

1 **Sec. 101.** RCW 82.32.020 and 2003 1st sp.s. c 13 s 16 are each
2 amended to read as follows:

3 For the purposes of this chapter:

4 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
5 the words and phrases "tax year," "taxable year," "person," "company,"
6 "gross proceeds of sales," "gross income of the business," "business,"
7 "engaging in business," "successor," "gross operating revenue," "gross
8 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
9 "extended warranty," and "value of products" shall apply equally to the
10 provisions of this chapter.

11 (2) The definitions in this subsection apply throughout this
12 chapter, unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

4 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
5 is effective on the first day of a calendar quarter at least sixty days
6 after at least ten states comprising at least twenty percent of the
7 total population, as determined by the 2000 federal census, of all
8 states imposing a state sales tax have petitioned for membership and
9 have either been found in compliance with the agreement or have been
10 found to be an associate member under section 704 of the agreement.

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

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

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

23 (h) "Model 3 seller" means a seller that has sales in at least five
24 member states, has total annual sales revenue of at least five hundred
25 million dollars, has a proprietary system that calculates the amount of
26 tax due each jurisdiction, and has entered into a performance agreement
27 with the member states that establishes a tax performance standard for
28 the seller. As used in this subsection (2)(h), a seller includes an
29 affiliated group of sellers using the same proprietary system.

30 (i) "Source" means the location in which the sale or use of
31 tangible personal property, an extended warranty, or a service, subject
32 to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
33 occur.

34 **Sec. 102.** RCW 82.08.037 and 2004 c 153 s 302 are each amended to
35 read as follows:

36 (1) A seller is entitled to a credit or refund for sales taxes

1 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
2 166, as amended or renumbered as of January 1, 2003.

3 (2) For purposes of this section, "bad debts" does not include:

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

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

7 (c) Repossessed property.

8 (3) If a credit or refund of sales tax is taken for a bad debt and
9 the debt is subsequently collected in whole or in part, the tax on the
10 amount collected must be paid and reported on the return filed for the
11 period in which the collection is made.

12 (4) Payments on a previously claimed bad debt are applied first
13 proportionally to the taxable price of the property or service and the
14 sales or use tax thereon, and secondly to interest, service charges,
15 and any other charges.

16 (5) If the seller uses a certified service provider as defined in
17 RCW (~~(82.58.010)~~) 82.32.020 to administer its sales tax
18 responsibilities, the certified service provider may claim, on behalf
19 of the seller, the credit or refund allowed by this section. The
20 certified service provider must credit or refund the full amount
21 received to the seller.

22 (6) The department shall allow an allocation of bad debts among
23 member states to the streamlined sales tax agreement, as defined in RCW
24 82.58.010(1), if the books and records of the person claiming bad debts
25 support the allocation.

26 **Sec. 103.** RCW 82.12.037 and 2004 c 153 s 304 are each amended to
27 read as follows:

28 (1) A seller is entitled to a credit or refund for use taxes
29 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
30 166, as amended or renumbered as of January 1, 2003.

31 (2) For purposes of this section, "bad debts" does not include:

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

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

35 (c) Repossessed property.

36 (3) If a credit or refund of use tax is taken for a bad debt and

1 the debt is subsequently collected in whole or in part, the tax on the
2 amount collected must be paid and reported on the return filed for the
3 period in which the collection is made.

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

8 (5) If the seller uses a certified service provider as defined in
9 RCW (~~82.58.010~~) 82.32.020 to administer its use tax responsibilities,
10 the certified service provider may claim, on behalf of the seller, the
11 credit or refund allowed by this section. The certified service
12 provider must credit or refund the full amount received to the seller.

13 (6) The department shall allow an allocation of bad debts among
14 member states to the streamlined sales and use tax agreement, as
15 defined in RCW 82.58.010(1), if the books and records of the person
16 claiming bad debts support the allocation.

17 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.32
18 RCW, to be codified between RCW 82.32.020 and 82.32.030, to read as
19 follows:

20 For purposes of compliance with the requirements of the agreement
21 only, and unless the context requires otherwise, the terms "product"
22 and "products" refer to tangible personal property, services, extended
23 warranties, and anything else that can be sold or used.

24 **Sec. 105.** RCW 82.02.210 and 2003 c 168 s 1 are each amended to
25 read as follows:

26 (1) It is the intent of the legislature that Washington join as a
27 member state in the streamlined sales and use tax agreement referred to
28 in chapter 82.58 RCW. The agreement provides for a simpler and more
29 uniform sales and use tax structure among states that have sales and
30 use taxes. The intent of the legislature is to bring Washington's
31 sales and use tax system into compliance with the agreement so that
32 Washington may join as a member state and have a voice in the
33 development and administration of the system, and to substantially
34 reduce the burden of tax compliance on sellers.

35 (2) Chapter 168, Laws of 2003 does not include changes to
36 Washington law that may be required in the future and that are not

1 fully developed under the agreement. These include, but are not
2 limited to, changes relating to on-line registration, reporting, and
3 remitting of payments by businesses for sales and use tax purposes,
4 monetary allowances for sellers and their agents, sourcing, and amnesty
5 for businesses registering under the agreement.

6 (3) It is the intent of the legislature that the provisions of
7 (~~chapters 82.08 and 82.12 RCW~~) this title relating to the
8 administration and collection of state and local sales and use taxes be
9 interpreted and applied consistently with the agreement.

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

15 **PART II**
16 **REGISTRATION**

17 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
18 RCW to read as follows:

19 (1) A seller, by written agreement, may appoint a person to
20 represent the seller as its agent. The seller's agent has authority to
21 register the seller with the department under RCW 82.32.030. An agent
22 may also be a certified service provider, with authority to perform all
23 the seller's sales and use tax functions, except that the seller
24 remains responsible for remitting the tax on its own purchases.

25 (2) The seller or its agent must provide the department with a copy
26 of the written agreement upon request.

27 **Sec. 202.** RCW 82.32.030 and 1996 c 111 s 2 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (2) and (3) of this section,
30 if any person engages in any business or performs any act upon which a
31 tax is imposed by the preceding chapters, he or she shall, under such
32 rules as the department of revenue shall prescribe, apply for and
33 obtain from the department a registration certificate. Such
34 registration certificate shall be personal and nontransferable and
35 shall be valid as long as the taxpayer continues in business and pays

1 the tax accrued to the state. In case business is transacted at two or
2 more separate places by one taxpayer, a separate registration
3 certificate for each place at which business is transacted with the
4 public shall be required. Each certificate shall be numbered and shall
5 show the name, residence, and place and character of business of the
6 taxpayer and such other information as the department of revenue deems
7 necessary and shall be posted in a conspicuous place at the place of
8 business for which it is issued. Where a place of business of the
9 taxpayer is changed, the taxpayer must return to the department the
10 existing certificate, and a new certificate will be issued for the new
11 place of business. No person required to be registered under this
12 section shall engage in any business taxable hereunder without first
13 being so registered. The department, by rule, may provide for the
14 issuance of certificates of registration to temporary places of
15 business.

16 (2) Unless the person is a dealer as defined in RCW 9.41.010,
17 registration under this section is not required if the following
18 conditions are met:

19 (a) A person's value of products, gross proceeds of sales, or gross
20 income of the business, from all business activities taxable under
21 chapter 82.04 RCW, is less than twelve thousand dollars per year;

22 (b) The person's gross income of the business from all activities
23 taxable under chapter 82.16 RCW is less than twelve thousand dollars
24 per year;

25 (c) The person is not required to collect or pay to the department
26 of revenue any other tax or fee which the department is authorized to
27 collect; and

28 (d) The person is not otherwise required to obtain a license
29 subject to the master application procedure provided in chapter 19.02
30 RCW.

31 (3) All persons who agree to collect and remit sales and use tax to
32 the department under the agreement must register through the central
33 registration system authorized under the agreement. Persons required
34 to register under subsection (1) of this section are not relieved of
35 that requirement because of registration under this subsection (3).

36

PART III

1 **MONETARY ALLOWANCES AND VENDOR COMPENSATION**

2 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.32
3 RCW to read as follows:

4 (1) The department shall adopt by rule monetary allowances for
5 certified service providers, model 2 sellers, and model 3 sellers and
6 all other sellers that are not model 1 or model 2 sellers. The
7 department may be guided by the provisions for monetary allowances
8 adopted by the governing board of the agreement to determine the amount
9 of the allowances and the conditions under which they are allowed. The
10 monetary allowances must be reasonable and provide adequate incentive
11 for certified service providers and sellers to collect and remit sales
12 and use taxes under the agreement. Monetary allowances will be funded
13 solely from state sales and use taxes.

14 (2) For certified service providers, the monetary allowance may
15 include a base rate that applies to taxable transactions processed by
16 the certified service provider. Additionally, for a period not to
17 exceed twenty-four months following a seller's registration under RCW
18 82.32.030(3), the monetary allowance may include a percentage of tax
19 revenue generated by the seller.

20 (3) For model 2 sellers, the monetary allowance may include a base
21 rate and a percentage of revenue generated by a seller registering
22 under RCW 82.32.030(3), but shall not exceed a period of twenty-four
23 months.

24 (4) For model 3 sellers and all other sellers that are not model 1
25 sellers or model 2 sellers, the monetary allowance may include a
26 percentage of tax revenue generated by a seller registering under RCW
27 82.32.030(3), but shall not exceed a period of twenty-four months.

28 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.32
29 RCW to read as follows:

30 (1) The department may adopt by rule vendor compensation for
31 sellers collecting and remitting sales and use taxes. The vendor
32 compensation may include a base rate or a percentage of tax revenue
33 collected by the seller, and may vary by type of seller. The
34 department may be guided by the findings of the cost of collection
35 study performed under the agreement, by cost of collection studies
36 performed by the department, and by vendor compensation provided by

1 other states, to determine reasonable vendor compensation for sellers
2 for the costs to collect and remit sales and use taxes. Vendor
3 compensation will be funded solely from state sales and use taxes.

4 (2) A seller is not entitled to vendor compensation while the
5 seller or its certified service provider receives a monetary allowance
6 under section 301 of this act.

7 **PART IV**
8 **AMNESTY**

9 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
10 RCW to read as follows:

11 (1) No assessment for taxes imposed or authorized under chapters
12 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be
13 made by the department against a seller who:

14 (a) Within twelve months of the effective date of this state
15 becoming a member state of the agreement, registers under RCW
16 82.32.030(3) to collect and remit to the department the applicable
17 taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW
18 on sales made to buyers in this state in accordance with the terms of
19 the agreement, if the seller was not otherwise registered in this state
20 in the twelve-month period preceding the effective date of this state
21 becoming a member state of the agreement; and

22 (b) Continues to be registered and continues to collect and remit
23 to the department the applicable taxes imposed or authorized under
24 chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-
25 six months, absent the seller's fraud or intentional misrepresentation
26 of a material fact.

27 (2) The provisions of subsection (1) of this section preclude an
28 assessment for taxes imposed or authorized under chapters 82.08, 82.12,
29 and 82.14 RCW for sales made to buyers during the period the seller was
30 not registered in this state.

31 (3) The provisions of this section do not apply to any seller with
32 respect to:

33 (a) Any matter or matters for which the seller, before registering
34 to collect and remit the applicable taxes imposed or authorized under
35 chapters 82.08, 82.12, and 82.14 RCW, received notice from the

1 department of the commencement of an audit and which audit is not yet
2 finally resolved including any related administrative and judicial
3 processes;

4 (b) Taxes imposed or authorized under chapters 82.08, 82.12, and
5 82.14 RCW and collected or remitted to the department by the seller; or

6 (c) That seller's liability for taxes imposed or authorized under
7 chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a
8 buyer.

9 (4) The limitation periods for making an assessment or correction
10 of an assessment prescribed in RCW 82.32.050(3) and 82.32.100(3) do not
11 run during the thirty-six month period in subsection (1)(b) of this
12 section.

13 **PART V**
14 **SOURCING**

15 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
16 RCW to read as follows:

17 (1) Except as provided in subsections (5), (6), (7), and (8) of
18 this section, for purposes of collecting or paying sales or use taxes
19 to the appropriate jurisdictions, all sales at retail shall be sourced
20 in accordance with this subsection and subsections (2) through (4) of
21 this section.

22 (a) When tangible personal property, an extended warranty, or a
23 service defined as a retail sale under RCW 82.04.050 is received by the
24 purchaser at a business location of the seller, the sale is sourced to
25 that business location.

26 (b) When the tangible personal property, extended warranty, or a
27 service defined as a retail sale under RCW 82.04.050 is not received by
28 the purchaser at a business location of the seller, the sale is sourced
29 to the location where receipt by the purchaser or the purchaser's
30 donee, designated as such by the purchaser, occurs, including the
31 location indicated by instructions for delivery to the purchaser or
32 donee, known to the seller.

33 (c) When (a) and (b) of this subsection do not apply, the sale is
34 sourced to the location indicated by an address for the purchaser that
35 is available from the business records of the seller that are

1 maintained in the ordinary course of the seller's business when use of
2 this address does not constitute bad faith.

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

8 (e) When (a), (b), (c), or (d) of this subsection do not apply,
9 including the circumstance where the seller is without sufficient
10 information to apply those provisions, then the location shall be
11 determined by the address from which tangible personal property was
12 shipped, from which the digital good or the computer software delivered
13 electronically was first available for transmission by the seller, or
14 from which the extended warranty or service defined as a retail sale
15 under RCW 82.04.050 was provided, disregarding for these purposes any
16 location that merely provided the digital transfer of the product sold.

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

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

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

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

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

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

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

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

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

20 (5)(a) A purchaser that is a business and is not a holder of a
21 direct pay permit that knows at the time of purchase of a digital good,
22 computer software, or a service that the digital good, computer
23 software, or service will be concurrently available for use in more
24 than one jurisdiction shall either deliver to the seller in conjunction
25 with its purchase an exemption certificate claiming multiple points of
26 use or meet the requirements of subsection (5)(b) or (c) of this
27 section. Computer software, for purposes of this subsection, includes,
28 but is not limited to, computer software delivered electronically, by
29 load and leave, or in tangible form. Computer software received in
30 person by a business purchaser at a business location of the seller is
31 not included.

32 (i) Upon receipt of an exemption certificate claiming multiple
33 points of use, the seller is relieved of all obligation to collect,
34 pay, or remit the applicable tax and the purchaser is obligated to
35 collect, pay, or remit the applicable tax to the appropriate
36 jurisdiction.

37 (ii) A purchaser delivering an exemption certificate claiming
38 multiple points of use may use any reasonable, but consistent and

1 uniform, method of apportionment that is supported by the purchaser's
2 books and records as they exist at the time the transaction is reported
3 for sales or use tax purposes.

4 (iii) A purchaser delivering an exemption certificate claiming
5 multiple points of use shall report and pay the appropriate tax to each
6 jurisdiction where concurrent use occurs. The tax due will be
7 calculated as if the apportioned amount of the digital good, computer
8 software, or service had been delivered to each jurisdiction to which
9 the sale is apportioned pursuant to (a)(ii) of this subsection.

10 (iv) The exemption certificate claiming multiple points of use
11 shall remain in effect for all future sales by the seller to the
12 purchaser, except as to the subsequent sales' specific apportionment
13 that is governed by the principles of (a)(ii) and (iii) of this
14 subsection, until it is revoked in writing.

15 (b) When the seller knows that the product will be concurrently
16 available for use in more than one jurisdiction, but the purchaser does
17 not provide an exemption certificate claiming multiple points of use as
18 provided in (a) of this subsection, the seller may work with the
19 purchaser to produce the correct apportionment. The purchaser and
20 seller may use any reasonable, but consistent and uniform, method of
21 apportionment that is supported by the seller's and purchaser's
22 business records as they exist at the time the transaction is reported
23 for sales or use tax purposes. If the purchaser certifies to the
24 accuracy of the apportionment and the seller accepts the certification,
25 the seller shall collect and remit the tax pursuant to (a)(iii) of this
26 subsection. In the absence of bad faith, the seller is relieved of any
27 further obligation to collect tax on any transaction where the seller
28 has collected tax pursuant to the information certified by the
29 purchaser.

30 (c) When the seller knows that the product will be concurrently
31 available for use in more than one jurisdiction and the purchaser does
32 not have a direct pay permit and does not provide the seller with an
33 exemption certificate claiming multiple points of use as provided in
34 (a) of this subsection, or certification pursuant to (b) of this
35 subsection, the seller shall collect and remit the tax based on
36 subsections (1) through (4) of this section.

37 (d) A holder of a direct pay permit shall not be required to
38 deliver an exemption certificate claiming multiple points of use to the

1 seller. A direct pay permit holder shall follow (a)(ii) and (iii) of
2 this subsection in apportioning the tax due on the sale or use of a
3 digital good, computer software, or service that will be concurrently
4 available for use in more than one jurisdiction.

5 (e) This section does not limit a person's obligation for sales or
6 use tax to any state in which the qualifying purchases are concurrently
7 available for use, nor does it limit a person's ability under local,
8 state, federal, or constitutional law to claim a credit for sales or
9 use taxes legally due and paid to other jurisdictions.

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

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

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

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

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

36 (7) The following are sourced to the location at or from which
37 delivery is made to the consumer:

38 (a) A retail sale of watercraft;

1 (b) A retail sale of a modular home, manufactured home, or mobile
2 home;

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

6 (d) Until January 1, 2008, a retail sale of tangible personal
7 property made by a person engaged in the business of selling flowers.
8 The rules for the sourcing of retail sales of flowers delivered with
9 telegraphic instructions in WAC 458-20-158, as effective on July 1,
10 1970, shall remain in effect until January 1, 2008.

11 (8) A retail sale of the providing of telecommunications services
12 shall be sourced in accordance with RCW 82.32.520.

13 (9) The definitions in this subsection apply throughout this
14 section.

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

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

26 (c) "Receive" and "receipt" mean taking possession of tangible
27 personal property, making first use of services, or taking possession
28 or making first use of digital goods, whichever comes first. "Receive"
29 and "receipt" do not include possession by a shipping company on behalf
30 of the purchaser.

31 (d) "Transportation equipment" means:

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

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

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

1 (B) Operated under authority of a carrier authorized and
2 certificated by the United States department of transportation or
3 another federal authority to engage in the carriage of persons or
4 property in interstate commerce;

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

9 (iv) Containers designed for use on and component parts attached or
10 secured on the items described in (d)(i) through (iii) of this
11 subsection.

12 (10) In those instances where there is no obligation on the part of
13 a seller to collect or remit sales or use tax, the use of tangible
14 personal property or of a service, subject to use tax, is sourced to
15 the place of first use. The definition of use in RCW 82.12.010 applies
16 to this subsection.

17 **Sec. 502.** RCW 82.14.020 and 2005 c 514 s 111 are each amended to
18 read as follows:

19 For purposes of this chapter:

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

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

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

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

1 **CONFIDENTIALITY AND PRIVACY PROTECTIONS FOR PERSONS USING**
2 **CERTIFIED SERVICE PROVIDERS**

3 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.32
4 RCW to read as follows:

5 (1) A fundamental precept of allowing the use of a certified
6 service provider is to preserve the privacy of consumers by protecting
7 their anonymity. With very limited exceptions, a certified service
8 provider shall perform its tax calculation, remittance, and reporting
9 functions without retaining the personally identifiable information of
10 consumers.

11 (2) The department shall provide public notification to consumers,
12 including purchasers claiming exemption from tax, of its practices
13 relating to the collection, use, and retention of personally
14 identifiable information.

15 (3) When personally identifiable information that has been
16 collected and retained is no longer required to ensure the validity of
17 exemptions from taxation by reason of the consumer's status or the
18 intended use of the goods or services purchased, the information shall
19 no longer be retained by the state of Washington.

20 (4) When personally identifiable information regarding an
21 individual is retained by or on behalf of the state of Washington, this
22 state shall provide reasonable access for the individual to his or her
23 own information and a right to correct any inaccurately recorded
24 information.

25 (5) If anyone other than a member state of the agreement, or other
26 than a person authorized by Washington law or the agreement, seeks to
27 discover personally identifiable information, the state of Washington
28 shall make a reasonable and timely effort to notify the individual of
29 the request.

30 (6) The provisions of this section may be enforced by petitioning
31 the superior court of Thurston county for injunctive relief.

32 **PART VII**
33 **TAXABILITY MATRIX**

34 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.32
35 RCW to read as follows:

36 (1) The department shall complete a taxability matrix maintained by

1 the member states of the agreement in downloadable format. The matrix
2 contains terms defined in the agreement. The department shall provide
3 notice of changes in the taxability of products or services listed in
4 the matrix.

5 (2) Sellers and certified service providers are relieved from
6 liability to the state and to local jurisdictions for having charged or
7 collected the incorrect amount of sales or use tax if the error
8 resulted from reliance on erroneous information provided by the
9 department in the taxability matrix.

10 **PART VIII**
11 **DELIVERY CHARGES**

12 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.08
13 RCW to read as follows:

14 When computing the tax levied by RCW 82.08.020, if a shipment
15 consists of taxable tangible personal property and nontaxable tangible
16 personal property, and delivery charges are included in the sales
17 price, the seller must collect and remit tax on the percentage of
18 delivery charges allocated to the taxable tangible personal property,
19 but does not have to collect and remit tax on the percentage allocated
20 to exempt tangible personal property. The seller may use either of the
21 following percentages to determine the taxable portion of the delivery
22 charges:

23 (1) A percentage based on the total sales price of the taxable
24 tangible personal property compared to the total sales price of all
25 tangible personal property in the shipment; or

26 (2) A percentage based on the total weight of the taxable tangible
27 personal property compared to the total weight of all tangible personal
28 property in the shipment.

29 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
30 RCW to read as follows:

31 When computing the tax levied by RCW 82.12.020, if a shipment
32 consists of taxable tangible personal property and nontaxable tangible
33 personal property, and delivery charges are included in the purchase
34 price, the consumer must remit tax or the retailer must collect and
35 remit tax on the percentage of delivery charges allocated to the

1 taxable tangible personal property, but does not have to remit or
2 collect and remit tax on the percentage allocated to exempt tangible
3 personal property. The consumer or retailer may use either of the
4 following percentages to determine the taxable portion of the delivery
5 charges:

6 (1) A percentage based on the total purchase price of the taxable
7 tangible personal property compared to the total purchase price of all
8 tangible personal property in the shipment; or

9 (2) A percentage based on the total weight of the taxable tangible
10 personal property compared to the total weight of all tangible personal
11 property in the shipment.

12 **PART IX**

13 **SALES AND USE TAX MITIGATION**

14 NEW SECTION. **Sec. 901.** (1) The legislature finds and declares
15 that:

16 (a) Washington state's participation as a member state in the
17 streamlined sales and use tax agreement benefits the state, all its
18 local taxing jurisdictions, and its retailing industry, by increasing
19 state and local revenues, improving the state's business climate, and
20 standardizing and simplifying the state's tax structure;

21 (b) Participation in the streamlined sales and use tax agreement is
22 a matter of statewide concern and is in the best interests of the
23 state, the general public, and all local jurisdictions that impose a
24 sales and use tax under applicable law;

25 (c) Participation in the streamlined sales and use tax agreement
26 requires the adoption of the agreement's sourcing provisions, which
27 changes the location in which a retail sale of delivered tangible
28 personal property occurs from the point of origin to the point of
29 destination;

30 (d) Changes in the state's sourcing law provisions to conform with
31 the streamlined sales and use tax agreement will cause sales and use
32 tax revenues to shift among local taxing jurisdictions. The
33 legislature finds that there will be an unintended adverse impact on
34 local taxing jurisdictions that receive less revenues because local tax
35 revenues will be redistributed, with revenue increases for some
36 jurisdictions and reductions for others, due solely to changes in state

1 sales tax sourcing rules to be implemented under sections 501 and 503
2 of this act, even though no local taxing jurisdiction has changed its
3 tax rate or tax base;

4 (e) The purpose of providing mitigation to such jurisdictions is to
5 mitigate the unintended revenue redistribution effect of the sourcing
6 law changes among local governments;

7 (f) It is in the best interest of the state and all its
8 subdivisions to mitigate the adverse effects of amending the state's
9 sales and use tax sourcing provisions to be in conformance with the
10 streamlined sales and use tax agreement;

11 (g) Additionally, changes in sourcing laws may have negative
12 implications for industry sectors such as warehousing and
13 manufacturing, as well as jurisdictions that house a concentration of
14 these industries and have made zoning decisions, infrastructure
15 investments, bonding decisions, and land use policy decisions based on
16 point of origin sales tax rules in place before the effective date of
17 this section, and the mitigation provided by sections 901 through 905
18 of this act is intended to help offset those negative implications; and

19 (h) It is important that the state of Washington maintain its
20 supply of industrial land for present and future economic development
21 activities, and local governments taking advantage of the mitigation
22 provided by sections 901 through 905 of this act should strive to
23 maintain the supply of industrial land available for economic
24 development efforts.

25 (2) The legislature intends that the streamlined sales and use tax
26 mitigation account established in section 902 of this act have the sole
27 objective of mitigating, for negatively affected local taxing
28 jurisdictions, the net local sales and use tax revenue reductions
29 incurred as a result of sections 501 and 503 of this act.

30 NEW SECTION. **Sec. 902.** A new section is added to chapter 82.14
31 RCW to read as follows:

32 (1) The streamlined sales and use tax mitigation account is created
33 in the state treasury. The state treasurer shall transfer into the
34 account from the general fund amounts as directed in section 903 of
35 this act. Moneys in the account may be spent only after appropriation.
36 Expenditures from the account may be used only for the purpose of

1 mitigating the negative fiscal impacts to local taxing jurisdictions as
2 a result of sections 501 and 503 of this act.

3 (2) Beginning July 1, 2007, the state treasurer, as directed by the
4 department, shall distribute the funds in the streamlined sales and use
5 tax mitigation account to local taxing jurisdictions in accordance with
6 section 903 of this act.

7 (3) The definitions in this subsection apply throughout this
8 section, RCW 82.14.390, and section 903 of this act.

9 (a) "Agreement" means the same as in RCW 82.32.020.

10 (b) "Local taxing jurisdiction" means counties, cities,
11 transportation authorities under RCW 82.14.045, public facilities
12 districts under chapters 36.100 and 35.57 RCW, public transportation
13 benefit areas under RCW 82.14.440, and regional transit authorities
14 under chapter 81.112 RCW, that impose a sales and use tax.

15 (c) "Loss" or "losses" means the local sales and use tax revenue
16 reduction to a local taxing jurisdiction resulting from the sourcing
17 provisions in section 501 of this act.

18 (d) "Net loss" or "net losses" means a loss offset by any voluntary
19 compliance revenue.

20 (e) "Voluntary compliance revenue" means the local sales and use
21 tax revenue gain to each local taxing jurisdiction reported to the
22 department from persons registering through the central registration
23 system authorized under the agreement.

24 (f) "Working day" has the same meaning as in RCW 82.45.180.

25 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.14
26 RCW to read as follows:

27 (1) In order to mitigate local sales and use tax revenue net losses
28 as a result of the sourcing provisions of the streamlined sales and use
29 tax agreement under this title, the state treasurer shall transfer into
30 the streamlined sales and use tax mitigation account from the general
31 fund the sum of twenty-eight million dollars, subject to appropriation,
32 on July 1, 2007. On July 1, 2008, and each July 1st thereafter, the
33 state treasurer shall transfer into the streamlined sales and use tax
34 mitigation account from the general fund the sum required to mitigate
35 actual net losses as determined under this section.

36 (2) Beginning July 1, 2007, and continuing until the department
37 determines annual losses under subsection (3) of this section, the

1 department shall determine the amount of local sales and use tax net
2 loss each local taxing jurisdiction experiences as a result of the
3 sourcing provisions of the streamlined sales and use tax agreement
4 under this title each calendar quarter. The department shall determine
5 losses by analyzing and comparing data from tax return information and
6 tax collections for each local taxing jurisdiction before and after the
7 effective date of this section on a calendar quarter basis. The
8 department's analysis may be revised and supplemented in consultation
9 with the oversight committee as provided in subsection (4) of this
10 section. To determine net losses, the department shall reduce losses
11 by the amount of voluntary compliance revenue for the calendar quarter
12 analyzed. Beginning December 31, 2007, distributions shall be made
13 quarterly from the streamlined sales and use tax mitigation account by
14 the state treasurer, as directed by the department, to each local
15 taxing jurisdiction, other than public facilities districts for losses
16 in respect to taxes imposed under the authority of RCW 82.14.390, in an
17 amount representing its net losses for the previous calendar quarter.
18 Distributions shall be made on the last working day of each calendar
19 quarter.

20 (3) By December 31, 2008, or such later date the department in
21 consultation with the oversight committee determines that sufficient
22 data is available, the department shall determine each local taxing
23 jurisdiction's annual loss. The department shall determine annual
24 losses by comparing at least twelve months of data from tax return
25 information and tax collections for each local taxing jurisdiction
26 before and after the effective date of this section. Beginning the
27 calendar quarter in which the department determines annual losses, and
28 each calendar quarter thereafter, distributions shall be made from the
29 streamlined sales and use tax mitigation account by the state treasurer
30 on the last working day of the calendar quarter, as directed by the
31 department, to each local taxing jurisdiction, other than public
32 facilities districts for losses in respect to taxes imposed under the
33 authority of RCW 82.14.390, in an amount representing one-fourth of the
34 jurisdiction's annual loss reduced by voluntary compliance revenue
35 reported during the previous calendar quarter. The department's
36 analysis of annual losses shall be reviewed by December 1st of each
37 year and may be revised and supplemented in consultation with the
38 oversight committee as provided in subsection (4) of this section.

1 (4) The department shall convene an oversight committee to assist
2 in the determination of losses. The committee shall include one
3 representative of one city whose revenues are increased, one
4 representative of one city whose revenues are reduced, one
5 representative of one county whose revenues are increased, one
6 representative of one county whose revenues are decreased, one
7 representative of one transportation authority under RCW 82.14.045
8 whose revenues are increased, and one representative of one
9 transportation authority under RCW 82.14.045 whose revenues are
10 reduced, as a result of sections 501 and 503 of this act. Beginning
11 July 1, 2007, the oversight committee shall meet quarterly with the
12 department to review and provide additional input and direction on the
13 department's analyses of losses. Local taxing jurisdictions may also
14 present to the oversight committee additional information to improve
15 the department's analyses of the jurisdiction's loss. Beginning
16 January 1, 2009, the oversight committee shall meet at least annually
17 with the department by December 1st.

18 (5) The rule-making provisions of chapter 34.05 RCW do not apply to
19 this section.

20 (6) No distributions may be made under this section unless funds
21 are appropriated as required by section 902(1) of this act.

22 **Sec. 904.** RCW 82.14.390 and 2002 c 363 s 4 are each amended to
23 read as follows:

24 (1) Except as provided in subsection (~~(6)~~) (7) of this section,
25 the governing body of a public facilities district created before July
26 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction
27 of a new regional center, or improvement or rehabilitation of an
28 existing new regional center, before January 1, 2004, may impose a
29 sales and use tax in accordance with the terms of this chapter. The
30 tax is in addition to other taxes authorized by law and shall be
31 collected from those persons who are taxable by the state under
32 chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event
33 within the public facilities district. The rate of tax shall not
34 exceed 0.033 percent of the selling price in the case of a sales tax or
35 value of the article used in the case of a use tax.

36 (2)(a) The governing body of a public facilities district imposing
37 a sales and use tax under the authority of this section may increase

1 the rate of tax up to 0.037 percent if, within three fiscal years of
2 the effective date of this section, the department determines that, as
3 a result of sections 501 and 503 of this act, a public facilities
4 district's sales and use tax collections for fiscal years after the
5 effective date of this section have been reduced by a net loss of at
6 least 0.50 percent from the fiscal year before the effective date of
7 this section. The fiscal year in which this section becomes effective
8 is the first fiscal year after the effective date of this section.

9 (b) The department shall determine sales and use tax collection net
10 losses under this section as provided in section 903 (2) and (3) of
11 this act. The department shall provide written notice of its
12 determinations to public facilities districts. Determinations by the
13 department of a public facilities district's sales and use tax
14 collection net losses as a result of sections 501 and 503 of this act
15 are final and not appealable.

16 (c) A public facilities district may increase its rate of tax after
17 it has received written notice from the department as provided in (b)
18 of this subsection. The increase in the rate of tax must be made in
19 0.001 percent increments and must be the least amount necessary to
20 mitigate the net loss in sales and use tax collections as a result of
21 sections 501 and 503 of this act. The increase in the rate of tax is
22 subject to RCW 82.14.055.

23 (3) The tax imposed under subsection (1) of this section shall be
24 deducted from the amount of tax otherwise required to be collected or
25 paid over to the department of revenue under chapter 82.08 or 82.12
26 RCW. The department of revenue shall perform the collection of such
27 taxes on behalf of the county at no cost to the public facilities
28 district.

29 ~~((+3))~~ (4) No tax may be collected under this section before
30 August 1, 2000. The tax imposed in this section shall expire when the
31 bonds issued for the construction of the regional center and related
32 parking facilities are retired, but not more than twenty-five years
33 after the tax is first collected.

34 ~~((+4))~~ (5) Moneys collected under this section shall only be used
35 for the purposes set forth in RCW 35.57.020 and must be matched with an
36 amount from other public or private sources equal to thirty-three
37 percent of the amount collected under this section, provided that
38 amounts generated from nonvoter approved taxes authorized under chapter

1 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
2 RCW shall not constitute a public or private source. For the purpose
3 of this section, public or private sources includes, but is not limited
4 to cash or in-kind contributions used in all phases of the development
5 or improvement of the regional center, land that is donated and used
6 for the siting of the regional center, cash or in-kind contributions
7 from public or private foundations, or amounts attributed to private
8 sector partners as part of a public and private partnership agreement
9 negotiated by the public facilities district.

10 ~~((+5))~~ (6) The combined total tax levied under this section shall
11 not be greater than ~~((0.033))~~ 0.037 percent. If both a public
12 facilities district created under chapter 35.57 RCW and a public
13 facilities district created under chapter 36.100 RCW impose a tax under
14 this section, the tax imposed by a public facilities district created
15 under chapter 35.57 RCW shall be credited against the tax imposed by a
16 public facilities district created under chapter 36.100 RCW.

17 ~~((+6))~~ (7) A public facilities district created under chapter
18 36.100 RCW is not eligible to impose the tax under this section if the
19 legislative authority of the county where the public facilities
20 district is located has imposed a sales and use tax under RCW
21 82.14.0485 or 82.14.0494.

22 NEW SECTION. Sec. 905. A new section is added to chapter 44.28
23 RCW to read as follows:

24 (1) During calendar year 2009, the joint legislative audit and
25 review committee shall review the mitigation provisions for local
26 taxing jurisdictions under RCW 82.14.390 and section 903 of this act to
27 determine the extent to which the mitigation provisions address the
28 needs of local taxing jurisdictions for which the sourcing provisions
29 in sections 501 and 503 of this act had the greatest fiscal impact. In
30 conducting the study, the committee shall solicit input from the
31 oversight committee created in section 903 of this act and additional
32 local taxing jurisdictions as the committee determines. The department
33 of revenue and the state treasurer shall provide the committee with any
34 data within their purview that the committee considers necessary to
35 conduct the review. The committee shall report to the legislature the
36 results of its findings, and any recommendations for changes to the

1 mitigation provisions under RCW 82.14.390 and section 903 of this act,
2 by December 31, 2009.

3 (2) The definitions in section 902 of this act apply to this
4 section.

5 (3) This section expires July 1, 2010.

6 **PART X**

7 **TELECOMMUNICATIONS PROVISIONS**

8 **Sec. 1001.** RCW 82.32.520 and 2004 c 153 s 403 are each amended to
9 read as follows:

10 (1) Except for the defined telecommunications services listed in
11 subsection (3) of this section, the sale of ((telephone))
12 telecommunications service as defined in RCW 82.04.065 sold on a call-
13 by-call basis shall be sourced to (a) each level of taxing jurisdiction
14 where the call originates and terminates in that jurisdiction or (b)
15 each level of taxing jurisdiction where the call either originates or
16 terminates and in which the service address is also located.

17 (2) Except for the defined telecommunications services listed in
18 subsection (3) of this section, a sale of ((telephone))
19 telecommunications service as defined in RCW 82.04.065 sold on a basis
20 other than a call-by-call basis, is sourced to the customer's place of
21 primary use.

22 (3) The sales of ((telephone)) telecommunications service as
23 defined in RCW 82.04.065 that are listed in subsection (3) of this
24 section shall be sourced to each level of taxing jurisdiction as
25 follows:

26 (a) A sale of mobile telecommunications services, other than air-
27 ground radiotelephone service and prepaid calling service, is sourced
28 to the customer's place of primary use as required by RCW 82.08.066.

29 (b) A sale of postpaid calling service is sourced to the
30 origination point of the telecommunications signal as first identified
31 by either (i) the seller's telecommunications system, or (ii)
32 information received by the seller from its service provider, where the
33 system used to transport such signals is not that of the seller.

34 (c) A sale of prepaid calling service or a sale of a prepaid
35 wireless calling service is sourced as follows:

1 (i) When a prepaid calling service is received by the purchaser at
2 a business location of the seller, the sale is sourced to that business
3 location;

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

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

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

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

29 (vi) In the case of a sale of (~~mobile telecommunications service~~
30 ~~that is a prepaid telecommunications~~) prepaid wireless calling
31 service, (c)(v) of this subsection shall include as an option the
32 location associated with the mobile telephone number.

33 (d) A sale of a private communication service is sourced as
34 follows:

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

1 (ii) Service where all customer termination points are located
2 entirely within one jurisdiction or levels of jurisdiction is sourced
3 in such jurisdiction in which the customer channel termination points
4 are located.

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

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

16 (4) The definitions in this subsection apply throughout this
17 chapter.

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

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

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

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

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

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

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

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

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

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

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

29 (l) "Prepaid wireless calling service" means a telecommunications
30 service that provides the right to use mobile wireless service as well
31 as other nontelecommunications services, including the download of
32 digital products delivered electronically, content, and ancillary
33 services, which must be paid for in advance that is sold in
34 predetermined units or dollars of which the number declines with use in
35 a known amount.

36 (m) "Private communication service" means a telecommunications
37 service that entitles the customer to exclusive or priority use of a
38 communications channel or group of channels between or among

1 termination points, regardless of the manner in which such channel or
2 channels are connected, and includes switching capacity, extension
3 lines, stations, and any other associated services that are provided in
4 connection with the use of such channel or channels.

5 ((+m)) (n) "Service address" means:

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

9 (ii) If the location in ((+m)) (n)(i) of this subsection is not
10 known, the origination point of the signal of the telecommunications
11 services first identified by either the seller's telecommunications
12 system or in information received by the seller from its service
13 provider, where the system used to transport such signals is not that
14 of the seller;

15 (iii) If the locations in ((+m)) (n)(i) and (ii) of this
16 subsection are not known, the location of the customer's place of
17 primary use.

18 **Sec. 1002.** RCW 82.04.065 and 2002 c 67 s 2 are each amended to
19 read as follows:

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

26 (2) (~~"Network telephone service" means the providing by any person~~
27 ~~of access to a telephone network, telephone network switching service,~~
28 ~~toll service, or coin telephone services, or the providing of~~
29 ~~telephonic, video, data, or similar communication or transmission for~~
30 ~~hire, via a telephone network, toll line or channel, cable, microwave,~~
31 ~~or similar communication or transmission system. "Network telephone~~
32 ~~service" includes the provision of transmission to and from the site of~~
33 ~~an internet provider via a telephone network, toll line or channel,~~
34 ~~cable, microwave, or similar communication or transmission system.~~
35 ~~"Network telephone service" does not include the providing of~~
36 ~~competitive telephone service, the providing of cable television~~
37 ~~service, the providing of broadcast services by radio or television~~

1 ~~stations, nor the provision of internet service as defined in RCW~~
2 ~~82.04.297, including the reception of dial in connection, provided at~~
3 ~~the site of the internet service provider.~~

4 ~~(3) "Telephone service" means competitive telephone service or~~
5 ~~network telephone service, or both, as defined in subsections (1) and~~
6 ~~(2) of this section.~~

7 ~~(4) "Telephone business" means the business of providing network~~
8 ~~telephone service, as defined in subsection (2) of this section. It~~
9 ~~includes cooperative or farmer line telephone companies or associations~~
10 ~~operating an exchange.~~

11 ~~(5))~~ "Ancillary services" means services that are associated with
12 or incidental to the provision of "telecommunications services,"
13 including but not limited to "detailed telecommunications billing,"
14 "directory assistance," "vertical service," and "voice mail services."

15 (3) "Conference-bridging service" means an ancillary service that
16 links two or more participants of an audio or video conference call and
17 may include the provision of a telephone number. "Conference-bridging
18 service" does not include the telecommunications services used to reach
19 the conference bridge.

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

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

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

30 (7) "Voice mail service" means an ancillary service that enables
31 the customer to store, send, or receive recorded messages. "Voice mail
32 service" does not include any vertical services that the customer may
33 be required to have in order to use the voice mail service.

34 (8) "Telecommunications service" means the electronic transmission,
35 conveyance, or routing of voice, data, audio, video, or any other
36 information or signals to a point, or between or among points.
37 "Telecommunications service" includes such transmission, conveyance, or
38 routing in which computer processing applications are used to act on

1 the form, code, or protocol of the content for purposes of
2 transmission, conveyance, or routing without regard to whether such
3 service is referred to as voice over internet protocol services or is
4 classified by the federal communications commission as enhanced or
5 value added. "Telecommunications service" does not include:

6 (a) Data processing and information services that allow data to be
7 generated, acquired, stored, processed, or retrieved and delivered by
8 an electronic transmission to a purchaser where such purchaser's
9 primary purpose for the underlying transaction is the processed data or
10 information;

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

13 (c) Tangible personal property;

14 (d) Advertising, including but not limited to directory
15 advertising;

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

17 (f) Internet access service;

18 (g) Radio and television audio and video programming services,
19 regardless of the medium, including the furnishing of transmission,
20 conveyance, and routing of such services by the programming service
21 provider. Radio and television audio and video programming services
22 include but are not limited to cable service as defined in 47 U.S.C.
23 Sec. 522(6) and audio and video programming services delivered by
24 commercial mobile radio service providers, as defined in section 20.3,
25 Title 47 C.F.R.;

26 (h) Ancillary services; or

27 (i) Digital products delivered electronically, including but not
28 limited to software, music, video, reading materials, or ring tones.

29 (9) "800 service" means a telecommunications service that allows a
30 caller to dial a toll-free number without incurring a charge for the
31 call. The service is typically marketed under the name "800," "855,"
32 "866," "877," and "888" toll-free calling, and any subsequent numbers
33 designated by the federal communications commission.

34 (10) "900 service" means an inbound toll telecommunications service
35 purchased by a subscriber that allows the subscriber's customers to
36 call in to the subscriber's prerecorded announcement or live service.
37 "900 service" does not include the charge for: Collection services
38 provided by the seller of the telecommunications services to the

1 subscriber, or services or products sold by the subscriber to the
2 subscriber's customer. The service is typically marketed under the
3 name "900" service, and any subsequent numbers designated by the
4 federal communications commission.

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

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

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

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

23 (15) "Prepaid wireless calling service" means a telecommunications
24 service that provides the right to use mobile wireless service as well
25 as other nontelecommunications services including the download of
26 digital products delivered electronically, content, and ancillary
27 services, which must be paid for in advance and that is sold in
28 predetermined units or dollars of which the number declines with use in
29 a known amount.

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

37 (17) "Value-added nonvoice data service" means a service that
38 otherwise meets the definition of telecommunications services in which

1 computer processing applications are used to act on the form, content,
2 code, or protocol of the information or data primarily for a purpose
3 other than transmission, conveyance, or routing.

4 (18) "Charges for mobile telecommunications services" means any
5 charge for, or associated with, the provision of commercial mobile
6 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
7 on June 1, 1999, or any charge for, or associated with, a service
8 provided as an adjunct to a commercial mobile radio service, regardless
9 of whether individual transmissions originate or terminate within the
10 licensed service area of the mobile telecommunications service
11 provider.

12 ~~((+6+))~~ (19) "Customer" means: (a) The person or entity that
13 contracts with the home service provider for mobile telecommunications
14 services; or (b) the end user of the mobile telecommunications service,
15 if the end user of mobile telecommunications services is not the
16 contracting party, but this subsection ~~((+6+))~~ (19)(b) applies only for
17 the purpose of determining the place of primary use. The term does not
18 include a reseller of mobile telecommunications service, or a serving
19 carrier under an arrangement to serve the customer outside the home
20 service provider's licensed service area.

21 ~~((+7+))~~ (20) "Designated data base provider" means a person
22 representing all the political subdivisions of the state that is:

23 (a) Responsible for providing an electronic data base prescribed in
24 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data
25 base; and

26 (b) Approved by municipal and county associations or leagues of the
27 state whose responsibility it would otherwise be to provide a data base
28 prescribed by 4 U.S.C. Secs. 116 through 126.

29 ~~((+8+))~~ (21) "Enhanced zip code" means a United States postal zip
30 code of nine or more digits.

31 ~~((+9+))~~ (22) "Home service provider" means the facilities-based
32 carrier or reseller with whom the customer contracts for the provision
33 of mobile telecommunications services.

34 ~~((+10+))~~ (23) "Licensed service area" means the geographic area in
35 which the home service provider is authorized by law or contract to
36 provide commercial mobile radio service to the customer.

37 ~~((+11+))~~ (24) "Mobile telecommunications service" means commercial

1 mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in
2 effect on June 1, 1999.

3 ~~((12))~~ (25) "Mobile telecommunications service provider" means a
4 home service provider or a serving carrier.

5 ~~((13))~~ (26) "Place of primary use" means the street address
6 representative of where the customer's use of the mobile
7 telecommunications service primarily occurs, which must be:

8 (a) The residential street address or the primary business street
9 address of the customer; and

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

11 ~~((14))~~ (27) "Prepaid telephone calling service" means the right
12 to purchase exclusively telecommunications services that must be paid
13 for in advance, that enables the origination of calls using an access
14 number, authorization code, or both, whether manually or electronically
15 dialed, if the remaining amount of units of service that have been
16 prepaid is known by the provider of the prepaid service on a continuous
17 basis.

18 ~~((15))~~ (28) "Reseller" means a provider who purchases
19 telecommunications services from another telecommunications service
20 provider and then resells, uses as a component part of, or integrates
21 the purchased services into a mobile telecommunications service.
22 "Reseller" does not include a serving carrier with whom a home service
23 provider arranges for the services to its customers outside the home
24 service provider's licensed service area.

25 ~~((16))~~ (29) "Serving carrier" means a facilities-based carrier
26 providing mobile telecommunications service to a customer outside a
27 home service provider's or reseller's licensed service area.

28 ~~((17))~~ (30) "Taxing jurisdiction" means any of the several
29 states, the District of Columbia, or any territory or possession of the
30 United States, any municipality, city, county, township, parish,
31 transportation district, or assessment jurisdiction, or other political
32 subdivision within the territorial limits of the United States with the
33 authority to impose a tax, charge, or fee.

34 **Sec. 1003.** RCW 82.04.065 and 1997 c 304 s 5 are each amended to
35 read as follows:

36 (1) "Competitive telephone service" means the providing by any
37 person of telecommunications equipment or apparatus, or service related

1 to that equipment or apparatus such as repair or maintenance service,
2 if the equipment or apparatus is of a type which can be provided by
3 persons that are not subject to regulation as telephone companies under
4 Title 80 RCW and for which a separate charge is made.

5 (2) (~~"Network telephone service" means the providing by any person~~
6 ~~of access to a local telephone network, local telephone network~~
7 ~~switching service, toll service, or coin telephone services, or the~~
8 ~~providing of telephonic, video, data, or similar communication or~~
9 ~~transmission for hire, via a local telephone network, toll line or~~
10 ~~channel, cable, microwave, or similar communication or transmission~~
11 ~~system. "Network telephone service" includes interstate service,~~
12 ~~including toll service, originating from or received on~~
13 ~~telecommunications equipment or apparatus in this state if the charge~~
14 ~~for the service is billed to a person in this state. "Network~~
15 ~~telephone service" includes the provision of transmission to and from~~
16 ~~the site of an internet provider via a local telephone network, toll~~
17 ~~line or channel, cable, microwave, or similar communication or~~
18 ~~transmission system. "Network telephone service" does not include the~~
19 ~~providing of competitive telephone service, the providing of cable~~
20 ~~television service, the providing of broadcast services by radio or~~
21 ~~television stations, nor the provision of internet service as defined~~
22 ~~in RCW 82.04.297, including the reception of dial in connection,~~
23 ~~provided at the site of the internet service provider.~~

24 (3) ~~"Telephone service" means competitive telephone service or~~
25 ~~network telephone service, or both, as defined in subsections (1) and~~
26 ~~(2) of this section.~~

27 (4) ~~"Telephone business" means the business of providing network~~
28 ~~telephone service, as defined in subsection (2) of this section. It~~
29 ~~includes cooperative or farmer line telephone companies or associations~~
30 ~~operating an exchange)) "Ancillary services" means services that are~~
31 ~~associated with or incidental to the provision of "telecommunications~~
32 ~~services," including but not limited to "detailed telecommunications~~
33 ~~billing," "directory assistance," "vertical service," and "voice mail~~
34 ~~services."~~

35 (3) "Conference-bridging service" means an ancillary service that
36 links two or more participants of an audio or video conference call and
37 may include the provision of a telephone number. "Conference-bridging

1 service" does not include the telecommunications services used to reach
2 the conference bridge.

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

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

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

13 (7) "Voice mail service" means an ancillary service that enables
14 the customer to store, send, or receive recorded messages. "Voice mail
15 service" does not include any vertical services that the customer may
16 be required to have in order to use the voice mail service.

17 (8) "Telecommunications service" means the electronic transmission,
18 conveyance, or routing of voice, data, audio, video, or any other
19 information or signals to a point, or between or among points.
20 "Telecommunications service" includes such transmission, conveyance, or
21 routing in which computer processing applications are used to act on
22 the form, code, or protocol of the content for purposes of
23 transmission, conveyance, or routing without regard to whether such
24 service is referred to as voice over internet protocol services or is
25 classified by the federal communications commission as enhanced or
26 value added. "Telecommunications service" does not include:

27 (a) Data processing and information services that allow data to be
28 generated, acquired, stored, processed, or retrieved and delivered by
29 an electronic transmission to a purchaser where such purchaser's
30 primary purpose for the underlying transaction is the processed data or
31 information;

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

34 (c) Tangible personal property;

35 (d) Advertising, including but not limited to directory
36 advertising;

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

38 (f) Internet access service;

1 (g) Radio and television audio and video programming services,
2 regardless of the medium, including the furnishing of transmission,
3 conveyance, and routing of such services by the programming service
4 provider. Radio and television audio and video programming services
5 include but are not limited to cable service as defined in 47 U.S.C.
6 Sec. 522(6) and audio and video programming services delivered by
7 commercial mobile radio service providers, as defined in section 20.3,
8 Title 47 C.F.R.;

9 (h) Ancillary services; or

10 (i) Digital products delivered electronically, including but not
11 limited to software, music, video, reading materials, or ring tones.

12 (9) "800 service" means a telecommunications service that allows a
13 caller to dial a toll-free number without incurring a charge for the
14 call. The service is typically marketed under the name "800," "855,"
15 "866," "877," and "888" toll-free calling, and any subsequent numbers
16 designated by the federal communications commission.

17 (10) "900 service" means an inbound toll "telecommunications
18 service" purchased by a subscriber that allows the subscriber's
19 customers to call in to the subscriber's prerecorded announcement or
20 live service. "900 service" does not include the charge for:
21 Collection services provided by the seller of the telecommunications
22 services to the subscriber, or services or products sold by the
23 subscriber to the subscriber's customer. The service is typically
24 marketed under the name "900" service, and any subsequent numbers
25 designated by the federal communications commission.

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

28 (12) "Mobile wireless service" means a telecommunications service
29 that is transmitted, conveyed, or routed regardless of the technology
30 used, whereby the origination and/or termination points of the
31 transmission, conveyance, or routing are not fixed, including, by way
32 of example only, telecommunications services that are provided by a
33 commercial mobile radio service provider.

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

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

7 (15) "Prepaid wireless calling service" means a telecommunications
8 service that provides the right to use mobile wireless service as well
9 as other nontelecommunications services including the download of
10 digital products delivered electronically, content, and ancillary
11 services, which must be paid for in advance and that is sold in
12 predetermined units or dollars of which the number declines with use in
13 a known amount.

14 (16) "Private communications service" means a telecommunications
15 service that entitles the customer to exclusive or priority use of a
16 communications channel or group of channels between or among
17 termination points, regardless of the manner in which the channel or
18 channels are connected, and includes switching capacity, extension
19 lines, stations, and any other associated services that are provided in
20 connection with the use of the channel or channels.

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

26 **Sec. 1004.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101
27 are each reenacted and amended to read as follows:

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

35 (a) Purchases for the purpose of resale as tangible personal
36 property in the regular course of business without intervening use by

1 such person, but a purchase for the purpose of resale by a regional
2 transit authority under RCW 81.112.300 is not a sale for resale; or

3 (b) Installs, repairs, cleans, alters, imprints, improves,
4 constructs, or decorates real or personal property of or for consumers,
5 if such tangible personal property becomes an ingredient or component
6 of such real or personal property without intervening use by such
7 person; or

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

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

19 (e) Purchases for the purpose of providing the property to
20 consumers as part of competitive telephone service, as defined in RCW
21 82.04.065. The term shall include every sale of tangible personal
22 property which is used or consumed or to be used or consumed in the
23 performance of any activity classified as a "sale at retail" or "retail
24 sale" even though such property is resold or utilized as provided in
25 (a), (b), (c), (d), or (e) of this subsection following such use. The
26 term also means every sale of tangible personal property to persons
27 engaged in any business which is taxable under RCW 82.04.280 (2) and
28 (7), 82.04.290, and 82.04.2908; or

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

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

37 (a) The installing, repairing, cleaning, altering, imprinting, or
38 improving of tangible personal property of or for consumers, including

1 charges made for the mere use of facilities in respect thereto, but
2 excluding charges made for the use of self-service laundry facilities,
3 and also excluding sales of laundry service to nonprofit health care
4 facilities, and excluding services rendered in respect to live animals,
5 birds and insects;

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

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

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

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

37 (f) The sale of and charge made for the furnishing of lodging and
38 all other services by a hotel, rooming house, tourist court, motel,

1 trailer camp, and the granting of any similar license to use real
2 property, as distinguished from the renting or leasing of real
3 property, and it shall be presumed that the occupancy of real property
4 for a continuous period of one month or more constitutes a rental or
5 lease of real property and not a mere license to use or enjoy the same.
6 For the purposes of this subsection, it shall be presumed that the sale
7 of and charge made for the furnishing of lodging for a continuous
8 period of one month or more to a person is a rental or lease of real
9 property and not a mere license to enjoy the same;

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

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

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

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

29 (c) Credit bureau services;

30 (d) Automobile parking and storage garage services;

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

36 (f) Service charges associated with tickets to professional
37 sporting events; and

1 (g) The following personal services: Physical fitness services,
2 tanning salon services, tattoo parlor services, steam bath services,
3 turkish bath services, escort services, and dating services.

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

5 (i) The renting or leasing of tangible personal property to
6 consumers; and

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

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

16 (5) The term shall also include the providing of "competitive
17 telephone service," "telecommunications service," or "ancillary
18 services," as those terms are defined in RCW 82.04.065, to consumers.

19 (6) The term shall also include the sale of prewritten computer
20 software other than a sale to a person who presents a resale
21 certificate under RCW 82.04.470, regardless of the method of delivery
22 to the end user, but shall not include custom software or the
23 customization of prewritten computer software.

24 (7) The term shall also include the sale of or charge made for an
25 extended warranty to a consumer. For purposes of this subsection,
26 "extended warranty" means an agreement for a specified duration to
27 perform the replacement or repair of tangible personal property at no
28 additional charge or a reduced charge for tangible personal property,
29 labor, or both, or to provide indemnification for the replacement or
30 repair of tangible personal property, based on the occurrence of
31 specified events. The term "extended warranty" does not include an
32 agreement, otherwise meeting the definition of extended warranty in
33 this subsection, if no separate charge is made for the agreement and
34 the value of the agreement is included in the sales price of the
35 tangible personal property covered by the agreement. For purposes of
36 this subsection, "sales price" has the same meaning as in RCW
37 82.08.010.

1 (8) The term shall not include the sale of or charge made for labor
2 and services rendered in respect to the building, repairing, or
3 improving of any street, place, road, highway, easement, right of way,
4 mass public transportation terminal or parking facility, bridge,
5 tunnel, or trestle which is owned by a municipal corporation or
6 political subdivision of the state or by the United States and which is
7 used or to be used primarily for foot or vehicular traffic including
8 mass transportation vehicles of any kind.

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

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

1 radioactive waste and other byproducts of weapons production and
2 nuclear research and development.

3 (11) The term shall not include the sale of or charge made for
4 labor, services, or tangible personal property pursuant to agreements
5 providing maintenance services for bus, rail, or rail fixed guideway
6 equipment when a regional transit authority is the recipient of the
7 labor, services, or tangible personal property, and a transit agency,
8 as defined in RCW 81.104.015, performs the labor or services.

9 **Sec. 1005.** RCW 82.08.0289 and 2002 c 67 s 6 are each amended to
10 read as follows:

11 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

12 (a) (~~Network telephone service, other than toll service, to~~
13 ~~residential customers;~~

14 ~~(b) Network telephone service which is paid for by inserting coins~~
15 ~~in coin-operated telephones)) Local service;~~

16 (b) Coin-operated telephone service; and

17 (c) Mobile telecommunications services, including any toll service,
18 provided to a customer whose place of primary use is outside this
19 state.

20 (2) The definitions in RCW 82.04.065, as well as the definitions in
21 this subsection, apply to this section.

22 (a) (~~"Residential customer" means an individual subscribing to a~~
23 ~~residential class of telephone service)) "Local service" means
24 ancillary services and telecommunications service, other than toll
25 service, provided to an individual subscribing to a residential class
26 of telephone service.~~

27 (b) "Toll service" does not include customer access line charges
28 for access to a toll calling network.

29 (c) "Coin-operated telephone service" means a telecommunications
30 service paid for by inserting money into a telephone accepting direct
31 deposits of money to operate.

32 **Sec. 1006.** RCW 82.08.0289 and 1983 2nd ex.s. c 3 s 30 are each
33 amended to read as follows:

34 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

35 (a) (~~Network telephone service, other than toll service, to~~
36 ~~residential customers.~~

1 ~~(b) Network telephone service which is paid for by inserting coins~~
2 ~~in coin-operated telephones))~~ Local service; and

3 (b) Coin-operated telephone service.

4 (2) As used in this section:

5 (a) (~~"Network telephone service" has the meaning given in RCW~~
6 ~~82.04.065.~~

7 ~~(b) "Residential customer" means an individual subscribing to a~~
8 ~~residential class of telephone service))~~ "Local service" means
9 ancillary services and telecommunications service, as those terms are
10 defined in RCW 82.04.065, other than toll service, provided to an
11 individual subscribing to a residential class of telephone service.

12 ((~~e~~)) (b) "Toll service" does not include customer access line
13 charges for access to a toll calling network.

14 (c) "Coin-operated telephone service" means a telecommunications
15 service paid for by inserting money into a telephone accepting direct
16 deposits of money to operate.

17 **Sec. 1007.** RCW 82.04.060 and 2005 c 514 s 102 are each amended to
18 read as follows:

19 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of
20 tangible personal property, any sale of services defined as a retail
21 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
22 services as defined in RCW 82.04.050(3)(a), any sale of canned
23 software, any sale of an extended warranty as defined in RCW
24 82.04.050(7), or any sale of (~~telephone~~) ancillary services or
25 telecommunications service as those terms are defined in RCW 82.04.065,
26 which is not a sale at retail; and (2) any charge made for labor and
27 services rendered for persons who are not consumers, in respect to real
28 or personal property, if such charge is expressly defined as a retail
29 sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED,
30 That the term "real or personal property" as used in this subsection
31 shall not include any natural products named in RCW 82.04.100.

32 **Sec. 1008.** RCW 82.04.190 and 2005 c 514 s 103 are each amended to
33 read as follows:

34 "Consumer" means the following:

35 (1) Any person who purchases, acquires, owns, holds, or uses any
36 article of tangible personal property irrespective of the nature of the

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

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

37 (3) Any person engaged in the business of contracting for the
38 building, repairing or improving of any street, place, road, highway,

1 easement, right of way, mass public transportation terminal or parking
2 facility, bridge, tunnel, or trestle which is owned by a municipal
3 corporation or political subdivision of the state of Washington or by
4 the United States and which is used or to be used primarily for foot or
5 vehicular traffic including mass transportation vehicles of any kind as
6 defined in RCW 82.04.280, in respect to tangible personal property when
7 such person incorporates such property as an ingredient or component of
8 such publicly owned street, place, road, highway, easement, right of
9 way, mass public transportation terminal or parking facility, bridge,
10 tunnel, or trestle by installing, placing or spreading the property in
11 or upon the right of way of such street, place, road, highway,
12 easement, bridge, tunnel, or trestle or in or upon the site of such
13 mass public transportation terminal or parking facility;

14 (4) Any person who is an owner, lessee or has the right of
15 possession to or an easement in real property which is being
16 constructed, repaired, decorated, improved, or otherwise altered by a
17 person engaged in business, excluding only (a) municipal corporations
18 or political subdivisions of the state in respect to labor and services
19 rendered to their real property which is used or held for public road
20 purposes, and (b) the United States, instrumentalities thereof, and
21 county and city housing authorities created pursuant to chapter 35.82
22 RCW in respect to labor and services rendered to their real property.
23 Nothing contained in this or any other subsection of this definition
24 shall be construed to modify any other definition of "consumer";

25 (5) Any person who is an owner, lessee, or has the right of
26 possession to personal property which is being constructed, repaired,
27 improved, cleaned, imprinted, or otherwise altered by a person engaged
28 in business;

29 (6) Any person engaged in the business of constructing, repairing,
30 decorating, or improving new or existing buildings or other structures
31 under, upon, or above real property of or for the United States, any
32 instrumentality thereof, or a county or city housing authority created
33 pursuant to chapter 35.82 RCW, including the installing or attaching of
34 any article of tangible personal property therein or thereto, whether
35 or not such personal property becomes a part of the realty by virtue of
36 installation; also, any person engaged in the business of clearing land
37 and moving earth of or for the United States, any instrumentality
38 thereof, or a county or city housing authority created pursuant to

1 chapter 35.82 RCW. Any such person shall be a consumer within the
2 meaning of this subsection in respect to tangible personal property
3 incorporated into, installed in, or attached to such building or other
4 structure by such person, except that consumer does not include any
5 person engaged in the business of constructing, repairing, decorating,
6 or improving new or existing buildings or other structures under, upon,
7 or above real property of or for the United States, or any
8 instrumentality thereof, if the investment project would qualify for
9 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
10 private entity;

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

19 (8) Any person engaged in the business of cleaning up for the
20 United States, or its instrumentalities, radioactive waste and other
21 byproducts of weapons production and nuclear research and development;
22 and

23 (9) Any person who is an owner, lessee, or has the right of
24 possession of tangible personal property that, under the terms of an
25 extended warranty as defined in RCW 82.04.050(7), has been repaired or
26 is replacement property, but only with respect to the sale of or charge
27 made for the repairing of the tangible personal property or the
28 replacement property.

29 **Sec. 1009.** RCW 82.14B.020 and 2002 c 341 s 7 are each amended to
30 read as follows:

31 As used in this chapter:

32 (1) "Emergency services communication system" means a multicounty,
33 countywide, or districtwide radio or landline communications network,
34 including an enhanced 911 telephone system, which provides rapid public
35 access for coordinated dispatching of services, personnel, equipment,
36 and facilities for police, fire, medical, or other emergency services.

1 (2) "Enhanced 911 telephone system" means a public telephone system
2 consisting of a network, data base, and on-premises equipment that is
3 accessed by dialing 911 and that enables reporting police, fire,
4 medical, or other emergency situations to a public safety answering
5 point. The system includes the capability to selectively route
6 incoming 911 calls to the appropriate public safety answering point
7 that operates in a defined 911 service area and the capability to
8 automatically display the name, address, and telephone number of
9 incoming 911 calls at the appropriate public safety answering point.

10 (3) "Switched access line" means the telephone service line which
11 connects a subscriber's main telephone(s) or equivalent main
12 telephone(s) to the local exchange company's switching office.

13 (4) "Local exchange company" has the meaning ascribed to it in RCW
14 80.04.010.

15 (5) "Radio access line" means the telephone number assigned to or
16 used by a subscriber for two-way local wireless voice service available
17 to the public for hire from a radio communications service company.
18 Radio access lines include, but are not limited to, radio-telephone
19 communications lines used in cellular telephone service, personal
20 communications services, and network radio access lines, or their
21 functional and competitive equivalent. Radio access lines do not
22 include lines that provide access to one-way signaling service, such as
23 paging service, or to communications channels suitable only for data
24 transmission, or to nonlocal radio access line service, such as
25 wireless roaming service, or to a private telecommunications system.

26 (6) "Radio communications service company" has the meaning ascribed
27 to it in RCW 80.04.010, except that it does not include radio paging
28 providers. It does include those persons or entities that provide
29 commercial mobile radio services, as defined by 47 U.S.C. Sec.
30 332(d)(1), and both facilities-based and nonfacilities-based resellers.

31 (7) "Private telecommunications system" has the meaning ascribed to
32 it in RCW 80.04.010.

33 (8) "Subscriber" means the retail purchaser of telephone service as
34 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

35 (9) "Place of primary use" has the meaning ascribed to it in (~~the~~
36 ~~federal mobile telecommunications sourcing act, P.L. 106-252~~) RCW
37 82.04.065.

1 **Sec. 1010.** RCW 82.72.010 and 2004 c 254 s 3 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Switched access line" has the meaning provided in RCW
6 82.14B.020.

7 (2) "Local exchange company" has the meaning provided in RCW
8 80.04.010.

9 (3) "Subscriber" means the retail purchaser of telephone service as
10 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

11 (4) "Telephone program excise taxes" means the taxes on switched
12 access lines imposed by RCW 43.20A.725 and 80.36.430.

13 **Sec. 1011.** RCW 82.32.555 and 2004 c 76 s 1 are each amended to
14 read as follows:

15 If a taxing jurisdiction does not subject some charges for
16 (~~(telephone)~~) ancillary services or telecommunications service, as
17 those terms are defined in RCW 82.04.065, to taxation, but these
18 charges are aggregated with and not separately stated from charges that
19 are subject to taxation, then the charges for nontaxable (~~(telephone)~~)
20 ancillary services or telecommunications service, as those terms are
21 defined in RCW 82.04.065, may be subject to taxation unless the
22 (~~(telephone)~~) telecommunications service (~~(or)~~) provider or ancillary
23 services provider can reasonably identify charges not subject to the
24 tax, charge, or fee from its books and records that are kept in the
25 regular course of business and for purposes other than merely
26 allocating the sales price of an aggregated charge to the individually
27 aggregated items.

28 **Sec. 1012.** RCW 35A.82.055 and 2002 c 179 s 4 are each amended to
29 read as follows:

30 Any code city which imposes a license fee or tax upon the business
31 activity of engaging in the telephone business, as defined in RCW
32 (~~(82.04.065)~~) 82.16.010, which is measured by gross receipts or gross
33 income from the business shall impose the tax at a uniform rate on all
34 persons engaged in the telephone business in the code city.

35 This section does not apply to the providing of competitive

1 telephone service as defined in RCW 82.04.065 or to the providing of
2 payphone service as defined in RCW 35.21.710.

3 **Sec. 1013.** RCW 35A.82.060 and 2002 c 67 s 10 are each amended to
4 read as follows:

5 (1) Any code city which imposes a license fee or tax upon the
6 business activity of engaging in the telephone business which is
7 measured by gross receipts or gross income may impose the fee or tax,
8 if it desires, on one hundred percent of the total gross revenue
9 derived from intrastate toll telephone services subject to the fee or
10 tax: PROVIDED, That the city shall not impose the fee or tax on that
11 portion of network telephone service which represents charges to
12 another telecommunications company, as defined in RCW 80.04.010, for
13 connecting fees, switching charges, or carrier access charges relating
14 to intrastate toll telephone services, or for access to, or charges
15 for, interstate services, or charges for network telephone service that
16 is purchased for the purpose of resale, or charges for mobile
17 telecommunications services provided to customers whose place of
18 primary use is not within the city.

19 (2) Any city that imposes a license tax or fee under subsection (1)
20 of this section has the authority, rights, and obligations of a taxing
21 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

22 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
23 section.

24 **Sec. 1014.** RCW 35A.82.060 and 1989 c 103 s 3 are each amended to
25 read as follows:

26 Any code city which imposes a license fee or tax upon the business
27 activity of engaging in the telephone business, as defined in RCW
28 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
29 income may impose the fee or tax, if it desires, on one hundred percent
30 of the total gross revenue derived from intrastate toll telephone
31 services subject to the fee or tax: PROVIDED, That the city shall not
32 impose the fee or tax on that portion of network telephone service, as
33 defined in RCW ((82.04.065)) 82.16.010, which represents charges to
34 another telecommunications company, as defined in RCW 80.04.010, for
35 connecting fees, switching charges, or carrier access charges relating

1 to intrastate toll telephone services, or for access to, or charges
2 for, interstate services, or charges for network telephone service that
3 is purchased for the purpose of resale.

4 **Sec. 1015.** RCW 35A.82.065 and 1989 c 103 s 4 are each amended to
5 read as follows:

6 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
7 imposes a tax upon business activities measured by gross receipts or
8 gross income from sales, may impose such tax on that portion of network
9 telephone service, as defined in RCW (~~(82.04.065)~~) 82.16.010, which
10 represents charges to another telecommunications company, as defined in
11 RCW 80.04.010, for connecting fees, switching charges, or carrier
12 access charges relating to intrastate toll services, or charges for
13 network telephone service that is purchased for the purpose of resale.
14 Such tax shall be levied at the same rate as is applicable to other
15 competitive telephone service as defined in RCW 82.04.065.

16 **Sec. 1016.** RCW 35.21.712 and 2002 c 179 s 2 are each amended to
17 read as follows:

18 Any city which imposes a license fee or tax upon the business
19 activity of engaging in the telephone business, as defined in RCW
20 (~~(82.04.065)~~) 82.16.010, which is measured by gross receipts or gross
21 income from the business shall impose the tax at a uniform rate on all
22 persons engaged in the telephone business in the city.

23 This section does not apply to the providing of competitive
24 telephone service as defined in RCW 82.04.065 or to the providing of
25 payphone service as defined in RCW 35.21.710.

26 **Sec. 1017.** RCW 35.21.714 and 2002 c 67 s 9 are each amended to
27 read as follows:

28 (1) Any city which imposes a license fee or tax upon the business
29 activity of engaging in the telephone business which is measured by
30 gross receipts or gross income may impose the fee or tax, if it
31 desires, on one hundred percent of the total gross revenue derived from
32 intrastate toll telephone services subject to the fee or tax:
33 PROVIDED, That the city shall not impose the fee or tax on that portion
34 of network telephone service which represents charges to another
35 telecommunications company, as defined in RCW 80.04.010, for connecting

1 fees, switching charges, or carrier access charges relating to
2 intrastate toll telephone services, or for access to, or charges for,
3 interstate services, or charges for network telephone service that is
4 purchased for the purpose of resale, or charges for mobile
5 telecommunications services provided to customers whose place of
6 primary use is not within the city.

7 (2) Any city that imposes a license tax or fee under subsection (1)
8 of this section has the authority, rights, and obligations of a taxing
9 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

10 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
11 section.

12 **Sec. 1018.** RCW 35.21.714 and 1989 c 103 s 1 are each amended to
13 read as follows:

14 Any city which imposes a license fee or tax upon the business
15 activity of engaging in the telephone business, as defined in RCW
16 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
17 income may impose the fee or tax, if it desires, on one hundred percent
18 of the total gross revenue derived from intrastate toll telephone
19 services subject to the fee or tax: PROVIDED, That the city shall not
20 impose the fee or tax on that portion of network telephone service, as
21 defined in RCW ((82.04.065)) 82.16.010, which represents charges to
22 another telecommunications company, as defined in RCW 80.04.010, for
23 connecting fees, switching charges, or carrier access charges relating
24 to intrastate toll telephone services, or for access to, or charges
25 for, interstate services, or charges for network telephone service that
26 is purchased for the purpose of resale.

27 **Sec. 1019.** RCW 35.21.715 and 1989 c 103 s 2 are each amended to
28 read as follows:

29 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
30 imposes a tax upon business activities measured by gross receipts or
31 gross income from sales, may impose such tax on that portion of network
32 telephone service, as defined in RCW ((82.04.065)) 82.16.010, which
33 represents charges to another telecommunications company, as defined in
34 RCW 80.04.010, for connecting fees, switching charges, or carrier
35 access charges relating to intrastate toll services, or charges for

1 network telephone service that is purchased for the purpose of resale.
2 Such tax shall be levied at the same rate as is applicable to other
3 competitive telephone service as defined in RCW 82.04.065.

4 **Sec. 1020.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to
5 read as follows:

6 (1) No city or town may impose a franchise fee or any other fee or
7 charge of whatever nature or description upon the light and power, or
8 gas distribution businesses, as defined in RCW 82.16.010, or telephone
9 business, as defined in RCW ((82.04.065)) 82.16.010, or service
10 provider for use of the right of way, except:

11 (a) A tax authorized by RCW 35.21.865 may be imposed;

12 (b) A fee may be charged to such businesses or service providers
13 that recovers actual administrative expenses incurred by a city or town
14 that are directly related to receiving and approving a permit, license,
15 and franchise, to inspecting plans and construction, or to the
16 preparation of a detailed statement pursuant to chapter 43.21C RCW;

17 (c) Taxes permitted by state law on service providers;

18 (d) Franchise requirements and fees for cable television services
19 as allowed by federal law; and

20 (e) A site-specific charge pursuant to an agreement between the
21 city or town and a service provider of personal wireless services
22 acceptable to the parties for:

23 (i) The placement of new structures in the right of way regardless
24 of height, unless the new structure is the result of a mandated
25 relocation in which case no charge will be imposed if the previous
26 location was not charged;

27 (ii) The placement of replacement structures when the replacement
28 is necessary for the installation or attachment of wireless facilities,
29 and the overall height of the replacement structure and the wireless
30 facility is more than sixty feet; or

31 (iii) The placement of personal wireless facilities on structures
32 owned by the city or town located in the right of way. However, a
33 site-specific charge shall not apply to the placement of personal
34 wireless facilities on existing structures, unless the structure is
35 owned by the city or town.

36 A city or town is not required to approve the use permit for the
37 placement of a facility for personal wireless services that meets one

1 of the criteria in this subsection absent such an agreement. If the
2 parties are unable to agree on the amount of the charge, the service
3 provider may submit the amount of the charge to binding arbitration by
4 serving notice on the city or town. Within thirty days of receipt of
5 the initial notice, each party shall furnish a list of acceptable
6 arbitrators. The parties shall select an arbitrator; failing to agree
7 on an arbitrator, each party shall select one arbitrator and the two
8 arbitrators shall select a third arbitrator for an arbitration panel.
9 The arbitrator or arbitrators shall determine the charge based on
10 comparable siting agreements involving public land and rights of way.
11 The arbitrator or arbitrators shall not decide any other disputed
12 issues, including but not limited to size, location, and zoning
13 requirements. Costs of the arbitration, including compensation for the
14 arbitrator's services, must be borne equally by the parties
15 participating in the arbitration and each party shall bear its own
16 costs and expenses, including legal fees and witness expenses, in
17 connection with the arbitration proceeding.

18 (2) Subsection (1) of this section does not prohibit franchise fees
19 imposed on an electrical energy, natural gas, or telephone business, by
20 contract existing on April 20, 1982, with a city or town, for the
21 duration of the contract, but the franchise fees shall be considered
22 taxes for the purposes of the limitations established in RCW 35.21.865
23 and 35.21.870 to the extent the fees exceed the costs allowable under
24 subsection (1) of this section.

25 **Sec. 1021.** RCW 35.102.020 and 2003 c 79 s 2 are each amended to
26 read as follows:

27 Chapter 79, Laws of 2003 does not apply to taxes on any service
28 that historically or traditionally has been taxed as a utility business
29 for municipal tax purposes, such as:

30 (1) A light and power business or a natural gas distribution
31 business, as defined in RCW 82.16.010;

32 (2) A telephone business, as defined in RCW (~~82.04.065~~)
33 82.16.010;

34 (3) Cable television services;

35 (4) Sewer or water services;

36 (5) Drainage services;

37 (6) Solid waste services; or

1 (7) Steam services.

2 **Sec. 1022.** RCW 82.04.530 and 2004 c 153 s 410 are each amended to
3 read as follows:

4 For purposes of this chapter, a ~~((telephone—business))~~
5 telecommunications service provider other than a mobile
6 telecommunications service provider must calculate gross proceeds of
7 ~~((retail))~~ sales in a manner consistent with the sourcing rules
8 provided in RCW 82.32.520. The department may adopt rules to implement
9 this section, including rules that provide a formulary method of
10 determining gross proceeds that reasonably approximates the taxable
11 activity of a telephone business.

12 **Sec. 1023.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to
13 read as follows:

14 For the purposes of this chapter, unless otherwise required by the
15 context:

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

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

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

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

32 (5) "Light and power business" means the business of operating a
33 plant or system for the generation, production or distribution of
34 electrical energy for hire or sale and/or for the wheeling of
35 electricity for others.

1 (6) "Telegraph business" means the business of affording
2 telegraphic communication for hire.

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

6 (8) "Motor transportation business" means the business (except
7 urban transportation business) of operating any motor propelled vehicle
8 by which persons or property of others are conveyed for hire, and
9 includes, but is not limited to, the operation of any motor propelled
10 vehicle as an auto transportation company (except urban transportation
11 business), common carrier or contract carrier as defined by RCW
12 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
13 business" shall not mean or include the transportation of logs or other
14 forest products exclusively upon private roads or private highways.

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

29 (10)(a) "Public service business" means any of the businesses
30 defined in (~~subdivisions~~) subsections (1), (2), (3), (4), (5), (6),
31 (7), (8), and (9) of this section or any business subject to control by
32 the state, or having the powers of eminent domain and the duties
33 incident thereto, or any business hereafter declared by the legislature
34 to be of a public service nature, except telephone business (~~as~~
35 ~~defined in RCW 82.04.065~~) and low-level radioactive waste site
36 operating companies as redefined in RCW 81.04.010. It includes, among
37 others, without limiting the scope hereof: Airplane transportation,

1 boom, dock, ferry, pipe line, toll bridge, toll logging road, water
2 transportation and wharf businesses.

3 (b) The definitions in this subsection (10)(b) apply throughout
4 this subsection (10).

5 (i) "Competitive telephone service" has the same meaning as in RCW
6 82.04.065.

7 (ii) "Network telephone service" means the providing by any person
8 of access to a telephone network, telephone network switching service,
9 toll service, or coin telephone services, or the providing of
10 telephonic, video, data, or similar communication or transmission for
11 hire, via a telephone network, toll line or channel, cable, microwave,
12 or similar communication or transmission system. "Network telephone
13 service" includes the provision of transmission to and from the site of
14 an internet provider via a telephone network, toll line or channel,
15 cable, microwave, or similar communication or transmission system.
16 "Network telephone service" does not include the providing of
17 competitive telephone service, the providing of cable television
18 service, the providing of broadcast services by radio or television
19 stations, nor the provision of internet service as defined in RCW
20 82.04.297, including the reception of dial-in connection, provided at
21 the site of the internet service provider.

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

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

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

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

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

5 **Sec. 1024.** RCW 82.14B.030 and 2002 c 341 s 8 and 2002 c 67 § 8 are
6 each reenacted and amended to read as follows:

7 (1) The legislative authority of a county may impose a county
8 enhanced 911 excise tax on the use of switched access lines in an
9 amount not exceeding fifty cents per month for each switched access
10 line. The amount of tax shall be uniform for each switched access
11 line. Each county shall provide notice of such tax to all local
12 exchange companies serving in the county at least sixty days in advance
13 of the date on which the first payment is due.

14 (2) The legislative authority of a county may also impose a county
15 enhanced 911 excise tax on the use of radio access lines whose place of
16 primary use is located within the county in an amount not exceeding
17 fifty cents per month for each radio access line. The amount of tax
18 shall be uniform for each radio access line. (~~The location of a radio
19 access line is the customer's place of primary use as defined in RCW
20 82.04.065.~~) The county shall provide notice of such tax to all radio
21 communications service companies serving in the county at least sixty
22 days in advance of the date on which the first payment is due. Any
23 county imposing this tax shall include in its ordinance a refund
24 mechanism whereby the amount of any tax ordered to be refunded by the
25 judgment of a court of record, or as a result of the resolution of any
26 appeal therefrom, shall be refunded to the radio communications service
27 company or local exchange company that collected the tax, and those
28 companies shall reimburse the subscribers who paid the tax. The
29 ordinance shall further provide that to the extent the subscribers who
30 paid the tax cannot be identified or located, the tax paid by those
31 subscribers shall be returned to the county.

32 (3) A state enhanced 911 excise tax is imposed on all switched
33 access lines in the state. The amount of tax shall not exceed twenty
34 cents per month for each switched access line. The tax shall be
35 uniform for each switched access line. The tax imposed under this
36 subsection shall be remitted to the department of revenue by local

1 exchange companies on a tax return provided by the department. Tax
2 proceeds shall be deposited by the treasurer in the enhanced 911
3 account created in RCW 38.52.540.

4 (4) A state enhanced 911 excise tax is imposed on all radio access
5 lines whose place of primary use is located within the state in an
6 amount of twenty cents per month for each radio access line. The tax
7 shall be uniform for each radio access line. The tax imposed under
8 this section shall be remitted to the department of revenue by radio
9 communications service companies, including those companies that resell
10 radio access lines, on a tax return provided by the department. Tax
11 proceeds shall be deposited by the treasurer in the enhanced 911
12 account created in RCW 38.52.540. The tax imposed under this section
13 is not subject to the state sales and use tax or any local tax.

14 (5) By August 31st of each year the state enhanced 911 coordinator
15 shall recommend the level for the next year of the state enhanced 911
16 excise tax imposed by subsection (3) of this section, based on a
17 systematic cost and revenue analysis, to the utilities and
18 transportation commission. The commission shall by the following
19 October 31st determine the level of the state enhanced 911 excise tax
20 for the following year.

21 PART XI

22 DURABLE MEDICAL EQUIPMENT

23 **Sec. 1101.** RCW 82.08.0283 and 2004 c 153 s 101 are each amended to
24 read as follows:

25 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

26 (a) Prosthetic devices prescribed, fitted, or furnished for an
27 individual by a person licensed under the laws of this state to
28 prescribe, fit, or furnish prosthetic devices, and the components of
29 such prosthetic devices;

30 (b) Medicines of mineral, animal, and botanical origin prescribed,
31 administered, dispensed, or used in the treatment of an individual by
32 a person licensed under chapter 18.36A RCW; ((and))

33 (c) ((Medically prescribed oxygen, including, but not limited to,
34 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
35 systems, and)) Durable medical equipment, and the components of durable

1 medical equipment, for home use and prescribed by a person licensed
2 under the laws of this state to prescribe such equipment; and

3 (d) Gaseous(~~(τ)~~) or liquid bottled oxygen (~~(systems)~~) used with
4 durable medical equipment prescribed for an individual by a person
5 licensed under (~~chapter 18.57 or 18.71 RCW~~) the laws of this state
6 for use in the medical treatment of (~~that~~) an individual for home
7 use.

8 (2) In addition, the tax levied by RCW 82.08.020 shall not apply to
9 charges made for labor and services rendered in respect to the
10 repairing, cleaning, altering, or improving of any of the items
11 exempted under subsection (1) of this section.

12 (3) The exemption in subsection (1) of this section shall not apply
13 to sales of (~~durable medical equipment or~~) mobility enhancing
14 equipment.

15 (4) The definitions in this subsection apply throughout this
16 section.

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

- 20 (i) Artificially replace a missing portion of the body;
- 21 (ii) Prevent or correct a physical deformity or malfunction; or
- 22 (iii) Support a weak or deformed portion of the body.

23 (b) "Durable medical equipment" means equipment, including repair
24 and replacement parts for durable medical equipment that:

- 25 (i) Can withstand repeated use;
- 26 (ii) Is primarily and customarily used to serve a medical purpose;
- 27 (iii) Generally is not useful to a person in the absence of illness
28 or injury; and

29 (iv) (~~Does not work~~) Is not worn in or on the body.

30 (c) "Mobility enhancing equipment" means equipment, including
31 repair and replacement parts for mobility enhancing equipment that:

32 (i) Is primarily and customarily used to provide or increase the
33 ability to move from one place to another and that is appropriate for
34 use either in a home or a motor vehicle;

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

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

1 (d) The terms "durable medical equipment" and "mobility enhancing
2 equipment" are mutually exclusive.

3 NEW SECTION. **Sec. 1102.** A new section is added to chapter 82.08
4 RCW to read as follows:

5 (1) An exemption from the tax imposed by RCW 82.08.020 in the form
6 of a refund is provided for sales of:

7 (a) Medically prescribed oxygen, including, but not limited to,
8 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
9 systems, and gaseous, bottled oxygen systems prescribed for an
10 individual by a person licensed under chapter 18.57 or 18.71 RCW for
11 use in the medical treatment of that individual for other than home
12 use;

13 (b) Repair, replacement, and component parts for medically
14 prescribed oxygen for other than home use; and

15 (c) Labor and services rendered in respect to the repairing,
16 cleaning, altering, or improving of medically prescribed oxygen for
17 other than home use.

18 (2) Sellers shall collect tax on sales subject to this exemption.
19 The buyer shall apply for a refund directly from the department in a
20 form and manner prescribed by the department.

21 **Sec. 1103.** RCW 82.12.0277 and 2004 c 153 s 109 are each amended to
22 read as follows:

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

25 (a) Prosthetic devices prescribed, fitted, or furnished for an
26 individual by a person licensed under the laws of this state to
27 prescribe, fit, or furnish prosthetic devices, and the components of
28 such prosthetic devices;

29 (b) Medicines of mineral, animal, and botanical origin prescribed,
30 administered, dispensed, or used in the treatment of an individual by
31 a person licensed under chapter 18.36A RCW; ~~((and))~~

32 ~~((Medically prescribed oxygen, including, but not limited to,~~
33 ~~oxygen concentrator systems, oxygen enricher systems, liquid oxygen~~
34 ~~systems, and)) Durable medical equipment, and the components of durable
35 medical equipment, for home use and prescribed by a person licensed
36 under the laws of this state to prescribe such equipment; and~~

1 (d) Gaseous(~~(τ)~~) or liquid bottled oxygen (~~(systems)~~) used with
2 durable medical equipment prescribed for an individual by a person
3 licensed under (~~chapter 18.57 or 18.71 RCW~~) the laws of this state
4 for use in the medical treatment of (~~that~~) an individual for home
5 use.

6 (2) In addition, the provisions of this chapter shall not apply in
7 respect to the use of labor and services rendered in respect to the
8 repairing, cleaning, altering, or improving of any of the items
9 exempted under subsection (1) of this section.

10 (3) The exemption provided by subsection (1) of this section shall
11 not apply to the use of (~~durable medical equipment or~~) mobility
12 enhancing equipment.

13 (4) "Prosthetic device," "durable medical equipment," and "mobility
14 enhancing equipment" have the same meanings as in RCW 82.08.0283.

15 NEW SECTION. Sec. 1104. A new section is added to chapter 82.12
16 RCW to read as follows:

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

19 (a) Medically prescribed oxygen, including, but not limited to,
20 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
21 systems, and gaseous, bottled oxygen systems prescribed for an
22 individual by a person licensed under chapter 18.57 or 18.71 RCW for
23 use in the medical treatment of that individual for other than home
24 use;

25 (b) Repair, replacement, and component parts for medically
26 prescribed oxygen; and

27 (c) Labor and services rendered in respect to the repairing,
28 cleaning, altering, or improving of medically prescribed oxygen.

29 (2) Sellers obligated to collect use tax shall collect tax on sales
30 subject to this exemption. The buyer shall apply for a refund directly
31 from the department in a form and manner prescribed by the department.

32 **Sec. 1105.** RCW 82.08.803 and 2004 c 153 s 104 are each amended to
33 read as follows:

34 (~~The tax levied by RCW 82.08.020 shall not apply to~~) (1) An
35 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
36 is provided for sales of nebulizers for other than home use, including

1 repair ~~((and))~~, replacement, and component parts for such nebulizers,
2 for human use pursuant to a prescription. In addition, the tax levied
3 by RCW 82.08.020 shall not apply to charges made for labor and services
4 rendered in respect to the repairing, cleaning, altering, or improving
5 of nebulizers for other than home use. "Nebulizer" means a device, not
6 a building fixture, that converts a liquid medication into a mist so
7 that it can be inhaled.

8 (2) Sellers shall collect tax on sales subject to this exemption.
9 The buyer shall apply for a refund directly from the department in a
10 form and manner prescribed by the department.

11 **Sec. 1106.** RCW 82.12.803 and 2004 c 153 s 105 are each amended to
12 read as follows:

13 (1) The provisions of this chapter shall not apply in respect to
14 the use of nebulizers for other than home use, including repair
15 ~~((and))~~, replacement, and component parts for such nebulizers, for
16 human use pursuant to a prescription. In addition, the provisions of
17 this chapter shall not apply in respect to labor and services rendered
18 in respect to the repairing, cleaning, altering, or improving of
19 nebulizers for other than home use. "Nebulizer" has the same meaning
20 as in RCW 82.08.803.

21 (2) Sellers obligated to collect use tax shall collect tax on sales
22 subject to this exemption. The buyer shall apply for a refund directly
23 from the department in a form and manner prescribed by the department.

24 **Sec. 1107.** RCW 82.08.945 and 2004 c 153 s 110 are each amended to
25 read as follows:

26 ~~((The tax levied by RCW 82.08.020 shall not apply to))~~ (1) An
27 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
28 is provided for sales of kidney dialysis devices for other than home
29 use, including repair ~~((and))~~, replacement, and component parts, for
30 human use pursuant to a prescription. In addition, the tax levied by
31 RCW 82.08.020 shall not apply to charges made for labor and services
32 rendered in respect to the repairing, cleaning, altering, or improving
33 of kidney dialysis devices for other than home use.

34 (2) Sellers shall collect tax on sales subject to this exemption.
35 The buyer shall apply for a refund directly from the department in a
36 form and manner prescribed by the department.

1 ~~((+5+))~~ (4) As used in this section, "resale certificate" means
2 documentation provided by a buyer to a seller stating that the purchase
3 is for resale in the regular course of business, or that the buyer is
4 exempt from retail sales tax, and containing the following information:

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

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

8 (c) The type of business engaged in;

9 (d) The categories of items or services to be purchased for resale
10 or that are exempt, unless the buyer ~~((is in a business classification
11 that may))~~ presents a blanket resale certificate ~~((as provided by the
12 department by rule))~~;

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

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

17 (g) A statement that the buyer acknowledges that the buyer is
18 solely responsible for purchasing within the categories specified on
19 the certificate and that misuse of the resale or exemption privilege
20 claimed on the certificate subjects the buyer to a penalty of fifty
21 percent of the tax due, in addition to the tax, interest, and any other
22 penalties imposed by law;

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

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

26 (j) The name of the seller.

27 ~~((+6+))~~ (5) Subsection ~~((+5+))~~ (4)(h), (i), and (j) of this section
28 does not apply if the certificate is provided in a format other than
29 paper. If the certificate is provided in a format other than paper,
30 the name of the individual providing the certificate must be included
31 in the certificate.

32 **Sec. 1202.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and
33 2003 c 53 s 400 are each reenacted and amended to read as follows:

34 (1) The tax hereby imposed shall be paid by the buyer to the
35 seller, and each seller shall collect from the buyer the full amount of
36 the tax payable in respect to each taxable sale in accordance with the

1 schedule of collections adopted by the department pursuant to the
2 provisions of RCW 82.08.060.

3 (2) The tax required by this chapter, to be collected by the
4 seller, shall be deemed to be held in trust by the seller until paid to
5 the department, and any seller who appropriates or converts the tax
6 collected to his or her own use or to any use other than the payment of
7 the tax to the extent that the money required to be collected is not
8 available for payment on the due date as prescribed in this chapter is
9 guilty of a gross misdemeanor.

10 (3) In case any seller fails to collect the tax herein imposed or,
11 having collected the tax, fails to pay it to the department in the
12 manner prescribed by this chapter, whether such failure is the result
13 of his or her own acts or the result of acts or conditions beyond his
14 or her control, he or she shall, nevertheless, be personally liable to
15 the state for the amount of the tax, unless the seller has taken from
16 the buyer a resale certificate under RCW 82.04.470, a copy of a direct
17 pay permit issued under RCW 82.32.087, an exemption certificate
18 claiming multiple points of use under section 501(5) of this act, a
19 direct mail form under section 501(6) of this act, or other information
20 required under the streamlined sales and use tax agreement, or
21 information required under rules adopted by the department.

22 (4) Sellers shall not be relieved from personal liability for the
23 amount of the tax unless they maintain proper records of exempt
24 transactions and provide them to the department when requested.

25 ~~((4))~~ (5) Sellers are not relieved from personal liability for
26 the amount of tax if they fraudulently fail to collect the tax or if
27 they solicit purchasers to participate in an unlawful claim of
28 exemption.

29 (6) Sellers are not relieved from personal liability for the amount
30 of tax if they accept an exemption certificate from a purchaser
31 claiming an entity-based exemption if:

32 (a) The subject of the transaction sought to be covered by the
33 exemption certificate is actually received by the purchaser at a
34 location operated by the seller in Washington; and

35 (b) Washington provides an exemption certificate that clearly and
36 affirmatively indicates that the claimed exemption is not available in
37 Washington. Graying out exemption reason types on a uniform form and

1 posting it on the department's web site is a clear and affirmative
2 indication that the grayed out exemptions are not available.

3 (7) Sellers are not relieved from personal liability for the amount
4 of tax if they accept an exemption certificate claiming multiple points
5 of use for tangible personal property other than computer software for
6 which an exemption certificate claiming multiple points of use is
7 acceptable under section 501(5) of this act.

8 (8)(a) Sellers are relieved from personal liability for the amount
9 of tax if they obtain a fully completed exemption certificate or
10 capture the relevant data elements required under the streamlined sales
11 and use tax agreement within ninety days, or a longer period as may be
12 provided by rule by the department, subsequent to the date of sale.

13 (b) If the seller has not obtained an exemption certificate or all
14 relevant data elements required under the streamlined sales and use tax
15 agreement within the period allowed subsequent to the date of sale, the
16 seller may, within one hundred twenty days, or a longer period as may
17 be provided by rule by the department, subsequent to a request for
18 substantiation by the department, either prove that the transaction was
19 not subject to tax by other means or obtain a fully completed exemption
20 certificate from the purchaser, taken in good faith.

21 (c) Sellers are relieved from personal liability for the amount of
22 tax if they obtain a blanket exemption certificate for a purchaser with
23 which the seller has a recurring business relationship. The department
24 may not request from a seller renewal of blanket certificates or
25 updates of exemption certificate information or data elements if there
26 is a recurring business relationship between the buyer and seller. For
27 purposes of this subsection (8)(c), a "recurring business relationship"
28 means at least one sale transaction within a period of twelve
29 consecutive months.

30 (9) The amount of tax, until paid by the buyer to the seller or to
31 the department, shall constitute a debt from the buyer to the seller
32 and any seller who fails or refuses to collect the tax as required with
33 intent to violate the provisions of this chapter or to gain some
34 advantage or benefit, either direct or indirect, and any buyer who
35 refuses to pay any tax due under this chapter is guilty of a
36 misdemeanor.

37 ((+5)) (10) The tax required by this chapter to be collected by
38 the seller shall be stated separately from the selling price in any

1 sales invoice or other instrument of sale. On all retail sales through
2 vending machines, the tax need not be stated separately from the
3 selling price or collected separately from the buyer. For purposes of
4 determining the tax due from the buyer to the seller and from the
5 seller to the department it shall be conclusively presumed that the
6 selling price quoted in any price list, sales document, contract or
7 other agreement between the parties does not include the tax imposed by
8 this chapter, but if the seller advertises the price as including the
9 tax or that the seller is paying the tax, the advertised price shall
10 not be considered the selling price.

11 ~~((+6))~~ (11) Where a buyer has failed to pay to the seller the tax
12 imposed by this chapter and the seller has not paid the amount of the
13 tax to the department, the department may, in its discretion, proceed
14 directly against the buyer for collection of the tax, in which case a
15 penalty of ten percent may be added to the amount of the tax for
16 failure of the buyer to pay the same to the seller, regardless of when
17 the tax may be collected by the department; and all of the provisions
18 of chapter 82.32 RCW, including those relative to interest and
19 penalties, shall apply in addition; and, for the sole purpose of
20 applying the various provisions of chapter 82.32 RCW, the twenty-fifth
21 day of the month following the tax period in which the purchase was
22 made shall be considered as the due date of the tax.

23 ~~((+7))~~ (12) Notwithstanding subsections (1) through ~~((+6))~~ (11)
24 of this section, any person making sales is not obligated to collect
25 the tax imposed by this chapter if:

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

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

29 (ii) The taking of orders; or

30 (iii) The processing of payments; and

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

36 ~~((+8))~~ (13) Subsection ~~((+7))~~ (12) of this section expires when:

37 (a) The United States congress grants individual states the authority
38 to impose sales and use tax collection duties on remote sellers; or (b)

1 it is determined by a court of competent jurisdiction, in a judgment
2 not subject to review, that a state can impose sales and use tax
3 collection duties on remote sellers.

4 **PART XIII**
5 **SALES PRICE**

6 **Sec. 1301.** RCW 82.08.010 and 2005 c 514 s 110 are each amended to
7 read as follows:

8 For the purposes of this chapter:

9 (1) "Selling price" includes "sales price." "Sales price" means
10 the total amount of consideration, except separately stated trade-in
11 property of like kind, including cash, credit, property, and services,
12 for which tangible personal property, extended warranties, or services
13 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
14 rented, valued in money, whether received in money or otherwise. No
15 deduction from the total amount of consideration is allowed for the
16 following: (a) The seller's cost of the property sold; (b) the cost of
17 materials used, labor or service cost, interest, losses, all costs of
18 transportation to the seller, all taxes imposed on the seller, and any
19 other expense of the seller; (c) charges by the seller for any services
20 necessary to complete the sale, other than delivery and installation
21 charges; (d) delivery charges; and (e) installation charges(~~(; and (f)~~
22 ~~the value of exempt tangible personal property given to the purchaser~~
23 ~~where taxable and exempt tangible personal property have been bundled~~
24 ~~together and sold by the seller as a single product or piece of~~
25 ~~merchandise)).~~

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

32 "Selling price" or "sales price" does not include: Discounts,
33 including cash, term, or coupons that are not reimbursed by a third
34 party that are allowed by a seller and taken by a purchaser on a sale;
35 interest, financing, and carrying charges from credit extended on the
36 sale of tangible personal property, extended warranties, or services,

1 if the amount is separately stated on the invoice, bill of sale, or
2 similar document given to the purchaser; and any taxes legally imposed
3 directly on the consumer that are separately stated on the invoice,
4 bill of sale, or similar document given to the purchaser;

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

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

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

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

35 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
36 year," "taxable year," "person," "company," "sale," "sale at retail,"
37 "retail sale," "sale at wholesale," "wholesale," "business," "engaging

1 in business," "cash discount," "successor," "consumer," "in this state"
2 and "within this state" shall apply equally to the provisions of this
3 chapter;

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

10 (8) "Extended warranty" has the same meaning as in RCW
11 82.04.050(7).

12 **Sec. 1302.** RCW 82.08.010 and 2005 c 514 s 110 are each amended to
13 read as follows:

14 For the purposes of this chapter:

15 (1)(a) "Selling price" includes "sales price." "Sales price" means
16 the total amount of consideration, except separately stated trade-in
17 property of like kind, including cash, credit, property, and services,
18 for which tangible personal property, extended warranties, or services
19 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
20 rented, valued in money, whether received in money or otherwise. No
21 deduction from the total amount of consideration is allowed for the
22 following: ~~((a))~~ (i) The seller's cost of the property sold; ~~((b))~~
23 (ii) the cost of materials used, labor or service cost, interest,
24 losses, all costs of transportation to the seller, all taxes imposed on
25 the seller, and any other expense of the seller; ~~((c))~~ (iii) charges
26 by the seller for any services necessary to complete the sale, other
27 than delivery and installation charges; ~~((d))~~ (iv) delivery charges;
28 ~~((e))~~ and (v) installation charges ~~((; and (f) the value of exempt~~
29 ~~tangible personal property given to the purchaser where taxable and~~
30 ~~exempt tangible personal property have been bundled together and sold~~
31 ~~by the seller as a single product or piece of merchandise)).~~

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

1 **(b) "Selling price" or "sales price" does not include: Discounts,**
2 **including cash, term, or coupons that are not reimbursed by a third**
3 **party that are allowed by a seller and taken by a purchaser on a sale;**
4 **interest, financing, and carrying charges from credit extended on the**
5 **sale of tangible personal property, extended warranties, or services,**
6 **if the amount is separately stated on the invoice, bill of sale, or**
7 **similar document given to the purchaser; and any taxes legally imposed**
8 **directly on the consumer that are separately stated on the invoice,**
9 **bill of sale, or similar document given to the purchaser;**

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

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

15 **(ii) The seller has an obligation to pass the price reduction or**
16 **discount through to the purchaser;**

17 **(iii) The amount of the consideration attributable to the sale is**
18 **fixed and determinable by the seller at the time of the sale of the**
19 **item to the purchaser: and**

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

21 **(A) The purchaser presents a coupon, certificate, or other**
22 **documentation to the seller to claim a price reduction or discount**
23 **where the coupon, certificate, or documentation is authorized,**
24 **distributed, or granted by a third party with the understanding that**
25 **the third party will reimburse any seller to whom the coupon,**
26 **certificate, or documentation is presented;**

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

31 **(C) The price reduction or discount is identified as a third party**
32 **price reduction or discount on the invoice received by the purchaser or**
33 **on a coupon, certificate, or other documentation presented by the**
34 **purchaser.**

35 **(2) "Seller" means every person, including the state and its**
36 **departments and institutions, making sales at retail or retail sales to**
37 **a buyer, purchaser, or consumer, whether as agent, broker, or**

1 principal, except "seller" does not mean the state and its departments
2 and institutions when making sales to the state and its departments and
3 institutions;

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

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

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

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

34 (7) For the purposes of the taxes imposed under this chapter and
35 under chapter 82.12 RCW, "tangible personal property" means personal
36 property that can be seen, weighed, measured, felt, or touched, or that
37 is in any other manner perceptible to the senses. Tangible personal

1 property includes electricity, water, gas, steam, and prewritten
2 computer software;
3 (8) "Extended warranty" has the same meaning as in RCW
4 82.04.050(7).

5 **PART XIV**
6 **BUNDLED TRANSACTIONS**

7 NEW SECTION. **Sec. 1401.** A new section is added to chapter 82.08
8 RCW to read as follows:

9 The definitions in this section apply throughout this chapter,
10 unless the context clearly requires otherwise.

11 (1)(a) "Bundled transaction" means the retail sale of two or more
12 products, except real property and services to real property, where:

- 13 (i) The products are otherwise distinct and identifiable; and
- 14 (ii) The products are sold for one nonitemized price.

15 (b) A bundled transaction does not include the sale of any products
16 in which the sales price varies, or is negotiable, based on the
17 selection by the purchaser of the products included in the transaction.

18 (2) "Distinct and identifiable products" does not include:

19 (a) Packaging such as containers, boxes, sacks, bags, and bottles,
20 or other materials such as wrapping, labels, tags, and instruction
21 guides, that accompany the retail sale of the products and are
22 incidental or immaterial to the retail sale thereof. Examples of
23 packaging that are incidental or immaterial include grocery sacks,
24 shoeboxes, dry cleaning garment bags, and express delivery envelopes
25 and boxes;

26 (b) A product provided free of charge with the required purchase of
27 another product. A product is provided free of charge if the sales
28 price of the product purchased does not vary depending on the inclusion
29 of the product provided free of charge; or

30 (c) Items included in the definition of sales price in RCW
31 82.08.010.

32 (3) "One nonitemized price" does not include a price that is
33 separately identified by product on binding sales or other supporting
34 sales-related documentation made available to the customer in paper or
35 electronic form including, but not limited to, an invoice, bill of

1 sale, receipt, contract, service agreement, lease agreement, periodic
2 notice of rates and services, rate card, or price list.

3 (4) A transaction that otherwise meets the definition of a bundled
4 transaction is not a bundled transaction if it is:

5 (a) The retail sale of tangible personal property and a service
6 where the tangible personal property is essential to the use of the
7 service, and is provided exclusively in connection with the service,
8 and the true object of the transaction is the service; or

9 (b) The retail sale of services where one service is provided that
10 is essential to the use or receipt of a second service and the first
11 service is provided exclusively in connection with the second service
12 and the true object of the transaction is the second service; or

13 (c) A transaction that includes taxable products and nontaxable
14 products and the purchase price or sales price of the taxable products
15 is de minimis;

16 (i) As used in this subsection (4)(c), de minimis means the
17 seller's purchase price or sales price of the taxable products is ten
18 percent or less of the total purchase price or sales price of the
19 bundled products;

20 (ii) Sellers shall use either the purchase price or the sales price
21 of the products to determine if the taxable products are de minimis;

22 (iii) Sellers shall use the full term of a service contract to
23 determine if the taxable products are de minimis; or

24 (d) The retail sale of exempt tangible personal property and
25 taxable tangible personal property where:

26 (i) The transaction includes food and food ingredients, drugs,
27 durable medical equipment, mobility enhancing equipment, over-the-
28 counter drugs, prosthetic devices, all as defined in this chapter, or
29 medical supplies; and

30 (ii) Where the seller's purchase price or sales price of the
31 taxable tangible personal property is fifty percent or less of the
32 total purchase price or sales price of the bundled tangible personal
33 property. Sellers may not use a combination of the purchase price and
34 sales price of the tangible personal property when making the fifty
35 percent determination for a transaction.

36 NEW SECTION. **Sec. 1402.** A new section is added to chapter 82.08
37 RCW to read as follows:

1 (1) A bundled transaction is subject to the tax imposed by RCW
2 82.08.020 if the retail sale of any of its component products would be
3 subject to the tax imposed by RCW 82.08.020.

4 (2) The transactions described in section 1401(4) (a) and (b) of
5 this act are subject to the tax imposed by RCW 82.08.020 if the service
6 that is the true object of the transaction is subject to the tax
7 imposed by RCW 82.08.020. If the service that is the true object of
8 the transaction is not subject to the tax imposed by RCW 82.08.020, the
9 transaction is not subject to the tax imposed by RCW 82.08.020.

10 (3) The transaction described in section 1401(4)(c) of this act is
11 not subject to the tax imposed by RCW 82.08.020.

12 (4) The transaction described in section 1401(4)(d) of this act is
13 not subject to the tax imposed by RCW 82.08.020.

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

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

24 (b) If the price is attributable to products that are subject to
25 tax at different tax rates, the total price is attributable to the
26 products subject to the tax at the highest tax rate unless the seller
27 can identify by reasonable and verifiable standards the portion of the
28 price attributable to the products subject to the tax imposed by RCW
29 82.08.020 at the lower rate from its books and records that are kept in
30 the regular course of business for other purposes, including, but not
31 limited to, nontax purposes.

32 NEW SECTION. **Sec. 1403.** A new section is added to chapter 82.12
33 RCW to read as follows:

34 (1) The use of each product acquired in a bundled transaction is
35 subject to the tax imposed by RCW 82.12.020 if the use of any of its
36 component products is subject to the tax imposed by RCW 82.12.020.

1 (2) The use of each product acquired in a transaction described in
2 section 1401(4) (a) or (b) of this act is subject to the tax imposed by
3 RCW 82.12.020 if the service that is the true object of the transaction
4 is subject to the tax imposed by RCW 82.12.020. If the service that is
5 the true object of the transaction is not subject to the tax imposed by
6 RCW 82.12.020, the use of each product acquired in the transaction is
7 not subject to the tax imposed by RCW 82.12.020.

8 (3) The use of each product acquired in a transaction described in
9 section 1401(4)(c) of this act is not subject to the tax imposed by RCW
10 82.12.020.

11 (4) The use of each product in a transaction described in section
12 1401(4)(d) of this act is not subject to the tax imposed by RCW
13 82.12.020.

14 (5) The definitions in section 1401 of this act apply to this
15 section.

16 **PART XV**

17 **GEOGRAPHIC INFORMATION SYSTEM**

18 **Sec. 1501.** RCW 82.32.430 and 2003 c 168 s 207 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))~~ under the authority of chapter 82.14 RCW no later than sixty
30 days before the effective date 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
34 ~~((by))~~ under the authority of chapter 82.14 RCW no later than one
35 hundred twenty days before the effective date of the change.

1 (4) Sellers who have not received timely notice of rate and
2 boundary changes under subsections (2) and (3) of this section due to
3 actions or omissions of the department are not liable for the
4 difference in the amount due until they have received the appropriate
5 period of notice. Purchasers are liable for any uncollected amounts of
6 tax.

7 (5)(a) Except as provided in (b) of this subsection, sellers
8 registered with the department under RCW 82.32.030(3) and certified
9 service providers must use the address-based geographic information
10 technology system developed and provided by the department to calculate
11 the tax to be collected and remitted to the department and to determine
12 the appropriate local jurisdictions entitled to the tax.

13 (b)(i) Upon a showing that using the address-based geographic
14 information technology system would cause undue hardship, a seller may
15 be temporarily held harmless and not liable for the difference in
16 amount due nor subject to penalties or interest in regards to rate
17 calculation errors resulting from the proper use of zip code-based
18 technology provided by the department for the period in which relief is
19 granted. The department shall notify local taxing jurisdictions of the
20 identity of sellers granted relief under this section and the period
21 for which relief is granted.

22 (ii) The department shall reimburse local taxing jurisdictions for
23 differences in amount due on account of such rate calculation errors
24 occurring during the period in which relief is granted. Purchasers are
25 liable for any uncollected amounts of tax. The department shall retain
26 amounts collected from purchasers that have been reimbursed to local
27 taxing jurisdictions under this subsection (5)(b)(ii).

28 **Sec. 1502.** RCW 82.32.330 and 2005 c 326 s 1 and 2005 c 274 s 361
29 are each reenacted and amended to read as follows:

30 (1) For purposes of this section:

31 (a) "Disclose" means to make known to any person in any manner
32 whatever a return or tax information;

33 (b) "Return" means a tax or information return or claim for refund
34 required by, or provided for or permitted under, the laws of this state
35 which is filed with the department of revenue by, on behalf of, or with
36 respect to a person, and any amendment or supplement thereto, including

1 supporting schedules, attachments, or lists that are supplemental to,
2 or part of, the return so filed;

3 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
4 nature, source, or amount of the taxpayer's income, payments, receipts,
5 deductions, exemptions, credits, assets, liabilities, net worth, tax
6 liability deficiencies, overassessments, or tax payments, whether taken
7 from the taxpayer's books and records or any other source, (iii)
8 whether the taxpayer's return was, is being, or will be examined or
9 subject to other investigation or processing, (iv) a part of a written
10 determination that is not designated as a precedent and disclosed
11 pursuant to RCW 82.32.410, or a background file document relating to a
12 written determination, and (v) other data received by, recorded by,
13 prepared by, furnished to, or collected by the department of revenue
14 with respect to the determination of the existence, or possible
15 existence, of liability, or the amount thereof, of a person under the
16 laws of this state for a tax, penalty, interest, fine, forfeiture, or
17 other imposition, or offense: PROVIDED, That data, material, or
18 documents that do not disclose information related to a specific or
19 identifiable taxpayer do not constitute tax information under this
20 section. Except as provided by RCW 82.32.410, nothing in this chapter
21 shall require any person possessing data, material, or documents made
22 confidential and privileged by this section to delete information from
23 such data, material, or documents so as to permit its disclosure;

24 (d) "State agency" means every Washington state office, department,
25 division, bureau, board, commission, or other state agency;

26 (e) "Taxpayer identity" means the taxpayer's name, address,
27 telephone number, registration number, or any combination thereof, or
28 any other information disclosing the identity of the taxpayer; and

29 (f) "Department" means the department of revenue or its officer,
30 agent, employee, or representative.

31 (2) Returns and tax information shall be confidential and
32 privileged, and except as authorized by this section, neither the
33 department of revenue nor any other person may disclose any return or
34 tax information.

35 (3) This section does not prohibit the department of revenue from:

36 (a) Disclosing such return or tax information in a civil or
37 criminal judicial proceeding or an administrative proceeding:

1 (i) In respect of any tax imposed under the laws of this state if
2 the taxpayer or its officer or other person liable under Title 82 RCW
3 is a party in the proceeding; or

4 (ii) In which the taxpayer about whom such return or tax
5 information is sought and another state agency are adverse parties in
6 the proceeding;

7 (b) Disclosing, subject to such requirements and conditions as the
8 director shall prescribe by rules adopted pursuant to chapter 34.05
9 RCW, such return or tax information regarding a taxpayer to such
10 taxpayer or to such person or persons as that taxpayer may designate in
11 a request for, or consent to, such disclosure, or to any other person,
12 at the taxpayer's request, to the extent necessary to comply with a
13 request for information or assistance made by the taxpayer to such
14 other person: PROVIDED, That tax information not received from the
15 taxpayer shall not be so disclosed if the director determines that such
16 disclosure would compromise any investigation or litigation by any
17 federal, state, or local government agency in connection with the civil
18 or criminal liability of the taxpayer or another person, or that such
19 disclosure would identify a confidential informant, or that such
20 disclosure is contrary to any agreement entered into by the department
21 that provides for the reciprocal exchange of information with other
22 government agencies which agreement requires confidentiality with
23 respect to such information unless such information is required to be
24 disclosed to the taxpayer by the order of any court;

25 (c) Disclosing the name of a taxpayer with a deficiency greater
26 than five thousand dollars and against whom a warrant under RCW
27 82.32.210 has been either issued or filed and remains outstanding for
28 a period of at least ten working days. The department shall not be
29 required to disclose any information under this subsection if a
30 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
31 a warrant that has not been filed; and (iii) has entered a deferred
32 payment arrangement with the department of revenue and is making
33 payments upon such deficiency that will fully satisfy the indebtedness
34 within twelve months;

35 (d) Disclosing the name of a taxpayer with a deficiency greater
36 than five thousand dollars and against whom a warrant under RCW
37 82.32.210 has been filed with a court of record and remains
38 outstanding;

1 (e) Publishing statistics so classified as to prevent the
2 identification of particular returns or reports or items thereof;

3 (f) Disclosing such return or tax information, for official
4 purposes only, to the governor or attorney general, or to any state
5 agency, or to any committee or subcommittee of the legislature dealing
6 with matters of taxation, revenue, trade, commerce, the control of
7 industry or the professions;

8 (g) Permitting the department of revenue's records to be audited
9 and examined by the proper state officer, his or her agents and
10 employees;

11 (h) Disclosing any such return or tax information to a peace
12 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
13 official purposes. The disclosure may be made only in response to a
14 search warrant, subpoena, or other court order, unless the disclosure
15 is for the purpose of criminal tax enforcement. A peace officer or
16 county prosecuting attorney who receives the return or tax information
17 may disclose that return or tax information only for use in the
18 investigation and a related court proceeding, or in the court
19 proceeding for which the return or tax information originally was
20 sought;

21 (i) Disclosing any such return or tax information to the proper
22 officer of the internal revenue service of the United States, the
23 Canadian government or provincial governments of Canada, or to the
24 proper officer of the tax department of any state or city or town or
25 county, for official purposes, but only if the statutes of the United
26 States, Canada or its provincial governments, or of such other state or
27 city or town or county, as the case may be, grants substantially
28 similar privileges to the proper officers of this state;

29 (j) Disclosing any such return or tax information to the Department
30 of Justice, the Bureau of Alcohol, Tobacco (~~(and)~~), Firearms (~~(of)~~) and
31 Explosives within the Department of (~~(the Treasury)~~) Justice, the
32 Department of Defense, the United States Customs Service, the Coast
33 Guard of the United States, and the United States Department of
34 Transportation, or any authorized representative thereof, for official
35 purposes;

36 (k) Publishing or otherwise disclosing the text of a written
37 determination designated by the director as a precedent pursuant to RCW
38 82.32.410;

1 (l) Disclosing, in a manner that is not associated with other tax
2 information, the taxpayer name, entity type, business address, mailing
3 address, revenue tax registration numbers, North American industry
4 classification system or standard industrial classification code of a
5 taxpayer, and the dates of opening and closing of business. This
6 subsection shall not be construed as giving authority to the department
7 to give, sell, or provide access to any list of taxpayers for any
8 commercial purpose;

9 (m) Disclosing such return or tax information that is also
10 maintained by another Washington state or local governmental agency as
11 a public record available for inspection and copying under the
12 provisions of chapter 42.17 RCW or is a document maintained by a court
13 of record not otherwise prohibited from disclosure;

14 (n) Disclosing such return or tax information to the United States
15 department of agriculture for the limited purpose of investigating food
16 stamp fraud by retailers;

17 (o) Disclosing to a financial institution, escrow company, or title
18 company, in connection with specific real property that is the subject
19 of a real estate transaction, current amounts due the department for a
20 filed tax warrant, judgment, or lien against the real property;

21 (p) Disclosing to a person against whom the department has asserted
22 liability as a successor under RCW 82.32.140 return or tax information
23 pertaining to the specific business of the taxpayer to which the person
24 has succeeded; (~~(o)~~)

25 (q) Disclosing such return or tax information in the possession of
26 the department relating to the administration or enforcement of the
27 real estate excise tax imposed under chapter 82.45 RCW, including
28 information regarding transactions exempt or otherwise not subject to
29 tax; or

30 (r) Disclosing to local taxing jurisdictions the identity of
31 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
32 which relief is granted.

33 (4)(a) The department may disclose return or taxpayer information
34 to a person under investigation or during any court or administrative
35 proceeding against a person under investigation as provided in this
36 subsection (4). The disclosure must be in connection with the
37 department's official duties relating to an audit, collection activity,
38 or a civil or criminal investigation. The disclosure may occur only

1 when the person under investigation and the person in possession of
2 data, materials, or documents are parties to the return or tax
3 information to be disclosed. The department may disclose return or tax
4 information such as invoices, contracts, bills, statements, resale or
5 exemption certificates, or checks. However, the department may not
6 disclose general ledgers, sales or cash receipt journals, check
7 registers, accounts receivable/payable ledgers, general journals,
8 financial statements, expert's workpapers, income tax returns, state
9 tax returns, tax return workpapers, or other similar data, materials,
10 or documents.

11 (b) Before disclosure of any tax return or tax information under
12 this subsection (4), the department shall, through written
13 correspondence, inform the person in possession of the data, materials,
14 or documents to be disclosed. The correspondence shall clearly
15 identify the data, materials, or documents to be disclosed. The
16 department may not disclose any tax return or tax information under
17 this subsection (4) until the time period allowed in (c) of this
18 subsection has expired or until the court has ruled on any challenge
19 brought under (c) of this subsection.

20 (c) The person in possession of the data, materials, or documents
21 to be disclosed by the department has twenty days from the receipt of
22 the written request required under (b) of this subsection to petition
23 the superior court of the county in which the petitioner resides for
24 injunctive relief. The court shall limit or deny the request of the
25 department if the court determines that:

26 (i) The data, materials, or documents sought for disclosure are
27 cumulative or duplicative, or are obtainable from some other source
28 that is more convenient, less burdensome, or less expensive;

29 (ii) The production of the data, materials, or documents sought
30 would be unduly burdensome or expensive, taking into account the needs
31 of the department, the amount in controversy, limitations on the
32 petitioner's resources, and the importance of the issues at stake; or

33 (iii) The data, materials, or documents sought for disclosure
34 contain trade secret information that, if disclosed, could harm the
35 petitioner.

36 (d) The department shall reimburse reasonable expenses for the
37 production of data, materials, or documents incurred by the person in
38 possession of the data, materials, or documents to be disclosed.

1 (e) Requesting information under (b) of this subsection that may
2 indicate that a taxpayer is under investigation does not constitute a
3 disclosure of tax return or tax information under this section.

4 (5) Any person acquiring knowledge of any return or tax information
5 in the course of his or her employment with the department of revenue
6 and any person acquiring knowledge of any return or tax information as
7 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
8 section, who discloses any such return or tax information to another
9 person not entitled to knowledge of such return or tax information
10 under the provisions of this section, is guilty of a misdemeanor. If
11 the person guilty of such violation is an officer or employee of the
12 state, such person shall forfeit such office or employment and shall be
13 incapable of holding any public office or employment in this state for
14 a period of two years thereafter.

15 **PART XVI**

16 **MISCELLANEOUS PROVISIONS**

17 **Sec. 1601.** 2004 c 153 s 502 (uncodified) is amended to read as
18 follows:

19 (1) If a court of competent jurisdiction enters a final judgment on
20 the merits that is based on federal or state law, is no longer subject
21 to appeal, and substantially limits or impairs the essential elements
22 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
23 2002, then sections 1 through 6, 8 through 17, and 19, chapter 67, Laws
24 of 2002 ((is)) are null and void in ((its)) their entirety.

25 ~~(2) ((If the contingency in subsection (1) of this section occurs,~~
26 ~~section 502, chapter 168, Laws of 2003 is null and void.~~

27 ~~(3))~~ If the contingency in subsection (1) of this section occurs,
28 section 410, chapter 153, Laws of 2004 is null and void.

29 (3) If the contingency in subsection (1) of this section occurs,
30 sections 1002, 1005, 1013, 1017, 1022, and 1024 of this act are null
31 and void.

32 NEW SECTION. **Sec. 1602.** Part headings used in this act are not
33 any part of the law.

1 NEW SECTION. **Sec. 1603.** This act does not affect any existing
2 right acquired or liability or obligation incurred under the sections
3 amended or repealed in this act or under any rule or order adopted
4 under those sections, nor does it affect any proceeding instituted
5 under those sections.

6 NEW SECTION. **Sec. 1604.** Sections 301, 1301, and 1602 of this act
7 take effect July 1, 2006.

8 NEW SECTION. **Sec. 1605.** Sections 101 through 105, 201, 202, 401,
9 501 through 503, 601, 701, 801, 802, 901 through 905, 1001, 1002, 1004,
10 1005, 1007 through 1013, 1015 through 1017, 1019 through 1024, 1101
11 through 1108, 1201, 1202, 1302, 1401 through 1403, 1501, and 1502 of
12 this act take effect July 1, 2007.

13 NEW SECTION. **Sec. 1606.** (1) Section 302 of this act takes effect
14 when:

15 (a) The United States congress grants individual states the
16 authority to impose sales and use tax collection duties on remote
17 sellers; or

18 (b) It is determined by a court of competent jurisdiction, in a
19 judgment not subject to review, that a state can impose sales and use
20 tax collection duties on remote sellers.

21 (2) The department of revenue shall provide notice to affected
22 taxpayers, the legislature, and others as deemed appropriate by the
23 department, if either of the contingencies in this section occurs.

24 NEW SECTION. **Sec. 1607.** Section 1301 of this act expires July 1,
25 2007.

26 NEW SECTION. **Sec. 1608.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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