an ingredient

1 or component of buildings or other structures at an aluminum smelter,
2 or for labor and services rendered with respect to such buildings,
3 structures, or (~~tangible~~) personal property, is eligible for an
4 exemption from the state share of the tax in the form of a credit, as
5 provided in this section. The amount of the credit shall be equal to
6 the state share of use tax computed to be due under RCW 82.12.020. The
7 person shall submit information, in a form and manner prescribed by the
8 department, specifying the amount of qualifying purchases or
9 acquisitions for which the exemption is claimed and the amount of
10 exempted tax.

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

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

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

17 (1) This chapter does not apply to state credit unions with respect
18 to the use of any article of tangible personal property, digital good,
19 digital code, digital automated service, service defined as a retail
20 sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or extended
21 warranty, acquired from a federal credit union, foreign credit union,
22 or out-of-state credit union as a result of a merger or conversion.

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

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

26 (b) "Foreign credit union" means a credit union organized and
27 operating under the laws of another country or other foreign
28 jurisdiction.

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

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

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

36 (1) The provisions of this chapter do not apply with respect to the

1 use of (~~tangible~~) personal property and services provided by a public
2 corporation, commission, or authority created under RCW 35.21.660 or
3 35.21.730 to an eligible entity.

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

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

10 **PART VII**
11 **SOURCING AND SALES/USE TAX APPORTIONMENT**

12 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.08
13 RCW to read as follows:

14 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
15 digital goods, digital codes, digital automated services, prewritten
16 computer software, or services defined as a retail sale in RCW
17 82.04.050(6)(b) to a buyer that provides the seller with an exemption
18 certificate claiming multiple points of use. An exemption certificate
19 claiming multiple points of use must be in a form and contain such
20 information as required by the department.

21 (2) A buyer is entitled to use an exemption certificate claiming
22 multiple points of use only if the buyer is a business or other
23 organization and the digital goods or digital automated services
24 purchased, or the digital goods or digital automated services to be
25 obtained by the digital code purchased, or the prewritten computer
26 software or services defined as a retail sale in RCW 82.04.050(6)(b)
27 purchased will be concurrently available for use within and outside
28 this state. A buyer is not entitled to use an exemption certificate
29 claiming multiple points of use for digital goods, digital codes,
30 digital automated services, prewritten computer software, or services
31 defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal
32 use.

33 (3) A buyer claiming an exemption under this section must report
34 and pay the tax imposed in RCW 82.12.020 and any local use taxes

1 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
2 directly to the department in accordance with sections 702 and 703 of
3 this act.

4 (4) For purposes of this section, "concurrently available for use
5 within and outside this state" means that employees or other agents of
6 the buyer may use the digital goods, digital automated services,
7 prewritten computer software, or services defined as a retail sale in
8 RCW 82.04.050(6)(b) simultaneously from one or more locations within
9 this state and one or more locations outside this state. A digital
10 code is concurrently available for use within and outside this state if
11 employees or other agents of the buyer may use the digital goods or
12 digital automated services to be obtained by the code simultaneously at
13 one or more locations within this state and one or more locations
14 outside this state.

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

17 (1) A business or other organization subject to the tax imposed in
18 RCW 82.12.020 on the use of digital goods, digital codes, digital
19 automated services, prewritten computer software, or services defined
20 as a retail sale in RCW 82.04.050(6)(b) that are concurrently available
21 for use within and outside this state is entitled to apportion the
22 amount of tax due this state based on users in this state compared to
23 users everywhere. The department may authorize or require an
24 alternative method of apportionment supported by the taxpayer's records
25 that fairly reflects the proportion of in-state to out-of-state use by
26 the taxpayer of the digital goods, digital automated services,
27 prewritten computer software, or services defined as a retail sale in
28 RCW 82.04.050(6)(b).

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

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

33 (a) "Concurrently available for use within and outside this state"
34 means that employees or other agents of the taxpayer may use the
35 digital goods, digital automated services, prewritten computer
36 software, or services defined as a retail sale in RCW 82.04.050(6)(b)
37 simultaneously at one or more locations within this state and one or

1 more locations outside this state. A digital code is concurrently
2 available for use within and outside this state if employees or other
3 agents of the taxpayer may use the digital goods or digital automated
4 services to be obtained by the code simultaneously at one or more
5 locations within this state and one or more locations outside this
6 state.

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

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

14 (1) A business or other organization that is entitled under section
15 702 of this act to apportion the amount of state use tax on the use of
16 digital goods, digital codes, digital automated services, prewritten
17 computer software, or services defined as a retail sale in RCW
18 82.04.050(6)(b) is also entitled to apportion the amount of local use
19 taxes imposed under the authority of this chapter and RCW 81.104.170 on
20 the use of such products or services.

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

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

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

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

33 (a) When tangible personal property, an extended warranty, a
34 digital good, digital code, digital automated service, or ((a)) other
35 service defined as a retail sale under RCW 82.04.050 is received by the

1 purchaser at a business location of the seller, the sale is sourced to
2 that business location.

3 (b) When the tangible personal property, extended warranty, digital
4 good, digital code, digital automated service, or ((a)) other service
5 defined as a retail sale under RCW 82.04.050 is not received by the
6 purchaser at a business location of the seller, the sale is sourced to
7 the location where receipt by the purchaser or the purchaser's donee,
8 designated as such by the purchaser, occurs, including the location
9 indicated by instructions for delivery to the purchaser or donee, known
10 to the seller.

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

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

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

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

34 (a) For a lease or rental that requires recurring periodic
35 payments, the first periodic payment is sourced the same as a retail
36 sale in accordance with subsection (1) of this section. Periodic
37 payments made subsequent to the first payment are sourced to the
38 primary property location for each period covered by the payment. The

1 primary property location shall be as indicated by an address for the
2 property provided by the lessee that is available to the lessor from
3 its records maintained in the ordinary course of business, when use of
4 this address does not constitute bad faith. The property location is
5 not altered by intermittent use at different locations, such as use of
6 business property that accompanies employees on business trips and
7 service calls.

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

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

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

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

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

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

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

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

37 (i) Upon receipt of the direct mail form, the seller is relieved of
38 all obligations to collect, pay, or remit the applicable tax and the

1 purchaser is obligated to pay or remit the applicable tax on a direct
2 pay basis. A direct mail form shall remain in effect for all future
3 sales of direct mail by the seller to the purchaser until it is revoked
4 in writing.

5 (ii) Upon receipt of information from the purchaser showing the
6 jurisdictions to which the direct mail is delivered to recipients, the
7 seller shall collect the tax according to the delivery information
8 provided by the purchaser. In the absence of bad faith, the seller is
9 relieved of any further obligation to collect tax on any transaction
10 where the seller has collected tax pursuant to the delivery information
11 provided by the purchaser.

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

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

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

23 (a) A retail sale of watercraft;

24 (b) A retail sale of a modular home, manufactured home, or mobile
25 home;

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

29 (d) Florist sales. In the case of a sale in which one florist
30 takes an order from a customer and then communicates that order to
31 another florist who delivers the items purchased to the place
32 designated by the customer, the location at or from which the delivery
33 is made to the consumer is deemed to be the location of the florist
34 originally taking the order.

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

1 (8) The definitions in this subsection apply throughout this
2 section.

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

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

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

20 (d) "Receive" and "receipt" mean taking possession of tangible
21 personal property, making first use of digital automated services or
22 other services, or taking possession or making first use of digital
23 goods or digital codes, whichever comes first. "Receive" and "receipt"
24 do not include possession by a shipping company on behalf of the
25 purchaser.

26 (e) "Transportation equipment" means:

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

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

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

33 (B) Operated under authority of a carrier authorized and
34 certificated by the United States department of transportation or
35 another federal authority to engage in the carriage of persons or
36 property in interstate commerce;

37 (iii) Aircraft that are operated by air carriers authorized and

1 certificated by the United States department of transportation or
2 another federal or foreign authority to engage in the carriage of
3 persons or property in interstate or foreign commerce; or

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

7 (9) In those instances where there is no obligation on the part of
8 a seller to collect or remit this state's sales or use tax, the use of
9 tangible personal property, digital good, digital code, or of a digital
10 automated service or other service, subject to use tax, is sourced to
11 the place of first use in this state. The definition of use in RCW
12 82.12.010 applies to this subsection.

13 PART VIII

14 BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED THROUGH THE 15 USE OF A CODE THAT DOES NOT MEET THE DEFINITION OF DIGITAL CODE

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

18 (1) A bundled transaction is subject to the tax imposed by RCW
19 82.08.020 if the retail sale of any of its component products would be
20 subject to the tax imposed by RCW 82.08.020.

21 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are
22 subject to the tax imposed by RCW 82.08.020 if the service that is the
23 true object of the transaction is subject to the tax imposed by RCW
24 82.08.020. If the service that is the true object of the transaction
25 is not subject to the tax imposed by RCW 82.08.020, the transaction is
26 not subject to the tax imposed by RCW 82.08.020.

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

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

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

34 (a) If the price is attributable to products that are taxable and
35 products that are not taxable, the portion of the price attributable to
36 the nontaxable products are subject to the tax imposed by RCW 82.08.020

1 unless the seller can identify by reasonable and verifiable standards
2 the portion from its books and records that are kept in the regular
3 course of business for other purposes including, but not limited to,
4 nontax purposes;

5 (b) If the price is attributable to products that are subject to
6 tax at different tax rates, the total price is attributable to the
7 products subject to the tax at the highest tax rate unless the seller
8 can identify by reasonable and verifiable standards the portion of the
9 price attributable to the products subject to the tax imposed by RCW
10 82.08.020 at the lower rate from its books and records that are kept in
11 the regular course of business for other purposes including, but not
12 limited to, nontax purposes.

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

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

21 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire
22 selling price of the code, except as provided in (b)(ii) of this
23 subsection (6).

24 (ii) If the seller can identify by reasonable and verifiable
25 standards the portion of the selling price attributable to the products
26 and services that are not subject to the tax imposed by RCW 82.08.020
27 from its books and records that are kept in the regular course of
28 business for other purposes including, but not limited to, nontax
29 purposes, the tax imposed by RCW 82.08.020 does not apply to that
30 portion of the selling price of the code attributable to the products
31 and services that are not subject to the tax imposed by RCW 82.08.020.

32 **PART IX**
33 **NEXUS**

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

36 For purposes of the taxes imposed in this title, the department of

1 revenue may not consider a person's ownership of, or rights in, digital
2 goods or digital codes residing on servers located in this state in
3 determining whether the person has substantial nexus with this state.
4 For purposes of this section, "substantial nexus" means the requisite
5 connection that a person has with a state to allow the state to subject
6 the person to the state's taxing authority, consistent with the
7 commerce clause of the United States Constitution.

8 **PART X**
9 **AMNESTY**

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

14 (2) Subsection (1) of this section does not relieve any person from
15 liability for:

16 (a) State and local sales and use taxes assessed by the department
17 of revenue, if the assessment was originally issued before January 1,
18 2009; and

19 (b) State and local sales taxes that the person collected from
20 buyers but did not remit to the department of revenue.

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

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

26 **PART XI**
27 **MISCELLANEOUS AMENDMENTS**

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

30 ~~((Until July 1, 2006, a city or town may not impose any new taxes~~
31 ~~or fees specific to internet service providers.))~~ A city or town may
32 tax internet ((service)) access providers under generally applicable
33 business taxes or fees, at a rate not to exceed the rate applied to a

1 general service classification. For the purposes of this section,
2 "internet ((service)) access" has the same meaning as in RCW 82.04.297.

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

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

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

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

10 (b) Excise taxes on the sale, purchase, use, or possession of (i)
11 real property; (ii) tangible personal property; (iii) extended
12 warranties; ((and)) (iv) services, including digital automated services
13 as defined in section 201 of this act; and (v) digital goods and
14 digital codes as those terms are defined in section 201 of this act;
15 and

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

18 (3) For the purposes of this section, the term "taxes" includes
19 taxes imposed by the state or any county, city, town, municipal
20 corporation, quasi-municipal corporation, or other political
21 subdivision.

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

24 Except only as expressly provided in chapters 67.28, 81.104, and
25 82.14 RCW, the state preempts the field of imposing retail sales and
26 use taxes and taxes upon ((~~retail sales of tangible personal property,~~
27 ~~the use of tangible personal property,~~)) parimutuel wagering authorized
28 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
29 town, or other municipal subdivision shall have the right to impose
30 taxes of that nature. Except as provided in RCW 64.34.440 and
31 82.02.050 through 82.02.090, no county, city, town, or other municipal
32 corporation shall impose any tax, fee, or charge, either direct or
33 indirect, on the construction or reconstruction of residential
34 buildings, commercial buildings, industrial buildings, or on any other
35 building or building space or appurtenance thereto, or on the
36 development, subdivision, classification, or reclassification of land.

1 However, this section does not preclude dedications of land or
2 easements within the proposed development or plat which the county,
3 city, town, or other municipal corporation can demonstrate are
4 reasonably necessary as a direct result of the proposed development or
5 plat to which the dedication of land or easement is to apply.

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

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

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

20 (3) Any payment not so expended shall be refunded with interest to
21 be calculated from the original date the deposit was received by the
22 county and at the same rate applied to tax refunds pursuant to RCW
23 84.69.100; however, if the payment is not expended within five years
24 due to delay attributable to the developer, the payment shall be
25 refunded without interest.

26 No county, city, town, or other municipal corporation shall require
27 any payment as part of such a voluntary agreement which the county,
28 city, town, or other municipal corporation cannot establish is
29 reasonably necessary as a direct result of the proposed development or
30 plat.

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

37 This section does not limit the existing authority of any county,

1 city, town, or other municipal corporation to impose special
2 assessments on property specifically benefitted thereby in the manner
3 prescribed by law.

4 Nothing in this section prohibits counties, cities, or towns from
5 imposing or permits counties, cities, or towns to impose water, sewer,
6 natural gas, drainage utility, and drainage system charges(~~(+
7 PROVIDED, That))~~). However, no such charge shall exceed the
8 proportionate share of such utility or system's capital costs which the
9 county, city, or town can demonstrate are attributable to the property
10 being charged(~~(+
11 PROVIDED FURTHER, That))~~). Furthermore, these
12 provisions (~~(shall))~~) may not be interpreted to expand or contract any
13 existing authority of counties, cities, or towns to impose such
14 charges.

15 Nothing in this section prohibits a transportation benefit district
16 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
17 the legislative authority of a county, city, or town from approving the
18 imposition of such fees within a transportation benefit district.

19 Nothing in this section prohibits counties, cities, or towns from
20 imposing transportation impact fees authorized pursuant to chapter
21 39.92 RCW.

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

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

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

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

33 (1) Subject to the limits in this section, an eligible person is
34 allowed a credit against the tax due under this chapter. The credit is
35 based on qualified employment positions in eligible areas. The credit
36 is available to persons who are engaged in international services as
defined in this section. In order to receive the credit, the

1 international service activities must take place at a business within
2 the eligible area.

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

8 (b) Credit may not be taken for hiring of persons into positions
9 that exist on July 1, 1998. Credit is authorized for new employees
10 hired for new positions created after July 1, 1998. New positions
11 filled by existing employees are eligible for the credit under this
12 section only if the position vacated by the existing employee is filled
13 by a new hire.

14 (c) When a position is newly created, if it is filled before July
15 1st, this position is eligible for the full yearly credit. If it is
16 filled after June 30th, this position is eligible for half of the
17 credit.

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

20 (3) For the purposes of this section:

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

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

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

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

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

34 (ii) "International services" excludes any service taxable under
35 RCW 82.04.290(1).

36 (iii) Eligible services are: Computer; data processing;
37 information; legal; accounting and tax preparation; engineering;
38 architectural; business consulting; business management; public

1 relations and advertising; surveying; geological consulting; real
2 estate appraisal; or financial services. For the purposes of this
3 section these services mean the following:

4 (A) "Computer services" are services such as computer programming,
5 custom software modification, customization of canned software, custom
6 software installation, custom software maintenance, custom software
7 repair, training in the use of software, computer systems design, and
8 custom software update services;

9 (B) "Data processing services" are services such as word
10 processing, data entry, data retrieval, data search, information
11 compilation, payroll processing, business accounts processing, data
12 production, and other computerized data and information storage or
13 manipulation. "Data processing services" also includes the use of a
14 computer or computer time for data processing whether the processing is
15 performed by the provider of the computer or by the purchaser or other
16 beneficiary of the service;

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

21 (D) "Legal services" are services such as representation by an
22 attorney, or other person when permitted, in an administrative or legal
23 proceeding, legal drafting, paralegal services, legal research
24 services, and court reporting services, arbitration, and mediation
25 services;

26 (E) "Accounting and tax preparation services" are services such as
27 accounting, auditing, actuarial, bookkeeping, or tax preparation
28 services;

29 (F) "Engineering services" are services such as civil, electrical,
30 mechanical, petroleum, marine, nuclear, and design engineering, machine
31 designing, machine tool designing, and sewage disposal system designing
32 services;

33 (G) "Architectural services" are services such as structural or
34 landscape design or architecture, interior design, building design,
35 building program management, and space planning services;

36 (H) "Business consulting services" are services such as primarily
37 providing operating counsel, advice, or assistance to the management or
38 owner of any business, private, nonprofit, or public organization,

1 including but not limited to those in the following areas:
2 Administrative management consulting; general management consulting;
3 human resource consulting or training; management engineering
4 consulting; management information systems consulting; manufacturing
5 management consulting; marketing consulting; operations research
6 consulting; personnel management consulting; physical distribution
7 consulting; site location consulting; economic consulting; motel,
8 hotel, and resort consulting; restaurant consulting; government affairs
9 consulting; and lobbying;

10 (I) "Business management services" are services such as
11 administrative management, business management, and office management.
12 "Business management services" does not include property management or
13 property leasing, motel, hotel, and resort management, or automobile
14 parking management;

15 (J) "Public relations and advertising services" are services such
16 as layout, art direction, graphic design, copy writing, mechanical
17 preparation, opinion research, marketing research, marketing, or
18 production supervision;

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

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

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

25 (N) "Financial services" are services such as banking, loan,
26 security, investment management, investment advisory, mortgage
27 servicing, contract collection, and finance leasing services, engaged
28 in by financial businesses, or businesses similar to or in competition
29 with financial businesses; and

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

35 (4) By ordinance, the legislative authority of a city, or
36 legislative authorities of contiguous cities by ordinance of each
37 city's legislative authority, with population greater than eighty
38 thousand, located in a county containing no community empowerment zones

1 as designated under RCW 43.31C.020, may designate a contiguous group of
2 census tracts within the city or cities as an eligible area under this
3 section. Each of the census tracts must meet the unemployment and
4 poverty criteria of RCW 43.31C.030. Upon making the designation, the
5 city or cities shall transmit to the department of revenue a
6 certification letter and a map, each explicitly describing the
7 boundaries of the census tract. This designation must be made by
8 December 31, 1998.

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

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

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

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

17 (6) If at any time the department finds that a person is not
18 eligible for tax credit under this section, the amount of taxes for
19 which a credit has been used shall be immediately due. The department
20 shall assess interest, but not penalties, on the credited taxes for
21 which the person is not eligible. The interest shall be assessed at
22 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
23 shall be assessed retroactively to the date the tax credit was taken,
24 and shall accrue until the taxes for which a credit has been used are
25 repaid.

26 (7) The employment security department shall provide to the
27 department of revenue such information needed by the department of
28 revenue to verify eligibility under this section.

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

31 (1) Every consignee, bailee, factor, or auctioneer (~~((authorized,~~
32 ~~engaged, or employed to sell or call))~~ selling or calling for bids on
33 ~~((tangible))~~ personal property belonging to another, ~~((and so selling~~
34 ~~or calling, shall be))~~ is deemed the seller of such ~~((tangible))~~
35 personal property within the meaning of this chapter ~~((and)).~~ All
36 sales made by such persons are subject to ~~((its))~~ the provisions of

1 this chapter even though the sale would have been exempt from the tax
2 ~~((hereunder))~~ imposed in this chapter had it been made directly by the
3 owner of the property sold.

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

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

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

15 (1) If a buyer normally is engaged in both consuming and reselling
16 certain types of ~~((articles of tangible))~~ personal property, the retail
17 sale of which is taxable under this chapter, and the buyer is not able
18 to determine at the time of purchase whether the particular property
19 acquired will be consumed or resold, the buyer may use a resale
20 certificate for the entire purchase if the buyer principally resells
21 the articles according to the general nature of the buyer's business.
22 The buyer shall account for the value of any articles purchased with a
23 resale certificate that are used by the buyer and remit the sales tax
24 on the articles to the department.

25 (2) A buyer who pays a tax on all purchases and subsequently
26 resells an article at retail, without intervening use by the buyer,
27 shall collect the tax from the purchaser as otherwise provided by law
28 and is entitled to a deduction on the buyer's tax return equal to the
29 cost to the buyer of the property resold upon which retail sales tax
30 has been paid. The deduction is allowed only if the taxpayer keeps and
31 preserves records that show the names of the persons from whom the
32 articles were purchased, the date of the purchase, the type of
33 articles, the amount of the purchase, and the tax that was paid. The
34 department shall provide by rule for the refund or credit of retail
35 sales tax paid by a buyer for purchases that are later sold at
36 wholesale without intervening use by the buyer.

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

3 A credit (~~shall be~~) is allowed against the taxes imposed by this
4 chapter upon the use in this state of tangible personal property,
5 extended warranty, digital good, digital code, digital automated
6 service, or services (~~taxable under~~) defined as a retail sale in RCW
7 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the (~~state of~~
8 ~~Washington in the~~) amount that the present user thereof or his or her
9 bailor or donor has paid a legally imposed retail sales or use tax with
10 respect to such property, extended warranty, digital good, digital
11 code, digital automated service, or service defined as a retail sale in
12 RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state,
13 possession, territory, or commonwealth of the United States, any
14 political subdivision thereof, the District of Columbia, and any
15 foreign country or political subdivision thereof (~~, prior to the use of~~
16 ~~such property, extended warranty, or service in Washington~~)).

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

19 (1) Every person who maintains in this state a place of business or
20 a stock of goods, or engages in business activities within this state,
21 shall obtain from the department a certificate of registration, and
22 shall, at the time of making sales of tangible personal property,
23 digital goods, digital codes, digital automated services, extended
24 warranties, or sales of any service defined as a retail sale in RCW
25 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
26 either possession or title, or both, of tangible personal property for
27 use in this state, collect from the purchasers or transferees the tax
28 imposed under this chapter. The tax to be collected under this section
29 (~~shall~~) must be in an amount equal to the purchase price multiplied
30 by the rate in effect for the retail sales tax under RCW 82.08.020.
31 For the purposes of this chapter, the phrase "maintains in this state
32 a place of business" shall include the solicitation of sales and/or
33 taking of orders by sales agents or traveling representatives. For the
34 purposes of this chapter, "engages in business activity within this
35 state" includes every activity which is sufficient under the
36 Constitution of the United States for this state to require collection
37 of tax under this chapter. The department (~~shall~~) must in rules

1 specify activities which constitute engaging in business activity
2 within this state, and (~~shall~~) must keep the rules current with
3 future court interpretations of the Constitution of the United States.

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

15 (3) The tax required to be collected by this chapter (~~shall be~~)
16 is deemed to be held in trust by the retailer until paid to the
17 department, and any retailer who appropriates or converts the tax
18 collected to the retailer's own use or to any use other than the
19 payment of the tax provided herein to the extent that the money
20 required to be collected is not available for payment on the due date
21 as prescribed (~~shall be~~) is guilty of a misdemeanor. In case any
22 seller fails to collect the tax herein imposed or having collected the
23 tax, fails to pay the same to the department in the manner prescribed,
24 whether such failure is the result of the seller's own acts or the
25 result of acts or conditions beyond the seller's control, the seller
26 (~~shall~~) is nevertheless(~~, be~~) personally liable to the state for
27 the amount of such tax, unless the seller has taken from the buyer in
28 good faith a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

- 1 (ii) The taking of orders; or
2 (iii) The processing of payments; and

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

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

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

16 (1) A city, town, or county that creates a benefit zone and
17 finances public improvements pursuant to chapter 39.100 RCW may impose
18 a sales and use tax in accordance with the terms of this chapter and
19 subject to the criteria set forth in this section. Except as provided
20 in this section, the tax is in addition to other taxes authorized by
21 law and shall be collected from those persons who are taxable by the
22 state under chapters 82.08 and 82.12 RCW upon the occurrence of any
23 taxable event within the taxing jurisdiction of the city, town, or
24 county. The rate of tax shall not exceed the rate provided in RCW
25 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~
26 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of
27 any other taxes imposed on the same events that are credited against
28 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax
29 rate shall be no higher than what is reasonably necessary for the local
30 government to receive its entire annual state contribution in a ten-
31 month period of time.

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

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

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

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

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

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

18 (i) The amount of tax distributions totals the amount of the state
19 contribution;

20 (ii) The amount of tax distributions totals the amount of local
21 public sources, dedicated in the previous calendar year to finance
22 public improvements authorized under chapter 39.100 RCW, expended in
23 the previous year for public improvement costs or used to pay for other
24 bonds issued to pay for public improvements; or

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

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

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

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

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

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

9 (6) The department shall determine the amount of tax distributions
10 attributable to each city, town, and county imposing a sales and use
11 tax under this section and shall advise a city, town, or county when
12 the tax will cease to be distributed for the remainder of the fiscal
13 year as provided in subsection (4)(c) of this section. Determinations
14 by the department of the amount of taxes attributable to a city, town,
15 or county are final and shall not be used to challenge the validity of
16 any tax imposed under this section. The department shall remit any tax
17 revenues in excess of the amounts specified in subsection (4)(b) and
18 (c) of this section to the state treasurer who shall deposit the moneys
19 in the general fund.

20 (7) The definitions in this subsection apply throughout this
21 section and RCW 82.14.470 unless the context clearly requires
22 otherwise.

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

25 (b) "Benefit zone" has the same meaning as provided in RCW
26 39.100.010.

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

29 (d) "Excess state excise taxes" means the amount of excise taxes
30 received by the state during the measurement year from taxable activity
31 within the benefit zone over and above the amount of excise taxes
32 received by the state during the base year from taxable activity within
33 the benefit zone. However, if a local government creates the benefit
34 zone and reasonably determines that no activity subject to tax under
35 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
36 preceding the creation of the benefit zone within the boundaries of the
37 area that became the benefit zone, "excess state excise taxes" means
38 the entire amount of state excise taxes the state receives during a

1 calendar year period beginning with the calendar year immediately
2 following the creation of the benefit zone and continuing with each
3 measurement year thereafter.

4 (e) "State excise taxes" means revenues derived from state retail
5 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
6 of tax distributions from all local retail sales and use taxes imposed
7 on the same taxable events that are credited against the state retail
8 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
9 local tax authorized in this section.

10 (f) "Fiscal year" has the same meaning as provided in RCW
11 39.100.030.

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

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

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

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

23 (k) "Local public sources" includes, but is not limited to, private
24 monetary contributions, assessments, dedicated local government funds,
25 and tax allocation revenues. "Local public sources" does not include
26 local government funds derived from any state loan or state grant, any
27 local tax that is credited against the state sales and use taxes, or
28 any other state funds.

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

31 For the purposes of this chapter, unless otherwise required by the
32 context:

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

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

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

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

13 (5) "Light and power business" means the business of operating a
14 plant or system for the generation, production or distribution of
15 electrical energy for hire or sale and/or for the wheeling of
16 electricity for others.

17 (6) "Telegraph business" means the business of affording
18 telegraphic communication for hire.

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

22 (8) "Motor transportation business" means the business (except
23 urban transportation business) of operating any motor propelled vehicle
24 by which persons or property of others are conveyed for hire, and
25 includes, but is not limited to, the operation of any motor propelled
26 vehicle as an auto transportation company (except urban transportation
27 business), common carrier, or contract carrier as defined by RCW
28 81.68.010 and 81.80.010(~~(+—PROVIDED, That)~~). However, "motor
29 transportation business" (~~(shall)~~) does not mean or include the
30 transportation of logs or other forest products exclusively upon
31 private roads or private highways.

32 (9) "Urban transportation business" means the business of operating
33 any vehicle for public use in the conveyance of persons or property for
34 hire, insofar as (a) operating entirely within the corporate limits of
35 any city or town, or within five miles of the corporate limits thereof,
36 or (b) operating entirely within and between cities and towns whose
37 corporate limits are not more than five miles apart or within five
38 miles of the corporate limits of either thereof. Included herein, but

1 without limiting the scope hereof, is the business of operating
2 passenger vehicles of every type and also the business of operating
3 cartage, pickup, or delivery services, including in such services the
4 collection and distribution of property arriving from or destined to a
5 point within or without the state, whether or not such collection or
6 distribution be made by the person performing a local or interstate
7 line-haul of such property.

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

18 (b) The definitions in this subsection (10)(b) apply throughout
19 this subsection (10).

20 (i) "Competitive telephone service" has the same meaning as in RCW
21 82.04.065.

22 (ii) "Network telephone service" means the providing by any person
23 of access to a telephone network, telephone network switching service,
24 toll service, or coin telephone services, or the providing of
25 telephonic, video, data, or similar communication or transmission for
26 hire, via a telephone network, toll line or channel, cable, microwave,
27 or similar communication or transmission system. "Network telephone
28 service" includes the provision of transmission to and from the site of
29 an internet provider via a telephone network, toll line or channel,
30 cable, microwave, or similar communication or transmission system.
31 "Network telephone service" does not include the providing of
32 competitive telephone service, the providing of cable television
33 service, the providing of broadcast services by radio or television
34 stations, nor the provision of internet (~~service~~) access as defined
35 in RCW 82.04.297, including the reception of dial-in connection,
36 provided at the site of the internet service provider.

37 (iii) "Telephone business" means the business of providing network

1 telephone service. It includes cooperative or farmer line telephone
2 companies or associations operating an exchange.

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

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

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

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

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

22 For the purposes of this chapter:

23 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
24 the words and phrases "tax year," "taxable year," "person," "company,"
25 "gross proceeds of sales," "gross income of the business," "business,"
26 "engaging in business," "successor," "gross operating revenue," "gross
27 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
28 "extended warranty," and "value of products" shall apply equally to the
29 provisions of this chapter.

30 (2) Whenever "property" or "personal property" is used, those terms
31 must be construed to include digital goods and digital codes unless:
32 (a) It is clear from the context that the term "personal property" is
33 intended only to refer to tangible personal property; (b) it is clear
34 from the context that the term "property" is intended only to refer to
35 tangible personal property, real property, or both; or (c) to construe
36 the term "property" or "personal property" as including digital goods

1 and digital codes would yield unlikely, absurd, or strained
2 consequences.

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

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

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

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

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

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

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

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

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

33 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
34 is effective on the first day of a calendar quarter at least sixty days
35 after at least ten states comprising at least twenty percent of the
36 total population, as determined by the 2000 federal census, of all
37 states imposing a state sales tax have petitioned for membership and

1 have either been found in compliance with the agreement or have been
2 found to be an associate member under section 704 of the agreement.

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

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

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

15 (h) "Model 3 seller" means a seller that has sales in at least five
16 member states, has total annual sales revenue of at least five hundred
17 million dollars, has a proprietary system that calculates the amount of
18 tax due each jurisdiction, and has entered into a performance agreement
19 with the member states that establishes a tax performance standard for
20 the seller. As used in this subsection ~~((+2))~~ (3)(h), a seller
21 includes an affiliated group of sellers using the same proprietary
22 system.

23 (i) "Source" means the location in which the sale or use of
24 tangible personal property, a digital good or digital code, an extended
25 warranty, or a digital automated service or other service, subject to
26 tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
27 occur.

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

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

