

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 (4) Persons registered under subsection (3) of this section who are
37 not required to register under subsection (1) of this section and who

1 are not otherwise subject to the requirements of chapter 19.02 RCW are
2 not subject to the fees imposed by RCW 19.02.075.

3 **PART III**

4 **MONETARY ALLOWANCES AND VENDOR COMPENSATION**

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

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

17 (2) For certified service providers, the monetary allowance may
18 include a base rate that applies to taxable transactions processed by
19 the certified service provider. Additionally, for a period not to
20 exceed twenty-four months following a seller's registration under RCW
21 82.32.030(3), the monetary allowance may include a percentage of tax
22 revenue generated by the seller.

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

27 (4) For model 3 sellers and all other sellers that are not model 1
28 sellers or model 2 sellers, the monetary allowance may include a
29 percentage of tax revenue generated by a seller registering under RCW
30 82.32.030(3), but shall not exceed a period of twenty-four months.

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

33 (1) The department may adopt by rule vendor compensation for
34 sellers collecting and remitting sales and use taxes. The vendor
35 compensation may include a base rate or a percentage of tax revenue

1 collected by the seller, and may vary by type of seller. The
2 department may be guided by the findings of the cost of collection
3 study performed under the agreement, by cost of collection studies
4 performed by the department, and by vendor compensation provided by
5 other states, to determine reasonable vendor compensation for sellers
6 for the costs to collect and remit sales and use taxes. Vendor
7 compensation will be funded solely from state sales and use taxes.

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

11 **PART IV**
12 **AMNESTY**

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

15 (1) No assessment for taxes imposed or authorized under chapters
16 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be
17 made by the department against a seller who:

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

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

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

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

1 (a) Any matter or matters for which the seller, before registering
2 to collect and remit the applicable taxes imposed or authorized under
3 chapters 82.08, 82.12, and 82.14 RCW, received notice from the
4 department of the commencement of an audit and which audit is not yet
5 finally resolved including any related administrative and judicial
6 processes;

7 (b) Taxes imposed or authorized under chapters 82.08, 82.12, and
8 82.14 RCW and collected or remitted to the department by the seller; or

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

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

16 **PART V**
17 **SOURCING**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 collect, pay, or remit the applicable tax to the appropriate
2 jurisdiction.

3 (ii) A purchaser delivering an exemption certificate claiming
4 multiple points of use may use any reasonable, but consistent and
5 uniform, method of apportionment that is supported by the purchaser's
6 books and records as they exist at the time the transaction is reported
7 for sales or use tax purposes.

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

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

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

34 (c) When the seller knows that the product will be concurrently
35 available for use in more than one jurisdiction and the purchaser does
36 not have a direct pay permit and does not provide the seller with an
37 exemption certificate claiming multiple points of use as provided in

1 (a) of this subsection, or certification pursuant to (b) of this
2 subsection, the seller shall collect and remit the tax based on
3 subsections (1) through (4) of this section.

4 (d) A holder of a direct pay permit shall not be required to
5 deliver an exemption certificate claiming multiple points of use to the
6 seller. A direct pay permit holder shall follow (a)(ii) and (iii) of
7 this subsection in apportioning the tax due on the sale or use of a
8 digital good, computer software, or service that will be concurrently
9 available for use in more than one jurisdiction.

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

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

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

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

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

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

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

6 (a) A retail sale of watercraft;

7 (b) A retail sale of a modular home, manufactured home, or mobile
8 home;

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

12 (d) Until January 1, 2008, a retail sale of tangible personal
13 property made by a person engaged in the business of selling flowers.
14 The rules for the sourcing of retail sales of flowers delivered with
15 telegraphic instructions in WAC 458-20-158, as effective on July 1,
16 1970, shall remain in effect until January 1, 2008.

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

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

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

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

32 (c) "Receive" and "receipt" mean taking possession of tangible
33 personal property, making first use of services, or taking possession
34 or making first use of digital goods, whichever comes first. "Receive"
35 and "receipt" do not include possession by a shipping company on behalf
36 of the purchaser.

37 (d) "Transportation equipment" means:

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

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

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

7 (B) Operated under authority of a carrier authorized and
8 certificated by the United States department of transportation or
9 another federal authority to engage in the carriage of persons or
10 property in interstate commerce;

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

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

18 (10) In those instances where there is no obligation on the part of
19 a seller to collect or remit this state's sales or use tax, the use of
20 tangible personal property or of a service, subject to use tax, is
21 sourced to the place of first use in this state. The definition of use
22 in RCW 82.12.010 applies to this subsection.

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

25 For purposes of this chapter:

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

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

35 ~~(3) A retail sale consisting of the rental of tangible personal~~
36 ~~property shall be deemed to have occurred (a) in the case of a rental~~

1 ~~involving periodic rental payments, at the place of primary use by the~~
2 ~~lessee during the period covered by each payment, or (b) in all other~~
3 ~~cases, at the place of first use by the lessee;~~

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

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

15 ~~(b) A retail sale consisting of the providing of telecommunications~~
16 ~~services shall be sourced in accordance with RCW 82.32.520;~~

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

19 ~~(7) A retail sale consisting of an extended warranty shall be~~
20 ~~deemed to have occurred at the business location of the seller if the~~
21 ~~extended warranty is received by the purchaser at that location. If an~~
22 ~~extended warranty is not received by the purchaser at the business~~
23 ~~location of the seller, a retail sale of an extended warranty shall be~~
24 ~~deemed to have occurred at the location where receipt by the buyer~~
25 ~~occurs;~~

26 ~~(8)) "City" means a city or town;~~

27 ~~((9)) (2) The meaning ascribed to words and phrases in chapters~~
28 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
29 ~~applicable, shall have full force and effect with respect to taxes~~
30 ~~imposed under authority of this chapter;~~

31 ~~((10)) (3) "Taxable event" shall mean any retail sale, or any~~
32 ~~use, upon which a state tax is imposed pursuant to chapter 82.08 or~~
33 ~~82.12 RCW, as they now exist or may hereafter be amended: PROVIDED,~~
34 ~~HOWEVER, That the term shall not include a retail sale taxable pursuant~~
35 ~~to RCW 82.08.150, as now or hereafter amended;~~

36 ~~((11)) (4) "Treasurer or other legal depository" shall mean the~~
37 ~~treasurer or legal depository of a county or city.~~

PART VII
TAXABILITY MATRIX AND OTHER INFORMATION PROVIDED BY
THE DEPARTMENT OF REVENUE

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

(1) The department shall complete a taxability matrix maintained by the member states of the agreement in downloadable format. The matrix contains terms defined in the agreement. The department shall provide notice of changes in the taxability of products or services listed in the matrix.

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

NEW SECTION. **Sec. 702.** A new section is added to chapter 82.32 RCW to read as follows:

(1) The department shall review software submitted to the governing board of the agreement for certification as a certified automated system under the terms of the agreement. The review shall include a determination of whether the software adequately classifies this state's product-based sales tax exemptions. Upon completing the review, the department shall certify to the governing board its acceptance or rejection of the classifications made by the system.

(2) Certified service providers and model 2 sellers shall be held harmless and are not liable for sales or use taxes, nor interest or penalties on those taxes, not collected due to reliance on the certification of the department under subsection (1) of this section.

(3) The relief from liability provided to certified service providers and model 2 sellers under subsection (2) of this section does not apply with respect to the incorrect classification of an item or transaction into a product-based exemption certified by the department unless that item or transaction is contained in a listing of items or transactions within a product definition approved by the governing board or the department.

(4) If the department determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the

1 certified service provider or model 2 seller of the incorrect
2 classification. The certified service provider or model 2 seller has
3 ten days to revise the classification after receipt of notice from the
4 department. Upon the expiration of the ten days, the certified service
5 provider or model 2 seller is liable for the failure to collect the
6 correct amount of sales or use taxes.

7 NEW SECTION. **Sec. 703.** A new section is added to chapter 82.32
8 RCW to read as follows:

9 (1) Purchasers are relieved from liability for tax, interest, and
10 penalty for having failed to pay the correct amount of sales or use tax
11 in any of the following circumstances:

12 (a) A purchaser's seller or certified service provider relied on
13 erroneous data provided by the department on tax rates, boundaries,
14 taxing jurisdiction assignments, or in the taxability matrix completed
15 by the department pursuant to section 701 of this act;

16 (b) A purchaser holding a direct pay permit relied on erroneous
17 data provided by the department on tax rates, boundaries, taxing
18 jurisdiction assignments, or in the taxability matrix completed by the
19 department pursuant to section 701 of this act;

20 (c) A purchaser relied on erroneous data provided by the department
21 in the taxability matrix completed by the department pursuant to
22 section 701 of this act; or

23 (d) A purchaser relied on erroneous data provided by the department
24 on tax rates, boundaries, or taxing jurisdiction assignments.

25 (2) For purposes of this section, "penalty" means an amount imposed
26 for noncompliance that is not fraudulent, willful, or intentional that
27 is in addition to the correct amount of sales or use tax and interest.

28 **PART VIII**
29 **DELIVERY CHARGES**

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

32 When computing the tax levied by RCW 82.08.020, if a shipment
33 consists of taxable tangible personal property and nontaxable tangible
34 personal property, and delivery charges are included in the sales
35 price, the seller must collect and remit tax on the percentage of

1 delivery charges allocated to the taxable tangible personal property,
2 but does not have to collect and remit tax on the percentage allocated
3 to exempt tangible personal property. The seller 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 sales price of the taxable
7 tangible personal property compared to the total sales 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 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
13 RCW to read as follows:

14 When computing the tax levied by RCW 82.12.020, if a shipment
15 consists of taxable tangible personal property and nontaxable tangible
16 personal property, and delivery charges are included in the purchase
17 price, the consumer must remit tax or the retailer must collect and
18 remit tax on the percentage of delivery charges allocated to the
19 taxable tangible personal property, but does not have to remit or
20 collect and remit tax on the percentage allocated to exempt tangible
21 personal property. The consumer or retailer may use either of the
22 following percentages to determine the taxable portion of the delivery
23 charges:

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

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

30 **PART IX**
31 **SALES AND USE TAX MITIGATION**

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

34 (a) Washington state's participation as a member state in the
35 streamlined sales and use tax agreement benefits the state, all its

1 local taxing jurisdictions, and its retailing industry, by increasing
2 state and local revenues, improving the state's business climate, and
3 standardizing and simplifying the state's tax structure;

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

8 (c) Participation in the streamlined sales and use tax agreement
9 requires the adoption of the agreement's sourcing provisions, which
10 change the location in which a retail sale of delivered tangible
11 personal property occurs for local sales tax purposes from the point of
12 origin to the point of destination;

13 (d) Changes in the local sales tax sourcing law provisions to
14 conform with the streamlined sales and use tax agreement will cause
15 sales tax revenues to shift among local taxing jurisdictions. The
16 legislature finds that there will be an unintended adverse impact on
17 local taxing jurisdictions that receive less revenues because local tax
18 revenues will be redistributed, with revenue increases for some
19 jurisdictions and reductions for others, due solely to changes in local
20 sales tax sourcing rules to be implemented under section 503 of this
21 act and the chapter ..., Laws of 2007 (this act) amendments to RCW
22 82.14.020, even though no local taxing jurisdiction has changed its tax
23 rate or tax base;

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

27 (f) It is in the best interest of the state and all its
28 subdivisions to mitigate the adverse effects of amending the local
29 sales tax sourcing provisions to be in conformance with the streamlined
30 sales and use tax agreement;

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

1 (h) It is important that the state of Washington maintain its
2 supply of industrial land for present and future economic development
3 activities, and local governments taking advantage of the mitigation
4 provided by sections 901 through 905 of this act should strive to
5 maintain the supply of industrial land available for economic
6 development efforts.

7 (2) The legislature intends that the streamlined sales and use tax
8 mitigation account established in section 902 of this act have the sole
9 objective of mitigating, for negatively affected local taxing
10 jurisdictions, the net local sales tax revenue reductions incurred as
11 a result of section 503 of this act and the chapter ..., Laws of 2007
12 (this act) amendments to RCW 82.14.020.

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

15 (1) The streamlined sales and use tax mitigation account is created
16 in the state treasury. The state treasurer shall transfer into the
17 account from the general fund amounts as directed in section 903 of
18 this act. Expenditures from the account may be used only for the
19 purpose of mitigating the negative fiscal impacts to local taxing
20 jurisdictions as a result of section 503 of this act and the chapter
21 ..., Laws of 2007 (this act) amendments to RCW 82.14.020.

22 (2) Beginning July 1, 2008, the state treasurer, as directed by the
23 department, shall distribute the funds in the streamlined sales and use
24 tax mitigation account to local taxing jurisdictions in accordance with
25 section 903 of this act.

26 (3) The definitions in this subsection apply throughout this
27 section and RCW 82.14.390 and section 903 of this act.

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

29 (b) "Local taxing jurisdiction" means counties, cities,
30 transportation authorities under RCW 82.14.045, public facilities
31 districts under chapters 36.100 and 35.57 RCW, public transportation
32 benefit areas under RCW 82.14.440, and regional transit authorities
33 under chapter 81.112 RCW, that impose a sales and use tax.

34 (c) "Loss" or "losses" means the local sales and use tax revenue
35 reduction to a local taxing jurisdiction resulting from the sourcing
36 provisions in section 502 of this act and the chapter ..., Laws of 2007
37 (this act) amendments to RCW 82.14.020.

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

3 (e) "Voluntary compliance revenue" means the local sales tax
4 revenue gain to each local taxing jurisdiction reported to the
5 department from persons registering through the central registration
6 system authorized under the agreement.

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

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

10 (1) In order to mitigate local sales tax revenue net losses as a
11 result of the sourcing provisions of the streamlined sales and use tax
12 agreement under this title, the state treasurer shall transfer into the
13 streamlined sales and use tax mitigation account from the general fund
14 the sum of thirty-one million six hundred thousand dollars on July 1,
15 2008. On July 1, 2009, and each July 1st thereafter, the state
16 treasurer shall transfer into the streamlined sales and use tax
17 mitigation account from the general fund the sum required to mitigate
18 actual net losses as determined under this section.

19 (2) Beginning July 1, 2008, and continuing until the department
20 determines annual losses under subsection (3) of this section, the
21 department shall determine the amount of local sales tax net loss each
22 local taxing jurisdiction experiences as a result of the sourcing
23 provisions of the streamlined sales and use tax agreement under this
24 title each calendar quarter. The department shall determine losses by
25 analyzing and comparing data from tax return information and tax
26 collections for each local taxing jurisdiction before and after the
27 effective date of this section on a calendar quarter basis. The
28 department's analysis may be revised and supplemented in consultation
29 with the oversight committee as provided in subsection (4) of this
30 section. To determine net losses, the department shall reduce losses
31 by the amount of voluntary compliance revenue for the calendar quarter
32 analyzed. Beginning December 31, 2008, distributions shall be made
33 quarterly from the streamlined sales and use tax mitigation account by
34 the state treasurer, as directed by the department, to each local
35 taxing jurisdiction, other than public facilities districts for losses
36 in respect to taxes imposed under the authority of RCW 82.14.390, in an
37 amount representing its net losses for the previous calendar quarter.

1 Distributions shall be made on the last working day of each calendar
2 quarter and shall cease when distributions under subsection (3) of this
3 section begin.

4 (3)(a) By December 31, 2009, or such later date the department in
5 consultation with the oversight committee determines that sufficient
6 data is available, the department shall determine each local taxing
7 jurisdiction's annual loss. The department shall determine annual
8 losses by comparing at least twelve months of data from tax return
9 information and tax collections for each local taxing jurisdiction
10 before and after the effective date of this section. The department
11 shall not be required to determine annual losses on a recurring basis,
12 but may make any adjustments to annual losses as it deems proper as a
13 result of the annual reviews provided in (b) of this subsection.
14 Beginning the calendar quarter in which the department determines
15 annual losses, and each calendar quarter thereafter, distributions
16 shall be made from the streamlined sales and use tax mitigation account
17 by the state treasurer on the last working day of the calendar quarter,
18 as directed by the department, to each local taxing jurisdiction, other
19 than public facilities districts for losses in respect to taxes imposed
20 under the authority of RCW 82.14.390, in an amount representing one-
21 fourth of the jurisdiction's annual loss reduced by voluntary
22 compliance revenue reported during the previous calendar quarter.

23 (b) The department's analysis of annual losses shall be reviewed by
24 December 1st of each year and may be revised and supplemented in
25 consultation with the oversight committee as provided in subsection (4)
26 of this section.

27 (4) The department shall convene an oversight committee to assist
28 in the determination of losses. The committee shall include one
29 representative of one city whose revenues are increased, one
30 representative of one city whose revenues are reduced, one
31 representative of one county whose revenues are increased, one
32 representative of one county whose revenues are decreased, one
33 representative of one transportation authority under RCW 82.14.045
34 whose revenues are increased, and one representative of one
35 transportation authority under RCW 82.14.045 whose revenues are
36 reduced, as a result of section 503 of this act and the chapter ...,
37 Laws of 2007 (this act) amendments to RCW 82.14.020. Beginning July 1,
38 2008, the oversight committee shall meet quarterly with the department

1 to review and provide additional input and direction on the
2 department's analyses of losses. Local taxing jurisdictions may also
3 present to the oversight committee additional information to improve
4 the department's analyses of the jurisdiction's loss. Beginning
5 January 1, 2010, the oversight committee shall meet at least annually
6 with the department by December 1st.

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

9 **Sec. 904.** RCW 82.14.390 and 2006 c 298 s 1 are each amended to
10 read as follows:

11 (1) Except as provided in subsection (~~((6))~~) (7) of this section,
12 the governing body of a public facilities district (a) created before
13 July 31, 2002, under chapter 35.57 or 36.100 RCW that commences
14 construction of a new regional center, or improvement or rehabilitation
15 of an existing new regional center, before January 1, 2004, or (b)
16 created before July 1, 2006, under chapter 35.57 RCW in a county or
17 counties in which there are no other public facilities districts on
18 June 7, 2006, and in which the total population in the public
19 facilities district is greater than ninety thousand that commences
20 construction of a new regional center before February 1, 2007, may
21 impose a sales and use tax in accordance with the terms of this
22 chapter. The tax is in addition to other taxes authorized by law and
23 shall be collected from those persons who are taxable by the state
24 under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable
25 event within the public facilities district. The rate of tax shall not
26 exceed 0.033 percent of the selling price in the case of a sales tax or
27 value of the article used in the case of a use tax.

28 (2)(a) The governing body of a public facilities district imposing
29 a sales and use tax under the authority of this section may increase
30 the rate of tax up to 0.037 percent if, within three fiscal years of
31 the effective date of this section, the department determines that, as
32 a result of section 503 of this act and the chapter ..., Laws of 2007
33 (this act) amendments to RCW 82.14.020, a public facilities district's
34 sales and use tax collections for fiscal years after the effective date
35 of this section have been reduced by a net loss of at least 0.50
36 percent from the fiscal year before the effective date of this section.

1 The fiscal year in which this section becomes effective is the first
2 fiscal year after the effective date of this section.

3 (b) The department shall determine sales and use tax collection net
4 losses under this section as provided in section 903 (2) and (3) of
5 this act. The department shall provide written notice of its
6 determinations to public facilities districts. Determinations by the
7 department of a public facilities district's sales and use tax
8 collection net losses as a result of section 503 of this act and the
9 chapter ..., Laws of 2007 (this act) amendments to RCW 82.14.020 are
10 final and not appealable.

11 (c) A public facilities district may increase its rate of tax after
12 it has received written notice from the department as provided in (b)
13 of this subsection. The increase in the rate of tax must be made in
14 0.001 percent increments and must be the least amount necessary to
15 mitigate the net loss in sales and use tax collections as a result of
16 section 503 of this act and the chapter ..., Laws of 2007 (this act)
17 amendments to RCW 82.14.020. The increase in the rate of tax is
18 subject to RCW 82.14.055.

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

25 ~~((+3))~~ (4) No tax may be collected under this section before
26 August 1, 2000. The tax imposed in this section shall expire when the
27 bonds issued for the construction of the regional center and related
28 parking facilities are retired, but not more than twenty-five years
29 after the tax is first collected.

30 ~~((+4))~~ (5) Moneys collected under this section shall only be used
31 for the purposes set forth in RCW 35.57.020 and must be matched with an
32 amount from other public or private sources equal to thirty-three
33 percent of the amount collected under this section, provided that
34 amounts generated from nonvoter approved taxes authorized under chapter
35 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
36 RCW shall not constitute a public or private source. For the purpose
37 of this section, public or private sources includes, but is not limited
38 to cash or in-kind contributions used in all phases of the development

1 or improvement of the regional center, land that is donated and used
2 for the siting of the regional center, cash or in-kind contributions
3 from public or private foundations, or amounts attributed to private
4 sector partners as part of a public and private partnership agreement
5 negotiated by the public facilities district.

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

13 ~~((+6))~~ (7) A public facilities district created under chapter
14 36.100 RCW is not eligible to impose the tax under this section if the
15 legislative authority of the county where the public facilities
16 district is located has imposed a sales and use tax under RCW
17 82.14.0485 or 82.14.0494.

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

20 (1) During calendar year 2010, the joint legislative audit and
21 review committee shall review the mitigation provisions for local
22 taxing jurisdictions under RCW 82.14.390 and section 903 of this act to
23 determine the extent to which the mitigation provisions address the
24 needs of local taxing jurisdictions for which the sourcing provisions
25 in section 503 of this act and the chapter ..., Laws of 2007 (this act)
26 amendments to RCW 82.14.020 had the greatest fiscal impact. In
27 conducting the study, the committee shall solicit input from the
28 oversight committee created in section 903 of this act and additional
29 local taxing jurisdictions as the committee determines. The department
30 of revenue and the state treasurer shall provide the committee with any
31 data within their purview that the committee considers necessary to
32 conduct the review. The committee shall report to the legislature the
33 results of its findings, and any recommendations for changes to the
34 mitigation provisions under RCW 82.14.390 and section 903 of this act,
35 by December 31, 2010.

36 (2) The definitions in section 902 of this act apply to this
37 section.

1 (3) This section expires July 1, 2011.

2 **PART X**

3 **TELECOMMUNICATIONS PROVISIONS**

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

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

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

18 (3) The sales of ((~~telephone~~)) telecommunications service as
19 defined in RCW 82.04.065 that are listed in subsection (3) of this
20 section shall be sourced to each level of taxing jurisdiction as
21 follows:

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

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

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

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

35 (ii) When a prepaid calling service is not received by the
36 purchaser at a business location of the seller, the sale is sourced to

1 the location where receipt by the purchaser or the purchaser's donee,
2 designated as such by the purchaser, occurs, including the location
3 indicated by instructions for delivery to the purchaser or donee, known
4 to the seller;

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

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

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

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

28 (d) A sale of a private communication service is sourced as
29 follows:

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

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

37 (iii) Service for segments of a channel between two customer
38 channel termination points located in different jurisdictions and which

1 segment of channel are separately charged is sourced fifty percent in
2 each level of jurisdiction in which the customer channel termination
3 points are located.

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

10 (4) The definitions in this subsection apply throughout this
11 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ((~~m~~)) (n) "Service address" means:

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

4 (ii) If the location in ~~((m))~~ (n)(i) of this subsection is not
5 known, the origination point of the signal of the telecommunications
6 services first identified by either the seller's telecommunications
7 system or in information received by the seller from its service
8 provider, where the system used to transport such signals is not that
9 of the seller;

10 (iii) If the locations in ~~((m))~~ (n)(i) and (ii) of this
11 subsection are not known, the location of the customer's place of
12 primary use.

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

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

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

36 ~~(3) "Telephone service" means competitive telephone service or~~

1 ~~network telephone service, or both, as defined in subsections (1) and~~
2 ~~(2) of this section.~~

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

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

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

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

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

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

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

30 (8) "Telecommunications service" means the electronic transmission,
31 conveyance, or routing of voice, data, audio, video, or any other
32 information or signals to a point, or between or among points.
33 "Telecommunications service" includes such transmission, conveyance, or
34 routing in which computer processing applications are used to act on
35 the form, code, or protocol of the content for purposes of
36 transmission, conveyance, or routing without regard to whether such
37 service is referred to as voice over internet protocol services or is

1 classified by the federal communications commission as enhanced or
2 value added. "Telecommunications service" does not include:

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

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

10 (c) Tangible personal property;

11 (d) Advertising, including but not limited to directory
12 advertising;

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

14 (f) Internet access service;

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

23 (h) Ancillary services; or

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

26 (9) "800 service" means a telecommunications service that allows a
27 caller to dial a toll-free number without incurring a charge for the
28 call. The service is typically marketed under the name "800," "855,"
29 "866," "877," and "888" toll-free calling, and any subsequent numbers
30 designated by the federal communications commission.

31 (10) "900 service" means an inbound toll telecommunications service
32 purchased by a subscriber that allows the subscriber's customers to
33 call in to the subscriber's prerecorded announcement or live service.
34 "900 service" does not include the charge for: Collection services
35 provided by the seller of the telecommunications services to the
36 subscriber, or services or products sold by the subscriber to the
37 subscriber's customer. The service is typically marketed under the

1 name "900" service, and any subsequent numbers designated by the
2 federal communications commission.

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

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

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

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

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

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

35 (17) "Value-added nonvoice data service" means a service that
36 otherwise meets the definition of telecommunications services in which
37 computer processing applications are used to act on the form, content,

1 code, or protocol of the information or data primarily for a purpose
2 other than transmission, conveyance, or routing.

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

11 ~~((+6+))~~ (19) "Customer" means: (a) The person or entity that
12 contracts with the home service provider for mobile telecommunications
13 services; or (b) the end user of the mobile telecommunications service,
14 if the end user of mobile telecommunications services is not the
15 contracting party, but this subsection ~~((+6+))~~ (19)(b) applies only for
16 the purpose of determining the place of primary use. The term does not
17 include a reseller of mobile telecommunications service, or a serving
18 carrier under an arrangement to serve the customer outside the home
19 service provider's licensed service area.

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

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

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

28 ~~((+8+))~~ (21) "Enhanced zip code" means a United States postal zip
29 code of nine or more digits.

30 ~~((+9+))~~ (22) "Home service provider" means the facilities-based
31 carrier or reseller with whom the customer contracts for the provision
32 of mobile telecommunications services.

33 ~~((+10+))~~ (23) "Licensed service area" means the geographic area in
34 which the home service provider is authorized by law or contract to
35 provide commercial mobile radio service to the customer.

36 ~~((+11+))~~ (24) "Mobile telecommunications service" means commercial
37 mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in
38 effect on June 1, 1999.

1 ~~((12))~~ (25) "Mobile telecommunications service provider" means a
2 home service provider or a serving carrier.

3 ~~((13))~~ (26) "Place of primary use" means the street address
4 representative of where the customer's use of the mobile
5 telecommunications service primarily occurs, which must be:

6 (a) The residential street address or the primary business street
7 address of the customer; and

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

9 ~~((14))~~ (27) "Prepaid telephone calling service" means the right
10 to purchase exclusively telecommunications services that must be paid
11 for in advance, that enables the origination of calls using an access
12 number, authorization code, or both, whether manually or electronically
13 dialed, if the remaining amount of units of service that have been
14 prepaid is known by the provider of the prepaid service on a continuous
15 basis.

16 ~~((15))~~ (28) "Reseller" means a provider who purchases
17 telecommunications services from another telecommunications service
18 provider and then resells, uses as a component part of, or integrates
19 the purchased services into a mobile telecommunications service.
20 "Reseller" does not include a serving carrier with whom a home service
21 provider arranges for the services to its customers outside the home
22 service provider's licensed service area.

23 ~~((16))~~ (29) "Serving carrier" means a facilities-based carrier
24 providing mobile telecommunications service to a customer outside a
25 home service provider's or reseller's licensed service area.

26 ~~((17))~~ (30) "Taxing jurisdiction" means any of the several
27 states, the District of Columbia, or any territory or possession of the
28 United States, any municipality, city, county, township, parish,
29 transportation district, or assessment jurisdiction, or other political
30 subdivision within the territorial limits of the United States with the
31 authority to impose a tax, charge, or fee.

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

34 (1) "Competitive telephone service" means the providing by any
35 person of telecommunications equipment or apparatus, or service related
36 to that equipment or apparatus such as repair or maintenance service,

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

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

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

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

34 (3) "Conference-bridging service" means an ancillary service that
35 links two or more participants of an audio or video conference call and
36 may include the provision of a telephone number. "Conference-bridging
37 service" does not include the telecommunications services used to reach
38 the conference bridge.

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

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

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

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

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

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

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

32 (c) Tangible personal property;

33 (d) Advertising, including but not limited to directory
34 advertising;

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

36 (f) Internet access service;

37 (g) Radio and television audio and video programming services,
38 regardless of the medium, including the furnishing of transmission,

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

7 (h) Ancillary services; or

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

10 (9) "800 service" means a telecommunications service that allows a
11 caller to dial a toll-free number without incurring a charge for the
12 call. The service is typically marketed under the name "800," "855,"
13 "866," "877," and "888" toll-free calling, and any subsequent numbers
14 designated by the federal communications commission.

15 (10) "900 service" means an inbound toll "telecommunications
16 service" purchased by a subscriber that allows the subscriber's
17 customers to call in to the subscriber's prerecorded announcement or
18 live service. "900 service" does not include the charge for:
19 Collection services provided by the seller of the telecommunications
20 services to the subscriber, or services or products sold by the
21 subscriber to the subscriber's customer. The service is typically
22 marketed under the name "900" service, and any subsequent numbers
23 designated by the federal communications commission.

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

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

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

36 (14) "Prepaid calling service" means the right to access
37 exclusively telecommunications services, which must be paid for in
38 advance and which enable the origination of calls using an access

1 number or authorization code, whether manually or electronically
2 dialed, and that is sold in predetermined units or dollars of which the
3 number declines with use in a known amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 facilities, and excluding services rendered in respect to live animals,
2 birds and insects;

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

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

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

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

34 (f) The sale of and charge made for the furnishing of lodging and
35 all other services by a hotel, rooming house, tourist court, motel,
36 trailer camp, and the granting of any similar license to use real
37 property, as distinguished from the renting or leasing of real
38 property, and it shall be presumed that the occupancy of real property

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

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

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

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

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

26 (c) Credit bureau services;

27 (d) Automobile parking and storage garage services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (11) The term shall not include the sale of or charge made for
36 labor, services, or tangible personal property pursuant to agreements
37 providing maintenance services for bus, rail, or rail fixed guideway

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

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

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

7 (a) (~~Network telephone service, other than toll service, to~~
8 ~~residential customers;~~

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

11 (b) Coin-operated telephone service; and

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

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

17 (a) (~~"Residential customer" means an individual subscribing to a~~
18 ~~residential class of telephone service)) "Local service" means
19 ancillary services and telecommunications service, other than toll
20 service, provided to an individual subscribing to a residential class
21 of telephone service.~~

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

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

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

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

30 (a) (~~Network telephone service, other than toll service, to~~
31 ~~residential customers.~~

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

34 (b) Coin-operated telephone service.

35 (2) As used in this section:

1 (a) (~~"Network telephone service" has the meaning given in RCW~~
2 ~~82.04.065.~~

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

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

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

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

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

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

30 "Consumer" means the following:
31 (1) Any person who purchases, acquires, owns, holds, or uses any
32 article of tangible personal property irrespective of the nature of the
33 person's business and including, among others, without limiting the
34 scope hereof, persons who install, repair, clean, alter, improve,
35 construct, or decorate real or personal property of or for consumers
36 other than for the purpose (a) of resale as tangible personal property

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

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

33 (3) Any person engaged in the business of contracting for the
34 building, repairing or improving of any street, place, road, highway,
35 easement, right of way, mass public transportation terminal or parking
36 facility, bridge, tunnel, or trestle which is owned by a municipal
37 corporation or political subdivision of the state of Washington or by
38 the United States and which is used or to be used primarily for foot or

1 vehicular traffic including mass transportation vehicles of any kind as
2 defined in RCW 82.04.280, in respect to tangible personal property when
3 such person incorporates such property as an ingredient or component of
4 such publicly owned street, place, road, highway, easement, right of
5 way, mass public transportation terminal or parking facility, bridge,
6 tunnel, or trestle by installing, placing or spreading the property in
7 or upon the right of way of such street, place, road, highway,
8 easement, bridge, tunnel, or trestle or in or upon the site of such
9 mass public transportation terminal or parking facility;

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

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

25 (6) Any person engaged in the business of constructing, repairing,
26 decorating, or improving new or existing buildings or other structures
27 under, upon, or above real property of or for the United States, any
28 instrumentality thereof, or a county or city housing authority created
29 pursuant to chapter 35.82 RCW, including the installing or attaching of
30 any article of tangible personal property therein or thereto, whether
31 or not such personal property becomes a part of the realty by virtue of
32 installation; also, any person engaged in the business of clearing land
33 and moving earth of or for the United States, any instrumentality
34 thereof, or a county or city housing authority created pursuant to
35 chapter 35.82 RCW. Any such person shall be a consumer within the
36 meaning of this subsection in respect to tangible personal property
37 incorporated into, installed in, or attached to such building or other
38 structure by such person, except that consumer does not include any

1 person engaged in the business of constructing, repairing, decorating,
2 or improving new or existing buildings or other structures under, upon,
3 or above real property of or for the United States, or any
4 instrumentality thereof, if the investment project would qualify for
5 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
6 private entity;

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

15 (8) Any person engaged in the business of cleaning up for the
16 United States, or its instrumentalities, radioactive waste and other
17 byproducts of weapons production and nuclear research and development;
18 and

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

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

27 As used in this chapter:

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

33 (2) "Enhanced 911 telephone system" means a public telephone system
34 consisting of a network, data base, and on-premises equipment that is
35 accessed by dialing 911 and that enables reporting police, fire,
36 medical, or other emergency situations to a public safety answering
37 point. The system includes the capability to selectively route

1 incoming 911 calls to the appropriate public safety answering point
2 that operates in a defined 911 service area and the capability to
3 automatically display the name, address, and telephone number of
4 incoming 911 calls at the appropriate public safety answering point.

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

8 (4) "Local exchange company" has the meaning ascribed to it in RCW
9 80.04.010.

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

21 (6) "Radio communications service company" has the meaning ascribed
22 to it in RCW 80.04.010, except that it does not include radio paging
23 providers. It does include those persons or entities that provide
24 commercial mobile radio services, as defined by 47 U.S.C. Sec.
25 332(d)(1), and both facilities-based and nonfacilities-based resellers.

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

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

30 (9) "Place of primary use" has the meaning ascribed to it in (~~the~~
31 ~~federal mobile telecommunications sourcing act, P.L. 106-252~~) RCW
32 82.04.065.

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

35 The definitions in this section apply throughout this chapter
36 unless the context clearly requires otherwise.

1 (1) "Switched access line" has the meaning provided in RCW
2 82.14B.020.

3 (2) "Local exchange company" has the meaning provided in RCW
4 80.04.010.

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

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

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

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

24 **Sec. 1012.** RCW 35A.82.055 and 2002 c 179 s 4 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 from the business shall impose the tax at a uniform rate on all
30 persons engaged in the telephone business in the code city.

31 This section does not apply to the providing of competitive
32 telephone service as defined in RCW 82.04.065 or to the providing of
33 payphone service as defined in RCW 35.21.710.

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

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

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

18 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
19 section.

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

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

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

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

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

13 Any city which imposes a license fee or tax upon the business
14 activity of engaging in the telephone business, as defined in RCW
15 (~~(82.04.065)~~) 82.16.010, which is measured by gross receipts or gross
16 income from the business shall impose the tax at a uniform rate on all
17 persons engaged in the telephone business in the city.

18 This section does not apply to the providing of competitive
19 telephone service as defined in RCW 82.04.065 or to the providing of
20 payphone service as defined in RCW 35.21.710.

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

23 (1) Any city which imposes a license fee or tax upon the business
24 activity of engaging in the telephone business which is measured by
25 gross receipts or gross income may impose the fee or tax, if it
26 desires, on one hundred percent of the total gross revenue derived from
27 intrastate toll telephone services subject to the fee or tax:
28 PROVIDED, That the city shall not impose the fee or tax on that portion
29 of network telephone service which represents charges to another
30 telecommunications company, as defined in RCW 80.04.010, for connecting
31 fees, switching charges, or carrier access charges relating to
32 intrastate toll telephone services, or for access to, or charges for,
33 interstate services, or charges for network telephone service that is
34 purchased for the purpose of resale, or charges for mobile
35 telecommunications services provided to customers whose place of
36 primary use is not within the city.

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

4 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
5 section.

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

8 Any city which imposes a license fee or tax upon the business
9 activity of engaging in the telephone business, as defined in RCW
10 (~~82.04.065~~) 82.16.010, which is measured by gross receipts or gross
11 income may impose the fee or tax, if it desires, on one hundred percent
12 of the total gross revenue derived from intrastate toll telephone
13 services subject to the fee or tax: PROVIDED, That the city shall not
14 impose the fee or tax on that portion of network telephone service, as
15 defined in RCW (~~82.04.065~~) 82.16.010, which represents charges to
16 another telecommunications company, as defined in RCW 80.04.010, for
17 connecting fees, switching charges, or carrier access charges relating
18 to intrastate toll telephone services, or for access to, or charges
19 for, interstate services, or charges for network telephone service that
20 is purchased for the purpose of resale.

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

23 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
24 imposes a tax upon business activities measured by gross receipts or
25 gross income from sales, may impose such tax on that portion of network
26 telephone service, as defined in RCW (~~82.04.065~~) 82.16.010, which
27 represents charges to another telecommunications company, as defined in
28 RCW 80.04.010, for connecting fees, switching charges, or carrier
29 access charges relating to intrastate toll services, or charges for
30 network telephone service that is purchased for the purpose of resale.
31 Such tax shall be levied at the same rate as is applicable to other
32 competitive telephone service as defined in RCW 82.04.065.

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

35 (1) No city or town may impose a franchise fee or any other fee or

1 charge of whatever nature or description upon the light and power, or
2 gas distribution businesses, as defined in RCW 82.16.010, or telephone
3 business, as defined in RCW ((82.04.065)) 82.16.010, or service
4 provider for use of the right of way, except:

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

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

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

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

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

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

21 (ii) The placement of replacement structures when the replacement
22 is necessary for the installation or attachment of wireless facilities,
23 and the overall height of the replacement structure and the wireless
24 facility is more than sixty feet; or

25 (iii) The placement of personal wireless facilities on structures
26 owned by the city or town located in the right of way. However, a
27 site-specific charge shall not apply to the placement of personal
28 wireless facilities on existing structures, unless the structure is
29 owned by the city or town.

30 A city or town is not required to approve the use permit for the
31 placement of a facility for personal wireless services that meets one
32 of the criteria in this subsection absent such an agreement. If the
33 parties are unable to agree on the amount of the charge, the service
34 provider may submit the amount of the charge to binding arbitration by
35 serving notice on the city or town. Within thirty days of receipt of
36 the initial notice, each party shall furnish a list of acceptable
37 arbitrators. The parties shall select an arbitrator; failing to agree
38 on an arbitrator, each party shall select one arbitrator and the two

1 arbitrators shall select a third arbitrator for an arbitration panel.
2 The arbitrator or arbitrators shall determine the charge based on
3 comparable siting agreements involving public land and rights of way.
4 The arbitrator or arbitrators shall not decide any other disputed
5 issues, including but not limited to size, location, and zoning
6 requirements. Costs of the arbitration, including compensation for the
7 arbitrator's services, must be borne equally by the parties
8 participating in the arbitration and each party shall bear its own
9 costs and expenses, including legal fees and witness expenses, in
10 connection with the arbitration proceeding.

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

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

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

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

25 (2) A telephone business, as defined in RCW (~~82.04.065~~)
26 82.16.010;

27 (3) Cable television services;

28 (4) Sewer or water services;

29 (5) Drainage services;

30 (6) Solid waste services; or

31 (7) Steam services.

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

34 For purposes of this chapter, a (~~telephone business~~)
35 telecommunications service provider other than a mobile
36 telecommunications service provider must calculate gross proceeds of

1 (~~retail~~) sales in a manner consistent with the sourcing rules
2 provided in RCW 82.32.520. The department may adopt rules to implement
3 this section, including rules that provide a formulary method of
4 determining gross proceeds that reasonably approximates the taxable
5 activity of a telephone business.

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

8 For the purposes of this chapter, unless otherwise required by the
9 context:

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

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

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

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

26 (5) "Light and power business" means the business of operating a
27 plant or system for the generation, production or distribution of
28 electrical energy for hire or sale and/or for the wheeling of
29 electricity for others.

30 (6) "Telegraph business" means the business of affording
31 telegraphic communication for hire.

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

35 (8) "Motor transportation business" means the business (except
36 urban transportation business) of operating any motor propelled vehicle
37 by which persons or property of others are conveyed for hire, and

1 includes, but is not limited to, the operation of any motor propelled
2 vehicle as an auto transportation company (except urban transportation
3 business), common carrier or contract carrier as defined by RCW
4 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
5 business" shall not mean or include the transportation of logs or other
6 forest products exclusively upon private roads or private highways.

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

21 (10)(a) "Public service business" means any of the businesses
22 defined in (~~subdivisions~~) subsections (1), (2), (3), (4), (5), (6),
23 (7), (8), and (9) of this section or any business subject to control by
24 the state, or having the powers of eminent domain and the duties
25 incident thereto, or any business hereafter declared by the legislature
26 to be of a public service nature, except telephone business (~~as~~
27 ~~defined in RCW 82.04.065~~) and low-level radioactive waste site
28 operating companies as redefined in RCW 81.04.010. It includes, among
29 others, without limiting the scope hereof: Airplane transportation,
30 boom, dock, ferry, pipe line, toll bridge, toll logging road, water
31 transportation and wharf businesses.

32 (b) The definitions in this subsection (10)(b) apply throughout
33 this subsection (10).

34 (i) "Competitive telephone service" has the same meaning as in RCW
35 82.04.065.

36 (ii) "Network telephone service" means the providing by any person
37 of access to a telephone network, telephone network switching service,
38 toll service, or coin telephone services, or the providing of

1 telephonic, video, data, or similar communication or transmission for
2 hire, via a telephone network, toll line or channel, cable, microwave,
3 or similar communication or transmission system. "Network telephone
4 service" includes the provision of transmission to and from the site of
5 an internet provider via a telephone network, toll line or channel,
6 cable, microwave, or similar communication or transmission system.
7 "Network telephone service" does not include the providing of
8 competitive telephone service, the providing of cable television
9 service, the providing of broadcast services by radio or television
10 stations, nor the provision of internet service as defined in RCW
11 82.04.297, including the reception of dial-in connection, provided at
12 the site of the internet service provider.

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

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

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

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

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

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

35 (1) The legislative authority of a county may impose a county
36 enhanced 911 excise tax on the use of switched access lines in an
37 amount not exceeding fifty cents per month for each switched access

1 line. The amount of tax shall be uniform for each switched access
2 line. Each county shall provide notice of such tax to all local
3 exchange companies serving in the county at least sixty days in advance
4 of the date on which the first payment is due.

5 (2) The legislative authority of a county may also impose a county
6 enhanced 911 excise tax on the use of radio access lines whose place of
7 primary use is located within the county in an amount not exceeding
8 fifty cents per month for each radio access line. The amount of tax
9 shall be uniform for each radio access line. (~~The location of a radio
10 access line is the customer's place of primary use as defined in RCW
11 82.04.065.~~) The county shall provide notice of such tax to all radio
12 communications service companies serving in the county at least sixty
13 days in advance of the date on which the first payment is due. Any
14 county imposing this tax shall include in its ordinance a refund
15 mechanism whereby the amount of any tax ordered to be refunded by the
16 judgment of a court of record, or as a result of the resolution of any
17 appeal therefrom, shall be refunded to the radio communications service
18 company or local exchange company that collected the tax, and those
19 companies shall reimburse the subscribers who paid the tax. The
20 ordinance shall further provide that to the extent the subscribers who
21 paid the tax cannot be identified or located, the tax paid by those
22 subscribers shall be returned to the county.

23 (3) A state enhanced 911 excise tax is imposed on all switched
24 access lines in the state. The amount of tax shall not exceed twenty
25 cents per month for each switched access line. The tax shall be
26 uniform for each switched access line. The tax imposed under this
27 subsection shall be remitted to the department of revenue by local
28 exchange companies on a tax return provided by the department. Tax
29 proceeds shall be deposited by the treasurer in the enhanced 911
30 account created in RCW 38.52.540.

31 (4) A state enhanced 911 excise tax is imposed on all radio access
32 lines whose place of primary use is located within the state in an
33 amount of twenty cents per month for each radio access line. The tax
34 shall be uniform for each radio access line. The tax imposed under
35 this section shall be remitted to the department of revenue by radio
36 communications service companies, including those companies that resell
37 radio access lines, on a tax return provided by the department. Tax

1 proceeds shall be deposited by the treasurer in the enhanced 911
2 account created in RCW 38.52.540. The tax imposed under this section
3 is not subject to the state sales and use tax or any local tax.

4 (5) By August 31st of each year the state enhanced 911 coordinator
5 shall recommend the level for the next year of the state enhanced 911
6 excise tax imposed by subsection (3) of this section, based on a
7 systematic cost and revenue analysis, to the utilities and
8 transportation commission. The commission shall by the following
9 October 31st determine the level of the state enhanced 911 excise tax
10 for the following year.

11 **PART XI**

12 **DURABLE MEDICAL EQUIPMENT**

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

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

16 (a) Prosthetic devices prescribed, fitted, or furnished for an
17 individual by a person licensed under the laws of this state to
18 prescribe, fit, or furnish prosthetic devices, and the components of
19 such prosthetic devices;

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

23 (c) Medically prescribed oxygen, including, but not limited to,
24 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
25 systems, and gaseous, bottled oxygen systems prescribed for an
26 individual by a person licensed under chapter 18.57 or 18.71 RCW for
27 use in the medical treatment of that individual.

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

32 (3) The exemption in subsection (1) of this section shall not apply
33 to sales of durable medical equipment, other than as specified in
34 subsection (1)(c) of this section, or mobility enhancing equipment.

35 (4) The definitions in this subsection apply throughout this
36 section.

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

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

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

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

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

9 (i) Can withstand repeated use;

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

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

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

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

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

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

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

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

24 **Sec. 1102.** RCW 82.12.0277 and 2004 c 153 s 109 are each amended to
25 read as follows:

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

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

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

35 (c) Medically prescribed oxygen, including, but not limited to,
36 oxygen concentrator systems, oxygen enricher systems, liquid oxygen

1 systems, and gaseous, bottled oxygen systems prescribed for an
2 individual by a person licensed under chapter 18.57 or 18.71 RCW for
3 use in the medical treatment of that individual.

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

8 (3) The exemption provided by subsection (1) of this section shall
9 not apply to the use of durable medical equipment, other than as
10 specified in subsection (1)(c) of this section, or mobility enhancing
11 equipment.

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

14 **Sec. 1103.** RCW 82.08.803 and 2004 c 153 s 104 are each amended to
15 read as follows:

16 (~~The tax levied by RCW 82.08.020 shall not apply to~~) (1) An
17 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
18 is provided for sales of nebulizers, including repair ~~((and))~~,
19 replacement, and component parts for such nebulizers, for human use
20 pursuant to a prescription. In addition, the tax levied by RCW
21 82.08.020 shall not apply to charges made for labor and services
22 rendered in respect to the repairing, cleaning, altering, or improving
23 of nebulizers. "Nebulizer" means a device, not a building fixture,
24 that converts a liquid medication into a mist so that it can be
25 inhaled.

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

29 **Sec. 1104.** RCW 82.12.803 and 2004 c 153 s 105 are each amended to
30 read as follows:

31 (1) The provisions of this chapter shall not apply in respect to
32 the use of nebulizers, including repair ~~((and))~~, replacement, and
33 component parts for such nebulizers, for human use pursuant to a
34 prescription. In addition, the provisions of this chapter shall not
35 apply in respect to labor and services rendered in respect to the

1 repairing, cleaning, altering, or improving of nebulizers. "Nebulizer"
2 has the same meaning as in RCW 82.08.803.

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

6 **PART XII**

7 **EXEMPTION ADMINISTRATION AND CREDIT PROVISIONS**

8 **Sec. 1201.** RCW 82.04.470 and 2003 c 168 s 204 are each amended to
9 read as follows:

10 (1) Unless a seller has taken from the buyer a resale certificate,
11 the burden of proving that a sale of tangible personal property, or of
12 services, was not a sale at retail shall be upon the person who made
13 it.

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

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

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

29 ~~((5))~~ (4) As used in this section, "resale certificate" means
30 documentation provided by a buyer to a seller stating that the purchase
31 is for resale in the regular course of business, or that the buyer is
32 exempt from retail sales tax, and containing the following information:

- 33 (a) The name and address of the buyer;
- 34 (b) The uniform business identifier or revenue registration number
35 of the buyer, if the buyer is required to be registered;
- 36 (c) The type of business engaged in;

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

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

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

9 (g) A statement that the buyer acknowledges that the buyer is
10 solely responsible for purchasing within the categories specified on
11 the certificate and that misuse of the resale or exemption privilege
12 claimed on the certificate subjects the buyer to a penalty of fifty
13 percent of the tax due, in addition to the tax, interest, and any other
14 penalties imposed by law;

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

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

18 (j) The name of the seller.

19 ~~((+6))~~ (5) Subsection ~~((+5))~~ (4)(h), (i), and (j) of this section
20 does not apply if the certificate is provided in a format other than
21 paper. If the certificate is provided in a format other than paper,
22 the name of the individual providing the certificate must be included
23 in the certificate.

24 **Sec. 1202.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and
25 2003 c 53 s 400 are each reenacted and amended to read as follows:

26 (1) The tax hereby imposed shall be paid by the buyer to the
27 seller, and each seller shall collect from the buyer the full amount of
28 the tax payable in respect to each taxable sale in accordance with the
29 schedule of collections adopted by the department pursuant to the
30 provisions of RCW 82.08.060.

31 (2) The tax required by this chapter, to be collected by the
32 seller, shall be deemed to be held in trust by the seller until paid to
33 the department, and any seller who appropriates or converts the tax
34 collected to his or her own use or to any use other than the payment of
35 the tax to the extent that the money required to be collected is not
36 available for payment on the due date as prescribed in this chapter is
37 guilty of a gross misdemeanor.

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

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

16 ~~((4))~~ (5) Sellers are not relieved from personal liability for
17 the amount of tax if they fraudulently fail to collect the tax or if
18 they solicit purchasers to participate in an unlawful claim of
19 exemption.

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

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

26 (b) Washington provides an exemption certificate that clearly and
27 affirmatively indicates that the claimed exemption is not available in
28 Washington. Graying out exemption reason types on a uniform form and
29 posting it on the department's web site is a clear and affirmative
30 indication that the grayed out exemptions are not available.

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

36 (8)(a) Sellers are relieved from personal liability for the amount
37 of tax if they obtain a fully completed exemption certificate or

1 capture the relevant data elements required under the streamlined sales
2 and use tax agreement within ninety days, or a longer period as may be
3 provided by rule by the department, subsequent to the date of sale.

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

12 (c) Sellers are relieved from personal liability for the amount of
13 tax if they obtain a blanket exemption certificate for a purchaser with
14 which the seller has a recurring business relationship. The department
15 may not request from a seller renewal of blanket certificates or
16 updates of exemption certificate information or data elements if there
17 is a recurring business relationship between the buyer and seller. For
18 purposes of this subsection (8)(c), a "recurring business relationship"
19 means at least one sale transaction within a period of twelve
20 consecutive months.

21 (9) The amount of tax, until paid by the buyer to the seller or to
22 the department, shall constitute a debt from the buyer to the seller
23 and any seller who fails or refuses to collect the tax as required with
24 intent to violate the provisions of this chapter or to gain some
25 advantage or benefit, either direct or indirect, and any buyer who
26 refuses to pay any tax due under this chapter is guilty of a
27 misdemeanor.

28 ~~((+5))~~ (10) The tax required by this chapter to be collected by
29 the seller shall be stated separately from the selling price in any
30 sales invoice or other instrument of sale. On all retail sales through
31 vending machines, the tax need not be stated separately from the
32 selling price or collected separately from the buyer. For purposes of
33 determining the tax due from the buyer to the seller and from the
34 seller to the department it shall be conclusively presumed that the
35 selling price quoted in any price list, sales document, contract or
36 other agreement between the parties does not include the tax imposed by
37 this chapter, but if the seller advertises the price as including the

1 tax or that the seller is paying the tax, the advertised price shall
2 not be considered the selling price.

3 ~~((+6+))~~ (11) Where a buyer has failed to pay to the seller the tax
4 imposed by this chapter and the seller has not paid the amount of the
5 tax to the department, the department may, in its discretion, proceed
6 directly against the buyer for collection of the tax, in which case a
7 penalty of ten percent may be added to the amount of the tax for
8 failure of the buyer to pay the same to the seller, regardless of when
9 the tax may be collected by the department; and all of the provisions
10 of chapter 82.32 RCW, including those relative to interest and
11 penalties, shall apply in addition; and, for the sole purpose of
12 applying the various provisions of chapter 82.32 RCW, the twenty-fifth
13 day of the month following the tax period in which the purchase was
14 made shall be considered as the due date of the tax.

15 ~~((+7+))~~ (12) Notwithstanding subsections (1) through ~~((+6+))~~ (11)
16 of this section, any person making sales is not obligated to collect
17 the tax imposed by this chapter if:

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

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

21 (ii) The taking of orders; or

22 (iii) The processing of payments; and

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

28 ~~((+8+))~~ (13) Subsection ~~((+7+))~~ (12) of this section expires when:

29 (a) The United States congress grants individual states the authority
30 to impose sales and use tax collection duties on remote sellers; or (b)
31 it is determined by a court of competent jurisdiction, in a judgment
32 not subject to review, that a state can impose sales and use tax
33 collection duties on remote sellers.

34 (14) For purposes of this section, "seller" includes a certified
35 service provider, as defined in RCW 82.32.020, acting as agent for the
36 seller.

1 reasonable rental for the use of the articles so rented or leased, the
2 "selling price" shall be determined as nearly as possible according to
3 the value of such use at the places of use of similar products of like
4 quality and character under such rules as the department may prescribe.

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 1302.** RCW 82.08.010 and 2006 c 301 s 2 are each amended to
33 read as follows:

34 For the purposes of this chapter:

35 (1)(a) "Selling price" includes "sales price." "Sales price" means
36 the total amount of consideration, except separately stated trade-in
37 property of like kind, including cash, credit, property, and services,

1 for which tangible personal property, extended warranties, or services
2 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
3 rented, valued in money, whether received in money or otherwise. No
4 deduction from the total amount of consideration is allowed for the
5 following: ~~((a))~~ (i) The seller's cost of the property sold; ~~((b))~~
6 (ii) the cost of materials used, labor or service cost, interest,
7 losses, all costs of transportation to the seller, all taxes imposed on
8 the seller, and any other expense of the seller; ~~((c))~~ (iii) charges
9 by the seller for any services necessary to complete the sale, other
10 than delivery and installation charges; ~~((d))~~ (iv) delivery charges;
11 ~~((e))~~ and (v) installation charges ~~((; and (f) the value of exempt~~
12 ~~tangible personal property given to the purchaser where taxable and~~
13 ~~exempt tangible personal property have been bundled together and sold~~
14 ~~by the seller as a single product or piece of merchandise)).~~

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

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

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

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

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

37 (iii) The amount of the consideration attributable to the sale is

1 fixed and determinable by the seller at the time of the sale of the
2 item to the purchaser: and

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

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

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

14 (C) The price reduction or discount is identified as a third party
15 price reduction or discount on the invoice received by the purchaser or
16 on a coupon, certificate, or other documentation presented by the
17 purchaser.

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

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

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

31 (b) For the purposes of (a) of this subsection, the terms "client,"
32 "covered employee," "professional employer agreement," and
33 "professional employer organization" have the same meanings as in RCW
34 82.04.540.

35 (3) "Buyer," "purchaser," and "consumer" include, without limiting
36 the scope hereof, every individual, receiver, assignee, trustee in
37 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
38 company, joint stock company, business trust, corporation, association,

1 society, or any group of individuals acting as a unit, whether mutual,
2 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
3 quasi municipal corporation, and also the state, its departments and
4 institutions and all political subdivisions thereof, irrespective of
5 the nature of the activities engaged in or functions performed, and
6 also the United States or any instrumentality thereof;

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

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

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

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

33 (8) "Extended warranty" has the same meaning as in RCW
34 82.04.050(7).

35 **PART XIV**
36 **BUNDLED TRANSACTIONS**

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

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

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

7 (i) The products are otherwise distinct and identifiable; and

8 (ii) The products are sold for one nonitemized price.

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

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

13 (a) Packaging such as containers, boxes, sacks, bags, and bottles,
14 or other materials such as wrapping, labels, tags, and instruction
15 guides, that accompany the retail sale of the products and are
16 incidental or immaterial to the retail sale thereof. Examples of
17 packaging that are incidental or immaterial include grocery sacks,
18 shoeboxes, dry cleaning garment bags, and express delivery envelopes
19 and boxes;

20 (b) A product provided free of charge with the required purchase of
21 another product. A product is provided free of charge if the sales
22 price of the product purchased does not vary depending on the inclusion
23 of the product provided free of charge; or

24 (c) Items included in the definition of sales price in RCW
25 82.08.010.

26 (3) "One nonitemized price" does not include a price that is
27 separately identified by product on binding sales or other supporting
28 sales-related documentation made available to the customer in paper or
29 electronic form including, but not limited to, an invoice, bill of
30 sale, receipt, contract, service agreement, lease agreement, periodic
31 notice of rates and services, rate card, or price list.

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

34 (a) The retail sale of tangible personal property and a service
35 where the tangible personal property is essential to the use of the
36 service, and is provided exclusively in connection with the service,
37 and the true object of the transaction is the service; or

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

5 (c) A transaction that includes taxable products and nontaxable
6 products and the purchase price or sales price of the taxable products
7 is de minimis;

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

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

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

16 (d) The retail sale of exempt tangible personal property and
17 taxable tangible personal property where:

18 (i) The transaction includes food and food ingredients, drugs,
19 durable medical equipment, mobility enhancing equipment, over-the-
20 counter drugs, prosthetic devices, all as defined in this chapter, or
21 medical supplies; and

22 (ii) Where the seller's purchase price or sales price of the
23 taxable tangible personal property is fifty percent or less of the
24 total purchase price or sales price of the bundled tangible personal
25 property. Sellers may not use a combination of the purchase price and
26 sales price of the tangible personal property when making the fifty
27 percent determination for a transaction.

28 NEW SECTION. Sec. 1402. A new section is added to chapter 82.08
29 RCW to read as follows:

30 (1) A bundled transaction is subject to the tax imposed by RCW
31 82.08.020 if the retail sale of any of its component products would be
32 subject to the tax imposed by RCW 82.08.020.

33 (2) The transactions described in section 1401(4) (a) and (b) of
34 this act are subject to the tax imposed by RCW 82.08.020 if the service
35 that is the true object of the transaction is subject to the tax
36 imposed by RCW 82.08.020. If the service that is the true object of

1 the transaction is not subject to the tax imposed by RCW 82.08.020, the
2 transaction is not subject to the tax imposed by RCW 82.08.020.

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

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

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

10 (a) If the price is attributable to products that are taxable and
11 products that are not taxable, the portion of the price attributable to
12 the nontaxable products are subject to the tax imposed by RCW 82.08.020
13 unless the seller can identify by reasonable and verifiable standards
14 the portion from its books and records that are kept in the regular
15 course of business for other purposes, including, but not limited to,
16 nontax purposes;

17 (b) If the price is attributable to products that are subject to
18 tax at different tax rates, the total price is attributable to the
19 products subject to the tax at the highest tax rate unless the seller
20 can identify by reasonable and verifiable standards the portion of the
21 price attributable to the products subject to the tax imposed by RCW
22 82.08.020 at the lower rate from its books and records that are kept in
23 the regular course of business for other purposes, including, but not
24 limited to, nontax purposes.

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

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

30 (2) The use of each product acquired in a transaction described in
31 section 1401(4) (a) or (b) of this act is subject to the tax imposed by
32 RCW 82.12.020 if the service that is the true object of the transaction
33 is subject to the tax imposed by RCW 82.12.020. If the service that is
34 the true object of the transaction is not subject to the tax imposed by
35 RCW 82.12.020, the use of each product acquired in the transaction is
36 not subject to the tax imposed by RCW 82.12.020.

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

4 (4) The use of each product in a transaction described in section
5 1401(4)(d) of this act is not subject to the tax imposed by RCW
6 82.12.020.

7 (5) The definitions in section 1401 of this act apply to this
8 section.

9 **PART XV**

10 **GEOGRAPHIC INFORMATION SYSTEM**

11 **Sec. 1501.** RCW 82.32.430 and 2003 c 168 s 207 are each amended to
12 read as follows:

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

19 (2) Except as provided in subsection (3) of this section, the
20 department shall notify sellers who collect and remit sales or use tax
21 to the department of changes in boundaries and rates to taxes imposed
22 ~~((by))~~ under the authority of chapter 82.14 RCW no later than sixty
23 days before the effective date of the change.

24 (3) The department shall notify sellers who collect and remit sales
25 or use tax to the department and make sales from printed catalogs of
26 changes, as to such sales, of boundaries and rates to taxes imposed
27 ~~((by))~~ under the authority of chapter 82.14 RCW no later than one
28 hundred twenty days before the effective date of the change.

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

35 (5)(a) Except as provided in (b) of this subsection, sellers
36 registered with the department under RCW 82.32.030(3) and certified

1 service providers must use the address-based geographic information
2 technology system developed and provided by the department to calculate
3 the tax to be collected and remitted to the department and to determine
4 the appropriate local jurisdictions entitled to the tax.

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

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

20 **Sec. 1502.** RCW 82.32.330 and 2006 c 177 s 7 are each amended to
21 read as follows:

22 (1) For purposes of this section:

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

25 (b) "Return" means a tax or information return or claim for refund
26 required by, or provided for or permitted under, the laws of this state
27 which is filed with the department of revenue by, on behalf of, or with
28 respect to a person, and any amendment or supplement thereto, including
29 supporting schedules, attachments, or lists that are supplemental to,
30 or part of, the return so filed;

31 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
32 nature, source, or amount of the taxpayer's income, payments, receipts,
33 deductions, exemptions, credits, assets, liabilities, net worth, tax
34 liability deficiencies, overassessments, or tax payments, whether taken
35 from the taxpayer's books and records or any other source, (iii)
36 whether the taxpayer's return was, is being, or will be examined or
37 subject to other investigation or processing, (iv) a part of a written

1 determination that is not designated as a precedent and disclosed
2 pursuant to RCW 82.32.410, or a background file document relating to a
3 written determination, and (v) other data received by, recorded by,
4 prepared by, furnished to, or collected by the department of revenue
5 with respect to the determination of the existence, or possible
6 existence, of liability, or the amount thereof, of a person under the
7 laws of this state for a tax, penalty, interest, fine, forfeiture, or
8 other imposition, or offense: PROVIDED, That data, material, or
9 documents that do not disclose information related to a specific or
10 identifiable taxpayer do not constitute tax information under this
11 section. Except as provided by RCW 82.32.410, nothing in this chapter
12 shall require any person possessing data, material, or documents made
13 confidential and privileged by this section to delete information from
14 such data, material, or documents so as to permit its disclosure;

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

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

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

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

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

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

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

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

35 (b) Disclosing, subject to such requirements and conditions as the
36 director shall prescribe by rules adopted pursuant to chapter 34.05
37 RCW, such return or tax information regarding a taxpayer to such
38 taxpayer or to such person or persons as that taxpayer may designate in

1 a request for, or consent to, such disclosure, or to any other person,
2 at the taxpayer's request, to the extent necessary to comply with a
3 request for information or assistance made by the taxpayer to such
4 other person: PROVIDED, That tax information not received from the
5 taxpayer shall not be so disclosed if the director determines that such
6 disclosure would compromise any investigation or litigation by any
7 federal, state, or local government agency in connection with the civil
8 or criminal liability of the taxpayer or another person, or that such
9 disclosure would identify a confidential informant, or that such
10 disclosure is contrary to any agreement entered into by the department
11 that provides for the reciprocal exchange of information with other
12 government agencies which agreement requires confidentiality with
13 respect to such information unless such information is required to be
14 disclosed to the taxpayer by the order of any court;

15 (c) Disclosing the name of a taxpayer with a deficiency greater
16 than five thousand dollars and against whom a warrant under RCW
17 82.32.210 has been either issued or filed and remains outstanding for
18 a period of at least ten working days. The department shall not be
19 required to disclose any information under this subsection if a
20 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
21 a warrant that has not been filed; and (iii) has entered a deferred
22 payment arrangement with the department of revenue and is making
23 payments upon such deficiency that will fully satisfy the indebtedness
24 within twelve months;

25 (d) 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 filed with a court of record and remains
28 outstanding;

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

31 (f) Disclosing such return or tax information, for official
32 purposes only, to the governor or attorney general, or to any state
33 agency, or to any committee or subcommittee of the legislature dealing
34 with matters of taxation, revenue, trade, commerce, the control of
35 industry or the professions;

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

1 (h) Disclosing any such return or tax information to a peace
2 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
3 official purposes. The disclosure may be made only in response to a
4 search warrant, subpoena, or other court order, unless the disclosure
5 is for the purpose of criminal tax enforcement. A peace officer or
6 county prosecuting attorney who receives the return or tax information
7 may disclose that return or tax information only for use in the
8 investigation and a related court proceeding, or in the court
9 proceeding for which the return or tax information originally was
10 sought;

11 (i) Disclosing any such return or tax information to the proper
12 officer of the internal revenue service of the United States, the
13 Canadian government or provincial governments of Canada, or to the
14 proper officer of the tax department of any state or city or town or
15 county, for official purposes, but only if the statutes of the United
16 States, Canada or its provincial governments, or of such other state or
17 city or town or county, as the case may be, grants substantially
18 similar privileges to the proper officers of this state;

19 (j) Disclosing any such return or tax information to the Department
20 of Justice, including the Bureau of Alcohol, Tobacco, Firearms and
21 Explosives within the Department of Justice, the Department of Defense,
22 the Immigration and Customs Enforcement and the Customs and Border
23 Protection agencies of the United States Department of Homeland
24 Security, the Coast Guard of the United States, and the United States
25 Department of Transportation, or any authorized representative thereof,
26 for official purposes;

27 (k) Publishing or otherwise disclosing the text of a written
28 determination designated by the director as a precedent pursuant to RCW
29 82.32.410;

30 (l) Disclosing, in a manner that is not associated with other tax
31 information, the taxpayer name, entity type, business address, mailing
32 address, revenue tax registration numbers, North American industry
33 classification system or standard industrial classification code of a
34 taxpayer, and the dates of opening and closing of business. This
35 subsection shall not be construed as giving authority to the department
36 to give, sell, or provide access to any list of taxpayers for any
37 commercial purpose;

1 (m) Disclosing such return or tax information that is also
2 maintained by another Washington state or local governmental agency as
3 a public record available for inspection and copying under the
4 provisions of chapter 42.56 RCW or is a document maintained by a court
5 of record not otherwise prohibited from disclosure;

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

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

13 (p) Disclosing to a person against whom the department has asserted
14 liability as a successor under RCW 82.32.140 return or tax information
15 pertaining to the specific business of the taxpayer to which the person
16 has succeeded;

17 (q) Disclosing such return or tax information in the possession of
18 the department relating to the administration or enforcement of the
19 real estate excise tax imposed under chapter 82.45 RCW, including
20 information regarding transactions exempt or otherwise not subject to
21 tax; ((~~or~~))

22 (r) Disclosing the least amount of return or tax information
23 necessary for the reports required in RCW 82.32.640 (4) and (5) when
24 the number of taxpayers included in the reports or any part of the
25 reports cannot be classified to prevent the identification of taxpayers
26 or particular returns, reports, tax information, or items in the
27 possession of the department; or

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

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

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

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

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

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

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

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

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

37 (e) Requesting information under (b) of this subsection that may

1 indicate that a taxpayer is under investigation does not constitute a
2 disclosure of tax return or tax information under this section.

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

14 **PART XVI**

15 **RELIEF FOR CERTAIN SELLERS IMPACTED BY THE CHANGE TO**
16 **DESTINATION SOURCING**

17 NEW SECTION. **Sec. 1601.** A new section is added to chapter 82.32
18 RCW to read as follows:

19 (1) Notwithstanding any other provision in this chapter, no
20 interest or penalties may be imposed on any taxpayer because of errors
21 in collecting or remitting the correct amount of local sales tax
22 arising out of changes in local sales and use tax sourcing rules
23 implemented under section 503 of this act and the chapter . . ., Laws
24 of 2007 (this act) amendments to RCW 82.14.020 if the taxpayer
25 establishes that:

26 (a) Immediately before the effective date of section 503 of this
27 act the taxpayer was registered with the department and engaged in
28 making sales of tangible personal property that the taxpayer delivered
29 to locations away from its place of business; and

30 (b) During the calendar year for which the error was made the
31 taxpayer:

32 (i) Has gross income of the business less than five hundred
33 thousand dollars;

34 (ii) Has at least five percent of its gross income from sales
35 subject to sales tax derived from sales of tangible personal property
36 delivered to physical locations away from its place of business; and

1 (iii) Has at least one percent of its gross income from sales
2 subject to sales tax derived from deliveries of tangible personal
3 property to destinations in local jurisdictions imposing sales tax
4 other than the one to which the taxpayer reported the most local sales
5 tax.

6 (2) The relief from penalty and interest provided by subsection (1)
7 of this section does not apply with respect to transactions occurring
8 more than four years after the close of the calendar year in which
9 section 503 of this act becomes effective.

10 NEW SECTION. **Sec. 1602.** A new section is added to chapter 82.32
11 RCW to read as follows:

12 (1) Eligible taxpayers may either:

13 (a) Use the services of a certified service provider at no cost to
14 themselves for tax reporting periods up to two years after the
15 effective date of section 503 of this act; or

16 (b) Claim a credit against the tax imposed under RCW 82.08.020(1)
17 collected and otherwise required to be remitted by the taxpayer as a
18 seller. The amount of the credit is equal to the amount of costs
19 incurred within one year of the effective date of section 503 of this
20 act in order to comply with changes in local sales and use tax sourcing
21 rules implemented under section 503 of this act and the chapter . . . ,
22 Laws of 2007 (this act) amendments to RCW 82.14.020.

23 (i) The total amount of credit claimed under this subsection (1)(b)
24 may not exceed one thousand dollars.

25 (ii) The credit may be claimed until it is used. No refunds may be
26 granted for the credit. The costs that may be used in the calculation
27 of the credit include goods and services purchased, and labor costs
28 incurred, for the purpose of complying with the local sales tax
29 sourcing rules.

30 (2) The use of a certified service provider under subsection (1)(a)
31 of this section must begin within one year of the effective date of
32 section 503 of this act.

33 (3) The credit under subsection (1)(b) of this section must first
34 be claimed within one year of the effective date of section 503 of this
35 act. This subsection does not affect the ability of a taxpayer to
36 claim unused credit after that time until it is used.

1 (4) For purposes of subsection (1) of this section, an "eligible
2 taxpayer" means a taxpayer that:

3 (a) Immediately before the effective date of section 503 of this
4 act was registered with the department and engaged in making sales of
5 tangible personal property that the taxpayer delivered to physical
6 locations away from its place of business; and

7 (b) During the calendar year in which section 503 of this act
8 becomes effective:

9 (i) Has a physical presence in Washington;

10 (ii) Has gross income of the business less than five hundred
11 thousand dollars;

12 (iii) Has at least five percent of its gross income from sales
13 subject to sales tax derived from sales of tangible personal property
14 delivered to physical locations away from its place of business; and

15 (iv) Has at least one percent of its gross income from sales
16 subject to sales tax derived from deliveries of tangible personal
17 property to destinations in local jurisdictions imposing sales tax
18 other than the one to which the taxpayer reported the most local sales
19 tax.

20 (5) Certified service providers agreeing to provide services to
21 eligible taxpayers under subsection (1)(a) of this section shall be
22 compensated for those services by retaining as a fee an amount equal to
23 a percentage of the state and local sales tax due to the department
24 according to the following calendar year schedule:

25 (a) 4.0 percent of the first five thousand dollars due per seller;

26 (b) 3.7 percent of the amount due between over five thousand
27 dollars and twenty thousand dollars per seller;

28 (c) 3.3 percent of the amount due between over twenty thousand
29 dollars and fifty thousand dollars per seller;

30 (d) 3.0 percent of the amount due between over fifty thousand
31 dollars and one hundred thousand dollars per seller;

32 (e) 2.7 percent of the amount due between over one hundred thousand
33 dollars and two hundred thousand dollars per seller;

34 (f) 2.3 percent of the amount due between over two hundred thousand
35 dollars and five hundred thousand dollars per seller; and

36 (g) 2.0 percent of the amount due over five hundred thousand
37 dollars.

1 (6) Taxpayers that use certified service provider services under
2 subsection (1)(a) of this section but are not eligible taxpayers are
3 immediately liable to the department for the amount retained by the
4 certified service provider as a fee for providing those services to the
5 taxpayer. All administrative provisions of this chapter applicable to
6 the collection of taxes apply to amounts due under this subsection. If
7 any amounts due under this subsection are not paid by the due date of
8 any notice informing the taxpayer of such liability, the department
9 shall apply interest, but not penalties, to amounts remaining due.
10 Interest assessed under this subsection shall be at the rate provided
11 for delinquent excise taxes under this chapter from the day after the
12 due date until the amount due under this subsection is paid in full.

13 (7) Taxpayers that claim a credit under subsection (1)(b) of this
14 section but are not eligible taxpayers are immediately liable to the
15 department for the amount of credit claimed. If any amounts due under
16 this subsection are not paid by the due date of any notice informing
17 the taxpayer of such liability, the department shall apply interest,
18 but not penalties, to amounts remaining due. Interest assessed under
19 this subsection shall be at the rate provided for delinquent excise
20 taxes under this chapter from the day after the due date until the
21 amount due under this subsection is paid in full.

22 (8) No application is necessary for either the use of certified
23 service providers under subsection (1)(a) of this section or the tax
24 credit under subsection (1)(b) of this section. The taxpayer must keep
25 records necessary for the department to determine eligibility under
26 this section. The department may prescribe rules and procedures
27 regarding the administration of this section.

28 **PART XVII**

29 **MISCELLANEOUS PROVISIONS**

30 **Sec. 1701.** 2004 c 153 s 502 (uncodified) is amended to read as
31 follows:

32 (1) If a court of competent jurisdiction enters a final judgment on
33 the merits that is based on federal or state law, is no longer subject
34 to appeal, and substantially limits or impairs the essential elements
35 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of

1 2002, then sections 1 through 6, 8 through 17, and 19, chapter 67, Laws
2 of 2002 (~~(is)~~) are null and void in (~~(its)~~) their entirety.

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

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

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

10 NEW SECTION. Sec. 1702. Part headings used in this act are not
11 any part of the law.

12 NEW SECTION. Sec. 1703. This act does not affect any existing
13 right acquired or liability or obligation incurred under the sections
14 amended or repealed in this act or under any rule or order adopted
15 under those sections, nor does it affect any proceeding instituted
16 under those sections.

17 NEW SECTION. Sec. 1704. Sections 101 through 105, 201, 202, 401,
18 501 through 503, 601, 701 through 703, 801, 802, 901 through 905, 1001,
19 1002, 1004, 1005, 1007 through 1013, 1015 through 1017, 1019 through
20 1024, 1101 through 1104, 1201 through 1203, 1302, 1401 through 1403,
21 1501, 1502, 1601, and 1602 of this act take effect July 1, 2008.

22 NEW SECTION. Sec. 1705. (1) Section 302 of this act takes effect
23 when:

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

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

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

1 NEW SECTION. **Sec. 1706.** Section 1301 of this act expires July 1,
2 2008.

3 NEW SECTION. **Sec. 1707.** Section 1003 of this act takes effect the
4 later of: The date chapter 67, Laws of 2002, becomes null and void; or
5 July 1, 2008.

6 NEW SECTION. **Sec. 1708.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

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