
SENATE BILL 5783

State of Washington

58th Legislature

2003 Regular Session

By Senators Finkbeiner and Regala; by request of Department of Revenue

Read first time 02/12/2003. Referred to Committee on Ways & Means.

1 AN ACT Relating to implementing the streamlined sales and use tax
2 agreement; amending RCW 82.08.010, 82.12.010, 82.04.040, 82.04.050,
3 82.14.050, 82.14.070, 82.08.050, 82.04.470, 82.08.064, 82.14.055,
4 82.32.430, 82.08.02566, 82.12.02566, 82.08.037, 82.12.020, 82.12.040,
5 82.12.060, 82.08.0293, 82.12.0293, 66.28.190, 82.04.272, 82.04.4289,
6 82.08.0281, 82.12.0275, 82.08.0283, 82.12.0277, 82.14.020, 82.04.215,
7 82.04.29001, 82.12.0284, and 82.04.120; amending 2002 c 67 s 18
8 (uncodified); reenacting and amending RCW 82.14.020; adding new
9 sections to chapter 82.02 RCW; adding new sections to chapter 82.08
10 RCW; adding new sections to chapter 82.32 RCW; adding new sections to
11 chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; creating
12 a new section; and providing an effective date.

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

14 **INTENT**

15 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.02 RCW
16 to read as follows:

17 (1) It is the intent of the legislature that Washington join as a
18 member state in the streamlined sales and use tax agreement referred to

1 in chapter 82.58 RCW. The agreement provides for a simpler and more
2 uniform sales and use tax structure among states that have sales and
3 use taxes. The intent of the legislature is to bring Washington's
4 sales and use tax system into compliance with the agreement so that
5 Washington may join as a member state and have a voice in the
6 development and administration of the system, and to substantially
7 reduce the burden of tax compliance on sellers.

8 (2) This act does not include changes to Washington law that may be
9 required in the future and that are not fully developed under the
10 agreement. These include, but are not limited to, changes relating to
11 online registration, reporting, and remitting of payments by businesses
12 for sales and use tax purposes, monetary allowances for sellers and
13 their agents, sourcing, and amnesty for businesses registering under
14 the agreement.

15 (3) It is the intent of the legislature that the provisions of
16 chapters 82.08 and 82.12 RCW be interpreted and applied consistently
17 with the agreement.

18 (4) The department of revenue shall report to the fiscal committees
19 of the legislature on January 1, 2004, and each January 1st thereafter,
20 on the development of the agreement and shall recommend changes to the
21 sales and use tax structure and propose legislation as may be necessary
22 to keep Washington in compliance with the agreement.

23 **PART I--DEFINITIONS**

24 **Sec. 101.** RCW 82.08.010 and 1985 c 38 s 3 are each amended to read
25 as follows:

26 For the purposes of this chapter:

27 (1) "Selling price" includes "sales price." "Sales price" means
28 the total amount of consideration, (~~whether money, credits, rights, or~~
29 ~~other property except trade-in property of like kind, expressed in the~~
30 ~~terms of money paid or delivered by a buyer to a seller without any~~
31 ~~deduction on account of the cost of tangible property sold, the cost of~~
32 ~~materials used, labor costs, interest, discount, delivery costs, taxes~~
33 ~~other than taxes imposed under this chapter if the seller advertises~~
34 ~~the price as including the tax or that the seller is paying the tax, or~~
35 ~~any other expenses whatsoever paid or accrued and without any deduction~~

1 ~~on account of losses; but shall not include the amount of cash discount~~
2 ~~actually taken by a buyer; and shall be subject to modification to the~~
3 ~~extent modification is provided for in RCW 82.08.080.~~

4 ~~When tangible personal property is rented or leased under~~
5 ~~circumstances that the consideration paid does not represent a~~
6 ~~reasonable rental for the use of the articles so rented or leased, the~~
7 ~~"selling price" shall be determined as nearly as possible according to~~
8 ~~the value of such use at the places of use of similar products of like~~
9 ~~quality and character under such rules as the department of revenue may~~
10 ~~prescribe)) except trade-in property of like kind, including cash,~~
11 ~~credit, property, and services, for which tangible personal property or~~
12 ~~services defined as a "retail sale" under RCW 82.04.050 are sold,~~
13 ~~leased, or rented, valued in money, whether received in money or~~
14 ~~otherwise. No deduction from the total amount of consideration is~~
15 ~~allowed for the following: (a) The seller's cost of the property sold;~~
16 ~~(b) the cost of materials used, labor or service cost, interest,~~
17 ~~losses, all costs of transportation to the seller, all taxes imposed on~~
18 ~~the seller, and any other expense of the seller; (c) charges by the~~
19 ~~seller for any services necessary to complete the sale, other than~~
20 ~~delivery and installation charges; (d) delivery charges; (e)~~
21 ~~installation charges; and (f) the value of exempt tangible personal~~
22 ~~property given to the purchaser where taxable and exempt tangible~~
23 ~~personal property have been bundled together and sold by the seller as~~
24 ~~a single product or piece of merchandise.~~

25 ~~When tangible personal property is rented or leased under~~
26 ~~circumstances that the consideration paid does not represent a~~
27 ~~reasonable rental for the use of the articles so rented or leased, the~~
28 ~~"selling price" shall be determined as nearly as possible according to~~
29 ~~the value of such use at the places of use of similar products of like~~
30 ~~quality and character under such rules as the department may prescribe.~~

31 ~~"Selling price" or "sales price" does not include: Discounts,~~
32 ~~including cash, term, or coupons that are not reimbursed by a third~~
33 ~~party that are allowed by a seller and taken by a purchaser on a sale;~~
34 ~~interest, financing, and carrying charges from credit extended on the~~
35 ~~sale of tangible personal property or services, if the amount is~~
36 ~~separately stated on the invoice, bill of sale, or similar document~~
37 ~~given to the purchaser; and any taxes legally imposed directly on the~~

1 consumer that are separately stated on the invoice, bill of sale, or
2 similar document given to the purchaser;

3 (2) "Seller" means every person, including the state and its
4 departments and institutions, making sales at retail or retail sales to
5 a buyer, purchaser, or consumer, whether as agent, broker, or
6 principal, except "seller" does not mean the state and its departments
7 and institutions when making sales to the state and its departments and
8 institutions;

9 (3) "Buyer," "purchaser," and "consumer" include, without limiting
10 the scope hereof, every individual, receiver, assignee, trustee in
11 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
12 company, joint stock company, business trust, corporation, association,
13 society, or any group of individuals acting as a unit, whether mutual,
14 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
15 quasi municipal corporation, and also the state, its departments and
16 institutions and all political subdivisions thereof, irrespective of
17 the nature of the activities engaged in or functions performed, and
18 also the United States or any instrumentality thereof;

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

24 (5) The meaning attributed in chapter 82.04 RCW to the terms "tax
25 year," "taxable year," "person," "company," "sale," "sale at retail,"
26 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
27 in business," "cash discount," "successor," "consumer," "in this state"
28 and "within this state" shall apply equally to the provisions of this
29 chapter;

30 (6) For the purposes of the taxes imposed under this chapter and
31 under chapter 82.12 RCW, "tangible personal property" means personal
32 property that can be seen, weighed, measured, felt, or touched, or that
33 is in any other manner perceptible to the senses. Tangible personal
34 property includes electricity, water, gas, steam, and prewritten
35 computer software.

36 **Sec. 102.** RCW 82.12.010 and 2002 c 367 s 3 are each amended to
37 read as follows:

1 For the purposes of this chapter:

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

4 (2)(a) "Value of the article used" shall ((mean the consideration,
5 whether money, credit, rights, or other property except trade in
6 property of like kind, expressed in terms of money, paid or given or
7 contracted to be paid or given by the purchaser to the seller)) be the
8 purchase price for the article of tangible personal property, the use
9 of which is taxable under this chapter. ~~((The term includes the amount
10 of any freight, delivery, or other like transportation charge paid or
11 given by the purchaser to the seller with respect to the purchase of
12 such article.))~~ The term also includes, in addition to the
13 ~~((consideration paid or given or contracted to be paid or given))~~
14 purchase price, the amount of any tariff or duty paid with respect to
15 the importation of the article used. In case the article used is
16 acquired by lease or by gift or is extracted, produced, or manufactured
17 by the person using the same or is sold under conditions wherein the
18 purchase price does not represent the true value thereof, the value of
19 the article used shall be determined as nearly as possible according to
20 the retail selling price at place of use of similar products of like
21 quality and character under such rules as the department ~~((of revenue))~~
22 may prescribe.

23 (b) In case the articles used are acquired by bailment, the value
24 of the use of the articles so used shall be in an amount representing
25 a reasonable rental for the use of the articles so bailed, determined
26 as nearly as possible according to the value of such use at the places
27 of use of similar products of like quality and character under such
28 rules as the department of revenue may prescribe. In case any such
29 articles of tangible personal property are used in respect to the
30 construction, repairing, decorating, or improving of, and which become
31 or are to become an ingredient or component of, new or existing
32 buildings or other structures under, upon, or above real property of or
33 for the United States, any instrumentality thereof, or a county or city
34 housing authority created pursuant to chapter 35.82 RCW, including the
35 installing or attaching of any such articles therein or thereto,
36 whether or not such personal property becomes a part of the realty by
37 virtue of installation, then the value of the use of such articles so
38 used shall be determined according to the retail selling price of such

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

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

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

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

28 (f) In the case of an article purchased with a direct pay permit
29 under RCW 82.32.087, the value of the article used shall be determined
30 by the ~~((retail selling))~~ purchase price ~~((, as defined in RCW~~
31 ~~82.08.010,))~~ of such article if, but for the use of the direct pay
32 permit, the transaction would have been subject to sales tax;

33 ~~((+2))~~ (3) "Value of the service used" means the ~~((consideration,~~
34 ~~whether money, credit, rights, or other property, expressed in terms of~~
35 ~~money, paid or given or contracted to be paid or given by the purchaser~~
36 ~~to the seller))~~ purchase price for the service, the use of which is
37 taxable under this chapter. If the service is received by gift or
38 under conditions wherein the purchase price does not represent the true

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

5 ~~((+3))~~ (4) "Use," "used," "using," or "put to use" shall have
6 their ordinary meaning, and shall mean:

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

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

20 ~~((+4))~~ (5) "Taxpayer" and "purchaser" include all persons included
21 within the meaning of the word "buyer" and the word "consumer" as
22 defined in chapters 82.04 and 82.08 RCW;

23 ~~((+5))~~ (6) "Retailer" means every seller as defined in RCW
24 82.08.010 and every person engaged in the business of selling tangible
25 personal property at retail and every person required to collect from
26 purchasers the tax imposed under this chapter;

27 ~~((+6))~~ (7) The meaning ascribed to words and phrases in chapters
28 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
29 effect with respect to taxes imposed under the provisions of this
30 chapter. "Consumer," in addition to the meaning ascribed to it in
31 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
32 person who distributes or displays, or causes to be distributed or
33 displayed, any article of tangible personal property, except
34 newspapers, the primary purpose of which is to promote the sale of
35 products or services. With respect to property distributed to persons
36 within this state by a consumer as defined in this subsection ~~((+6))~~
37 (7), the use of the property shall be deemed to be by such consumer.

1 **Sec. 103.** RCW 82.04.040 and 1961 c 15 s 82.04.040 are each amended
2 to read as follows:

3 (1) "Sale" means any transfer of the ownership of, title to, or
4 possession of property for a valuable consideration and includes any
5 activity classified as a "sale at retail" or "retail sale" under RCW
6 82.04.050. It includes (~~renting or leasing~~) lease or rental,
7 conditional sale contracts, (~~leases with option to purchase,~~) and any
8 contract under which possession of the property is given to the
9 purchaser but title is retained by the vendor as security for the
10 payment of the purchase price. It also includes the furnishing of
11 food, drink, or meals for compensation whether consumed upon the
12 premises or not.

13 (2) "Casual or isolated sale" means a sale made by a person who is
14 not engaged in the business of selling the type of property involved.

15 (3)(a) "Lease or rental" means any transfer of possession or
16 control of tangible personal property for a fixed or indeterminate term
17 for consideration. A lease or rental may include future options to
18 purchase or extend. "Lease or rental" includes transactions under
19 agreements covering motor vehicles and trailers where the amount of
20 consideration may be increased or decreased by reference to the amount
21 realized upon sale or disposition of the property as defined in 26
22 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003.
23 The definition in this subsection (3) shall be used for sales and use
24 tax purposes regardless if a transaction is characterized as a lease or
25 rental under generally accepted accounting principles, the United
26 States internal revenue code, Washington state's commercial code, or
27 other provisions of federal, state, or local law.

28 (b) "Lease or rental" does not include:

29 (i) A transfer of possession or control of property under a
30 security agreement or deferred payment plan that requires the transfer
31 of title upon completion of the required payments;

32 (ii) A transfer of possession or control of party under an
33 agreement that requires the transfer of title upon completion of
34 required payments, and payment of an option price does not exceed the
35 greater of one hundred dollars or one percent of the total required
36 payments; or

37 (iii) Providing tangible personal property along with an operator
38 for a fixed or indeterminate period of time. A condition of this

1 exclusion is that the operator is necessary for the equipment to
2 perform as designed. For the purpose of this subsection (3)(b)(iii),
3 an operator must do more than maintain, inspect, or set up the tangible
4 personal property.

5 **Sec. 104.** RCW 82.04.050 and 2002 c 178 s 1 are each amended to
6 read as follows:

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

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

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

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

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

34 (e) Purchases for the purpose of providing the property to
35 consumers as part of competitive telephone service, as defined in RCW
36 82.04.065. The term shall include every sale of tangible personal
37 property which is used or consumed or to be used or consumed in the

1 performance of any activity classified as a "sale at retail" or "retail
2 sale" even though such property is resold or utilized as provided in
3 (a), (b), (c), (d), or (e) of this subsection following such use. The
4 term also means every sale of tangible personal property to persons
5 engaged in any business which is taxable under RCW 82.04.280 (2) and
6 (7) and 82.04.290.

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

10 (a) The installing, repairing, cleaning, altering, imprinting, or
11 improving of tangible personal property of or for consumers, including
12 charges made for the mere use of facilities in respect thereto, but
13 excluding charges made for the use of coin-operated laundry facilities
14 when such facilities are situated in an apartment house, rooming house,
15 or mobile home park for the exclusive use of the tenants thereof, and
16 also excluding sales of laundry service to nonprofit health care
17 facilities, and excluding services rendered in respect to live animals,
18 birds and insects;

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

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

35 (d) The sale of or charge made for labor and services rendered in
36 respect to the cleaning, fumigating, razing or moving of existing
37 buildings or structures, but shall not include the charge made for
38 janitorial services; and for purposes of this section the term

1 "janitorial services" shall mean those cleaning and caretaking services
2 ordinarily performed by commercial janitor service businesses
3 including, but not limited to, wall and window washing, floor cleaning
4 and waxing, and the cleaning in place of rugs, drapes and upholstery.
5 The term "janitorial services" does not include painting, papering,
6 repairing, furnace or septic tank cleaning, snow removal or
7 sandblasting;

8 (e) The sale of or charge made for labor and services rendered in
9 respect to automobile towing and similar automotive transportation
10 services, but not in respect to those required to report and pay taxes
11 under chapter 82.16 RCW;

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

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

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

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

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

5 (c) Credit bureau services;

6 (d) Automobile parking and storage garage services;

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

12 (f) Service charges associated with tickets to professional
13 sporting events; and

14 (g) The following personal services: Physical fitness services,
15 tanning salon services, tattoo parlor services, steam bath services,
16 turkish bath services, escort services, and dating services.

17 (4)(a) The term shall also include:

18 (i) The renting or leasing of tangible personal property to
19 consumers ((and the rental of equipment with an operator)); and

20 (ii) Providing tangible personal property along with an operator
21 for a fixed or indeterminate period of time. A consideration of this
22 is that the operator is necessary for the equipment to perform as
23 designed. For the purpose of this subsection (4)(a)(ii), an operator
24 must do more than maintain, inspect, or set up the tangible personal
25 property.

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

29 (5) The term shall also include the providing of telephone service,
30 as defined in RCW 82.04.065, to consumers.

31 (6) The term shall also include the sale of ((eanned)) prewritten
32 computer software other than a sale to a person who presents a resale
33 certificate under RCW 82.04.470, regardless of the method of delivery
34 to the end user, but shall not include custom software or the
35 customization of ((eanned)) prewritten computer software.

36 (7) The term shall not include the sale of or charge made for labor
37 and services rendered in respect to the building, repairing, or
38 improving of any street, place, road, highway, easement, right of way,

1 mass public transportation terminal or parking facility, bridge,
2 tunnel, or trestle which is owned by a municipal corporation or
3 political subdivision of the state or by the United States and which is
4 used or to be used primarily for foot or vehicular traffic including
5 mass transportation vehicles of any kind.

6 (8) The term shall also not include sales of chemical sprays or
7 washes to persons for the purpose of postharvest treatment of fruit for
8 the prevention of scald, fungus, mold, or decay, nor shall it include
9 sales of feed, seed, seedlings, fertilizer, agents for enhanced
10 pollination including insects such as bees, and spray materials to:

11 (a) Persons who participate in the federal conservation reserve
12 program, the environmental quality incentives program, the wetlands
13 reserve program, and the wildlife habitat incentives program, or their
14 successors administered by the United States department of agriculture;

15 (b) farmers for the purpose of producing for sale any agricultural
16 product; and (c) farmers acting under cooperative habitat development
17 or access contracts with an organization exempt from federal income tax
18 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
19 fish and wildlife to produce or improve wildlife habitat on land that
20 the farmer owns or leases.

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

37 (10) Until July 1, 2003, the term shall not include the sale of or

1 charge made for labor and services rendered for environmental remedial
2 action as defined in RCW 82.04.2635(2).

3 **PART II--ADMINISTRATIVE PROVISIONS**

4 **Sec. 201.** RCW 82.14.050 and 2002 c 56 s 406 are each amended to
5 read as follows:

6 The counties, cities, and transportation authorities under RCW
7 82.14.045, public facilities districts under chapters 36.100 and 35.57
8 RCW, and regional transportation investment districts shall contract,
9 prior to the effective date of a resolution or ordinance imposing a
10 sales and use tax, the administration and collection to the state
11 department of revenue, which shall deduct a percentage amount, as
12 provided by contract, not to exceed two percent of the taxes collected
13 for administration and collection expenses incurred by the department.
14 The remainder of any portion of any tax authorized by this chapter that
15 is collected by the department of revenue shall be deposited by the
16 state department of revenue in the local sales and use tax account
17 hereby created in the state treasury. Moneys in the local sales and
18 use tax account may be spent only for distribution to counties, cities,
19 transportation authorities, public facilities districts, and regional
20 transportation investment districts imposing a sales and use tax. All
21 administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32
22 RCW, as they now exist or may hereafter be amended, shall, insofar as
23 they are applicable to state sales and use taxes, be applicable to
24 taxes imposed pursuant to this chapter. Counties, cities,
25 transportation authorities, public facilities districts, and regional
26 transportation investment districts may not conduct independent sales
27 or use tax audits of sellers registered under the streamlined sales tax
28 agreement. Except as provided in RCW 43.08.190, all earnings of
29 investments of balances in the local sales and use tax account shall be
30 credited to the local sales and use tax account and distributed to the
31 counties, cities, transportation authorities, public facilities
32 districts, and regional transportation investment districts monthly.

33 **Sec. 202.** RCW 82.14.070 and 2000 c 104 s 5 are each amended to
34 read as follows:

35 It is the intent of this chapter that any local sales and use tax

1 adopted pursuant to this chapter be (~~as consistent and uniform as~~
2 ~~possible with~~) identical to the state sales and use tax, unless
3 otherwise prohibited by federal law, and with other local sales and use
4 taxes adopted pursuant to this chapter. It is further the intent of
5 this chapter that the local sales and use tax shall be imposed upon an
6 individual taxable event simultaneously with the imposition of the
7 state sales or use tax upon the same taxable event. The rule making
8 powers of the state department of revenue contained in RCW 82.08.060
9 and 82.32.300 shall be applicable to this chapter. The department
10 shall, as soon as practicable, and with the assistance of the
11 appropriate associations of county prosecutors and city attorneys,
12 draft a model resolution and ordinance.

13 **Sec. 203.** RCW 82.08.050 and 2001 c 188 s 4 are each amended to
14 read as follows:

15 The tax hereby imposed shall be paid by the buyer to the seller,
16 and each seller shall collect from the buyer the full amount of the tax
17 payable in respect to each taxable sale in accordance with the schedule
18 of collections adopted by the department pursuant to the provisions of
19 RCW 82.08.060. The tax required by this chapter, to be collected by
20 the seller, shall be deemed to be held in trust by the seller until
21 paid to the department, and any seller who appropriates or converts the
22 tax collected to his or her own use or to any use other than the
23 payment of the tax to the extent that the money required to be
24 collected is not available for payment on the due date as prescribed in
25 this chapter shall be guilty of a gross misdemeanor.

26 In case any seller fails to collect the tax herein imposed or,
27 having collected the tax, fails to pay it to the department in the
28 manner prescribed by this chapter, whether such failure is the result
29 of his or her own acts or the result of acts or conditions beyond his
30 or her control, he or she shall, nevertheless, be personally liable to
31 the state for the amount of the tax, unless the seller has taken from
32 the buyer (~~in good faith a properly executed~~) a resale certificate
33 under RCW 82.04.470 (~~or~~), a copy of a direct pay permit issued under
34 RCW 82.32.087, information required under the streamlined sales and use
35 tax agreement, or information required under rules adopted by the
36 department. Sellers shall not be relieved from personal liability for

1 the amount of the tax unless they maintain proper records of exempt
2 transactions and provide them to the department when requested.

3 The amount of tax, until paid by the buyer to the seller or to the
4 department, shall constitute a debt from the buyer to the seller and
5 any seller who fails or refuses to collect the tax as required with
6 intent to violate the provisions of this chapter or to gain some
7 advantage or benefit, either direct or indirect, and any buyer who
8 refuses to pay any tax due under this chapter shall be guilty of a
9 misdemeanor. The tax required by this chapter to be collected by the
10 seller shall be stated separately from the selling price in any sales
11 invoice or other instrument of sale. On all retail sales through
12 vending machines, the tax need not be stated separately from the
13 selling price or collected separately from the buyer. For purposes of
14 determining the tax due from the buyer to the seller and from the
15 seller to the department it shall be conclusively presumed that the
16 selling price quoted in any price list, sales document, contract or
17 other agreement between the parties does not include the tax imposed by
18 this chapter, but if the seller advertises the price as including the
19 tax or that the seller is paying the tax, the advertised price shall
20 not be considered the selling price.

21 Where a buyer has failed to pay to the seller the tax imposed by
22 this chapter and the seller has not paid the amount of the tax to the
23 department, the department may, in its discretion, proceed directly
24 against the buyer for collection of the tax, in which case a penalty of
25 ten percent may be added to the amount of the tax for failure of the
26 buyer to pay the same to the seller, regardless of when the tax may be
27 collected by the department; and all of the provisions of chapter 82.32
28 RCW, including those relative to interest and penalties, shall apply in
29 addition; and, for the sole purpose of applying the various provisions
30 of chapter 82.32 RCW, the twenty-fifth day of the month following the
31 tax period in which the purchase was made shall be considered as the
32 due date of the tax.

33 **Sec. 204.** RCW 82.04.470 and 1993 sp.s. c 25 s 701 are each amended
34 to read as follows:

35 (1) Unless a seller has taken from the buyer a resale certificate,
36 the burden of proving that a sale of tangible personal property, or of

1 services, was not a sale at retail shall be upon the person who made
2 it.

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

10 (3) Resale certificates shall be valid for a period of four years
11 from the date the certificate is provided to the seller.

12 (4) The department may provide by rule for suggested forms for
13 resale certificates or equivalent documents containing the information
14 that will be accepted as resale certificates. The department shall
15 provide by rule the categories of items or services that must be
16 specified on resale certificates and the business classifications that
17 may use a blanket resale certificate.

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

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

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

25 (c) The type of business engaged in;

26 (d) The categories of items or services to be purchased for resale
27 or that are exempt, unless the buyer is in a business classification
28 that may present a blanket resale certificate as provided by the
29 department by rule;

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

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

34 (g) A statement that the buyer acknowledges that the buyer is
35 solely responsible for purchasing within the categories specified on
36 the certificate and that misuse of the resale or exemption privilege
37 claimed on the certificate subjects the buyer to a penalty of fifty

1 percent of the tax due, in addition to the tax, interest, and any other
2 penalties imposed by law;

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

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

6 (j) The name of the seller.

7 (6) Subsection (5)(h), (i), and (j) of this section does not apply
8 if the certificate is provided in a format other than paper. If the
9 certificate is provided in a format other than paper, the name of the
10 individual providing the certificate must be included in the
11 certificate.

12 **Sec. 205.** RCW 82.08.064 and 2000 c 104 s 3 are each amended to
13 read as follows:

14 (1) A sales and use tax rate change under this chapter or chapter
15 82.12 RCW shall be imposed (~~((+1))~~) (a) no sooner than seventy-five days
16 after its enactment into law and (~~((+2))~~) (b) only on the first day of
17 January, April, July, or October.

18 (2)(a) A sales and use tax rate increase under this chapter or
19 chapter 82.12 RCW imposed on services applies to the first billing
20 period starting on or after the effective date of the increase.

21 (b) A sales and use tax rate decrease under this chapter or chapter
22 82.12 RCW imposed on services applies to bills rendered on or after the
23 effective date of the decrease.

24 (c) For the purposes of this subsection (2), "services" means
25 retail services such as installing and constructing and retail services
26 such as telecommunications, but does not include services such as
27 tattooing.

28 **Sec. 206.** RCW 82.14.055 and 2001 c 320 s 7 are each amended to
29 read as follows:

30 (1) Except as provided in subsections (2), (3), and (4) of this
31 section, a local sales and use tax change shall take effect (a) no
32 sooner than seventy-five days after the department receives notice of
33 the change and (b) only on the first day of January, April, July, or
34 October.

35 (2) In the case of a local sales and use tax that is a credit
36 against the state sales tax or use tax, a local sales and use tax

1 change shall take effect (a) no sooner than thirty days after the
2 department receives notice of the change and (b) only on the first day
3 of a month.

4 (3)(a) A local sales and use tax rate increase imposed on services
5 applies to the first billing period starting on or after the effective
6 date of the increase.

7 (b) A local sales and use tax rate decrease imposed on services
8 applies to bills rendered on or after the effective date of the
9 decrease.

10 (c) For the purposes of this subsection (3), "services" means
11 retail services such as installing and constructing and retail services
12 such as telecommunications, but does not include services such as
13 tattooing.

14 (4) For the purposes of this section, "local sales and use tax
15 change" means enactment or revision of local sales and use taxes under
16 this chapter or any other statute, including changes resulting from
17 referendum or annexation.

18 **Sec. 207.** RCW 82.32.430 and 2001 c 320 s 11 are each amended to
19 read as follows:

20 (1) A person who collects and remits sales or use tax to the
21 department and who calculates the tax using geographic information
22 system technology developed and provided by the department shall be
23 held harmless and is not liable for the difference in amount due nor
24 subject to penalties or interest in regards to rate calculation errors
25 resulting from the proper use of such technology.

26 (2) Except as provided in subsection (3) of this section, the
27 department shall notify sellers who collect and remit sales or use tax
28 to the department of changes in boundaries and rates to taxes imposed
29 by chapter 82.14 RCW no later than sixty days before the effective date
30 of the change.

31 (3) The department shall notify sellers who collect and remit sales
32 or use tax to the department and make sales from printed catalogs of
33 changes, as to such sales, of boundaries and rates to taxes imposed by
34 chapter 82.14 RCW no later than one hundred twenty days before the
35 effective date of the change.

36 (4) Sellers who have not received timely notice of rate and
37 boundary changes under subsections (2) and (3) of this section due to

1 actions or omissions of the department are not liable for the
2 difference in the amount due until they have received the appropriate
3 period of notice. Purchasers are liable for any uncollected amounts of
4 tax.

5 **Sec. 208.** RCW 82.08.02566 and 1997 c 302 s 1 are each amended to
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
8 tangible personal property incorporated into a prototype for aircraft
9 parts, auxiliary equipment, or modifications; or to sales of tangible
10 personal property that at one time is incorporated into the prototype
11 but is later destroyed in the testing or development of the prototype.

12 (2) This exemption does not apply to sales to any person whose
13 total taxable amount during the immediately preceding calendar year
14 exceeds twenty million dollars. For purposes of this section, "total
15 taxable amount" means gross income of the business and value of
16 products manufactured, less any amounts for which a credit is allowed
17 under RCW 82.04.440.

18 (3) State and local taxes for which an exemption is received under
19 this section and RCW 82.12.02566 shall not exceed one hundred thousand
20 dollars for any person during any calendar year.

21 (4) Sellers shall collect tax on sales subject to this exemption.
22 The buyer shall apply for a refund directly from the department.

23 **Sec. 209.** RCW 82.12.02566 and 1997 c 302 s 2 are each amended to
24 read as follows:

25 (1) The provisions of this chapter shall not apply with respect to
26 the use of tangible personal property incorporated into a prototype for
27 aircraft parts, auxiliary equipment, or modifications; or in respect to
28 the use of tangible personal property that at one time is incorporated
29 into the prototype but is later destroyed in the testing or development
30 of the prototype.

31 (2) This exemption does not apply in respect to the use of tangible
32 personal property by any person whose total taxable amount during the
33 immediately preceding calendar year exceeds twenty million dollars.
34 For purposes of this section, "total taxable amount" means gross income
35 of the business and value of products manufactured, less any amounts
36 for which a credit is allowed under RCW 82.04.440.

1 (3) State and local taxes for which an exemption is received under
2 this section and RCW 82.08.02566 shall not exceed one hundred thousand
3 dollars for any person during any calendar year.

4 (4) Sellers obligated to collect use tax shall collect tax on sales
5 subject to this exemption. The buyer shall apply for a refund directly
6 from the department.

7 NEW SECTION. Sec. 210. A new section is added to chapter 82.08
8 RCW to read as follows:

9 Sellers shall compute the tax due under this chapter and chapters
10 82.12 and 82.14 RCW by carrying the computation to the third decimal
11 place and rounding to a whole cent using a method that rounds up to the
12 next cent whenever the third decimal place is greater than four.
13 Sellers may elect to compute the tax due on a transaction on an item or
14 an invoice basis. This rounding rule shall be applied to the
15 aggregated state and local taxes.

16 NEW SECTION. Sec. 211. A new section is added to chapter 82.32
17 RCW to read as follows:

18 A purchaser's cause of action against the seller for over-collected
19 sales or use tax does not accrue until the purchaser has provided
20 written notice to the seller and the seller has sixty days to respond.
21 The notice to the seller must contain the information necessary to
22 determine the validity of the request.

23 **Sec. 212.** RCW 82.08.037 and 1982 1st ex.s. c 35 s 35 are each
24 amended to read as follows:

25 (1) A seller is entitled to a credit or refund for sales taxes
26 previously paid on debts which are ((deductible as worthless for
27 federal income tax purposes)) bad debts under 26 U.S.C. Sec. 166, as
28 amended or renumbered as of January 1, 2003, except for:

29 (a) Amounts due on property that remains in the possession of the
30 seller until the full purchase price is paid;

31 (b) Expenses incurred in attempting to collect debt; and

32 (c) Repossessed property.

33 (2) If a credit or refund of sales tax is taken for a bad debt and
34 the debt is subsequently collected in whole or in part, the tax on the

1 amount collected must be paid and reported on the return filed for the
2 period in which the collection is made.

3 (3) Payments on a bad debt are applied first proportionally to the
4 taxable price of the property or service and the sales tax thereon, and
5 secondly to interest, service charges, and any other charges.

6 (4) If the seller uses a certified service provider to administer
7 its sales tax responsibilities, the certified service provider may
8 claim, on behalf of the seller, the credit or refund allowed by this
9 section. The certified service provider must credit or refund the full
10 amount to the seller.

11 NEW SECTION. Sec. 213. A new section is added to chapter 82.32
12 RCW to read as follows:

13 The department may not attribute nexus with Washington to any
14 seller solely by virtue of the seller registering under the streamlined
15 sales and use tax agreement.

16 **Sec. 214.** RCW 82.12.020 and 2002 c 367 s 4 are each amended to
17 read as follows:

18 (1) There is hereby levied and there shall be collected from every
19 person in this state a tax or excise for the privilege of using within
20 this state as a consumer: (a) Any article of tangible personal
21 property purchased at retail, or acquired by lease, gift, repossession,
22 or bailment, or extracted or produced or manufactured by the person so
23 using the same, or otherwise furnished to a person engaged in any
24 business taxable under RCW 82.04.280 (2) or (7); or (b) any (~~earned~~)
25 prewritten computer software, regardless of the method of delivery, but
26 excluding (~~earned~~) prewritten computer software that is either
27 provided free of charge or is provided for temporary use in viewing
28 information, or both.

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

1 (3) Except as provided in RCW 82.12.0252, payment by one purchaser
2 or user of tangible personal property or service of the tax imposed by
3 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any
4 other purchaser or user of the same property or service from the taxes
5 imposed by such chapters.

6 (4) The tax shall be levied and collected in an amount equal to the
7 value of the article used or value of the service used by the taxpayer
8 multiplied by the rate in effect for the retail sales tax under RCW
9 82.08.020, except in the case of a seller required to collect use tax
10 from the purchaser, the tax shall be collected in an amount equal to
11 the purchase price multiplied by the rate in effect for the retail
12 sales tax under RCW 82.08.020.

13 **Sec. 215.** RCW 82.12.040 and 2001 c 188 s 5 are each amended to
14 read as follows:

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

35 (2) Every person who engages in this state in the business of
36 acting as an independent selling agent for persons who do not hold a
37 valid certificate of registration, and who receives compensation by

1 reason of sales of tangible personal property, or sales of any service
2 defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or
3 her principals (~~made~~) for use in this state, shall, at the time such
4 sales are made, collect from the purchasers the tax imposed on the
5 purchase price under this chapter, and for that purpose shall be deemed
6 a retailer as defined in this chapter.

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

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

25 **Sec. 216.** RCW 82.12.060 and 1975 1st ex.s. c 278 s 54 are each
26 amended to read as follows:

27 In the case of installment sales and leases of personal property,
28 the department, by (~~regulation~~) rule, may provide for the collection
29 of taxes upon the installments of the purchase price, or amount of
30 rental, as of the time the same fall due.

31 (~~In the case of property acquired by bailment, the department, by~~
32 ~~regulation, may provide for payment of the tax due in installments~~
33 ~~based on the reasonable rental for the property as determined under RCW~~
34 ~~82.12.010(1).)~~)

35 **PART III--FOOD**

1 **Sec. 301.** RCW 82.08.0293 and 1988 c 103 s 1 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
4 food (~~(products for human consumption.~~

5 ~~"Food products" include cereals and cereal products, oleomargarine,~~
6 ~~meat and meat products including livestock sold for personal~~
7 ~~consumption, fish and fish products, eggs and egg products, vegetables~~
8 ~~and vegetable products, fruit and fruit products, spices and salt,~~
9 ~~sugar and sugar products, coffee and coffee substitutes, tea, cocoa and~~
10 ~~cocoa products.~~

11 ~~"Food products" include milk and milk products, milk shakes, malted~~
12 ~~milks, and any other similar type beverages which are composed at least~~
13 ~~in part of milk or a milk product and which require the use of milk or~~
14 ~~a milk product in their preparation.~~

15 ~~"Food products" include all fruit juices, vegetable juices, and~~
16 ~~other beverages except bottled water, spirituous, malt or vinous~~
17 ~~liquors or carbonated beverages, whether liquid or frozen.~~

18 ~~"Food products" do not include medicines and preparations in~~
19 ~~liquid, powdered, granular, tablet, capsule, lozenge, and pill form~~
20 ~~sold as dietary supplements or adjuncts)) and food ingredients. "Food~~
21 ~~and food ingredients" means substances, whether in liquid,~~
22 ~~concentrated, solid, frozen, dried, or dehydrated form, that are sold~~
23 ~~for ingestion or chewing by humans and are consumed for their taste or~~
24 ~~nutritional value. "Food and food ingredients" does not include:~~

25 (a) "Alcoholic beverages," which means beverages that are suitable
26 for human consumption and contain one-half of one percent or more of
27 alcohol by volume; and

28 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
29 tobacco, or any other item that contains tobacco.

30 (2) The exemption of "food (~~(products)) and food ingredients"~~

31 provided for in subsection (1) of this section shall not apply(~~(:~~(a)

32 ~~When the food products are ordinarily sold for immediate consumption on~~

33 ~~or near a location at which parking facilities are provided primarily~~

34 ~~for the use of patrons in consuming the products purchased at the~~

35 ~~location, even though such products are sold on a "takeout" or "to go"~~

36 ~~order and are actually packaged or wrapped and taken from the premises~~

37 ~~of the retailer, or (b) when the food products are sold for consumption~~

38 ~~within a place, the entrance to which is subject to an admission~~

1 charge, except for national and state parks and monuments, or (c) to a
2 food product, when sold by the retail vendor, which by law must be
3 handled on the vendor's premises by a person with a food and beverage
4 service worker's permit under RCW 69.06.010, including but not be
5 limited to sandwiches prepared or chicken cooked on the premises, deli
6 trays, home delivered pizzas or meals, and salad bars but excluding:

7 (i) Raw meat prepared by persons who slaughter animals, including
8 fish and fowl, or dress or wrap slaughtered raw meat such as fish
9 mongers, butchers, or meat wrappers;

10 (ii) Meat and cheese sliced and/or wrapped, in any quantity
11 determined by the buyer, sold by vendors such as meat markets,
12 delicatessens, and grocery stores;

13 (iii) Bakeries which only sell baked goods;

14 (iv) Combination bakery businesses, as prescribed by rule of the
15 department, to the extent that sales of baked goods are separately
16 accounted for and the baked goods claimed for exemption are not sold as
17 part of meals or with beverages in unsealed containers; or

18 (v) Bulk food products sold from bins or barrels, including but not
19 limited to flour, fruits, vegetables, sugar, salt, candy, chips, and
20 ~~eeea~~) to prepared food, soft drinks, or dietary supplements.

21 (a) "Prepared food" means:

22 (i) Food sold in a heated state or heated by the seller;

23 (ii) Two or more food ingredients mixed or combined by the seller
24 for sale as a single item; or

25 (iii) Food sold with eating utensils provided by the seller,
26 including plates, knives, forks, spoons, glasses, cups, napkins, or
27 straws. A plate does not include a container or packaging used to
28 transport the food.

29 "Prepared food" in (a)(ii) of this subsection, does not include
30 food that is only cut, repackaged, or pasteurized by the seller and raw
31 eggs, fish, meat, poultry, and foods containing these raw animal foods
32 requiring cooking by the consumer as recommended by the federal food
33 and drug administration in chapter 3, part 401.11 of The Food Code,
34 published by the food and drug administration, as amended or renumbered
35 as of January 1, 2003, so as to prevent foodborne illness; or bakery
36 items, including bread, rolls, buns, biscuits, bagels, croissants,
37 pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
38 cookies, or tortillas.

1 (b) "Soft drinks" means nonalcoholic beverages that contain natural
2 or artificial sweeteners. Soft drinks do not include beverages that
3 contain: Milk or milk products; soy, rice, or similar milk
4 substitutes; or greater than fifty percent of vegetable or fruit juice
5 by volume.

6 (c) "Dietary supplement" means any product, other than tobacco,
7 intended to supplement the diet that:

8 (i) Contains one or more of the following dietary ingredients: A
9 vitamin; a mineral; an herb or other botanical; an amino acid; a
10 dietary substance for use by humans to supplement the diet by
11 increasing the total dietary intake; or a concentrate, metabolite,
12 constituent, extract, or combination of any ingredient described in
13 this subsection; and is intended for ingestion in tablet, capsule,
14 powder, softgel, gelcap, or liquid form, or if not intended for
15 ingestion in such form, is not represented as conventional food and is
16 not represented for use as a sole item of a meal or of the diet; and

17 (ii) Is required to be labeled as a dietary supplement,
18 identifiable by the "supplement facts" box found on the label as
19 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
20 of January 1, 2003.

21 (3) Notwithstanding anything in this section to the contrary, the
22 exemption of "food (~~products~~) and food ingredients" provided in this
23 section shall apply to food (~~products~~) and food ingredients which are
24 furnished, prepared, or served as meals:

25 (a) Under a state administered nutrition program for the aged as
26 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
27 74.38.040(6); or

28 (b) Which are provided to senior citizens, disabled persons, or
29 low-income persons by a not-for-profit organization organized under
30 chapter 24.03 or 24.12 RCW.

31 (4) Subsection (1) of this section notwithstanding, the retail sale
32 of food (~~products~~) and food ingredients is subject to sales tax under
33 RCW 82.08.020 if the food (~~products~~) and food ingredients are sold
34 through a vending machine, and in this case the selling price for
35 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

36 This subsection does not apply to hot prepared food (~~products~~)
37 and food ingredients, other than food (~~products~~) and food ingredients

1 which are heated after they have been dispensed from the vending
2 machine.

3 For tax collected under this subsection, the requirements that the
4 tax be collected from the buyer and that the amount of tax be stated as
5 a separate item are waived.

6 NEW SECTION. Sec. 302. A new section is added to chapter 82.08
7 RCW to read as follows:

8 The tax levied by RCW 82.08.020 shall not apply to sales of dietary
9 supplements for human use dispensed or to be dispensed to patients,
10 pursuant to a prescription. "Dietary supplement" has the same meaning
11 as in RCW 82.08.0293.

12 **Sec. 303.** RCW 82.12.0293 and 1988 c 103 s 2 are each amended to
13 read as follows:

14 (1) The provisions of this chapter shall not apply in respect to
15 the use of food (~~(products))~~ and food ingredients for human
16 consumption. "Food and food ingredients" has the same meaning as in
17 RCW 82.08.0293.

18 (~~("Food products" include cereals and cereal products,~~
19 ~~oleomargarine, meat and meat products including livestock sold for~~
20 ~~personal consumption, fish and fish products, eggs and egg products,~~
21 ~~vegetables and vegetable products, fruit and fruit products, spices and~~
22 ~~salt, sugar and sugar products, coffee and coffee substitutes, tea,~~
23 ~~cocoa and cocoa products.~~

24 ~~"Food products" include milk and milk products, milk shakes, malted~~
25 ~~milks, and any other similar type beverages which are composed at least~~
26 ~~in part of milk or a milk product and which require the use of milk or~~
27 ~~a milk product in their preparation.~~

28 ~~"Food products" include all fruit juices, vegetable juices, and~~
29 ~~other beverages except bottled water, spirituous, malt or vinous~~
30 ~~liquors or carbonated beverages, whether liquid or frozen.~~

31 ~~"Food products" do not include medicines and preparations in~~
32 ~~liquid, powdered, granular, tablet, capsule, lozenge, and pill form~~
33 ~~sold as dietary supplements or adjuncts.))~~

34 (2) The exemption of "food (~~(products))~~ and food ingredients"
35 provided for in subsection (1) of this section shall not apply(~~(:—(a)~~
36 ~~When the food products are ordinarily sold for immediate consumption on~~

1 ~~or near a location at which parking facilities are provided primarily~~
2 ~~for the use of patrons in consuming the products purchased at the~~
3 ~~location, even though such products are sold on a "takeout" or "to go"~~
4 ~~order and are actually packaged or wrapped and taken from the premises~~
5 ~~of the retailer, or (b) when the food products are sold for consumption~~
6 ~~within a place, the entrance to which is subject to an admission~~
7 ~~charge, except for national and state parks and monuments, or (c) to a~~
8 ~~food product, when sold by the retail vendor, which by law must be~~
9 ~~handled on the vendor's premises by a person with a food and beverage~~
10 ~~service worker's permit under RCW 69.06.010, including but not be~~
11 ~~limited to sandwiches prepared or chicken cooked on the premises, deli~~
12 ~~trays, home delivered pizzas or meals, and salad bars but excluding:~~

13 ~~(i) Raw meat prepared by persons who slaughter animals, including~~
14 ~~fish and fowl, or dress or wrap slaughtered raw meat such as fish~~
15 ~~mongers, butchers, or meat wrappers;~~

16 ~~(ii) Meat and cheese sliced and/or wrapped, in any quantity~~
17 ~~determined by the buyer, sold by vendors such as meat markets,~~
18 ~~delicatessens, and grocery stores;~~

19 ~~(iii) Bakeries which only sell baked goods;~~

20 ~~(iv) Combination bakery businesses, as prescribed by rule of the~~
21 ~~department, to the extent that sales of baked goods are separately~~
22 ~~accounted for and the baked goods claimed for exemption are not sold as~~
23 ~~part of meals or with beverages in unsealed containers; or~~

24 ~~(v) Bulk food products sold from bins or barrels, including but not~~
25 ~~limited to flour, fruits, vegetables, sugar, salt, candy, chips, and~~
26 ~~☺☺☺)) to prepared food, soft drinks, or dietary supplements.~~
27 ~~"Prepared food," "soft drinks," and "dietary supplements" have the same~~
28 ~~meanings as in RCW 82.08.0293.~~

29 (3) Notwithstanding anything in this section to the contrary, the
30 exemption of "food ((~~products~~)) and food ingredients" provided in this
31 section shall apply to food ((~~products~~)) and food ingredients which are
32 furnished, prepared, or served as meals:

33 (a) Under a state administered nutrition program for the aged as
34 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
35 74.38.040(6); or

36 (b) Which are provided to senior citizens, disabled persons, or
37 low-income persons by a not-for-profit organization organized under
38 chapter 24.03 or 24.12 RCW.

1 NEW SECTION. **Sec. 304.** A new section is added to chapter 82.12
2 RCW to read as follows:

3 The provisions of this chapter shall not apply to the use of
4 dietary supplements dispensed or to be dispensed to patients, pursuant
5 to a prescription, if the dietary supplements are for human use.
6 "Dietary supplement" has the same meaning as in RCW 82.08.0293.

7 **Sec. 305.** RCW 66.28.190 and 1997 c 321 s 52 are each amended to
8 read as follows:

9 RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200
10 as wine distributors and persons licensed under RCW 66.24.250 as beer
11 distributors may sell at wholesale nonliquor food (~~((products))~~) and food
12 ingredients on thirty-day credit terms to persons licensed as retailers
13 under this title, but complete and separate accounting records shall be
14 maintained on all sales of nonliquor food (~~((products))~~) and food
15 ingredients to ensure that such persons are in compliance with RCW
16 66.28.010.

17 For the purpose of this section, "nonliquor food (~~((products))~~) and
18 food ingredients" includes all food (~~((products))~~) and food ingredients
19 for human consumption as defined in RCW 82.08.0293 as it exists on July
20 1, (~~((1987, except that for the purposes of this section bottled water~~
21 ~~and carbonated beverages, whether liquid or frozen, shall be considered~~
22 ~~food products))~~) 2004.

23 **PART IV--MEDICAL PROVISIONS**

24 **Sec. 401.** RCW 82.04.272 and 1998 c 343 s 1 are each amended to
25 read as follows:

26 (1) Upon every person engaging within this state in the business of
27 warehousing and reselling (~~((prescription))~~) drugs for human use pursuant
28 to a prescription; as to such persons, the amount of the tax shall be
29 equal to the gross income of the business multiplied by the rate of
30 0.138 percent.

31 (2) For the purposes of this section:

32 (a) "Prescription" and "drug" (~~((has))~~) have the same meaning as
33 (~~((that term is given))~~) in RCW 82.08.0281; and

34 (b) "Warehousing and reselling (~~((prescription))~~) drugs for human use
35 pursuant to a prescription" means the buying of (~~((prescription))~~) drugs

1 for human use pursuant to a prescription from a manufacturer or another
2 wholesaler, and reselling of the drugs to persons selling at retail or
3 to hospitals, clinics, health care providers, or other providers of
4 health care services, by a wholesaler or retailer who is registered
5 with the federal drug enforcement administration and licensed by the
6 state board of pharmacy.

7 **Sec. 402.** RCW 82.04.4289 and 1998 c 325 s 1 are each amended to
8 read as follows:

9 This chapter does not apply to amounts derived as compensation for
10 services rendered to patients or from sales of (~~prescription~~) drugs
11 (~~as defined in RCW 82.08.0281~~) for human use pursuant to a
12 prescription furnished as an integral part of services rendered to
13 patients by a kidney dialysis facility operated as a nonprofit
14 corporation, a nonprofit hospice agency licensed under chapter 70.127
15 RCW, and nursing homes and homes for unwed mothers operated as
16 religious or charitable organizations, but only if no part of the net
17 earnings received by such an institution inures directly or indirectly,
18 to any person other than the institution entitled to deduction
19 hereunder. "Prescription" and "drug" have the same meaning as in RCW
20 82.08.0281.

21 **Sec. 403.** RCW 82.08.0281 and 1993 sp.s. c 25 s 308 are each
22 amended to read as follows:

23 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
24 (~~prescription~~) drugs(~~(, including sales to the state or a political~~
25 ~~subdivision or municipal corporation thereof of drugs to be dispensed~~
26 ~~to patients by prescription without charge. The term "prescription~~
27 ~~drugs" shall include any medicine, drug, prescription lens, or other~~
28 ~~substance other than food for use in the diagnosis, cure, mitigation,~~
29 ~~treatment, or prevention of disease or other ailment in humans, or for~~
30 ~~use for family planning purposes, including the prevention of~~
31 ~~conception, supplied:~~

32 ~~(1) By a family planning clinic that is under contract with the~~
33 ~~department of health to provide family planning services; or~~

34 ~~(2) Under the written prescription to a pharmacist by a~~
35 ~~practitioner authorized by law of this state or laws of another~~
36 ~~jurisdiction to issue prescriptions; or~~

1 ~~(3) Upon an oral prescription of such practitioner which is reduced~~
2 ~~promptly to writing and filed by a duly licensed pharmacist; or~~

3 ~~(4) By refilling any such written or oral prescription if such~~
4 ~~refilling is authorized by the prescriber either in the original~~
5 ~~prescription or by oral order which is reduced promptly to writing and~~
6 ~~filed by the pharmacist; or~~

7 ~~(5) By physicians or optometrists by way of written directions and~~
8 ~~specifications for the preparation, grinding, and fabrication of lenses~~
9 ~~intended to aid or correct visual defects or anomalies of humans)) for~~
10 human use dispensed or to be dispensed to patients, pursuant to a
11 prescription.

12 (2) The tax levied by RCW 82.08.020 shall not apply to sales of
13 drugs or devices used for family planning purposes, including the
14 prevention of conception, for human use dispensed or to be dispensed to
15 patients, pursuant to a prescription.

16 (3) The tax levied by RCW 82.08.020 shall not apply to sales of
17 drugs and devices used for family planning purposes, including the
18 prevention of conception, for human use supplied by a family planning
19 clinic that is under contract with the department of health to provide
20 family planning services.

21 (4) The definitions in this subsection apply throughout this
22 section.

23 (a) "Prescription" means an order, formula, or recipe issued in any
24 form of oral, written, electronic, or other means of transmission by a
25 duly licensed practitioner authorized by the laws of this state.

26 (b) "Drug" means a compound, substance, or preparation, and any
27 component of a compound, substance, or preparation, other than food and
28 food ingredients, dietary supplements, or alcoholic beverages:

29 (i) Recognized in the official United States pharmacopoeia,
30 official homeopathic pharmacopoeia of the United States, or official
31 national formulary, or any supplement to any of them; or

32 (ii) Intended for use in the diagnosis, cure, mitigation,
33 treatment, or prevention of disease; or

34 (iii) Intended to affect the structure or any function of the body.

35 (c) "Over-the-counter drug" means a drug that contains a label that
36 identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as
37 amended or renumbered on January 1, 2003. The label includes:

38 (i) A "drug facts" panel; or

1 (ii) A statement of the "active ingredient(s)" with a list of those
2 ingredients contained in the compound, substance, or preparation.

3 NEW SECTION. **Sec. 404.** A new section is added to chapter 82.08
4 RCW to read as follows:

5 The tax levied by RCW 82.08.020 shall not apply to sales of
6 disposable devices used or to be used to deliver drugs for human use,
7 pursuant to a prescription. "Disposable devices used to deliver drugs"
8 means single use items such as syringes, tubing, or catheters.

9 NEW SECTION. **Sec. 405.** A new section is added to chapter 82.08
10 RCW to read as follows:

11 The tax levied by RCW 82.08.020 shall not apply to sales of over-
12 the-counter drugs for human use dispensed or to be dispensed to
13 patients, pursuant to a prescription. "Over-the-counter drug" has the
14 same meaning as in RCW 82.08.0281.

15 **Sec. 406.** RCW 82.12.0275 and 1993 sp.s. c 25 s 309 are each
16 amended to read as follows:

17 (1) The provisions of this chapter shall not apply in respect to
18 the use of ((prescription)) drugs((, including the use by the state or
19 a political subdivision or municipal corporation thereof of drugs to be
20 dispensed to patients by prescription without charge. The term
21 "prescription drugs" shall include any medicine, drug, prescription
22 lens, or other substance other than food for use in the diagnosis,
23 cure, mitigation, treatment, or prevention of disease or other ailment
24 in humans, or for use for family planning purposes, including the
25 prevention of conception, supplied:

26 (1) By a family planning clinic that is under contract with the
27 department of health to provide family planning services; or

28 (2) Under the written prescription to a pharmacist by a
29 practitioner authorized by law of this state or laws of another
30 jurisdiction to issue prescriptions; or

31 (3) Upon an oral prescription of such practitioner which is reduced
32 promptly to writing and filed by a duly licensed pharmacist; or

33 (4) By refilling any such written or oral prescription if such
34 refilling is authorized by the prescriber either in the original

1 ~~prescription or by oral order which is reduced promptly to writing and~~
2 ~~filed by the pharmacist; or~~

3 ~~(5) By physicians or optometrists by way of written directions and~~
4 ~~specifications for the preparation, grinding, and fabrication of lenses~~
5 ~~intended to aid or correct visual defects or anomalies of humans))~~
6 dispensed or to be dispensed to patients, pursuant to a prescription,
7 if the drugs are for human use.

8 (2) The provisions of this chapter shall not apply in respect to
9 the use of drugs or devices used for family planning purposes,
10 including the prevention of conception, for human use dispensed or to
11 be dispensed to patients, pursuant to a prescription.

12 (3) The provisions of this chapter shall not apply in respect to
13 the use of drugs or devices used for family planning purposes,
14 including the prevention of conception, for human use supplied by a
15 family planning clinic that is under contract with the department of
16 health to provide family planning services.

17 (4) As used in this section, "prescription" and "drug" have the
18 same meanings as in RCW 82.08.0281.

19 NEW SECTION. Sec. 407. A new section is added to chapter 82.12
20 RCW to read as follows:

21 The provisions of this chapter shall not apply to the use of
22 disposable devices used to deliver drugs for human use, pursuant to a
23 prescription. Disposable devices means the same as provided in section
24 404 of this act.

25 NEW SECTION. Sec. 408. A new section is added to chapter 82.12
26 RCW to read as follows:

27 The provisions of this chapter shall not apply to the use of over-
28 the-counter drugs dispensed or to be dispensed to patients, pursuant to
29 a prescription, if the over-the-counter drugs are for human use.
30 "Over-the-counter drug" has the same meaning as in RCW 82.08.0281.

31 **Sec. 409.** RCW 82.08.0283 and 2001 c 75 s 1 are each amended to
32 read as follows:

33 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
34 ((insulin;)) prosthetic devices ((and the components thereof; dental
35 appliances, devices, restorations, and substitutes, and the components

1 ~~thereof, including but not limited to full and partial dentures,~~
2 ~~crowns, inlays, fillings, braces, and retainers; orthotic devices))~~
3 prescribed for an individual by a person licensed under chapter ~~((s))~~
4 18.22, 18.25, 18.57, or 18.71 RCW; ~~((hearing instruments dispensed or~~
5 ~~fitted by a person licensed or certified under chapter 18.35 RCW, and~~
6 ~~the components thereof;))~~ medicines of mineral, animal, and botanical
7 origin ~~((prescribed,))~~ administered, dispensed, or used in the
8 treatment of an individual by a person licensed under chapter 18.36A
9 RCW; ~~((ostomic items;))~~ and medically prescribed oxygen, including, but
10 not limited to, oxygen concentrator systems, oxygen enricher systems,
11 liquid oxygen systems, and gaseous, bottled oxygen systems prescribed
12 for an individual by a person licensed under chapter 18.57 or 18.71 RCW
13 for use in the medical treatment of that individual. In addition, the
14 tax levied by RCW 82.08.020 shall not apply to charges made for labor
15 and services rendered in respect to the repairing, cleaning, altering,
16 or improving of any of the items exempted under this section.

17 (2) The exemption in subsection (1) of this section shall not apply
18 to sales of durable medical equipment or mobility enhancing equipment.

19 (3) The definitions in this subsection apply throughout this
20 section.

21 (a) "Prosthetic device" means a replacement, corrective, or
22 supportive device, including repair and replacement parts for a
23 prosthetic device, worn on or in the body to:

24 (i) Artificially replace a missing portion of the body;

25 (ii) Prevent or correct a physical deformity or malfunction; or

26 (iii) Support a weak or deformed portion of the body.

27 (b) "Durable medical equipment" means equipment, including repair
28 and replacement for durable medical equipment, but does not include
29 mobility enhancing equipment, that:

30 (i) Can withstand repeated use;

31 (ii) Is primarily and customarily used to serve a medical purpose;

32 (iii) Generally is not useful to a person in the absence of illness
33 or injury; and

34 (iv) Does not work in or on the body.

35 (c) "Mobility enhancing equipment" means equipment, including
36 repair and replacement parts for mobility enhancing equipment, but does
37 not include medical equipment, that:

1 (i) Is primarily and customarily used to provide or increase the
2 ability to move from one place to another and that is appropriate for
3 use either at home or a motor vehicle;

4 (ii) Is not generally used by persons with normal mobility; and

5 (iii) Does not include any motor vehicle or equipment on a motor
6 vehicle normally provided by a motor vehicle manufacturer.

7 NEW SECTION. Sec. 410. A new section is added to chapter 82.08
8 RCW to read as follows:

9 The tax levied by RCW 82.08.020 shall not apply to sales of kidney
10 dialysis devices, including repair and replacement parts, for human use
11 pursuant to a prescription.

12 NEW SECTION. Sec. 411. A new section is added to chapter 82.12
13 RCW to read as follows:

14 The provisions of this chapter shall not apply to the use of kidney
15 dialysis devices, including repair and replacement parts, for human use
16 pursuant to a prescription.

17 **Sec. 412.** RCW 82.12.0277 and 2001 c 75 s 2 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 ~~((insulin;))~~ prosthetic devices ~~((and the components~~
21 ~~thereof; dental appliances, devices, restorations, and substitutes, and~~
22 ~~the components thereof, including but not limited to full and partial~~
23 ~~dentures, crowns, inlays, fillings, braces, and retainers; orthotic~~
24 ~~devices))~~ prescribed for an individual by a person licensed under
25 chapter~~((s))~~ 18.22, 18.25, 18.57, or 18.71 RCW; ~~((hearing instruments~~
26 ~~dispensed or fitted by a person licensed or certified under chapter~~
27 ~~18.35 RCW, and the components thereof;))~~ medicines of mineral, animal,
28 and botanical origin ~~((prescribed,))~~ administered, dispensed, or used
29 in the treatment of an individual by a person licensed under chapter
30 18.36A RCW; ~~((ostomic items;))~~ and medically prescribed oxygen,
31 including, but not limited to, oxygen concentrator systems, oxygen
32 enricher systems, liquid oxygen systems, and gaseous, bottled oxygen
33 systems prescribed for an individual by a person licensed under chapter
34 18.57 or 18.71 RCW for use in the medical treatment of that individual.

1 (ii) When a prepaid calling service is not received by the
2 purchaser at a business location of the seller, the sale is sourced to
3 the location where receipt by the purchaser or the purchaser's donee,
4 designated as such by the purchaser, occurs, including the location
5 indicated by instructions for delivery to the purchaser or donee, known
6 to the seller;

7 (iii) When (c)(i) and (ii) of this subsection do not apply, the
8 sale is sourced to the location indicated by an address for the
9 purchaser that is available from the business records of the seller
10 that are maintained in the ordinary course of the seller's business
11 when use of this address does not constitute bad faith;

12 (iv) When (c)(i), (ii), and (iii) of this subsection do not apply,
13 the sale is sourced to the location indicated by an address for the
14 purchaser obtained during the consummation of the sale, including the
15 address of a purchaser's payment instrument, if no other address is
16 available, when use of this address does not constitute bad faith;

17 (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not
18 apply, including the circumstance where the seller is without
19 sufficient information to apply those provisions, then the location
20 shall be determined by the address from which tangible personal
21 property was shipped, from which the digital good or the computer
22 software delivered electronically was first available for transmission
23 by the seller, or from which the service defined as a retail sale under
24 RCW 82.04.050 was provided, disregarding for these purposes any
25 location that merely provided the digital transfer of the product sold;

26 (vi) In the case of a sale of mobile telecommunications service
27 that is a prepaid telecommunications service, (c)(iv) of this
28 subsection shall include as an option the location associated with the
29 mobile telephone number.

30 (d) A sale of a private communication service is sourced as
31 follows:

32 (i) Service for a separate charge related to a customer channel
33 termination point is sourced to each level of jurisdiction in which
34 such customer channel termination point is located.

35 (ii) Service where all customer termination points are located
36 entirely within one jurisdiction or levels of jurisdiction is sourced
37 in such jurisdiction in which the customer channel termination points
38 are located.

1 (iii) Service for segments of a channel between two customer
2 channel termination points located in different jurisdictions and which
3 segment of channel are separately charged is sourced fifty percent in
4 each level of jurisdiction in which the customer channel termination
5 points are located.

6 (iv) Service for segments of a channel located in more than one
7 jurisdiction or levels of jurisdiction and which segments are not
8 separately billed is sourced in each jurisdiction based on the
9 percentage determined by dividing the number of customer channel
10 termination points in the jurisdiction by the total number of customer
11 channel termination points.

12 (4) The definitions in this subsection apply throughout this
13 chapter.

14 (a) "Air-ground radiotelephone service" means air-ground radio
15 service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered
16 as of January 1, 2003, in which common carriers are authorized to offer
17 and provide radio telecommunications service for hire to subscribers in
18 aircraft.

19 (b) "Call-by-call basis" means any method of charging for
20 telecommunications services where the price is measured by individual
21 calls.

22 (c) "Communications channel" means a physical or virtual path of
23 communications over which signals are transmitted between or among
24 customer channel termination points.

25 (d) "Customer" means the person or entity that contracts with the
26 seller of telecommunications services. If the end user of
27 telecommunications services is not the contracting party, the end user
28 of the telecommunications service is the customer of the
29 telecommunications service. "Customer" does not include a reseller of
30 telecommunications service or for mobile telecommunications service of
31 a serving carrier under an agreement to serve the customer outside the
32 home service provider's licensed service area.

33 (e) "Customer channel termination point" means the location where
34 the customer either inputs or receives the communications.

35 (f) "End user" means the person who uses the telecommunications
36 service. In the case of an entity, the term end user means the
37 individual who uses the service on behalf of the entity.

1 (g) "Home service provider" means the same as that term is defined
2 in RCW 82.04.065.

3 (h) "Mobile telecommunications service" means the same as that term
4 is defined in RCW 82.04.065.

5 (i) "Place of primary use" means the street address representative
6 of where the customer's use of the telecommunications service primarily
7 occurs, which must be the residential street address or the primary
8 business street address of the customer. In the case of mobile
9 telecommunications services, "place of primary use" must be within the
10 licensed service area of the home service provider.

11 (j) "Postpaid calling service" means the telecommunications service
12 obtained by making a payment on a call-by-call basis either through the
13 use of a credit card or payment mechanism such as a bank card, travel
14 card, credit card, or debit card, or by charge made to which a
15 telephone number that is not associated with the origination or
16 termination of the telecommunications service. A postpaid calling
17 service includes a telecommunications service that would be a prepaid
18 calling service except it is not exclusively a telecommunications
19 service.

20 (k) "Prepaid calling service" means the right to access exclusively
21 telecommunications services, which must be paid for in advance and
22 which enables the origination of calls using an access number and/or
23 authorization code, whether manually or electronically dialed, and that
24 is sold in predetermined units or dollars of which the number declines
25 with use in a known amount.

26 (l) "Private communication service" means a telecommunications
27 service that entitles the customer to exclusive or priority use of a
28 communications channel or group of channels between or among
29 termination points, regardless of the manner in which such channel or
30 channels are connected, and includes switching capacity, extension
31 lines, stations, and any other associated services that are provided in
32 connection with the use of such channel or channels.

33 (m) "Service address" means:

34 (i) The location of the telecommunications equipment to which a
35 customer's call is charged and from which the call originates or
36 terminates, regardless of where the call is billed or paid;

37 (ii) If the location in (m)(i) of this subsection is not known, the
38 origination point of the signal of the telecommunications services

1 first identified by either the seller's telecommunications system or in
2 information received by the seller from its home service provider,
3 where the system used to transport such signals is not that of the
4 seller;

5 (iii) If the location in (m)(i) and (ii) of this subsection are not
6 known, the location of the customer's place of primary use.

7 **Sec. 502.** RCW 82.14.020 and 2002 c 367 s 6 and 2002 c 67 s 7 are
8 each reenacted and amended to read as follows:

9 For purposes of this chapter:

10 (1) A retail sale consisting solely of the sale of tangible
11 personal property shall be deemed to have occurred at the retail outlet
12 at or from which delivery is made to the consumer;

13 (2) A retail sale consisting essentially of the performance of
14 personal, business, or professional services shall be deemed to have
15 occurred at the place at which such services were primarily performed,
16 except that for the performance of a tow truck service, as defined in
17 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
18 place of business of the operator of the tow truck service;

19 (3) A retail sale consisting of the rental of tangible personal
20 property shall be deemed to have occurred (a) in the case of a rental
21 involving periodic rental payments, at the place of primary use by the
22 lessee during the period covered by each payment, or (b) in all other
23 cases, at the place of first use by the lessee;

24 (4) A retail sale within the scope of RCW 82.04.050(2), and a
25 retail sale of taxable personal property to be installed by the seller
26 shall be deemed to have occurred at the place where the labor and
27 services involved were primarily performed;

28 (5)(a) A retail sale consisting of the providing to a consumer of
29 telephone service, as defined in RCW 82.04.065, other than a sale of
30 tangible personal property under subsection (1) of this section or a
31 rental of tangible personal property under subsection (3) of this
32 section or a sale of mobile telecommunications services, shall be
33 deemed to have occurred at the situs of the telephone or other
34 instrument through which the telephone service is rendered;

35 (b) A retail sale consisting of the providing ~~((to a consumer of~~
36 ~~mobile telecommunications services is deemed to have occurred at the~~
37 ~~customer's place of primary use, regardless of where the mobile~~

1 ~~telecommunications services originate, terminate, or pass through,~~
2 ~~consistent with the mobile telecommunications sourcing act, P.L. 106-~~
3 ~~252, 4 U.S.C. Secs. 116 through 126))~~ of telecommunications services
4 shall be sourced in accordance with section 501 of this act;

5 (6) A retail sale of linen and uniform supply services is deemed to
6 occur as provided in RCW 82.08.0202;

7 (7) "City" means a city or town;

8 (8) The meaning ascribed to words and phrases in chapters 82.04,
9 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
10 applicable, shall have full force and effect with respect to taxes
11 imposed under authority of this chapter;

12 (9) "Taxable event" shall mean any retail sale, or any use, upon
13 which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as
14 they now exist or may hereafter be amended: PROVIDED, HOWEVER, That
15 the term shall not include a retail sale taxable pursuant to RCW
16 82.08.150, as now or hereafter amended;

17 (10) "Treasurer or other legal depository" shall mean the treasurer
18 or legal depository of a county or city.

19 **Sec. 503.** RCW 82.14.020 and 2002 c 367 s 6 are each amended to
20 read as follows:

21 For purposes of this chapter:

22 (1) A retail sale consisting solely of the sale of tangible
23 personal property shall be deemed to have occurred at the retail outlet
24 at or from which delivery is made to the consumer;

25 (2) A retail sale consisting essentially of the performance of
26 personal, business, or professional services shall be deemed to have
27 occurred at the place at which such services were primarily performed,
28 except that for the performance of a tow truck service, as defined in
29 RCW 46.55.010, the retail sale shall be deemed to have occurred at the
30 place of business of the operator of the tow truck service;

31 (3) A retail sale consisting of the rental of tangible personal
32 property shall be deemed to have occurred (a) in the case of a rental
33 involving periodic rental payments, at the primary place of use by the
34 lessee during the period covered by each payment, or (b) in all other
35 cases, at the place of first use by the lessee;

36 (4) A retail sale within the scope of RCW 82.04.050(2), and a

1 retail sale of taxable personal property to be installed by the seller
2 shall be deemed to have occurred at the place where the labor and
3 services involved were primarily performed;

4 (5) A retail sale consisting of the providing (~~to a consumer of~~
5 ~~telephone service, as defined in RCW 82.04.065, other than a sale of~~
6 ~~tangible personal property under subsection (1) of this section or a~~
7 ~~rental of tangible personal property under subsection (3) of this~~
8 ~~section, shall be deemed to have occurred at the situs of the telephone~~
9 ~~or other instrument through which the telephone service is rendered~~)
10 of telecommunications services shall be sourced in accordance with
11 section 501 of this act;

12 (6) A retail sale of linen and uniform supply services is deemed to
13 occur as provided in RCW 82.08.0202;

14 (7) "City" means a city or town;

15 (8) The meaning ascribed to words and phrases in chapters 82.04,
16 82.08 and 82.12 RCW, as now or hereafter amended, insofar as
17 applicable, shall have full force and effect with respect to taxes
18 imposed under authority of this chapter;

19 (9) "Taxable event" shall mean any retail sale, or any use, upon
20 which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as
21 they now exist or may hereafter be amended: PROVIDED, HOWEVER, That
22 the term shall not include a retail sale taxable pursuant to RCW
23 82.08.150, as now or hereafter amended;

24 (10) "Treasurer or other legal depository" shall mean the treasurer
25 or legal depository of a county or city.

26 NEW SECTION. Sec. 504. The department of revenue shall conduct a
27 study of the fiscal impact on local jurisdictions of the sourcing
28 provisions proposed in the streamlined sales and use tax agreement.
29 The department shall use, and regularly consult, a committee composed
30 of city and county officials to assist with the study. Committee
31 responsibilities include identification of elements of the study
32 including mitigation options for jurisdictions negatively impacted by
33 the sourcing provision. The department shall report the results of the
34 study, which at minimum shall include the identification of the fiscal
35 impacts on local governments of the sourcing provisions, by December 1,
36 2003, to the governor and fiscal committees of the legislature.

PART VI--SOFTWARE AND RELATED ITEMS

Sec. 601. RCW 82.04.215 and 1998 c 332 s 3 are each amended to read as follows:

(1) ~~("Canned software" means software that is created for sale to more than one person))~~ "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means software created for a single person.
~~((+3))~~ (4) "Customization of ((eanned)) prewritten computer software" means any alteration, modification, or development of applications using or incorporating ((eanned)) prewritten computer software for a specific person. "Customization of ((eanned)) prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of ((eanned)) prewritten computer software does not change the underlying character or taxability of the original ((eanned)) prewritten computer software.

~~((+4))~~ (5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

~~((+5))~~ (6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of

1 the person's modifications or enhancements. Prewritten computer
2 software or a prewritten portion thereof that is modified or enhanced
3 to any degree, where such modification or enhancement is designed and
4 developed to the specifications of a specific purchaser, remains
5 prewritten computer software; however where there is a reasonable,
6 separately stated charge or an invoice or other statement of the price
7 given to the purchaser for the modification or enhancement, the
8 modification or enhancement shall not constitute prewritten computer
9 software.

10 (7) "Retained rights" means any and all rights, including
11 intellectual property rights such as those rights arising from
12 copyrights, patents, and trade secret laws, that are owned or are held
13 under contract or license by a software developer, author, inventor,
14 publisher, licensor, sublicensor, or distributor.

15 ~~((6) "Software" means any information, program, or routine, or any~~
16 ~~set of one or more programs, routines, or collections of information~~
17 ~~used, or intended for use, to convey information that causes one or~~
18 ~~more computers or pieces of computer related peripheral equipment, or~~
19 ~~any combination thereof, to perform a task or set of tasks. "Software"~~
20 ~~includes only those copies of such information, programs, or routines~~
21 ~~intended for use by an end user and specifically excludes retained~~
22 ~~rights in software and master copies of software. "Software" includes~~
23 ~~the associated documentation that describes the code and its use,~~
24 ~~operation, and maintenance and typically is delivered with the code to~~
25 ~~the consumer. All software is classified as either canned or custom.))~~

26 **Sec. 602.** RCW 82.04.29001 and 1998 c 332 s 4 are each amended to
27 read as follows:

28 (1) The creation and distribution of custom software is a service
29 taxable under RCW 82.04.290(2). Duplication of the software for the
30 same person, or by the same person for its own use, does not change the
31 character of the software.

32 (2) The customization of ~~((canned))~~ prewritten computer software is
33 a service taxable under RCW 82.04.290(2).

34 **Sec. 603.** RCW 82.12.0284 and 1983 1st ex.s. c 55 s 7 are each
35 amended to read as follows:

36 The provisions of this chapter shall not apply in respect to the

1 use of computers, computer components, computer accessories, or
2 computer software irrevocably donated to any public or private
3 nonprofit school or college, as defined under chapter 84.36 RCW, in
4 this state. For purposes of this section, "computer" (~~means a data
5 processor that can perform substantial computation, including numerous
6 arithmetic or logic operations, without intervention by a human
7 operator during the run~~) has the same meaning as in RCW 82.04.215.

8 **Sec. 604.** RCW 82.04.120 and 1999 sp.s. c 9 s 1 are each amended to
9 read as follows:

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

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

33 **PART VII--STEAM, ELECTRICITY, AND ELECTRICAL ENERGY**

34 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.02
35 RCW to read as follows:

1 When the terms "ingredient," "component part," "incorporated into,"
2 "goods," "products," "byproducts," "materials," "consumables," and
3 other similar terms denoting tangible items that may be used, sold, or
4 consumed are used in this title, the terms do not include steam,
5 electricity, or electrical energy.

6 NEW SECTION. Sec. 702. A new section is added to chapter 82.04
7 RCW to read as follows:

8 Consistent with section 701 of this act, when the terms "tangible
9 personal property," "ingredient," "component part," "incorporated
10 into," "goods," "products," "byproducts," "materials," "consumables,"
11 and other similar terms denoting tangible items that may be used, sold,
12 or consumed are used in this chapter, the terms do not include steam,
13 electricity, or electrical energy.

14 NEW SECTION. Sec. 703. A new section is added to chapter 82.08
15 RCW to read as follows:

16 The tax levied by RCW 82.08.020 shall not apply to sales of steam,
17 electricity, or electrical energy.

18 NEW SECTION. Sec. 704. A new section is added to chapter 82.12
19 RCW to read as follows:

20 The provisions of this chapter shall not apply in respect to the
21 use of steam, electricity, or electrical energy.

22 **PART VIII--RATE PROVISIONS**

23 NEW SECTION. Sec. 801. A new section is added to chapter 82.02
24 RCW to read as follows:

25 (1) There shall be one statewide rate for sales and use taxes
26 imposed at the state level. This subsection does not apply to the
27 taxes imposed by RCW 82.12.022 or 82.18.020, or to taxes imposed on the
28 sale, rental, lease, or use of motor vehicles, aircraft, watercraft,
29 modular homes, manufactured homes, or mobile homes.

30 (2) There shall be one jurisdiction-wide rate for local sales and
31 use taxes imposed at levels below the state level. This subsection
32 does not apply to the taxes imposed by chapter 67.28 RCW, RCW 67.40.090

1 or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of
2 motor vehicles, aircraft, watercraft, modular homes, manufactured
3 homes, or mobile homes.

4 **PART IX--MISCELLANEOUS PROVISIONS**

5 NEW SECTION. **Sec. 901.** Part headings used in this act are not any
6 part of the law.

7 **Sec. 902.** 2002 c 67 s 18 (uncodified) is amended to read as
8 follows:

9 (1) If a court of competent jurisdiction enters a final judgment on
10 the merits that is based on federal or state law, is no longer subject
11 to appeal, and substantially limits or impairs the essential elements
12 of P.L. 106-252(~~(4 U.S.C.)~~), 4 U.S.C. Secs. 116 through 126, or
13 chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and
14 void in its entirety.

15 (2) If the contingency in subsection (1) of this section occurs,
16 section 502, chapter . . ., Laws of 2003 (section 502 of this act) is
17 null and void.

18 NEW SECTION. **Sec. 903.** Sections 101 through 104, 201 through 216,
19 301 through 305, 401 through 412, 501, 502, 601 through 604, 701
20 through 704, 801, 901, and 902 of this act take effect July 1, 2004.

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