
HOUSE BILL 1380

State of Washington

60th Legislature

2007 Regular Session

By Representatives Hunter and McIntire; by request of Department of Revenue

Read first time 01/18/2007. Referred to Committee on Finance.

1 AN ACT Relating to the printing and publishing business and
2 occupation tax classification; amending RCW 82.04.250, 82.04.250,
3 82.04.270, 82.04.120, 82.04.240, 82.04.240, 82.04.460, 82.04.280,
4 82.04.280, 82.08.0253, 82.08.806, 82.08.820, 82.08.820, 82.12.020, and
5 35.102.150; amending 2006 c 300 s 12 (uncodified); reenacting and
6 amending RCW 82.04.050 and 34.05.328; adding new sections to chapter
7 82.04 RCW; repealing RCW 82.04.214; providing effective dates;
8 providing a contingent effective date; providing expiration dates; and
9 providing a contingent expiration date.

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

11 **Sec. 1.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101 are
12 each reenacted and amended to read as follows:

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

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

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

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

16 (d) Purchases for the purpose of consuming the property purchased
17 in producing ferrosilicon which is subsequently used in producing
18 magnesium for sale, if the primary purpose of such property is to
19 create a chemical reaction directly through contact with an ingredient
20 of ferrosilicon; (~~((+7+))~~) or

21 (e) Purchases for the purpose of providing the property to
22 consumers as part of competitive telephone service, as defined in RCW
23 82.04.065. The term shall include every sale of tangible personal
24 property which is used or consumed or to be used or consumed in the
25 performance of any activity classified as a "sale at retail" or "retail
26 sale" even though such property is resold or utilized as provided in
27 (a), (b), (c), (d), or (e) of this subsection following such use. The
28 term also means every sale of tangible personal property to persons
29 engaged in any business which is taxable under RCW 82.04.280 (~~((+2+))~~)
30 (1) and (~~((+7+))~~) (6), 82.04.290, and 82.04.2908; or

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

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

1 (a) The installing, repairing, cleaning, altering, imprinting, or
2 improving of tangible personal property of or for consumers, including
3 charges made for the mere use of facilities in respect thereto, but
4 excluding charges made for the use of self-service laundry facilities,
5 and also excluding sales of laundry service to nonprofit health care
6 facilities, and excluding services rendered in respect to live animals,
7 birds and insects;

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

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

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

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

1 (f) The sale of and charge made for the furnishing of lodging and
2 all other services by a hotel, rooming house, tourist court, motel,
3 trailer camp, and the granting of any similar license to use real
4 property, as distinguished from the renting or leasing of real
5 property, and it shall be presumed that the occupancy of real property
6 for a continuous period of one month or more constitutes a rental or
7 lease of real property and not a mere license to use or enjoy the same.
8 For the purposes of this subsection, it shall be presumed that the sale
9 of and charge made for the furnishing of lodging for a continuous
10 period of one month or more to a person is a rental or lease of real
11 property and not a mere license to enjoy the same;

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

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

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

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

31 (c) Credit bureau services;

32 (d) Automobile parking and storage garage services;

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

1 (f) Service charges associated with tickets to professional
2 sporting events; and

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

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

7 (i) The renting or leasing of tangible personal property to
8 consumers; and

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

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

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

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

25 (7) The term shall also include the sale of or charge made for an
26 extended warranty to a consumer. For purposes of this subsection,
27 "extended warranty" means an agreement for a specified duration to
28 perform the replacement or repair of tangible personal property at no
29 additional charge or a reduced charge for tangible personal property,
30 labor, or both, or to provide indemnification for the replacement or
31 repair of tangible personal property, based on the occurrence of
32 specified events. The term "extended warranty" does not include an
33 agreement, otherwise meeting the definition of extended warranty in
34 this subsection, if no separate charge is made for the agreement and
35 the value of the agreement is included in the sales price of the
36 tangible personal property covered by the agreement. For purposes of
37 this subsection, "sales price" has the same meaning as in RCW
38 82.08.010.

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

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

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

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

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

9 **Sec. 2.** RCW 82.04.250 and 2003 2nd sp.s. c 1 s 2 are each amended
10 to read as follows:

11 (1) Upon every person (~~((except persons taxable under RCW 82.04.260~~
12 ~~(5) or (13), 82.04.272, or subsection (2) of this section))~~) engaging
13 within this state in the business of making sales at retail, including
14 any person making sales at retail of tangible personal property that it
15 has printed or published, and except persons explicitly taxable under
16 other provisions of this chapter on the business of making sales at
17 retail, as to such persons, the amount of tax with respect to such
18 business shall be equal to the gross proceeds of sales of the business,
19 multiplied by the rate of 0.471 percent.

20 (2) Upon every person engaging within this state in the business of
21 making sales at retail that are exempt from the tax imposed under
22 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
23 82.08.0263, ~~except persons taxable under RCW 82.04.260((+13))~~ (11), as
24 to such persons, the amount of tax with respect to such business shall
25 be equal to the gross proceeds of sales of the business, multiplied by
26 the rate of 0.484 percent.

27 **Sec. 3.** RCW 82.04.250 and 2006 c 177 s 5 are each amended to read
28 as follows:

29 (1) Upon every person engaging within this state in the business of
30 making sales at retail, including any person making sales at retail of
31 tangible personal property that it has printed or published, and except
32 persons explicitly taxable (~~((as retailers))~~) under other provisions of
33 this chapter on the business of making sales at retail, as to such
34 persons, the amount of tax with respect to such business shall be equal
35 to the gross proceeds of sales of the business, multiplied by the rate
36 of 0.471 percent.

1 (2) Upon every person engaging within this state in the business of
2 making sales at retail that are exempt from the tax imposed under
3 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
4 82.08.0263, except persons taxable under RCW 82.04.260(11) or
5 subsection (3) of this section, as to such persons, the amount of tax
6 with respect to such business shall be equal to the gross proceeds of
7 sales of the business, multiplied by the rate of 0.484 percent.

8 (3) Upon every person engaging within this state in the business of
9 making sales at retail that are exempt from the tax imposed under
10 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
11 82.08.0263, that is classified by the federal aviation administration
12 as a FAR part 145 certificated repair station with airframe and
13 instrument ratings and limited ratings for nondestructive testing,
14 radio, Class 3 Accessory, and specialized services, as to such persons,
15 the amount of tax with respect to such business shall be equal to the
16 gross proceeds of sales of the business, multiplied by the rate of
17 .2904 percent.

18 **Sec. 4.** RCW 82.04.270 and 2004 c 24 s 5 are each amended to read
19 as follows:

20 Upon every person engaging within this state in the business of
21 making sales at wholesale, including any person making sales at
22 wholesale of tangible personal property that it has printed or
23 published, and except persons explicitly taxable (~~(as wholesalers)~~)
24 under other provisions of this chapter on the business of making sales
25 at wholesale; as to such persons the amount of tax with respect to such
26 business shall be equal to the gross proceeds of sales of such business
27 multiplied by the rate of 0.484 percent.

28 **Sec. 5.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to
29 read as follows:

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

1 restorations, substitutes, or other dental laboratory products by a
2 dental laboratory or dental technician; (3) cutting, delimiting, and
3 measuring of felled, cut, or taken trees; (~~and~~) (4) crushing and/or
4 blending of rock, sand, stone, gravel, or ore; and (5) printing.

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

17 **Sec. 6.** RCW 82.04.240 and 2004 c 24 s 4 are each amended to read
18 as follows:

19 Upon every person engaging within this state in business as a
20 manufacturer, including any person that manufactures by printing, and
21 except persons explicitly taxable ((as—manufacturers)) under other
22 provisions of this chapter on engaging in business as a manufacturer;
23 as to such persons the amount of the tax with respect to such business
24 shall be equal to the value of the products, including byproducts,
25 manufactured, multiplied by the rate of 0.484 percent.

26 The measure of the tax is the value of the products, including
27 byproducts, so manufactured regardless of the place of sale or the fact
28 that deliveries may be made to points outside the state.

29 **Sec. 7.** RCW 82.04.240 and 2003 c 149 s 3 are each amended to read
30 as follows:

31 (1) Upon every person engaging within this state in business as a
32 manufacturer, including any person that manufactures by printing, and
33 except persons explicitly taxable ((as—manufacturers)) under other
34 provisions of this chapter on engaging in business as a manufacturer;
35 as to such persons the amount of the tax with respect to such business

1 shall be equal to the value of the products, including byproducts,
2 manufactured, multiplied by the rate of 0.484 percent.

3 (2) Upon every person engaging within this state in the business of
4 manufacturing semiconductor materials, as to such persons the amount of
5 tax with respect to such business shall, in the case of manufacturers,
6 be equal to the value of the product manufactured, or, in the case of
7 processors for hire, be equal to the gross income of the business,
8 multiplied by the rate of 0.275 percent. For the purposes of this
9 subsection "semiconductor materials" means silicon crystals, silicon
10 ingots, raw polished semiconductor wafers, compound semiconductors,
11 integrated circuits, and microchips. This subsection (2) expires
12 twelve years after the effective date of (~~this act~~) chapter 149, Laws
13 of 2003.

14 (3) The measure of the tax is the value of the products, including
15 byproducts, so manufactured regardless of the place of sale or the fact
16 that deliveries may be made to points outside the state.

17 NEW SECTION. Sec. 8. A new section is added to chapter 82.04 RCW
18 to read as follows:

19 (1) Upon every person engaging within this state in the business of
20 publishing newspapers or periodicals; as to such persons, the amount of
21 tax with respect to such business shall be equal to the gross
22 publishing income multiplied by the rate of 0.484 percent.

23 (2) Eligible publishers are entitled to a credit against the tax
24 imposed under this section. The amount of the credit is equal to the
25 amount of manufacturing tax imposed on the person for manufacturing the
26 printed material in respect to which tax is imposed under this section
27 on the publishing of such material. The amount of the credit shall not
28 exceed the amount of tax otherwise due under this section with respect
29 to the publishing of the printed material.

30 (3)(a) As used in this section:

31 (i) "Eligible publisher" means any person: (A) Taxable under this
32 section on the activity of publishing a newspaper or periodical; (B)
33 that is also subject to a manufacturing tax on the activity of printing
34 such newspaper or periodical; and (C) that does not make retail or
35 wholesale sales of such newspaper or periodical.

36 (ii) "Gross publishing income" means the gross income derived from

1 publishing activities other than selling printed materials, and
2 includes items such as advertising.

3 (iii) "Manufacturing tax" means a gross receipts tax imposed on the
4 act or privilege of engaging in business as a manufacturer, including
5 the tax imposed under RCW 82.04.240 and similar gross receipts taxes
6 imposed by other states.

7 (iv) "Newspaper" includes only a printed publication issued
8 regularly at stated intervals at least twice a month and printed on
9 newsprint in tabloid or broadsheet format folded loosely together
10 without stapling, glue, or any other binding of any kind, including any
11 supplement or special edition of the publication.

12 (v) "Periodical" includes only a printed publication, including a
13 magazine, issued regularly at stated intervals at least once every
14 three months, including any supplement or special edition of the
15 publication. "Periodical" does not include a newspaper.

16 (vi) "Supplement" means a printed publication distributed within
17 the circulation area of the publication to which it supplements, either
18 with or apart from such publication. To qualify as a supplement, a
19 publication distributed apart from the publication to which it
20 supplements must be clearly and consistently identified as a supplement
21 of such other publication.

22 (b) "Periodical" and "newspaper" do not include advertising
23 publications or materials. For purposes of this subsection (3)(b),
24 "advertising publications or materials" includes telephone or other
25 directories; catalogs; advertising leaflets, fliers, or circulars; real
26 estate guides; coupons; order forms; classified ad publications; and
27 similar publications or materials. "Advertising publications or
28 materials" does not include supplements.

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.04 RCW
30 to read as follows:

31 Gross income derived from publishing, distributing, or displaying
32 advertising publications or materials excluded from the definitions of
33 "newspaper" and "periodical" in section 8(3)(b) of this act, other than
34 income from the sale of tangible personal property, and including
35 income from the sale of advertising, is taxable under RCW 82.04.290(2).

1 **Sec. 10.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read
2 as follows:

3 (1) Except as otherwise provided in this section, any person
4 ((rendering services)) engaging in business activities in this state
5 taxable under RCW 82.04.290 or 82.04.2908, and ((maintaining places of
6 business both within and without this state which contribute to the
7 rendition of such services)) engaging in business activities outside
8 this state that contribute more than incidentally to such in-state
9 activities, shall, for the purpose of computing tax liability under RCW
10 82.04.290 or 82.04.2908, apportion to this state that portion of the
11 person's gross income ((which is)) derived from ((services rendered))
12 business activities performed within this state. Where such
13 apportionment cannot be accurately made by separate accounting methods,
14 the taxpayer shall apportion to this state that proportion of the
15 taxpayer's total income which the cost of doing business within the
16 state bears to the total cost of doing business both within and without
17 the state.

18 (2) ((Notwithstanding the provision of subsection (1) of this
19 section,)) Persons doing business both within and without the state who
20 receive gross income from service charges, as defined in RCW 63.14.010
21 (relating to amounts charged for granting the right or privilege to
22 make deferred or installment payments) or who receive gross income from
23 engaging in business as financial institutions within the scope of
24 chapter 82.14A RCW (relating to city taxes on financial institutions)
25 shall apportion or allocate gross income taxable under RCW 82.04.290 to
26 this state pursuant to rules promulgated by the department consistent
27 with uniform rules for apportionment or allocation developed by the
28 states.

29 (3) The department shall by rule provide a method or methods of
30 apportioning or allocating gross income derived from sales of telephone
31 services taxed under this chapter, if the gross proceeds of sales
32 subject to tax under this chapter do not fairly represent the extent of
33 the taxpayer's income attributable to this state. The rules shall be,
34 so far as feasible, consistent with the methods of apportionment
35 contained in this section and shall require the consideration of those
36 facts, circumstances, and apportionment factors as will result in an
37 equitable and constitutionally permissible division of the services.

1 (4) Persons doing business both within and without the state who
2 receive gross publishing income taxable under section 8 of this act
3 shall apportion or allocate income taxable under section 8 of this act
4 to this state as provided by the department by rule. In adopting any
5 rule for the apportionment of gross publishing income, the department
6 shall be guided by uniform rules for apportionment or allocation
7 developed by the states. The department shall also give due
8 consideration to the complexity of the apportionment or allocation
9 methods, and in particular, their effect on small businesses.

10 (5) Activities performed outside the state contribute more than
11 incidentally to in-state activities only to the extent that such
12 out-of-state activities would subject the taxpayer to the tax in this
13 chapter if performed in this state.

14 **Sec. 11.** RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are
15 each reenacted and amended to read as follows:

16 (1) Before adopting a rule described in subsection (5) of this
17 section, an agency shall:

18 (a) Clearly state in detail the general goals and specific
19 objectives of the statute that the rule implements;

20 (b) Determine that the rule is needed to achieve the general goals
21 and specific objectives stated under (a) of this subsection, and
22 analyze alternatives to rule making and the consequences of not
23 adopting the rule;

24 (c) Provide notification in the notice of proposed rule making
25 under RCW 34.05.320 that a preliminary cost-benefit analysis is
26 available. The preliminary cost-benefit analysis must fulfill the
27 requirements of the cost-benefit analysis under (d) of this subsection.
28 If the agency files a supplemental notice under RCW 34.05.340, the
29 supplemental notice shall include notification that a revised
30 preliminary cost-benefit analysis is available. A final cost-benefit
31 analysis shall be available when the rule is adopted under RCW
32 34.05.360;

33 (d) Determine that the probable benefits of the rule are greater
34 than its probable costs, taking into account both the qualitative and
35 quantitative benefits and costs and the specific directives of the
36 statute being implemented;

1 (e) Determine, after considering alternative versions of the rule
2 and the analysis required under (b), (c), and (d) of this subsection,
3 that the rule being adopted is the least burdensome alternative for
4 those required to comply with it that will achieve the general goals
5 and specific objectives stated under (a) of this subsection;

6 (f) Determine that the rule does not require those to whom it
7 applies to take an action that violates requirements of another federal
8 or state law;

9 (g) Determine that the rule does not impose more stringent
10 performance requirements on private entities than on public entities
11 unless required to do so by federal or state law;

12 (h) Determine if the rule differs from any federal regulation or
13 statute applicable to the same activity or subject matter and, if so,
14 determine that the difference is justified by the following:

15 (i) A state statute that explicitly allows the agency to differ
16 from federal standards; or

17 (ii) Substantial evidence that the difference is necessary to
18 achieve the general goals and specific objectives stated under (a) of
19 this subsection; and

20 (i) Coordinate the rule, to the maximum extent practicable, with
21 other federal, state, and local laws applicable to the same activity or
22 subject matter.

23 (2) In making its determinations pursuant to subsection (1)(b)
24 through (h) of this section, the agency shall place in the rule-making
25 file documentation of sufficient quantity and quality so as to persuade
26 a reasonable person that the determinations are justified.

27 (3) Before adopting rules described in subsection (5) of this
28 section, an agency shall place in the rule-making file a rule
29 implementation plan for rules filed under each adopting order. The
30 plan shall describe how the agency intends to:

31 (a) Implement and enforce the rule, including a description of the
32 resources the agency intends to use;

33 (b) Inform and educate affected persons about the rule;

34 (c) Promote and assist voluntary compliance; and

35 (d) Evaluate whether the rule achieves the purpose for which it was
36 adopted, including, to the maximum extent practicable, the use of
37 interim milestones to assess progress and the use of objectively
38 measurable outcomes.

1 (4) After adopting a rule described in subsection (5) of this
2 section regulating the same activity or subject matter as another
3 provision of federal or state law, an agency shall do all of the
4 following:

5 (a) Provide to the business assistance center a list citing by
6 reference the other federal and state laws that regulate the same
7 activity or subject matter;

8 (b) Coordinate implementation and enforcement of the rule with the
9 other federal and state entities regulating the same activity or
10 subject matter by making every effort to do one or more of the
11 following:

12 (i) Deferring to the other entity;

13 (ii) Designating a lead agency; or

14 (iii) Entering into an agreement with the other entities specifying
15 how the agency and entities will coordinate implementation and
16 enforcement.

17 If the agency is unable to comply with this subsection (4)(b), the
18 agency shall report to the legislature pursuant to (c) of this
19 subsection;

20 (c) Report to the joint administrative rules review committee:

21 (i) The existence of any overlap or duplication of other federal or
22 state laws, any differences from federal law, and any known overlap,
23 duplication, or conflict with local laws; and

24 (ii) Make recommendations for any legislation that may be necessary
25 to eliminate or mitigate any adverse effects of such overlap,
26 duplication, or difference.

27 (5)(a) Except as provided in (b) of this subsection, this section
28 applies to:

29 (i) Significant legislative rules of the departments of ecology,
30 labor and industries, health, revenue, social and health services, and
31 natural resources, the employment security department, the forest
32 practices board, the office of the insurance commissioner, and to the
33 legislative rules of the department of fish and wildlife implementing
34 chapter 77.55 RCW; and

35 (ii) Any rule of any agency, if this section is voluntarily made
36 applicable to the rule by the agency, or is made applicable to the rule
37 by a majority vote of the joint administrative rules review committee

1 within forty-five days of receiving the notice of proposed rule making
2 under RCW 34.05.320.

3 (b) This section does not apply to:

4 (i) Emergency rules adopted under RCW 34.05.350;

5 (ii) Rules relating only to internal governmental operations that
6 are not subject to violation by a nongovernment party;

7 (iii) Rules adopting or incorporating by reference without material
8 change federal statutes or regulations, Washington state statutes,
9 rules of other Washington state agencies, shoreline master programs
10 other than those programs governing shorelines of statewide
11 significance, or, as referenced by Washington state law, national
12 consensus codes that generally establish industry standards, if the
13 material adopted or incorporated regulates the same subject matter and
14 conduct as the adopting or incorporating rule;

15 (iv) Rules that only correct typographical errors, make address or
16 name changes, or clarify language of a rule without changing its
17 effect;

18 (v) Rules the content of which is explicitly and specifically
19 dictated by statute;

20 (vi) Rules that set or adjust fees or rates pursuant to legislative
21 standards; (~~(e)~~)

22 (vii) Rules of the department of social and health services
23 relating only to client medical or financial eligibility and rules
24 concerning liability for care of dependents; or

25 (viii) Rules of the department of revenue relating only to the
26 apportionment of gross publishing income as provided in RCW
27 82.04.460(4).

28 (c) For purposes of this subsection:

29 (i) A "procedural rule" is a rule that adopts, amends, or repeals
30 (A) any procedure, practice, or requirement relating to any agency
31 hearings; (B) any filing or related process requirement for making
32 application to an agency for a license or permit; or (C) any policy
33 statement pertaining to the consistent internal operations of an
34 agency.

35 (ii) An "interpretive rule" is a rule, the violation of which does
36 not subject a person to a penalty or sanction, that sets forth the
37 agency's interpretation of statutory provisions it administers.

1 (iii) A "significant legislative rule" is a rule other than a
2 procedural or interpretive rule that (A) adopts substantive provisions
3 of law pursuant to delegated legislative authority, the violation of
4 which subjects a violator of such rule to a penalty or sanction; (B)
5 establishes, alters, or revokes any qualification or standard for the
6 issuance, suspension, or revocation of a license or permit; or (C)
7 adopts a new, or makes significant amendments to, a policy or
8 regulatory program.

9 (d) In the notice of proposed rule making under RCW 34.05.320, an
10 agency shall state whether this section applies to the proposed rule
11 pursuant to (a)(i) of this subsection, or if the agency will apply this
12 section voluntarily.

13 (6) By January 31, 1996, and by January 31st of each even-numbered
14 year thereafter, the office of financial management, after consulting
15 with state agencies, counties, and cities, and business, labor, and
16 environmental organizations, shall report to the governor and the
17 legislature regarding the effects of this section on the regulatory
18 system in this state. The report shall document:

19 (a) The rules proposed to which this section applied and to the
20 extent possible, how compliance with this section affected the
21 substance of the rule, if any, that the agency ultimately adopted;

22 (b) The costs incurred by state agencies in complying with this
23 section;

24 (c) Any legal action maintained based upon the alleged failure of
25 any agency to comply with this section, the costs to the state of such
26 action, and the result;

27 (d) The extent to which this section has adversely affected the
28 capacity of agencies to fulfill their legislatively prescribed mission;

29 (e) The extent to which this section has improved the acceptability
30 of state rules to those regulated; and

31 (f) Any other information considered by the office of financial
32 management to be useful in evaluating the effect of this section.

33 **Sec. 12.** RCW 82.04.280 and 2006 c 300 s 6 are each amended to read
34 as follows:

35 Upon every person engaging within this state in the business of:

36 (1) (~~Printing, and of publishing newspapers, periodicals, or~~
37 ~~magazines; (2))~~ Building, repairing or improving any street, place,

1 road, highway, easement, right of way, mass public transportation
2 terminal or parking facility, bridge, tunnel, or trestle which is owned
3 by a municipal corporation or political subdivision of the state or by
4 the United States and which is used or to be used, primarily for foot
5 or vehicular traffic including mass transportation vehicles of any kind
6 and including any readjustment, reconstruction or relocation of the
7 facilities of any public, private or cooperatively owned utility or
8 railroad in the course of such building, repairing or improving, the
9 cost of which readjustment, reconstruction, or relocation, is the
10 responsibility of the public authority whose street, place, road,
11 highway, easement, right of way, mass public transportation terminal or
12 parking facility, bridge, tunnel, or trestle is being built, repaired
13 or improved; (~~(3)~~) (2) extracting for hire or processing for hire,
14 except persons taxable as extractors for hire or processors for hire
15 under another section of this chapter; (~~(4)~~) (3) operating a cold
16 storage warehouse or storage warehouse, but not including the rental of
17 cold storage lockers; (~~(5)~~) (4) representing and performing services
18 for fire or casualty insurance companies as an independent resident
19 managing general agent licensed under the provisions of RCW 48.05.310;
20 (~~(6)~~) (5) radio and television broadcasting, excluding network,
21 national and regional advertising computed as a standard deduction
22 based on the national average thereof as annually reported by the
23 Federal Communications Commission, or in lieu thereof by itemization by
24 the individual broadcasting station, and excluding that portion of
25 revenue represented by the out-of-state audience computed as a ratio to
26 the station's total audience as measured by the 100 micro-volt signal
27 strength and delivery by wire, if any; (~~(7)~~) (6) engaging in
28 activities which bring a person within the definition of consumer
29 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
30 such business shall be equal to the gross income of the business
31 multiplied by the rate of 0.484 percent.

32 As used in this section, "cold storage warehouse" means a storage
33 warehouse used to store fresh and/or frozen perishable fruits or
34 vegetables, meat, seafood, dairy products, or fowl, or any combination
35 thereof, at a desired temperature to maintain the quality of the
36 product for orderly marketing.

37 As used in this section, "storage warehouse" means a building or
38 structure, or any part thereof, in which goods, wares, or merchandise

1 are received for storage for compensation, except field warehouses,
2 fruit warehouses, fruit packing plants, warehouses licensed under
3 chapter 22.09 RCW, public garages storing automobiles, railroad freight
4 sheds, docks and wharves, and "self-storage" or "mini storage"
5 facilities whereby customers have direct access to individual storage
6 areas by separate entrance. "Storage warehouse" does not include a
7 building or structure, or that part of such building or structure, in
8 which an activity taxable under RCW 82.04.272 is conducted.

9 ~~((As used in this section, "periodical or magazine" means a printed
10 publication, other than a newspaper, issued regularly at stated
11 intervals at least once every three months, including any supplement or
12 special edition of the publication.))~~

13 **Sec. 13.** RCW 82.04.280 and 2006 c 300 s 7 are each amended to read
14 as follows:

15 Upon every person engaging within this state in the business of:

- 16 ~~(1) ((Printing, and of publishing newspapers, periodicals, or
17 magazines; (2)))~~ Building, repairing or improving any street, place,
18 road, highway, easement, right of way, mass public transportation
19 terminal or parking facility, bridge, tunnel, or trestle which is owned
20 by a municipal corporation or political subdivision of the state or by
21 the United States and which is used or to be used, primarily for foot
22 or vehicular traffic including mass transportation vehicles of any kind
23 and including any readjustment, reconstruction or relocation of the
24 facilities of any public, private or cooperatively owned utility or
25 railroad in the course of such building, repairing or improving, the
26 cost of which readjustment, reconstruction, or relocation, is the
27 responsibility of the public authority whose street, place, road,
28 highway, easement, right of way, mass public transportation terminal or
29 parking facility, bridge, tunnel, or trestle is being built, repaired
30 or improved; ~~((+3))~~ (2) extracting for hire or processing for hire,
31 except persons taxable as extractors for hire or processors for hire
32 under another section of this chapter; ~~((+4))~~ (3) operating a cold
33 storage warehouse or storage warehouse, but not including the rental of
34 cold storage lockers; ~~((+5))~~ (4) representing and performing services
35 for fire or casualty insurance companies as an independent resident
36 managing general agent licensed under the provisions of RCW 48.05.310;
37 ~~((+6))~~ (5) radio and television broadcasting, excluding network,

1 national and regional advertising computed as a standard deduction
2 based on the national average thereof as annually reported by the
3 Federal Communications Commission, or in lieu thereof by itemization by
4 the individual broadcasting station, and excluding that portion of
5 revenue represented by the out-of-state audience computed as a ratio to
6 the station's total audience as measured by the 100 micro-volt signal
7 strength and delivery by wire, if any; ~~((+7))~~ (6) engaging in
8 activities which bring a person within the definition of consumer
9 contained in RCW 82.04.190(6); as to such persons, the amount of tax on
10 such business shall be equal to the gross income of the business
11 multiplied by the rate of 0.484 percent.

12 As used in this section, "cold storage warehouse" means a storage
13 warehouse used to store fresh and/or frozen perishable fruits or
14 vegetables, meat, seafood, dairy products, or fowl, or any combination
15 thereof, at a desired temperature to maintain the quality of the
16 product for orderly marketing.

17 As used in this section, "storage warehouse" means a building or
18 structure, or any part thereof, in which goods, wares, or merchandise
19 are received for storage for compensation, except field warehouses,
20 fruit warehouses, fruit packing plants, warehouses licensed under
21 chapter 22.09 RCW, public garages storing automobiles, railroad freight
22 sheds, docks and wharves, and "self-storage" or "mini storage"
23 facilities whereby customers have direct access to individual storage
24 areas by separate entrance. "Storage warehouse" does not include a
25 building or structure, or that part of such building or structure, in
26 which an activity taxable under RCW 82.04.272 is conducted.

27 ~~((As used in this section, "periodical or magazine" means a printed
28 publication, other than a newspaper, issued regularly at stated
29 intervals at least once every three months, including any supplement or
30 special edition of the publication.))~~

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

33 The tax levied by RCW 82.08.020 shall not apply to the distribution
34 and newsstand sale of newspapers. For the purposes of this section,
35 "newspaper" has the same meaning as in section 8 of this act.

1 **Sec. 15.** RCW 82.08.806 and 2004 c 8 s 2 are each amended to read
2 as follows:

3 (1) The tax levied by RCW 82.08.020 shall not apply to sales, to a
4 printer or publisher, of computer equipment, including repair parts and
5 replacement parts for such equipment, when the computer equipment is
6 used primarily in the printing or publishing of any printed material,
7 or to sales of or charges made for labor and services rendered in
8 respect to installing, repairing, cleaning, altering, or improving the
9 computer equipment. This exemption applies only to computer equipment
10 not otherwise exempt under RCW 82.08.02565.

11 (2) A person taking the exemption under this section must keep
12 records necessary for the department to verify eligibility under this
13 section. This exemption is available only when the purchaser provides
14 the seller with an exemption certificate in a form and manner
15 prescribed by the department. The seller shall retain a copy of the
16 certificate for the seller's files.

17 (3) The definitions in this subsection (3) apply throughout this
18 section, unless the context clearly requires otherwise.

19 (a) "Computer" has the same meaning as in RCW 82.04.215.

20 (b) "Computer equipment" means a computer and the associated
21 physical components that constitute a computer system, including
22 monitors, keyboards, printers, modems, scanners, pointing devices, and
23 other computer peripheral equipment, cables, servers, and routers.
24 "Computer equipment" also includes digital cameras and computer
25 software.

26 (c) "Computer software" has the same meaning as in RCW 82.04.215.

27 (d) "Primarily" means greater than fifty percent as measured by
28 time.

29 (e) "Printer or publisher" means a person, as defined in RCW
30 82.04.030, who is subject to tax under: (i) RCW ((82.04.280(1)))
31 82.04.240 on the activity of manufacturing by printing; or (ii) section
32 8 of this act on the activity of publishing a newspaper or periodical
33 as those terms are defined in that section.

34 (4) "Computer equipment" does not include computer equipment that
35 is used primarily for administrative purposes including but not limited
36 to payroll processing, accounting, customer service, telemarketing, and
37 collection. If computer equipment is used simultaneously for
38 administrative and nonadministrative purposes, the administrative use

1 shall be disregarded during the period of simultaneous use for purposes
2 of determining whether the computer equipment is used primarily for
3 administrative purposes.

4 **Sec. 16.** RCW 82.08.820 and 2006 c 354 s 11 are each amended to
5 read as follows:

6 (1) Wholesalers or third-party warehouse owners who own or operate
7 warehouses or grain elevators and retailers who own or operate
8 distribution centers, and who have paid the tax levied by RCW 82.08.020
9 on:

10 (a) Material-handling and racking equipment, and labor and services
11 rendered in respect to installing, repairing, cleaning, altering, or
12 improving the equipment; or

13 (b) Construction of a warehouse or grain elevator, including
14 materials, and including service and labor costs,
15 are eligible for an exemption in the form of a remittance. The amount
16 of the remittance is computed under subsection (3) of this section and
17 is based on the state share of sales tax.

18 (2) For purposes of this section and RCW 82.12.820:

19 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

20 (b) "Cold storage warehouse" has the meaning provided in RCW
21 82.74.010;

22 (c) "Construction" means the actual construction of a warehouse or
23 grain elevator that did not exist before the construction began.
24 "Construction" includes expansion if the expansion adds at least
25 twenty-five thousand square feet of additional space to an existing
26 cold storage warehouse, at least two hundred thousand square feet of
27 additional space to an existing warehouse other than a cold storage
28 warehouse, or additional storage capacity of at least one million
29 bushels to an existing grain elevator. "Construction" does not include
30 renovation, remodeling, or repair;

31 (d) "Department" means the department of revenue;

32 (e) "Distribution center" means a warehouse that is used
33 exclusively by a retailer solely for the storage and distribution of
34 finished goods to retail outlets of the retailer. "Distribution
35 center" does not include a warehouse at which retail sales occur;

36 (f) "Finished goods" means tangible personal property intended for
37 sale by a retailer or wholesaler. "Finished goods" does not include

1 agricultural products stored by wholesalers, third-party warehouses, or
2 retailers if the storage takes place on the land of the person who
3 produced the agricultural product. "Finished goods" does not include
4 logs, minerals, petroleum, gas, or other extracted products stored as
5 raw materials or in bulk;

6 (g) "Grain elevator" means a structure used for storage and
7 handling of grain in bulk;

8 (h) "Material-handling equipment and racking equipment" means
9 equipment in a warehouse or grain elevator that is primarily used to
10 handle, store, organize, convey, package, or repackage finished goods.
11 The term includes tangible personal property with a useful life of one
12 year or more that becomes an ingredient or component of the equipment,
13 including repair and replacement parts. The term does not include
14 equipment in offices, lunchrooms, restrooms, and other like space,
15 within a warehouse or grain elevator, or equipment used for
16 nonwarehousing purposes. "Material-handling equipment" includes but is
17 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
18 place units, cranes, hoists, mechanical arms, and robots; mechanized
19 systems, including containers that are an integral part of the system,
20 whose purpose is to lift or move tangible personal property; and
21 automated handling, storage, and retrieval systems, including computers
22 that control them, whose purpose is to lift or move tangible personal
23 property; and forklifts and other off-the-road vehicles that are used
24 to lift or move tangible personal property and that cannot be operated
25 legally on roads and streets. "Racking equipment" includes, but is not
26 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
27 pallets, and other containers and storage devices that form a necessary
28 part of the storage system;

29 (i) "Person" has the meaning given in RCW 82.04.030;

30 (j) "Retailer" means a person who makes "sales at retail" as
31 defined in chapter 82.04 RCW of tangible personal property;

32 (k) "Square footage" means the product of the two horizontal
33 dimensions of each floor of a specific warehouse. The entire footprint
34 of the warehouse shall be measured in calculating the square footage,
35 including space that juts out from the building profile such as loading
36 docks. "Square footage" does not mean the aggregate of the square
37 footage of more than one warehouse at a location or the aggregate of
38 the square footage of warehouses at more than one location;

1 (l) "Third-party warehouser" means a person taxable under RCW
2 82.04.280(~~(+4)~~) (3);

3 (m) "Warehouse" means an enclosed building or structure in which
4 finished goods are stored. A warehouse building or structure may have
5 more than one storage room and more than one floor. Office space,
6 lunchrooms, restrooms, and other space within the warehouse and
7 necessary for the operation of the warehouse are considered part of the
8 warehouse as are loading docks and other such space attached to the
9 building and used for handling of finished goods. Landscaping and
10 parking lots are not considered part of the warehouse. A storage yard
11 is not a warehouse, nor is a building in which manufacturing takes
12 place; and

13 (n) "Wholesaler" means a person who makes "sales at wholesale" as
14 defined in chapter 82.04 RCW of tangible personal property, but
15 "wholesaler" does not include a person who makes sales exempt under RCW
16 82.04.330.

17 (3)(a) A person claiming an exemption from state tax in the form of
18 a remittance under this section must pay the tax imposed by RCW
19 82.08.020. The buyer may then apply to the department for remittance
20 of all or part of the tax paid under RCW 82.08.020. For grain
21 elevators with bushel capacity of one million but less than two
22 million, the remittance is equal to fifty percent of the amount of tax
23 paid. For warehouses with square footage of two hundred thousand or
24 more, other than cold storage warehouses, and for grain elevators with
25 bushel capacity of two million or more, the remittance is equal to one
26 hundred percent of the amount of tax paid for qualifying construction,
27 materials, service, and labor, and fifty percent of the amount of tax
28 paid for qualifying material-handling equipment and racking equipment,
29 and labor and services rendered in respect to installing, repairing,
30 cleaning, altering, or improving the equipment. For cold storage
31 warehouses with square footage of twenty-five thousand or more, the
32 remittance is equal to one hundred percent of the amount of tax paid
33 for qualifying construction, materials, service, and labor, and one
34 hundred percent of the amount of tax paid for qualifying material-
35 handling equipment and racking equipment, and labor and services
36 rendered in respect to installing, repairing, cleaning, altering, or
37 improving the equipment.

1 (b) The department shall determine eligibility under this section
2 based on information provided by the buyer and through audit and other
3 administrative records. The buyer shall on a quarterly basis submit an
4 information sheet, in a form and manner as required by the department
5 by rule, specifying the amount of exempted tax claimed and the
6 qualifying purchases or acquisitions for which the exemption is
7 claimed. The buyer shall retain, in adequate detail to enable the
8 department to determine whether the equipment or construction meets the
9 criteria under this section: Invoices; proof of tax paid; documents
10 describing the material-handling equipment and racking equipment;
11 location and size of warehouses and grain elevators; and construction
12 invoices and documents.

13 (c) The department shall on a quarterly basis remit exempted
14 amounts to qualifying persons who submitted applications during the
15 previous quarter.

16 (4) Warehouses, grain elevators, and material-handling equipment
17 and racking equipment for which an exemption, credit, or deferral has
18 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
19 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
20 under this section. Warehouses and grain elevators upon which
21 construction was initiated before May 20, 1997, are not eligible for a
22 remittance under this section.

23 (5) The lessor or owner of a warehouse or grain elevator is not
24 eligible for a remittance under this section unless the underlying
25 ownership of the warehouse or grain elevator and the material-handling
26 equipment and racking equipment vests exclusively in the same person,
27 or unless the lessor by written contract agrees to pass the economic
28 benefit of the remittance to the lessee in the form of reduced rent
29 payments.

30 **Sec. 17.** RCW 82.08.820 and 2006 c 354 s 12 are each amended to
31 read as follows:

32 (1) Wholesalers or third-party warehouse owners who own or operate
33 warehouses or grain elevators and retailers who own or operate
34 distribution centers, and who have paid the tax levied by RCW 82.08.020
35 on:

36 (a) Material-handling and racking equipment, and labor and services

1 rendered in respect to installing, repairing, cleaning, altering, or
2 improving the equipment; or

3 (b) Construction of a warehouse or grain elevator, including
4 materials, and including service and labor costs,
5 are eligible for an exemption in the form of a remittance. The amount
6 of the remittance is computed under subsection (3) of this section and
7 is based on the state share of sales tax.

8 (2) For purposes of this section and RCW 82.12.820:

9 (a) "Agricultural products" has the meaning given in RCW 82.04.213;

10 (b) "Construction" means the actual construction of a warehouse or
11 grain elevator that did not exist before the construction began.
12 "Construction" includes expansion if the expansion adds at least two
13 hundred thousand square feet of additional space to an existing
14 warehouse or additional storage capacity of at least one million
15 bushels to an existing grain elevator. "Construction" does not include
16 renovation, remodeling, or repair;

17 (c) "Department" means the department of revenue;

18 (d) "Distribution center" means a warehouse that is used
19 exclusively by a retailer solely for the storage and distribution of
20 finished goods to retail outlets of the retailer. "Distribution
21 center" does not include a warehouse at which retail sales occur;

22 (e) "Finished goods" means tangible personal property intended for
23 sale by a retailer or wholesaler. "Finished goods" does not include
24 agricultural products stored by wholesalers, third-party warehouses, or
25 retailers if the storage takes place on the land of the person who
26 produced the agricultural product. "Finished goods" does not include
27 logs, minerals, petroleum, gas, or other extracted products stored as
28 raw materials or in bulk;

29 (f) "Grain elevator" means a structure used for storage and
30 handling of grain in bulk;

31 (g) "Material-handling equipment and racking equipment" means
32 equipment in a warehouse or grain elevator that is primarily used to
33 handle, store, organize, convey, package, or repackage finished goods.
34 The term includes tangible personal property with a useful life of one
35 year or more that becomes an ingredient or component of the equipment,
36 including repair and replacement parts. The term does not include
37 equipment in offices, lunchrooms, restrooms, and other like space,
38 within a warehouse or grain elevator, or equipment used for

1 nonwarehousing purposes. "Material-handling equipment" includes but is
2 not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-
3 place units, cranes, hoists, mechanical arms, and robots; mechanized
4 systems, including containers that are an integral part of the system,
5 whose purpose is to lift or move tangible personal property; and
6 automated handling, storage, and retrieval systems, including computers
7 that control them, whose purpose is to lift or move tangible personal
8 property; and forklifts and other off-the-road vehicles that are used
9 to lift or move tangible personal property and that cannot be operated
10 legally on roads and streets. "Racking equipment" includes, but is not
11 limited to, conveying systems, chutes, shelves, racks, bins, drawers,
12 pallets, and other containers and storage devices that form a necessary
13 part of the storage system;

14 (h) "Person" has the meaning given in RCW 82.04.030;

15 (i) "Retailer" means a person who makes "sales at retail" as
16 defined in chapter 82.04 RCW of tangible personal property;

17 (j) "Square footage" means the product of the two horizontal
18 dimensions of each floor of a specific warehouse. The entire footprint
19 of the warehouse shall be measured in calculating the square footage,
20 including space that juts out from the building profile such as loading
21 docks. "Square footage" does not mean the aggregate of the square
22 footage of more than one warehouse at a location or the aggregate of
23 the square footage of warehouses at more than one location;

24 (k) "Third-party warehouser" means a person taxable under RCW
25 82.04.280(~~(+4)~~) (3);

26 (l) "Warehouse" means an enclosed building or structure in which
27 finished goods are stored. A warehouse building or structure may have
28 more than one storage room and more than one floor. Office space,
29 lunchrooms, restrooms, and other space within the warehouse and
30 necessary for the operation of the warehouse are considered part of the
31 warehouse as are loading docks and other such space attached to the
32 building and used for handling of finished goods. Landscaping and
33 parking lots are not considered part of the warehouse. A storage yard
34 is not a warehouse, nor is a building in which manufacturing takes
35 place; and

36 (m) "Wholesaler" means a person who makes "sales at wholesale" as
37 defined in chapter 82.04 RCW of tangible personal property, but

1 "wholesaler" does not include a person who makes sales exempt under RCW
2 82.04.330.

3 (3)(a) A person claiming an exemption from state tax in the form of
4 a remittance under this section must pay the tax imposed by RCW
5 82.08.020. The buyer may then apply to the department for remittance
6 of all or part of the tax paid under RCW 82.08.020. For grain
7 elevators with bushel capacity of one million but less than two
8 million, the remittance is equal to fifty percent of the amount of tax
9 paid. For warehouses with square footage of two hundred thousand or
10 more and for grain elevators with bushel capacity of two million or
11 more, the remittance is equal to one hundred percent of the amount of
12 tax paid for qualifying construction, materials, service, and labor,
13 and fifty percent of the amount of tax paid for qualifying material-
14 handling equipment and racking equipment, and labor and services
15 rendered in respect to installing, repairing, cleaning, altering, or
16 improving the equipment.

17 (b) The department shall determine eligibility under this section
18 based on information provided by the buyer and through audit and other
19 administrative records. The buyer shall on a quarterly basis submit an
20 information sheet, in a form and manner as required by the department
21 by rule, specifying the amount of exempted tax claimed and the
22 qualifying purchases or acquisitions for which the exemption is
23 claimed. The buyer shall retain, in adequate detail to enable the
24 department to determine whether the equipment or construction meets the
25 criteria under this section: Invoices; proof of tax paid; documents
26 describing the material-handling equipment and racking equipment;
27 location and size of warehouses and grain elevators; and construction
28 invoices and documents.

29 (c) The department shall on a quarterly basis remit exempted
30 amounts to qualifying persons who submitted applications during the
31 previous quarter.

32 (4) Warehouses, grain elevators, and material-handling equipment
33 and racking equipment for which an exemption, credit, or deferral has
34 been or is being received under chapter 82.60, 82.62, or 82.63 RCW or
35 RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance
36 under this section. Warehouses and grain elevators upon which
37 construction was initiated before May 20, 1997, are not eligible for a
38 remittance under this section.

1 (5) The lessor or owner of a warehouse or grain elevator is not
2 eligible for a remittance under this section unless the underlying
3 ownership of the warehouse or grain elevator and the material-handling
4 equipment and racking equipment vests exclusively in the same person,
5 or unless the lessor by written contract agrees to pass the economic
6 benefit of the remittance to the lessee in the form of reduced rent
7 payments.

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

10 (1) There is hereby levied and there shall be collected from every
11 person in this state a tax or excise for the privilege of using within
12 this state as a consumer: (a) Any article of tangible personal
13 property purchased at retail, or acquired by lease, gift, repossession,
14 or bailment, or extracted or produced or manufactured by the person so
15 using the same, or otherwise furnished to a person engaged in any
16 business taxable under RCW 82.04.280 (~~((+2+))~~) (1) or (~~((+7+))~~) (6); (b)
17 any prewritten computer software, regardless of the method of delivery,
18 but excluding prewritten computer software that is either provided free
19 of charge or is provided for temporary use in viewing information, or
20 both; or (c) any extended warranty.

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

28 (3) The provisions of this chapter do not apply in respect to the
29 use of any article of tangible personal property, extended warranty, or
30 service taxable under RCW 82.04.050 (2)(a) or (3)(a), purchased at
31 retail or acquired by lease, gift, or bailment if the sale to, or the
32 use by, the present user or his bailor or donor has already been
33 subjected to the tax under chapter 82.08 RCW or this chapter and the
34 tax has been paid by the present user or by his bailor or donor.

35 (4) Except as provided in this section, payment by one purchaser or
36 user of tangible personal property, extended warranty, or service of
37 the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect

1 of exempting any other purchaser or user of the same property, extended
2 warranty, or service from the taxes imposed by such chapters. If the
3 sale to, or the use by, the present user or his or her bailor or donor
4 has already been subjected to the tax under chapter 82.08 RCW or this
5 chapter and the tax has been paid by the present user or by his or her
6 bailor or donor; or in respect to the use of property acquired by
7 bailment and the tax has once been paid based on reasonable rental as
8 determined by RCW 82.12.060 measured by the value of the article at
9 time of first use multiplied by the tax rate imposed by chapter 82.08
10 RCW or this chapter as of the time of first use; or in respect to the
11 use of any article of tangible personal property acquired by bailment,
12 if the property was acquired by a previous bailee from the same bailor
13 for use in the same general activity and the original bailment was
14 prior to June 9, 1961, the tax imposed by this chapter does not apply.

15 (5) The tax shall be levied and collected in an amount equal to the
16 value of the article used, value of the extended warranty used, or
17 value of the service used by the taxpayer multiplied by the rates in
18 effect for the retail sales tax under RCW 82.08.020, except in the case
19 of a seller required to collect use tax from the purchaser, the tax
20 shall be collected in an amount equal to the purchase price multiplied
21 by the rate in effect for the retail sales tax under RCW 82.08.020.

22 **Sec. 19.** 2006 c 300 s 12 (uncodified) is amended to read as
23 follows:

24 (1)(a) This act (~~and~~), section 7, chapter 300, Laws of 2006, and
25 sections 7 and 13, chapter ..., Laws of 2007 (sections 7 and 13 of this
26 act) are contingent upon the siting and commercial operation of a
27 significant semiconductor microchip fabrication facility in the state
28 of Washington.

29 (b) For the purposes of this section:

30 (i) "Commercial operation" means the same as "commencement of
31 commercial production" as used in RCW 82.08.965.

32 (ii) "Semiconductor microchip fabrication" means "manufacturing
33 semiconductor microchips" as defined in RCW 82.04.426.

34 (iii) "Significant" means the combined investment of new buildings
35 and new machinery and equipment in the buildings, at the commencement
36 of commercial production, will be at least one billion dollars.

1 (2) This act takes effect the first day of the month in which a
2 contract for the construction of a significant semiconductor
3 fabrication facility is signed, as determined by the director of the
4 department of revenue.

5 (3)(a) The department of revenue shall provide notice of the
6 effective date of this act to affected taxpayers, the legislature, and
7 others as deemed appropriate by the department.

8 (b) If, after making a determination that a contract has been
9 signed and this act is effective, the department discovers that
10 commencement of commercial production did not take place within three
11 years of the date the contract was signed, the department shall make a
12 determination that this act is no longer effective, and all taxes that
13 would have been otherwise due shall be deemed deferred taxes and are
14 immediately assessed and payable from any person reporting tax under
15 RCW 82.04.240(2) or claiming an exemption or credit under section 2 or
16 5 through 10 of this act. The department is not authorized to make a
17 second determination regarding the effective date of this act.

18 NEW SECTION. **Sec. 20.** RCW 82.04.214 ("Newspaper") and 1994 c 22
19 s 1 & 1993 sp.s. c 25 s 304 are each repealed.

20 **Sec. 21.** RCW 35.102.150 and 2006 c 272 s 1 are each amended to
21 read as follows:

22 Notwithstanding RCW 35.102.130, a city that imposes a business and
23 occupation tax shall allocate a person's gross income from the
24 activities of printing, and of publishing newspapers(~~(7)~~) or
25 periodicals(~~(7 or magazines)~~), to the principal place in this state
26 from which the taxpayer's business is directed or managed. As used in
27 this section, the activities of printing, and of publishing
28 newspapers(~~(7)~~) or periodicals(~~(7 or magazines)~~), have the same
29 meanings as attributed to those terms in RCW (~~(82.04.280(1))~~) 82.04.240
30 and section 8 of this act by the department of revenue.

31 NEW SECTION. **Sec. 22.** (1) Except as otherwise provided in this
32 section, this act takes effect January 1, 2008.

33 (2) Section 2 of this act takes effect July 1, 2011.

34 (3) Sections 7 and 13 of this act take effect if the contingency in
35 section 19 of this act occurs.

1 (4) Section 17 of this act takes effect July 1, 2012.

2 NEW SECTION. **Sec. 23.** Sections 6 and 12 of this act expire if the
3 contingency in section 19 of this act occurs.

4 NEW SECTION. **Sec. 24.** Section 16 of this act expires July 1,
5 2012.

6 NEW SECTION. **Sec. 25.** Section 3 of this act expires July 1, 2011.

7 NEW SECTION. **Sec. 26.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

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