

SHB 2075 - H AMD 349

By Representative Hunter

ADOPTED 04/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "PART I

4 BACKGROUND AND FINDINGS

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

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

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

1 (4) This act is the outgrowth of the work of the department and the
2 study committee. The purpose of this act is to implement those
3 findings of the study committee noted in subsection (3) of this
4 section. This act also takes into account the goals noted in
5 subsection (2) of this section. Moreover, this act contains specific
6 provisions to: (a) Provide protections for taxpayers who failed to pay
7 or collect tax on digital products for periods before the effective
8 date of this act; and (b) promote the location of server farms and data
9 centers in this state by preventing the department from considering a
10 person's ownership of, or rights in, digital goods or digital codes
11 residing on servers located in this state in determining whether the
12 person has nexus with this state for purposes of the taxes imposed in
13 Title 82 RCW.

14 **PART II**
15 **DIGITAL PRODUCTS DEFINITIONS**

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

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

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

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

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

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

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

5 (i) Any service that primarily involves the application of human
6 effort, and the human effort originated after the customer requested
7 the service;

8 (ii) The loaning or transferring of money or the purchase, sale, or
9 transfer of financial instruments. For purposes of this subsection
10 (5)(b)(ii), "financial instruments" include cash, accounts receivable
11 and payable, loans and notes receivable and payable, debt securities,
12 equity securities, as well as derivative contracts such as forward
13 contracts, swap contracts, and options;

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

15 (iv) Payment processing services;

16 (v) Parimutuel wagering and handicapping contests as authorized by
17 chapter 67.16 RCW;

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

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

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

23 (ix) Online educational programs provided by a:

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

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

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

32 (xi) A service that allows the person receiving the service to make
33 online sales of products or services, digital or otherwise, using the
34 service provider's web site. The service described in this subsection
35 (5)(b)(xi) does not include the underlying sale of the products or
36 services, digital or otherwise, by the person receiving the service;
37 and

38 (xii) Online classified advertising services.

1 (6)(a) "Digital goods," except as provided in (b) of this
2 subsection (6), means sounds, images, data, facts, or information, or
3 any combination thereof, transferred electronically, including, but not
4 limited to, specified digital products and other products transferred
5 electronically not included within the definition of specified digital
6 products.

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

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

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

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

12 (iv) The representation of a personal service in electronic form,
13 such as an electronic copy of an engineering report prepared by an
14 engineer, that primarily involves the application of human effort, and
15 the human effort originated after the customer requested the service;
16 and

17 (v) Digital automated services and services and activities excluded
18 from the definition of digital automated services in subsection (5)(b)
19 of this section.

20 (7) "Digital products" means digital goods and digital automated
21 services.

22 (8) "Electronically transferred" or "transferred electronically"
23 means obtained by the purchaser by means other than tangible storage
24 media. It is not necessary that a copy of the product be physically
25 transferred to the purchaser. So long as the purchaser may access the
26 product, it will be considered to have been electronically transferred
27 to the purchaser.

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

30 PART III

31 IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS

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

34 (1) "Sale at retail" or "retail sale" means every sale of tangible
35 personal property (including articles produced, fabricated, or
36 imprinted) to all persons irrespective of the nature of their business

1 and including, among others, without limiting the scope hereof, persons
2 who install, repair, clean, alter, improve, construct, or decorate real
3 or personal property of or for consumers other than a sale to a person
4 who presents a resale certificate under RCW 82.04.470 and who:

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

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

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

20 (d) Purchases for the purpose of consuming the property purchased
21 in producing ferrosilicon which is subsequently used in producing
22 magnesium for sale, if the primary purpose of such property is to
23 create a chemical reaction directly through contact with an ingredient
24 of ferrosilicon; or

25 (e) Purchases for the purpose of providing the property to
26 consumers as part of competitive telephone service, as defined in RCW
27 82.04.065. The term shall include every sale of tangible personal
28 property which is used or consumed or to be used or consumed in the
29 performance of any activity classified as a "sale at retail" or "retail
30 sale" even though such property is resold or utilized as provided in
31 (a), (b), (c), (d), or (e) of this subsection following such use. The
32 term also means every sale of tangible personal property to persons
33 engaged in any business which is taxable under RCW 82.04.280 (2) and
34 (7), 82.04.290, and 82.04.2908; or

35 (f) Purchases for the purpose of satisfying the person's
36 obligations under an extended warranty as defined in subsection (7) of
37 this section, if such tangible personal property replaces or becomes an

1 ingredient or component of property covered by the extended warranty
2 without intervening use by such person.

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

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

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

22 (c) The constructing, repairing, or improving of any structure
23 upon, above, or under any real property owned by an owner who conveys
24 the property by title, possession, or any other means to the person
25 performing such construction, repair, or improvement for the purpose of
26 performing such construction, repair, or improvement and the property
27 is then reconveyed by title, possession, or any other means to the
28 original owner;

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

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

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

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

17 (h) Persons taxable under (a), (b), (c), (d), (e), (~~and~~) (f), and
18 (g) of this subsection when such sales or charges are for property,
19 labor and services which are used or consumed in whole or in part by
20 such persons in the performance of any activity defined as a "sale at
21 retail" or "retail sale" even though such property, labor and services
22 may be resold after such use or consumption. Nothing contained in this
23 subsection shall be construed to modify subsection (1) of this section
24 and nothing contained in subsection (1) of this section (~~shall~~) may
25 be construed to modify this subsection.

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

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

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

35 (c) Credit bureau services;

36 (d) Automobile parking and storage garage services;

37 (e) Landscape maintenance and horticultural services but excluding
38 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

4 (f) Service charges associated with tickets to professional
5 sporting events; and

6 (g) The following personal services: Physical fitness services,
7 tanning salon services, tattoo parlor services, steam bath services,
8 turkish bath services, escort services, and dating services.

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

10 (i) The renting or leasing of tangible personal property to
11 consumers; and

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

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

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

24 (6)(a) The term (~~shall~~) also includes the sale of prewritten
25 computer software other than a sale to a person who presents a resale
26 certificate under RCW 82.04.470, regardless of the method of delivery
27 to the end user(~~, but shall~~). For purposes of this subsection
28 (6)(a), the sale of prewritten computer software includes the sale of
29 or charge made for a key or an enabling or activation code, where the
30 key or code is required to activate prewritten computer software and
31 put the software into use. There is no separate sale of the key or
32 code from the prewritten computer software, regardless of how the sale
33 may be characterized by the vendor or by the purchaser.

34 The term "retail sale" does not include the sale of or charge made
35 for:

36 (i) Custom software; or

37 (ii) The customization of prewritten computer software.

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

6 (7) The term (~~shall~~) also includes the sale of or charge made for
7 an extended warranty to a consumer. For purposes of this subsection,
8 "extended warranty" means an agreement for a specified duration to
9 perform the replacement or repair of tangible personal property at no
10 additional charge or a reduced charge for tangible personal property,
11 labor, or both, or to provide indemnification for the replacement or
12 repair of tangible personal property, based on the occurrence of
13 specified events. The term "extended warranty" does not include an
14 agreement, otherwise meeting the definition of extended warranty in
15 this subsection, if no separate charge is made for the agreement and
16 the value of the agreement is included in the sales price of the
17 tangible personal property covered by the agreement. For purposes of
18 this subsection, "sales price" has the same meaning as in RCW
19 82.08.010.

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

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

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

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

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

30 (b) A retail sale of digital goods, digital codes, or digital
31 automated services under this subsection (8) includes any services
32 provided by the seller exclusively in connection with the digital
33 goods, digital codes, or digital automated services, whether or not a
34 separate charge is made for such services.

35 (c) For purposes of this subsection, "permanent" means perpetual or
36 for an indefinite or unspecified length of time. A right of permanent
37 use is presumed to have been granted unless the agreement between the

1 seller and the purchaser specifies or the circumstances surrounding the
2 transaction suggest or indicate that the right to use terminates on the
3 occurrence of a condition subsequent.

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

12 (~~(9)~~) (10) The term (~~shall~~) also does not include sales of
13 chemical sprays or washes to persons for the purpose of postharvest
14 treatment of fruit for the prevention of scald, fungus, mold, or decay,
15 nor (~~shall~~) does it include sales of feed, seed, seedlings,
16 fertilizer, agents for enhanced pollination including insects such as
17 bees, and spray materials to: (a) Persons who participate in the
18 federal conservation reserve program, the environmental quality
19 incentives program, the wetlands reserve program, and the wildlife
20 habitat incentives program, or their successors administered by the
21 United States department of agriculture; (b) farmers for the purpose of
22 producing for sale any agricultural product; and (c) farmers acting
23 under cooperative habitat development or access contracts with an
24 organization exempt from federal income tax under Title 26 U.S.C. Sec.
25 501(c)(3) or the Washington state department of fish and wildlife to
26 produce or improve wildlife habitat on land that the farmer owns or
27 leases.

28 (~~(10)~~) (11) The term (~~shall~~) does not include the sale of or
29 charge made for labor and services rendered in respect to the
30 constructing, repairing, decorating, or improving of new or existing
31 buildings or other structures under, upon, or above real property of or
32 for the United States, any instrumentality thereof, or a county or city
33 housing authority created pursuant to chapter 35.82 RCW, including the
34 installing, or attaching of any article of tangible personal property
35 therein or thereto, whether or not such personal property becomes a
36 part of the realty by virtue of installation. Nor (~~shall~~) does the
37 term include the sale of services or charges made for the clearing of
38 land and the moving of earth of or for the United States, any

1 instrumentality thereof, or a county or city housing authority. Nor
2 (~~shall~~) does the term include the sale of services or charges made
3 for cleaning up for the United States, or its instrumentalities,
4 radioactive waste and other byproducts of weapons production and
5 nuclear research and development.

6 (~~(11)~~) (12) The term (~~shall~~) does not include the sale of or
7 charge made for labor, services, or tangible personal property pursuant
8 to agreements providing maintenance services for bus, rail, or rail
9 fixed guideway equipment when a regional transit authority is the
10 recipient of the labor, services, or tangible personal property, and a
11 transit agency, as defined in RCW 81.104.015, performs the labor or
12 services.

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

15 "Consumer" means the following:

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

1 if such tangible personal property replaces or becomes an ingredient or
2 component of property covered by the extended warranty without
3 intervening use by such person;

4 (2)(a) Any person engaged in any business activity taxable under
5 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
6 uses any competitive telephone service, ancillary services, or
7 telecommunications service as those terms are defined in RCW 82.04.065,
8 other than for resale in the regular course of business; (c) any person
9 who purchases, acquires, or uses any service defined in RCW
10 82.04.050(2) (a) or (g), other than for resale in the regular course of
11 business or for the purpose of satisfying the person's obligations
12 under an extended warranty as defined in RCW 82.04.050(7); (d) any
13 person who purchases, acquires, or uses any amusement and recreation
14 service defined in RCW 82.04.050(3)(a), other than for resale in the
15 regular course of business; (e) (~~any person who is an end user of~~
16 ~~software; and (f)~~) any person who purchases or acquires an extended
17 warranty as defined in RCW 82.04.050(7) other than for resale in the
18 regular course of business; and (f) any person who is an end user of
19 software. For purposes of this subsection (2)(f) and RCW 82.04.050(6),
20 a person who purchases or otherwise acquires prewritten computer
21 software, who provides services described in RCW 82.04.050(6)(b) and
22 who will charge consumers for the right to access and use the
23 prewritten computer software, is not an end user of the prewritten
24 computer software;

25 (3) Any person engaged in the business of contracting for the
26 building, repairing or improving of any street, place, road, highway,
27 easement, right-of-way, mass public transportation terminal or parking
28 facility, bridge, tunnel, or trestle which is owned by a municipal
29 corporation or political subdivision of the state of Washington or by
30 the United States and which is used or to be used primarily for foot or
31 vehicular traffic including mass transportation vehicles of any kind as
32 defined in RCW 82.04.280, in respect to tangible personal property when
33 such person incorporates such property as an ingredient or component of
34 such publicly owned street, place, road, highway, easement,
35 right-of-way, mass public transportation terminal or parking facility,
36 bridge, tunnel, or trestle by installing, placing or spreading the
37 property in or upon the right-of-way of such street, place, road,

1 highway, easement, bridge, tunnel, or trestle or in or upon the site of
2 such mass public transportation terminal or parking facility;

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

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

18 (6) Any person engaged in the business of constructing, repairing,
19 decorating, or improving new or existing buildings or other structures
20 under, upon, or above real property of or for the United States, any
21 instrumentality thereof, or a county or city housing authority created
22 pursuant to chapter 35.82 RCW, including the installing or attaching of
23 any article of tangible personal property therein or thereto, whether
24 or not such personal property becomes a part of the realty by virtue of
25 installation; also, any person engaged in the business of clearing land
26 and moving earth of or for the United States, any instrumentality
27 thereof, or a county or city housing authority created pursuant to
28 chapter 35.82 RCW. Any such person shall be a consumer within the
29 meaning of this subsection in respect to tangible personal property
30 incorporated into, installed in, or attached to such building or other
31 structure by such person, except that consumer does not include any
32 person engaged in the business of constructing, repairing, decorating,
33 or improving new or existing buildings or other structures under, upon,
34 or above real property of or for the United States, or any
35 instrumentality thereof, if the investment project would qualify for
36 sales and use tax deferral under chapter 82.63 RCW if undertaken by a
37 private entity;

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

9 (8) Any person engaged in the business of cleaning up for the
10 United States, or its instrumentalities, radioactive waste and other
11 byproducts of weapons production and nuclear research and development;
12 (~~and~~)

13 (9) Any person who is an owner, lessee, or has the right of
14 possession of tangible personal property that, under the terms of an
15 extended warranty as defined in RCW 82.04.050(7), has been repaired or
16 is replacement property, but only with respect to the sale of or charge
17 made for the repairing of the tangible personal property or the
18 replacement property;

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

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

23 (b)(i) For purposes of this subsection, "end user" means any
24 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
25 by contract a digital product for further commercial broadcast,
26 rebroadcast, transmission, retransmission, licensing, relicensing,
27 distribution, redistribution or exhibition of the product, in whole or
28 in part, to others. A person that purchases digital products or
29 digital codes for the purpose of giving away such products or codes
30 will not be considered to have engaged in the distribution or
31 redistribution of such products or codes and will be treated as an end
32 user;

33 (ii) If a purchaser of a digital code does not receive the
34 contractual right to further redistribute, after the digital code is
35 redeemed, the underlying digital product to which the digital code
36 relates, then the purchaser of the digital code is an end user. If the
37 purchaser of the digital code receives the contractual right to further
38 redistribute, after the digital code is redeemed, the underlying

1 digital product to which the digital code relates, then the purchaser
2 of the digital code is not an end user. A purchaser of a digital code
3 who has the contractual right to further redistribute the digital code
4 is an end user if that purchaser does not have the right to further
5 redistribute, after the digital code is redeemed, the underlying
6 digital product to which the digital code relates.

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

9 For the purposes of this chapter:

10 (1)(a) "Selling price" includes "sales price." "Sales price" means
11 the total amount of consideration, except separately stated trade-in
12 property of like kind, including cash, credit, property, and services,
13 for which tangible personal property, extended warranties, digital
14 goods, digital codes, digital automated services, or other services
15 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
16 rented, valued in money, whether received in money or otherwise. No
17 deduction from the total amount of consideration is allowed for the
18 following: (i) The seller's cost of the property sold; (ii) the cost
19 of materials used, labor or service cost, interest, losses, all costs
20 of transportation to the seller, all taxes imposed on the seller, and
21 any other expense of the seller; (iii) charges by the seller for any
22 services necessary to complete the sale, other than delivery and
23 installation charges; (iv) delivery charges; and (v) installation
24 charges.

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

31 (b) "Selling price" or "sales price" does not include: Discounts,
32 including cash, term, or coupons that are not reimbursed by a third
33 party that are allowed by a seller and taken by a purchaser on a sale;
34 interest, financing, and carrying charges from credit extended on the
35 sale of tangible personal property, extended warranties, digital goods,
36 digital codes, digital automated services, or other services, if the
37 amount is separately stated on the invoice, bill of sale, or similar

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

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

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

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

11 (iii) The amount of the consideration attributable to the sale is
12 fixed and determinable by the seller at the time of the sale of the
13 item to the purchaser; and

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

15 (A) The purchaser presents a coupon, certificate, or other
16 documentation to the seller to claim a price reduction or discount
17 where the coupon, certificate, or documentation is authorized,
18 distributed, or granted by a third party with the understanding that
19 the third party will reimburse any seller to whom the coupon,
20 certificate, or documentation is presented;

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

25 (C) The price reduction or discount is identified as a third party
26 price reduction or discount on the invoice received by the purchaser or
27 on a coupon, certificate, or other documentation presented by the
28 purchaser;

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

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

35 (ii) A professional employer organization when a covered employee
36 coemployed with the client under the terms of a professional employer
37 agreement engages in activities that constitute a sale at retail that
38 is subject to the tax imposed by this chapter. In such cases, the

1 client, and not the professional employer organization, is deemed to be
2 the seller and is responsible for collecting and remitting the tax
3 imposed by this chapter.

4 (b) For the purposes of (a) of this subsection, the terms "client,"
5 "covered employee," "professional employer agreement," and
6 "professional employer organization" have the same meanings as in RCW
7 82.04.540;

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

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

23 (5) "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 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
33 year," "taxable year," "person," "company," "sale," "sale at retail,"
34 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
35 in business," "cash discount," "successor," "consumer," "in this state"
36 and "within this state" shall apply equally to the provisions of this
37 chapter;

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

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

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

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

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

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

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

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

25 For the purposes of this chapter:

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

28 (2)(a) "Value of the article used" shall be the purchase price for
29 the article of tangible personal property, the use of which is taxable
30 under this chapter. The term also includes, in addition to the
31 purchase price, the amount of any tariff or duty paid with respect to
32 the importation of the article used. In case the article used is
33 acquired by lease or by gift or is extracted, produced, or manufactured
34 by the person using the same or is sold under conditions wherein the
35 purchase price does not represent the true value thereof, the value of
36 the article used shall be determined as nearly as possible according to

1 the retail selling price at place of use of similar products of like
2 quality and character under such rules as the department may prescribe.

3 (b) In case the articles used are acquired by bailment, the value
4 of the use of the articles so used shall be in an amount representing
5 a reasonable rental for the use of the articles so bailed, determined
6 as nearly as possible according to the value of such use at the places
7 of use of similar products of like quality and character under such
8 rules as the department of revenue may prescribe. In case any such
9 articles of tangible personal property are used in respect to the
10 construction, repairing, decorating, or improving of, and which become
11 or are to become an ingredient or component of, new or existing
12 buildings or other structures under, upon, or above real property of or
13 for the United States, any instrumentality thereof, or a county or city
14 housing authority created pursuant to chapter 35.82 RCW, including the
15 installing or attaching of any such articles therein or thereto,
16 whether or not such personal property becomes a part of the realty by
17 virtue of installation, then the value of the use of such articles so
18 used shall be determined according to the retail selling price of such
19 articles, or in the absence of such a selling price, as nearly as
20 possible according to the retail selling price at place of use of
21 similar products of like quality and character or, in the absence of
22 either of these selling price measures, such value may be determined
23 upon a cost basis, in any event under such rules as the department of
24 revenue may prescribe.

25 (c) In the case of articles owned by a user engaged in business
26 outside the state which are brought into the state for no more than one
27 hundred eighty days in any period of three hundred sixty-five
28 consecutive days and which are temporarily used for business purposes
29 by the person in this state, the value of the article used shall be an
30 amount representing a reasonable rental for the use of the articles,
31 unless the person has paid tax under this chapter or chapter 82.08 RCW
32 upon the full value of the article used, as defined in (a) of this
33 subsection.

34 (d) In the case of articles manufactured or produced by the user
35 and used in the manufacture or production of products sold or to be
36 sold to the department of defense of the United States, the value of
37 the articles used shall be determined according to the value of the
38 ingredients of such articles.

1 (e) In the case of an article manufactured or produced for purposes
2 of serving as a prototype for the development of a new or improved
3 product, the value of the article used shall be determined by: (i) The
4 retail selling price of such new or improved product when first offered
5 for sale; or (ii) the value of materials incorporated into the
6 prototype in cases in which the new or improved product is not offered
7 for sale.

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

12 (3) "Value of the service used" means the purchase price for the
13 digital automated service or other service, the use of which is taxable
14 under this chapter. If the service is received by gift or under
15 conditions wherein the purchase price does not represent the true value
16 thereof, the value of the service used shall be determined as nearly as
17 possible according to the retail selling price at place of use of
18 similar services of like quality and character under rules the
19 department may prescribe;

20 (4) "Value of the extended warranty used" means the purchase price
21 for the extended warranty, the use of which is taxable under this
22 chapter. If the extended warranty is received by gift or under
23 conditions wherein the purchase price does not represent the true value
24 of the extended warranty, the value of the extended warranty used shall
25 be determined as nearly as possible according to the retail selling
26 price at place of use of similar extended warranties of like quality
27 and character under rules the department may prescribe;

28 (5) "Value of the digital good or digital code used" means the
29 purchase price for the digital good or digital code, the use of which
30 is taxable under this chapter. If the digital good or digital code is
31 acquired other than by purchase, the value of the digital good or
32 digital code must be determined as nearly as possible according to the
33 retail selling price at place of use of similar digital goods or
34 digital codes of like quality and character under rules the department
35 may prescribe;

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

1 (a) With respect to tangible personal property, the first act
2 within this state by which the taxpayer takes or assumes dominion or
3 control over the article of tangible personal property (as a consumer),
4 and include installation, storage, withdrawal from storage,
5 distribution, or any other act preparatory to subsequent actual use or
6 consumption within this state;

7 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
8 first act within this state after the service has been performed by
9 which the taxpayer takes or assumes dominion or control over the
10 article of tangible personal property upon which the service was
11 performed (as a consumer), and includes installation, storage,
12 withdrawal from storage, distribution, or any other act preparatory to
13 subsequent actual use or consumption of the article within this state;
14 ((and))

15 (c) With respect to an extended warranty, the first act within this
16 state after the extended warranty has been acquired by which the
17 taxpayer takes or assumes dominion or control over the article of
18 tangible personal property to which the extended warranty applies, and
19 includes installation, storage, withdrawal from storage, distribution,
20 or any other act preparatory to subsequent actual use or consumption of
21 the article within this state;

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

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

29 (f) With respect to a service defined as a retail sale in RCW
30 82.04.050(6)(b), the first act within this state by which the taxpayer,
31 as a consumer, accesses the prewritten computer software; and

32 (g) With respect to a service defined as a retail sale in RCW
33 82.04.050(2)(g), the first act within this state after the service has
34 been performed by which the taxpayer, as a consumer, views, accesses,
35 downloads, possesses, stores, opens, manipulates, or otherwise uses or
36 enjoys the digital good upon which the service was performed;

37 ((+6+)) (7) "Taxpayer" and "purchaser" include all persons included

1 within the meaning of the word "buyer" and the word "consumer" as
2 defined in chapters 82.04 and 82.08 RCW;

3 ~~((+7))~~ (8)(a)(i) Except as provided in (a)(ii) of this subsection
4 ~~((+7))~~ (8), "retailer" means every seller as defined in RCW 82.08.010
5 and every person engaged in the business of selling tangible personal
6 property at retail and every person required to collect from purchasers
7 the tax imposed under this chapter.

8 (ii) "Retailer" does not include a professional employer
9 organization when a covered employee coemployed with the client under
10 the terms of a professional employer agreement engages in activities
11 that constitute a sale of tangible personal property, extended
12 warranty, digital good, digital code, or a sale of any digital
13 automated service or service defined as a retail sale in RCW 82.04.050
14 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
15 this chapter. In such cases, the client, and not the professional
16 employer organization, is deemed to be the retailer and is responsible
17 for collecting and remitting the tax imposed by this chapter.

18 (b) For the purposes of (a) of this subsection, the terms "client,"
19 "covered employee," "professional employer agreement," and
20 "professional employer organization" have the same meanings as in RCW
21 82.04.540;

22 ~~((+8))~~ (9) "Extended warranty" has the same meaning as in RCW
23 82.04.050(7);

24 ~~((+9))~~ (10) The meaning ascribed to words and phrases in chapters
25 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
26 effect with respect to taxes imposed under the provisions of this
27 chapter. "Consumer," in addition to the meaning ascribed to it in
28 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
29 person who distributes or displays, or causes to be distributed or
30 displayed, any article of tangible personal property, except
31 newspapers, the primary purpose of which is to promote the sale of
32 products or services. With respect to property distributed to persons
33 within this state by a consumer as defined in this subsection ~~((+9))~~
34 (10), the use of the property shall be deemed to be by such consumer.

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

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

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

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

17 (c) (~~(any)~~) Services defined as a retail sale in RCW 82.04.050(2)
18 (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail
19 sale in RCW 82.04.050(6)(b) that are provided free of charge;

20 (d) Extended warranty; or

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

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

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

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

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

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

36 (iii) With respect to digital goods, digital automated services,
37 and digital codes acquired other than by purchase, the tax imposed in

1 this subsection (1)(e) applies regardless of whether or not the
2 consumer has a right of permanent use or is obligated to make continued
3 payment as a condition of use..

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

11 ~~(3))~~ The provisions of this chapter do not apply in respect to the
12 use of any article of tangible personal property, extended warranty,
13 digital good, digital code, digital automated service, or service
14 taxable under RCW 82.04.050(2) (a) or (g), (3)(a), ~~((purchased at~~
15 ~~retail or acquired by lease, gift, or bailment))~~ or (6)(b), if the sale
16 to, or the use by, the present user or ~~((his))~~ the present user's
17 bailor or donor has already been subjected to the tax under chapter
18 82.08 RCW or this chapter and the tax has been paid by the present user
19 or by ~~((his))~~ the present user's bailor or donor.

20 ~~((4))~~ (3)(a) Except as provided in this section, payment of the
21 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or
22 user of tangible personal property, extended warranty, digital good,
23 digital code, digital automated service, or other service ~~((of the tax~~
24 ~~imposed by chapter 82.08 or 82.12 RCW shall))~~ does not have the effect
25 of exempting any other purchaser or user of the same property, extended
26 warranty, digital good, digital code, digital automated service, or
27 other service from the taxes imposed by such chapters.

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

29 (i) If the sale to, or the use by, the present user or his or her
30 bailor or donor has already been subjected to the tax under chapter
31 82.08 RCW or this chapter and the tax has been paid by the present user
32 or by his or her bailor or donor; ~~((or))~~

33 (ii) In respect to the use of any article of tangible personal
34 property acquired by bailment and the tax has once been paid based on
35 reasonable rental as determined by RCW 82.12.060 measured by the value
36 of the article at time of first use multiplied by the tax rate imposed
37 by chapter 82.08 RCW or this chapter as of the time of first use;
38 ~~((or))~~

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

6 (iv) To the use of digital goods or digital automated services,
7 which were obtained through the use of a digital code, if the sale of
8 the digital code to, or the use of the digital code by, the present
9 user or the present user's bailor or donor has already been subjected
10 to the tax under chapter 82.08 RCW or this chapter and the tax has been
11 paid by the present user or by the present user's bailor or donor.

12 ~~((+5))~~ (4)(a) Except as provided in (b) of this subsection (4),
13 the tax (~~shall be~~) is levied and must be collected in an amount equal
14 to the value of the article used, value of the digital good or digital
15 code used, value of the extended warranty used, or value of the service
16 used by the taxpayer, multiplied by the applicable rates in effect for
17 the retail sales tax under RCW 82.08.020(~~, except~~).

18 (b) In the case of a seller required to collect use tax from the
19 purchaser, the tax (~~shall~~) must be collected in an amount equal to
20 the purchase price multiplied by the applicable rate in effect for the
21 retail sales tax under RCW 82.08.020.

22 **PART IV**

23 **BUSINESS AND OCCUPATION TAX CHANGES**

24 NEW SECTION. Sec. 401. A new section is added to chapter 82.04
25 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as
26 follows:

27 (1) Upon every person engaging within this state in the business of
28 making sales at retail or wholesale of digital goods, digital codes,
29 digital automated services, or services described in RCW 82.04.050
30 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to
31 such business is equal to the gross proceeds of sales of the business,
32 multiplied by the rate of 0.471 percent in the case of retail sales and
33 by the rate of 0.484 percent in the case of wholesale sales.

34 (2) For purposes of this section, a person is considered to be
35 engaging within this state in the business of making sales of digital
36 goods, digital codes, digital automated services, or services described

1 in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital
2 goods, digital codes, digital automated services, or services described
3 in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this
4 state under RCW 82.32.730 for sales tax purposes or would have been
5 sourced to this state under RCW 82.32.730 if the sale had been taxable
6 under chapter 82.08 RCW.

7 (3) A person subject to tax under this section must report the tax
8 imposed in this chapter in an electronic format provided by the
9 department.

10 NEW SECTION. **Sec. 402.** A new section is added to chapter 82.04
11 RCW to read as follows:

12 (1)(a) Any person subject to tax under section 401 of this act
13 engaging both within and outside this state in the business of making
14 sales at retail or wholesale of digital goods, digital codes, digital
15 automated services, or services described in RCW 82.04.050 (2)(g) or
16 (6)(b), must apportion to this state that portion of apportionable
17 income derived from activity performed within this state as provided in
18 subsection (2) of this section.

19 (b) For purposes of this subsection, a person is considered to be
20 engaging outside this state in the business of making sales of digital
21 goods, digital codes, digital automated services, or services described
22 in RCW 82.04.050 (2)(g) or (6)(b) if the person makes any sales of
23 digital goods, digital codes, digital automated services, or services
24 described in RCW 82.04.050 (2)(g) or (6)(b) that are sourced to a
25 jurisdiction other than Washington under RCW 82.32.730 for sales tax
26 purposes or would have been sourced to a jurisdiction other than
27 Washington under RCW 82.32.730 if the sale had been a retail sale.

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

30 (3)(a) The sales factor is a fraction, the numerator of which is
31 the total receipts of the taxpayer from making sales of digital goods,
32 digital codes, digital automated services, and services described in
33 RCW 82.04.050 (2)(g) or (6)(b) in this state during the tax period, and
34 the denominator of which is the total receipts of the taxpayer derived
35 from such activity everywhere during the tax period.

36 (b) For purposes of computing the sales factor, sales are
37 considered in this state if the sale was sourced to this state under

1 RCW 82.32.730 for sales tax purposes or would have been sourced to this
2 state under RCW 82.32.730 if the sale had been taxable under chapter
3 82.08 RCW.

4 (4) For purposes of this section, "apportionable income" means the
5 gross income of the business taxable under section 401 of this act,
6 including income received from activities outside this state if the
7 income would be taxable under section 401 of this act if received from
8 activities in this state.

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

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

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

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

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

15 (c) Amusement or recreation services as defined in RCW
16 82.04.050(3)(a)~~((, any sale of canned software, any sale of an))~~;

17 (d) Prewritten computer software;

18 (e) Services described in RCW 82.04.050(6)(b);

19 (f) Extended ~~((warranty))~~ warranties as defined in RCW
20 82.04.050(7)~~((, or any sale of))~~;

21 (g) Competitive telephone service, ancillary services, or
22 telecommunications service as those terms are defined in RCW
23 82.04.065~~((, which is not a sale at retail))~~; or

24 (h) Digital goods, digital codes, or digital automated services;

25 and

26
27 (2) Any charge made for labor and services rendered for persons who
28 are not consumers, in respect to real or personal property, if such
29 charge is expressly defined as a retail sale by RCW 82.04.050 when
30 rendered to or for consumers~~((: PROVIDED, That the term))~~. For the
31 purposes of this subsection (2), "real or personal property" ~~((as used~~
32 ~~in this subsection shall))~~ does not include any natural products named
33 in RCW 82.04.100.

34 **Sec. 404.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended
35 to read as follows:

36 "Gross proceeds of sales" means the value proceeding or accruing

1 from the sale of tangible personal property, digital goods, digital
2 codes, digital automated services, and/or for other services rendered,
3 without any deduction on account of the cost of property sold, the cost
4 of materials used, labor costs, interest, discount paid, delivery
5 costs, taxes, or any other expense whatsoever paid or accrued and
6 without any deduction on account of losses.

7 **Sec. 405.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to
8 read as follows:

9 (1) Except as otherwise provided in this section, "manufacturer"
10 means every person who, either directly or by contracting with others
11 for the necessary labor or mechanical services, manufactures for sale
12 or for commercial or industrial use from his or her own materials or
13 ingredients any articles, substances, or commodities.

14 (2)(a) When the owner of equipment or facilities furnishes, or
15 sells to the customer prior to manufacture, all or a portion of the
16 materials that become a part or whole of the manufactured article, the
17 department shall prescribe equitable rules for determining tax
18 liability(~~(:—PROVIDED, That)~~).

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

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

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

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

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

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

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

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

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

31 (1) Upon every person engaging within this state in the business of
32 receiving income from royalties or charges in the nature of royalties
33 for the granting of intangible rights, such as copyrights, licenses,
34 patents, or franchise fees, the amount of tax with respect to such
35 business shall be equal to the gross income from royalties or charges

1 in the nature of royalties from the business multiplied by the rate of
2 0.484 percent.

3 (2) For the purposes of this section, "royalties" means
4 compensation for the use of intangible property, such as copyrights,
5 patents, licenses, franchises, trademarks, trade names, and similar
6 items. It does not include compensation for any natural resource
7 ((~~or~~)), the licensing of ((~~eanned~~)) prewritten computer software to the
8 end user, or the licensing or use of digital goods, digital codes, or
9 digital automated services.

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

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

14 (2) ~~"Internet" ((means the international computer network of both~~
15 ~~federal and nonfederal interoperable packet switched data networks,~~
16 ~~including the graphical subnetwork called the world wide web)) and~~
17 "internet access" have the same meaning as those terms are defined in
18 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
19 existing on July 1, 2009.

20 (3) ~~((~~"Internet service" means a service that includes computer~~~~
21 ~~processing applications, provides the user with additional or~~
22 ~~restructured information, or permits the user to interact with stored~~
23 ~~information through the internet or a proprietary subscriber network.~~
24 ~~"Internet service" includes provision of internet electronic mail,~~
25 ~~access to the internet for information retrieval, and hosting of~~
26 ~~information for retrieval over the internet or the graphical subnetwork~~
27 ~~called the world wide web)) Unless the context clearly requires~~
28 otherwise, the definitions in this section apply throughout this
29 chapter.

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

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

1 (1) Lodging, conference and meeting rooms, camping facilities,
2 parking, and similar licenses to use real property;

3 (2) Food and meals;

4 (3) Books, tapes, and other products, including books and other
5 products that are transferred electronically, that are available
6 exclusively to the participants at the camp, conference, or meeting and
7 are not available to the public at large.

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

10 In computing tax there may be deducted from the measure of tax
11 amounts derived from bona fide (1) initiation fees, (2) dues, (3)
12 contributions, (4) donations, (5) tuition fees, (6) charges made by a
13 nonprofit trade or professional organization for attending or occupying
14 space at a trade show, convention, or educational seminar sponsored by
15 the nonprofit trade or professional organization, which trade show,
16 convention, or educational seminar is not open to the general public,
17 (7) charges made for operation of privately operated kindergartens, and
18 (8) endowment funds. This section (~~shall~~) may not be construed to
19 exempt any person, association, or society from tax liability upon
20 selling tangible personal property, digital goods, digital codes, or
21 digital automated services, or upon providing facilities or other
22 services for which a special charge is made to members or others. If
23 dues are in exchange for any significant amount of goods or services
24 rendered by the recipient thereof to members without any additional
25 charge to the member, or if the dues are graduated upon the amount of
26 goods or services rendered, the value of such goods or services shall
27 not be considered as a deduction under this section.

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

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

34 (2) If a seller does not receive a resale certificate at the time
35 of the sale, have a resale certificate on file at the time of the sale,
36 or obtain a resale certificate from the buyer within a reasonable time

1 after the sale, the seller shall remain liable for the tax as provided
2 in RCW 82.08.050, unless the seller can demonstrate facts and
3 circumstances according to rules adopted by the department of revenue
4 that show the sale was properly made without payment of sales tax.

5 (3) The department may provide by rule for suggested forms for
6 resale certificates or equivalent documents containing the information
7 that will be accepted as resale certificates. The department shall
8 provide by rule the categories of items or services that must be
9 specified on resale certificates and the business classifications that
10 may use a blanket resale certificate.

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

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

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

18 (c) The type of business engaged in;

19 (d) The categories of items or services to be purchased for resale
20 or that are exempt, unless the buyer presents a blanket resale
21 certificate;

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

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

26 (g) A statement that the buyer acknowledges that the buyer is
27 solely responsible for purchasing within the categories specified on
28 the certificate and that misuse of the resale or exemption privilege
29 claimed on the certificate subjects the buyer to a penalty of fifty
30 percent of the tax due, in addition to the tax, interest, and any other
31 penalties imposed by law;

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

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

35 (j) The name of the seller.

36 (5) Subsection (4)(h), (i), and (j) of this section does not apply
37 if the certificate is provided in a format other than paper. If the

1 certificate is provided in a format other than paper, the name of the
2 individual providing the certificate must be included in the
3 certificate.

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

6 (1) Every consignee, bailee, factor, or auctioneer having either
7 actual or constructive possession of (~~tangible~~) personal property, or
8 having possession of the documents of title thereto, with power to sell
9 such (~~tangible~~) personal property in (~~his or its~~) that person's own
10 name and actually so selling, (~~shall be~~) is deemed the seller of such
11 (~~tangible~~) personal property within the meaning of this chapter(~~+~~
12 ~~and further,~~)). Furthermore, the consignor, bailor, principal, or
13 owner (~~shall be~~) is deemed a seller of such property to the
14 consignee, bailee, factor, or auctioneer.

15 (2) The burden (~~shall be upon~~) is on the taxpayer in every case
16 to establish the fact that (~~he~~) the taxpayer is not engaged in the
17 business of (~~selling tangible personal property~~) making retail sales
18 or wholesale sales but is acting merely as broker or agent in promoting
19 sales for a principal. Such claim will be allowed only when the
20 taxpayer's accounting records are kept in such manner as required by
21 rule by the department (~~of revenue shall by general regulation~~
22 ~~provide~~)).

23 (3) For purposes of this section, "personal property" means
24 tangible personal property, digital goods, digital codes, and extended
25 warranties.

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

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

34 (2) "Ancillary services" means services that are associated with or
35 incidental to the provision of "telecommunications services," including

1 but not limited to "detailed telecommunications billing," "directory
2 assistance," "vertical service," and "voice mail services."

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

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

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

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

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

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

32 (a) Data processing and information services that allow data to be
33 generated, acquired, stored, processed, or retrieved and delivered by
34 an electronic transmission to a purchaser where such purchaser's
35 primary purpose for the underlying transaction is the processed data or
36 information;

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

- 1 (c) Tangible personal property;
- 2 (d) Advertising, including but not limited to directory
3 advertising;
- 4 (e) Billing and collection services provided to third parties;
- 5 (f) Internet access service;
- 6 (g) Radio and television audio and video programming services,
7 regardless of the medium, including the furnishing of transmission,
8 conveyance, and routing of such services by the programming service
9 provider. Radio and television audio and video programming services
10 include but are not limited to cable service as defined in 47 U.S.C.
11 Sec. 522(6) and audio and video programming services delivered by
12 commercial mobile radio service providers, as defined in section 20.3,
13 Title 47 C.F.R.;
- 14 (h) Ancillary services; (~~(e)~~)
- 15 (i) Digital products delivered electronically, including but not
16 limited to (~~(software,)~~) music, video, reading materials, or ring
17 tones; or
- 18 (j) Software delivered electronically.
- 19 (9) "800 service" means a telecommunications service that allows a
20 caller to dial a toll-free number without incurring a charge for the
21 call. The service is typically marketed under the name "800," "855,"
22 "866," "877," and "888" toll-free calling, and any subsequent numbers
23 designated by the federal communications commission.
- 24 (10) "900 service" means an inbound toll "telecommunications
25 service" purchased by a subscriber that allows the subscriber's
26 customers to call in to the subscriber's prerecorded announcement or
27 live service. "900 service" does not include the charge for:
28 Collection services provided by the seller of the telecommunications
29 services to the subscriber, or services or products sold by the
30 subscriber to the subscriber's customer. The service is typically
31 marketed under the name "900" service, and any subsequent numbers
32 designated by the federal communications commission.
- 33 (11) "Fixed wireless service" means a telecommunications service
34 that provides radio communication between fixed points.
- 35 (12) "Mobile wireless service" means a telecommunications service
36 that is transmitted, conveyed, or routed regardless of the technology
37 used, whereby the origination and/or termination points of the

1 transmission, conveyance, or routing are not fixed, including, by way
2 of example only, telecommunications services that are provided by a
3 commercial mobile radio service provider.

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

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

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

21 (16) "Private communications service" means a telecommunications
22 service that entitles the customer to exclusive or priority use of a
23 communications channel or group of channels between or among
24 termination points, regardless of the manner in which the channel or
25 channels are connected, and includes switching capacity, extension
26 lines, stations, and any other associated services that are provided in
27 connection with the use of the channel or channels.

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

33 (18) "Charges for mobile telecommunications services" means any
34 charge for, or associated with, the provision of commercial mobile
35 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
36 on June 1, 1999, or any charge for, or associated with, a service
37 provided as an adjunct to a commercial mobile radio service, regardless

1 of whether individual transmissions originate or terminate within the
2 licensed service area of the mobile telecommunications service
3 provider.

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

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

15 (a) Responsible for providing an electronic database prescribed in
16 4 U.S.C. Sec. 119(a) if the state has not provided an electronic
17 database; and

18 (b) Approved by municipal and county associations or leagues of the
19 state whose responsibility it would otherwise be to provide a database
20 prescribed by 4 U.S.C. Secs. 116 through 126.

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

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

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

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

32 (25) "Mobile telecommunications service provider" means a home
33 service provider or a serving carrier.

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

37 (a) The residential street address or the primary business street
38 address of the customer; and

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

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

9 (28) "Reseller" means a provider who purchases telecommunications
10 services from another telecommunications service provider and then
11 resells, uses as a component part of, or integrates the purchased
12 services into a mobile telecommunications service. "Reseller" does not
13 include a serving carrier with whom a home service provider arranges
14 for the services to its customers outside the home service provider's
15 licensed service area.

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

19 (30) "Taxing jurisdiction" means any of the several states, the
20 District of Columbia, or any territory or possession of the United
21 States, any municipality, city, county, township, parish,
22 transportation district, or assessment jurisdiction, or other political
23 subdivision within the territorial limits of the United States with the
24 authority to impose a tax, charge, or fee.

25 **PART V**

26 **SALES TAX EXEMPTIONS**

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

29 The tax imposed by RCW 82.08.020 does not apply to the sale of a
30 digital code for one or more digital products if the sale of the
31 digital products to which the digital code relates is exempt from the
32 tax levied by RCW 82.08.020.

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

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

4 (2)(a) Except as provided in (b) of this subsection, the exemption
5 provided in subsection (1) of this section does not apply in respect to
6 programming that is sold on a pay-per-program basis or that allows the
7 buyer to access a library of programs at any time for a specific charge
8 for that service.

9 (b) Notwithstanding (a) of this subsection, the exemption provided
10 in this section applies to the sale of programming described in (a) of
11 this subsection if the seller is subject to a franchise fee in this
12 state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross
13 revenue derived from the sale.

14 (3) For purposes of this section, "radio or television broadcaster"
15 includes satellite radio providers, satellite television providers,
16 cable television providers, and providers of subscription internet
17 television.

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

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

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

32 (b) Making the digital good or digital automated service, including
33 a digital good or digital automated service acquired through the use of
34 a digital code, or service defined as a retail sale in RCW
35 82.04.050(6)(b) available free of charge for the use or enjoyment of
36 others.

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

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

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

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

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

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

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

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

26 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to the
27 sale of public records by state and local agencies, as the terms are
28 defined in RCW 42.17.020, that are copied or transferred electronically
29 under a request for the record for which no fee is charged other than
30 a statutorily set fee or a fee to reimburse the agency for its actual
31 costs directly incident to the copying. A request for a record
32 includes a request for a document not available to the public but
33 available to those persons who by law are allowed access to the
34 document, such as requests for fire reports, law enforcement reports,
35 taxpayer information, and academic transcripts.

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

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

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

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

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

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

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

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

18 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to (~~the~~)
19 subscription sales (~~and distribution~~) of magazines or periodicals
20 (~~by subscription~~), including magazines and periodicals transferred
21 electronically to the buyer, for the purposes of fund-raising by (1)
22 educational institutions as defined in RCW 82.04.170, or (2) nonprofit
23 organizations engaged in activities primarily for the benefit of boys
24 and girls nineteen years and younger.

25 **Sec. 508.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to
26 read as follows:

27 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
28 of academic transcripts by educational institutions, including academic
29 transcripts transferred electronically.

30 **Sec. 509.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to
31 read as follows:

32 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to sales
33 (including transfers of title through decree of appropriation)
34 heretofore or hereafter made of the entire operating property of a
35 publicly or privately owned public utility, or of a complete operating

1 integral section thereof, to the state or a political subdivision
2 thereof for use in conducting any business defined in RCW 82.16.010
3 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For
4 purposes of this section, "operating property" includes digital goods
5 and digital codes.

6 **Sec. 510.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to
7 read as follows:

8 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
9 sales to a manufacturer or processor for hire of machinery and
10 equipment used directly in a manufacturing operation or research and
11 development operation, to sales to a person engaged in testing for a
12 manufacturer or processor for hire of machinery and equipment used
13 directly in a testing operation, or to sales of or charges made for
14 labor and services rendered in respect to installing, repairing,
15 cleaning, altering, or improving the machinery and equipment, but only
16 when the purchaser provides the seller with an exemption certificate in
17 a form and manner prescribed by the department by rule. The seller
18 (~~shall~~) must retain a copy of the certificate for the seller's files.

19 (2) For purposes of this section and RCW 82.12.02565:

20 (a) "Machinery and equipment" means industrial fixtures, devices,
21 and support facilities, and tangible personal property that becomes an
22 ingredient or component thereof, including repair parts and replacement
23 parts. "Machinery and equipment" includes pollution control equipment
24 installed and used in a manufacturing operation, testing operation, or
25 research and development operation to prevent air pollution, water
26 pollution, or contamination that might otherwise result from the
27 manufacturing operation, testing operation, or research and development
28 operation. "Machinery and equipment" also includes digital goods.

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

30 (i) Hand-powered tools;

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

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

34 (iv) Building fixtures that are not integral to the manufacturing
35 operation, testing operation, or research and development operation
36 that are permanently affixed to and become a physical part of a

1 building, such as utility systems for heating, ventilation, air
2 conditioning, communications, plumbing, or electrical.

3 (c) Machinery and equipment is "used directly" in a manufacturing
4 operation, testing operation, or research and development operation if
5 the machinery and equipment:

6 (i) Acts upon or interacts with an item of tangible personal
7 property;

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

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

12 (iv) Provides physical support for or access to tangible personal
13 property;

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

15 (vi) Produces another item of tangible personal property for use in
16 the manufacturing operation, testing operation, or research and
17 development operation;

18 (vii) Places tangible personal property in the container, package,
19 or wrapping in which the tangible personal property is normally sold or
20 transported; or

21 (viii) Is integral to research and development as defined in RCW
22 82.63.010.

23 (d) "Manufacturing operation" means the manufacturing of articles,
24 substances, or commodities for sale as tangible personal property. A
25 manufacturing operation begins at the point where the raw materials
26 enter the manufacturing site and ends at the point where the processed
27 material leaves the manufacturing site. The term also includes that
28 portion of a cogeneration project that is used to generate power for
29 consumption within the manufacturing site of which the cogeneration
30 project is an integral part. The term does not include the production
31 of electricity by a light and power business as defined in RCW
32 82.16.010 or the preparation of food products on the premises of a
33 person selling food products at retail.

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

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

1 (g) "Testing" means activities performed to establish or determine
2 the properties, qualities, and limitations of tangible personal
3 property.

4 (h) "Testing operation" means the testing of tangible personal
5 property for a manufacturer or processor for hire. A testing operation
6 begins at the point where the tangible personal property enters the
7 testing site and ends at the point where the tangible personal property
8 leaves the testing site. The term also includes that portion of a
9 cogeneration project that is used to generate power for consumption
10 within the site of which the cogeneration project is an integral part.
11 The term does not include the production of electricity by a light and
12 power business as defined in RCW 82.16.010 or the preparation of food
13 products on the premises of a person selling food products at retail.

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

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

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

23 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
24 sales to nonresidents of this state of tangible personal property,
25 digital goods, and digital codes, when such property is for use outside
26 this state (~~when~~), and the purchaser (a) is a bona fide resident of
27 a state or possession or Province of Canada other than the state of
28 Washington and such state, possession, or Province of Canada does not
29 impose a retail sales tax or use tax of three percent or more or, if
30 imposing such a tax, permits Washington residents exemption from
31 otherwise taxable sales by reason of their residence, and (b) agrees,
32 when requested, to grant the department of revenue access to such
33 records and other forms of verification at his or her place of
34 residence to assure that such purchases are not first used
35 substantially in the state of Washington.

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

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

21 (b) Acceptable proof of a nonresident person's status (~~shall~~)
22 includes one piece of identification such as a valid driver's license
23 from the jurisdiction in which the out-of-state residency is claimed or
24 a valid identification card which has a photograph of the holder and is
25 issued by the out-of-state jurisdiction. Identification under this
26 subsection (3)(b) must show the holder's residential address and have
27 as one of its legal purposes the establishment of residency in that
28 out-of-state jurisdiction.

29 (4) Nothing in this section requires the vendor to make tax exempt
30 retail sales to nonresidents. A vendor may choose to make sales to
31 nonresidents, collect the sales tax, and remit the amount of sales tax
32 collected to the state as otherwise provided by law. If the vendor
33 chooses to make a sale to a nonresident without collecting the sales
34 tax, the vendor shall, in good faith, examine the proof of
35 nonresidence, determine whether the proof is acceptable under
36 subsection (3)(b) of this section, and maintain records for each
37 nontaxable sale which shall show the type of proof accepted, including

1 any identification numbers where appropriate, and the expiration date,
2 if any.

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

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

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

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

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

28 (1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~)
29 personal property used at an aluminum smelter, tangible personal
30 property that will be incorporated as an ingredient or component of
31 buildings or other structures at an aluminum smelter, or for labor and
32 services rendered with respect to such buildings, structures, or
33 (~~tangible~~) personal property, is eligible for an exemption from the
34 state share of the tax in the form of a credit, as provided in this
35 section. A person claiming an exemption must pay the tax and may then
36 take a credit equal to the state share of retail sales tax paid under
37 RCW 82.08.020. The person shall submit information, in a form and

1 manner prescribed by the department, specifying the amount of
2 qualifying purchases or acquisitions for which the exemption is claimed
3 and the amount of exempted tax.

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

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

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

10 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
11 (~~tangible~~) personal property and services provided by a public
12 corporation, commission, or authority created under RCW 35.21.660 or
13 35.21.730 to an eligible entity.

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

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

20 **PART VI**
21 **USE TAX EXEMPTIONS**

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

24 The provisions of this chapter do not apply in respect to the use
25 of a digital code for one or more digital products, if the use of the
26 digital products to which the digital code relates is exempt from the
27 tax levied by RCW 82.12.020.

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

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

1 (2)(a) Except as provided in (b) of this subsection, the exemption
2 provided in subsection (1) of this section does not apply in respect to
3 programming that is sold on a pay-per-program basis or that allows the
4 buyer to access a library of programs at any time for a specific charge
5 for that service.

6 (b) Notwithstanding (a) of this subsection, the exemption provided
7 in this section applies to the sale of programming described in (a) of
8 this subsection if the seller is subject to a franchise fee in this
9 state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross
10 revenue derived from the sale.

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

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

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

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

30 (2) Making the digital good or digital automated service, including
31 a digital good or digital automated service acquired through the use of
32 a digital code, or service defined as a retail sale in RCW
33 82.04.050(6)(b) available free of charge for the use or enjoyment of
34 others.

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

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

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

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

10 (a) Of a noncommercial nature, such as personal e-mail
11 communications;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 The provisions of this chapter (~~shall~~) do not apply with respect
36 to the use of public records sold by state and local agencies, as the
37 terms are defined in RCW 42.17.020, including public records

1 transferred electronically that are obtained under a request for the
2 record for which no fee is charged other than a statutorily set fee or
3 a fee to reimburse the agency for its actual costs directly incident to
4 the copying. A request for a record includes a request for a document
5 not available to the public but available to those persons who by law
6 are allowed access to the document, such as requests for fire reports,
7 law enforcement reports, taxpayer information, and academic
8 transcripts.

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

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

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

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

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

30 The provisions of this chapter (~~shall~~) do not apply in respect to
31 the use of (~~tangible~~) personal property (including household goods)
32 (~~which have~~) that has been used in conducting a farm activity, if
33 such property was purchased from a farmer at an auction sale held or
34 conducted by an auctioneer upon a farm and not otherwise.

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

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

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

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

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

31 The provisions of this chapter ((~~shall~~)) do not apply in respect to
32 the use of ((~~tangible~~)) personal property held for sale and displayed
33 in single trade shows for a period not in excess of thirty days, the
34 primary purpose of which is to promote the sale of products or
35 services.

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

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

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

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

14 (1) Printed newspapers as defined in RCW 82.08.0253; and

15 (2) Newspapers transferred electronically, provided that the
16 electronic version of a printed newspaper:

17 (a) Shares content with the printed newspaper; and

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

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

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

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

28 (1) A person who is subject to tax under RCW 82.12.020 for
29 (~~tangible~~) personal property used at an aluminum smelter, or for
30 tangible personal property that will be incorporated as an ingredient
31 or component of buildings or other structures at an aluminum smelter,
32 or for labor and services rendered with respect to such buildings,
33 structures, or (~~tangible~~) personal property, is eligible for an
34 exemption from the state share of the tax in the form of a credit, as
35 provided in this section. The amount of the credit shall be equal to

1 the state share of use tax computed to be due under RCW 82.12.020. The
2 person shall submit information, in a form and manner prescribed by the
3 department, specifying the amount of qualifying purchases or
4 acquisitions for which the exemption is claimed and the amount of
5 exempted tax.

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

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

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

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

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

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

21 (b) "Foreign credit union" means a credit union organized and
22 operating under the laws of another country or other foreign
23 jurisdiction.

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

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

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

31 (1) The provisions of this chapter do not apply with respect to the
32 use of (~~tangible~~) personal property and services provided by a public
33 corporation, commission, or authority created under RCW 35.21.660 or
34 35.21.730 to an eligible entity.

35 (2) For purposes of this section, "eligible entity" means a limited

1 liability company, a limited partnership, or a single asset entity,
2 described in RCW 82.04.615.

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

6 **PART VII**

7 **SOURCING AND SALES/USE TAX APPORTIONMENT**

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

10 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
11 digital goods, digital codes, digital automated services, prewritten
12 computer software, or services defined as a retail sale in RCW
13 82.04.050(6)(b) to a buyer that provides the seller with an exemption
14 certificate claiming multiple points of use. An exemption certificate
15 claiming multiple points of use must be in a form and contain such
16 information as required by the department.

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

29 (3) A buyer claiming an exemption under this section must report
30 and pay the tax imposed in RCW 82.12.020 and any local use taxes
31 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
32 directly to the department in accordance with sections 702 and 703 of
33 this act.

34 (4) For purposes of this section, "concurrently available for use
35 within and outside this state" means that employees or other agents of

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

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

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

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

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

28 (a) "Concurrently available for use within and outside this state"
29 means that employees or other agents of the taxpayer may use the
30 digital goods, digital automated services, prewritten computer
31 software, or services defined as a retail sale in RCW 82.04.050(6)(b)
32 simultaneously at one or more locations within this state and one or
33 more locations outside this state. A digital code is concurrently
34 available for use within and outside this state if employees or other
35 agents of the taxpayer may use the digital goods or digital automated
36 services to be obtained by the code simultaneously at one or more

1 locations within this state and one or more locations outside this
2 state.

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

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

10 (1) A business or other organization that is entitled under section
11 702 of this act to apportion the amount of state use tax on the use of
12 digital goods, digital codes, digital automated services, prewritten
13 computer software, or services defined as a retail sale in RCW
14 82.04.050(6)(b) is also entitled to apportion the amount of local use
15 taxes imposed under the authority of this chapter and RCW 81.104.170 on
16 the use of such products or services.

17 (2) To ensure that the tax base for state and local use taxes is
18 identical, the measure of local use taxes apportioned under this
19 section must be the same as the measure of state use tax apportioned
20 under section 702 of this act.

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

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

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

29 (a) When tangible personal property, an extended warranty, a
30 digital good, digital code, digital automated service, or ((a)) other
31 service defined as a retail sale under RCW 82.04.050 is received by the
32 purchaser at a business location of the seller, the sale is sourced to
33 that business location.

34 (b) When the tangible personal property, extended warranty, digital
35 good, digital code, digital automated service, or ((a)) other service
36 defined as a retail sale under RCW 82.04.050 is not received by the

1 purchaser at a business location of the seller, the sale is sourced to
2 the location where receipt by the purchaser or the purchaser's donee,
3 designated as such by the purchaser, occurs, including the location
4 indicated by instructions for delivery to the purchaser or donee, known
5 to the seller.

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

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

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

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

29 (a) For a lease or rental that requires recurring periodic
30 payments, the first periodic payment is sourced the same as a retail
31 sale in accordance with subsection (1) of this section. Periodic
32 payments made subsequent to the first payment are sourced to the
33 primary property location for each period covered by the payment. The
34 primary property location shall be as indicated by an address for the
35 property provided by the lessee that is available to the lessor from
36 its records maintained in the ordinary course of business, when use of
37 this address does not constitute bad faith. The property location is

1 not altered by intermittent use at different locations, such as use of
2 business property that accompanies employees on business trips and
3 service calls.

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

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

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

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

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

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

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

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

33 (i) Upon receipt of the direct mail form, the seller is relieved of
34 all obligations to collect, pay, or remit the applicable tax and the
35 purchaser is obligated to pay or remit the applicable tax on a direct
36 pay basis. A direct mail form shall remain in effect for all future
37 sales of direct mail by the seller to the purchaser until it is revoked
38 in writing.

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

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

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

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

19 (a) A retail sale of watercraft;

20 (b) A retail sale of a modular home, manufactured home, or mobile
21 home;

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

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

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

34 (8) The definitions in this subsection apply throughout this
35 section.

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

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

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

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

22 (e) "Transportation equipment" means:

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

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

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

29 (B) Operated under authority of a carrier authorized and
30 certificated by the United States department of transportation or
31 another federal authority to engage in the carriage of persons or
32 property in interstate commerce;

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

37 (iv) Containers designed for use on and component parts attached or

1 secured on the items described in (e)(i) through (iii) of this
2 subsection.

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

9 **PART VIII**

10 **BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED THROUGH THE**
11 **USE OF A CODE THAT DOES NOT MEET THE DEFINITION OF DIGITAL CODE**

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

14 (1) A bundled transaction is subject to the tax imposed by RCW
15 82.08.020 if the retail sale of any of its component products would be
16 subject to the tax imposed by RCW 82.08.020.

17 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are
18 subject to the tax imposed by RCW 82.08.020 if the service that is the
19 true object of the transaction is subject to the tax imposed by RCW
20 82.08.020. If the service that is the true object of the transaction
21 is not subject to the tax imposed by RCW 82.08.020, the transaction is
22 not subject to the tax imposed by RCW 82.08.020.

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

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

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

30 (a) If the price is attributable to products that are taxable and
31 products that are not taxable, the portion of the price attributable to
32 the nontaxable products are subject to the tax imposed by RCW 82.08.020
33 unless the seller can identify by reasonable and verifiable standards
34 the portion from its books and records that are kept in the regular
35 course of business for other purposes including, but not limited to,
36 nontax purposes;

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

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

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

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

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

28 **PART IX**

29 **NEXUS**

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

32 For purposes of the taxes imposed in this title, the department of
33 revenue may not consider a person's ownership of, or rights in, digital
34 goods or digital codes residing on servers located in this state in
35 determining whether the person has substantial nexus with this state.
36 For purposes of this section, "substantial nexus" means the requisite

1 connection that a person has with a state to allow the state to subject
2 the person to the state's taxing authority, consistent with the
3 commerce clause of the United States Constitution.

4 **PART X**
5 **AMNESTY**

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

10 (2) Subsection (1) of this section does not relieve any person from
11 liability for state and local sales taxes that the person collected
12 from buyers but did not remit to the department of revenue.

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

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

18 **PART XI**
19 **MISCELLANEOUS AMENDMENTS**

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

22 (~~Until July 1, 2006, a city or town may not impose any new taxes~~
23 ~~or fees specific to internet service providers.)) A city or town may
24 tax internet ((~~service~~)) access providers under generally applicable
25 business taxes or fees, at a rate not to exceed the rate applied to a
26 general service classification. For the purposes of this section,
27 "internet ((~~service~~)) access" has the same meaning as in RCW 82.04.297.~~

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

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

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

1 (a) Taxes on real and tangible personal property;
2 (b) Excise taxes on the sale, purchase, use, or possession of (i)
3 real property; (ii) tangible personal property; (iii) extended
4 warranties; ~~((and))~~ (iv) services, including digital automated services
5 as defined in section 201 of this act; and (v) digital goods and
6 digital codes as those terms are defined in section 201 of this act;
7 and

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

10 (3) For the purposes of this section, the term "taxes" includes
11 taxes imposed by the state or any county, city, town, municipal
12 corporation, quasi-municipal corporation, or other political
13 subdivision.

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

16 Except only as expressly provided in chapters 67.28, 81.104, and
17 82.14 RCW, the state preempts the field of imposing retail sales and
18 use taxes and taxes upon (~~retail sales of tangible personal property,~~
19 ~~the use of tangible personal property,~~) parimutuel wagering authorized
20 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
21 town, or other municipal subdivision shall have the right to impose
22 taxes of that nature. Except as provided in RCW 64.34.440 and
23 82.02.050 through 82.02.090, no county, city, town, or other municipal
24 corporation shall impose any tax, fee, or charge, either direct or
25 indirect, on the construction or reconstruction of residential
26 buildings, commercial buildings, industrial buildings, or on any other
27 building or building space or appurtenance thereto, or on the
28 development, subdivision, classification, or reclassification of land.
29 However, this section does not preclude dedications of land or
30 easements within the proposed development or plat which the county,
31 city, town, or other municipal corporation can demonstrate are
32 reasonably necessary as a direct result of the proposed development or
33 plat to which the dedication of land or easement is to apply.

34 This section does not prohibit voluntary agreements with counties,
35 cities, towns, or other municipal corporations that allow a payment in
36 lieu of a dedication of land or to mitigate a direct impact that has
37 been identified as a consequence of a proposed development,

1 subdivision, or plat. A local government shall not use such voluntary
2 agreements for local off-site transportation improvements within the
3 geographic boundaries of the area or areas covered by an adopted
4 transportation program authorized by chapter 39.92 RCW. Any such
5 voluntary agreement is subject to the following provisions:

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

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

11 (3) Any payment not so expended shall be refunded with interest to
12 be calculated from the original date the deposit was received by the
13 county and at the same rate applied to tax refunds pursuant to RCW
14 84.69.100; however, if the payment is not expended within five years
15 due to delay attributable to the developer, the payment shall be
16 refunded without interest.

17 No county, city, town, or other municipal corporation shall require
18 any payment as part of such a voluntary agreement which the county,
19 city, town, or other municipal corporation cannot establish is
20 reasonably necessary as a direct result of the proposed development or
21 plat.

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

28 This section does not limit the existing authority of any county,
29 city, town, or other municipal corporation to impose special
30 assessments on property specifically benefitted thereby in the manner
31 prescribed by law.

32 Nothing in this section prohibits counties, cities, or towns from
33 imposing or permits counties, cities, or towns to impose water, sewer,
34 natural gas, drainage utility, and drainage system charges(~~(+
35 PROVIDED, That~~)). However, no such charge shall exceed the
36 proportionate share of such utility or system's capital costs which the
37 county, city, or town can demonstrate are attributable to the property
38 being charged(~~(+ PROVIDED FURTHER, That~~)). Furthermore, these

1 provisions (~~shall~~) may not be interpreted to expand or contract any
2 existing authority of counties, cities, or towns to impose such
3 charges.

4 Nothing in this section prohibits a transportation benefit district
5 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits
6 the legislative authority of a county, city, or town from approving the
7 imposition of such fees within a transportation benefit district.

8 Nothing in this section prohibits counties, cities, or towns from
9 imposing transportation impact fees authorized pursuant to chapter
10 39.92 RCW.

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

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

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

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

22 (1) Subject to the limits in this section, an eligible person is
23 allowed a credit against the tax due under this chapter. The credit is
24 based on qualified employment positions in eligible areas. The credit
25 is available to persons who are engaged in international services as
26 defined in this section. In order to receive the credit, the
27 international service activities must take place at a business within
28 the eligible area.

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

34 (b) Credit may not be taken for hiring of persons into positions
35 that exist on July 1, 1998. Credit is authorized for new employees
36 hired for new positions created after July 1, 1998. New positions

1 filled by existing employees are eligible for the credit under this
2 section only if the position vacated by the existing employee is filled
3 by a new hire.

4 (c) When a position is newly created, if it is filled before July
5 1st, this position is eligible for the full yearly credit. If it is
6 filled after June 30th, this position is eligible for half of the
7 credit.

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

10 (3) For the purposes of this section:

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

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

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

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

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

24 (ii) "International services" excludes any service taxable under
25 RCW 82.04.290(1).

26 (iii) Eligible services are: Computer; data processing;
27 information; legal; accounting and tax preparation; engineering;
28 architectural; business consulting; business management; public
29 relations and advertising; surveying; geological consulting; real
30 estate appraisal; or financial services. For the purposes of this
31 section these services mean the following:

32 (A) "Computer services" are services such as computer programming,
33 custom software modification, customization of canned software, custom
34 software installation, custom software maintenance, custom software
35 repair, training in the use of software, computer systems design, and
36 custom software update services;

37 (B) "Data processing services" are services such as word
38 processing, data entry, data retrieval, data search, information

1 compilation, payroll processing, business accounts processing, data
2 production, and other computerized data and information storage or
3 manipulation. "Data processing services" also includes the use of a
4 computer or computer time for data processing whether the processing is
5 performed by the provider of the computer or by the purchaser or other
6 beneficiary of the service;

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

11 (D) "Legal services" are services such as representation by an
12 attorney, or other person when permitted, in an administrative or legal
13 proceeding, legal drafting, paralegal services, legal research
14 services, and court reporting services, arbitration, and mediation
15 services;

16 (E) "Accounting and tax preparation services" are services such as
17 accounting, auditing, actuarial, bookkeeping, or tax preparation
18 services;

19 (F) "Engineering services" are services such as civil, electrical,
20 mechanical, petroleum, marine, nuclear, and design engineering, machine
21 designing, machine tool designing, and sewage disposal system designing
22 services;

23 (G) "Architectural services" are services such as structural or
24 landscape design or architecture, interior design, building design,
25 building program management, and space planning services;

26 (H) "Business consulting services" are services such as primarily
27 providing operating counsel, advice, or assistance to the management or
28 owner of any business, private, nonprofit, or public organization,
29 including but not limited to those in the following areas:
30 Administrative management consulting; general management consulting;
31 human resource consulting or training; management engineering
32 consulting; management information systems consulting; manufacturing
33 management consulting; marketing consulting; operations research
34 consulting; personnel management consulting; physical distribution
35 consulting; site location consulting; economic consulting; motel,
36 hotel, and resort consulting; restaurant consulting; government affairs
37 consulting; and lobbying;

1 (I) "Business management services" are services such as
2 administrative management, business management, and office management.
3 "Business management services" does not include property management or
4 property leasing, motel, hotel, and resort management, or automobile
5 parking management;

6 (J) "Public relations and advertising services" are services such
7 as layout, art direction, graphic design, copy writing, mechanical
8 preparation, opinion research, marketing research, marketing, or
9 production supervision;

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

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

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

16 (N) "Financial services" are services such as banking, loan,
17 security, investment management, investment advisory, mortgage
18 servicing, contract collection, and finance leasing services, engaged
19 in by financial businesses, or businesses similar to or in competition
20 with financial businesses; and

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

26 (4) By ordinance, the legislative authority of a city, or
27 legislative authorities of contiguous cities by ordinance of each
28 city's legislative authority, with population greater than eighty
29 thousand, located in a county containing no community empowerment zones
30 as designated under RCW 43.31C.020, may designate a contiguous group of
31 census tracts within the city or cities as an eligible area under this
32 section. Each of the census tracts must meet the unemployment and
33 poverty criteria of RCW 43.31C.030. Upon making the designation, the
34 city or cities shall transmit to the department of revenue a
35 certification letter and a map, each explicitly describing the
36 boundaries of the census tract. This designation must be made by
37 December 31, 1998.

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

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

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

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

9 (6) If at any time the department finds that a person is not
10 eligible for tax credit under this section, the amount of taxes for
11 which a credit has been used shall be immediately due. The department
12 shall assess interest, but not penalties, on the credited taxes for
13 which the person is not eligible. The interest shall be assessed at
14 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
15 shall be assessed retroactively to the date the tax credit was taken,
16 and shall accrue until the taxes for which a credit has been used are
17 repaid.

18 (7) The employment security department shall provide to the
19 department of revenue such information needed by the department of
20 revenue to verify eligibility under this section.

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

23 (1) Every consignee, bailee, factor, or auctioneer (~~authorized,~~
24 ~~engaged, or employed to sell or call~~) selling or calling for bids on
25 (~~tangible~~) personal property belonging to another, (~~and so selling~~
26 ~~or calling, shall be~~) is deemed the seller of such (~~tangible~~)
27 personal property within the meaning of this chapter (~~and~~). All
28 sales made by such persons are subject to (~~its~~) the provisions of
29 this chapter even though the sale would have been exempt from the tax
30 (~~hereunder~~) imposed in this chapter had it been made directly by the
31 owner of the property sold.

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

36 (b) If the owner of the property sold is engaged in the business of
37 (~~selling tangible personal property~~) making sales at retail in this

1 state, the tax imposed under this chapter may be remitted by such owner
2 under such rules (~~and regulations~~) as the department (~~of revenue~~
3 ~~shall prescribe~~) may adopt.

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

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

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

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

30 A credit (~~shall be~~) is allowed against the taxes imposed by this
31 chapter upon the use in this state of tangible personal property,
32 extended warranty, digital good, digital code, digital automated
33 service, or services (~~taxable under~~) defined as a retail sale in RCW
34 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the (~~state of~~
35 ~~Washington in the~~) amount that the present user thereof or his or her
36 bailor or donor has paid a legally imposed retail sales or use tax with

1 respect to such property, extended warranty, digital good, digital
2 code, digital automated service, or service defined as a retail sale in
3 RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state,
4 possession, territory, or commonwealth of the United States, any
5 political subdivision thereof, the District of Columbia, and any
6 foreign country or political subdivision thereof (~~(, prior to the use of~~
7 ~~such property, extended warranty, or service in Washington)~~).

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

10 (1) Every person who maintains in this state a place of business or
11 a stock of goods, or engages in business activities within this state,
12 shall obtain from the department a certificate of registration, and
13 shall, at the time of making sales of tangible personal property,
14 digital goods, digital codes, digital automated services, extended
15 warranties, or sales of any service defined as a retail sale in RCW
16 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
17 either possession or title, or both, of tangible personal property for
18 use in this state, collect from the purchasers or transferees the tax
19 imposed under this chapter. The tax to be collected under this section
20 (~~(shall)~~) must be 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 For the purposes of this chapter, the phrase "maintains in this state
23 a place of business" shall include the solicitation of sales and/or
24 taking of orders by sales agents or traveling representatives. For the
25 purposes of this chapter, "engages in business activity within this
26 state" includes every activity which is sufficient under the
27 Constitution of the United States for this state to require collection
28 of tax under this chapter. The department (~~(shall)~~) must in rules
29 specify activities which constitute engaging in business activity
30 within this state, and (~~(shall)~~) must keep the rules current with
31 future court interpretations of the Constitution of the United States.

32 (2) Every person who engages in this state in the business of
33 acting as an independent selling agent for persons who do not hold a
34 valid certificate of registration, and who receives compensation by
35 reason of sales of tangible personal property, digital goods, digital
36 codes, digital automated services, extended warranties, or sales of any
37 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),

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

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

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

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

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

- 29 (i) The storage, dissemination, or display of advertising;
- 30 (ii) The taking of orders; or
- 31 (iii) The processing of payments; and

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

37 (6) Subsection (5) of this section expires when: (a) The United
38 States congress grants individual states the authority to impose sales

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

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

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

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

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

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

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

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

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

9 (i) The amount of tax distributions totals the amount of the state
10 contribution;

11 (ii) The amount of tax distributions totals the amount of local
12 public sources, dedicated in the previous calendar year to finance
13 public improvements authorized under chapter 39.100 RCW, expended in
14 the previous year for public improvement costs or used to pay for other
15 bonds issued to pay for public improvements; or

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

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

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

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

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

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

37 (6) The department shall determine the amount of tax distributions
38 attributable to each city, town, and county imposing a sales and use

1 tax under this section and shall advise a city, town, or county when
2 the tax will cease to be distributed for the remainder of the fiscal
3 year as provided in subsection (4)(c) of this section. Determinations
4 by the department of the amount of taxes attributable to a city, town,
5 or county are final and shall not be used to challenge the validity of
6 any tax imposed under this section. The department shall remit any tax
7 revenues in excess of the amounts specified in subsection (4)(b) and
8 (c) of this section to the state treasurer who shall deposit the moneys
9 in the general fund.

10 (7) The definitions in this subsection apply throughout this
11 section and RCW 82.14.470 unless the context clearly requires
12 otherwise.

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

15 (b) "Benefit zone" has the same meaning as provided in RCW
16 39.100.010.

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

19 (d) "Excess state excise taxes" means the amount of excise taxes
20 received by the state during the measurement year from taxable activity
21 within the benefit zone over and above the amount of excise taxes
22 received by the state during the base year from taxable activity within
23 the benefit zone. However, if a local government creates the benefit
24 zone and reasonably determines that no activity subject to tax under
25 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
26 preceding the creation of the benefit zone within the boundaries of the
27 area that became the benefit zone, "excess state excise taxes" means
28 the entire amount of state excise taxes the state receives during a
29 calendar year period beginning with the calendar year immediately
30 following the creation of the benefit zone and continuing with each
31 measurement year thereafter.

32 (e) "State excise taxes" means revenues derived from state retail
33 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
34 of tax distributions from all local retail sales and use taxes imposed
35 on the same taxable events that are credited against the state retail
36 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
37 local tax authorized in this section.

1 (f) "Fiscal year" has the same meaning as provided in RCW
2 39.100.030.

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

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

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

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

14 (k) "Local public sources" includes, but is not limited to, private
15 monetary contributions, assessments, dedicated local government funds,
16 and tax allocation revenues. "Local public sources" does not include
17 local government funds derived from any state loan or state grant, any
18 local tax that is credited against the state sales and use taxes, or
19 any other state funds.

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

22 For the purposes of this chapter, unless otherwise required by the
23 context:

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

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

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

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

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

7 (6) "Telegraph business" means the business of affording
8 telegraphic communication for hire.

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

12 (8) "Motor transportation business" means the business (except
13 urban transportation business) of operating any motor propelled vehicle
14 by which persons or property of others are conveyed for hire, and
15 includes, but is not limited to, the operation of any motor propelled
16 vehicle as an auto transportation company (except urban transportation
17 business), common carrier, or contract carrier as defined by RCW
18 81.68.010 and 81.80.010(~~(+—PROVIDED, That)~~). However, "motor
19 transportation business" (~~(shall)~~) does not mean or include the
20 transportation of logs or other forest products exclusively upon
21 private roads or private highways.

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

36 (10)(a) "Public service business" means any of the businesses
37 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)
38 of this section or any business subject to control by the state, or

1 having the powers of eminent domain and the duties incident thereto, or
2 any business hereafter declared by the legislature to be of a public
3 service nature, except telephone business and low-level radioactive
4 waste site operating companies as redefined in RCW 81.04.010. It
5 includes, among others, without limiting the scope hereof: Airplane
6 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
7 road, water transportation and wharf businesses.

8 (b) The definitions in this subsection (10)(b) apply throughout
9 this subsection (10).

10 (i) "Competitive telephone service" has the same meaning as in RCW
11 82.04.065.

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

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

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

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

36 (12) "Gross income" means the value proceeding or accruing from the
37 performance of the particular public service or transportation business
38 involved, including operations incidental thereto, but without any

1 deduction on account of the cost of the commodity furnished or sold,
2 the cost of materials used, labor costs, interest, discount, delivery
3 costs, taxes, or any other expense whatsoever paid or accrued and
4 without any deduction on account of losses.

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

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

11 For the purposes of this chapter:

12 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
13 the words and phrases "tax year," "taxable year," "person," "company,"
14 "gross proceeds of sales," "gross income of the business," "business,"
15 "engaging in business," "successor," "gross operating revenue," "gross
16 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
17 "extended warranty," and "value of products" shall apply equally to the
18 provisions of this chapter.

19 (2) Whenever "property" or "personal property" is used, those terms
20 must be construed to include digital goods and digital codes unless:
21 (a) It is clear from the context that the term "personal property" is
22 intended only to refer to tangible personal property; (b) it is clear
23 from the context that the term "property" is intended only to refer to
24 tangible personal property, real property, or both; or (c) to construe
25 the term "property" or "personal property" as including digital goods
26 and digital codes would yield unlikely, absurd, or strained
27 consequences.

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

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

31 (b) "Associate member" means a petitioning state that is found to
32 be in compliance with the agreement and changes to its laws, rules, or
33 other authorities necessary to bring it into compliance are not in
34 effect, but are scheduled to take effect on or before January 1, 2008.
35 The petitioning states, by majority vote, may also grant associate
36 member status to a petitioning state that does not receive an
37 affirmative vote of three-fourths of the petitioning states upon a

1 finding that the state has achieved substantial compliance with the
2 terms of the agreement as a whole, but not necessarily each required
3 provision, measured qualitatively, and there is a reasonable
4 expectation that the state will achieve compliance by January 1, 2008.

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

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

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

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

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

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

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

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

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

37 (g) "Model 2 seller" means a seller that has selected a certified

1 automated system to perform part of its sales and use tax functions,
2 but retains responsibility for remitting the tax.

3 (h) "Model 3 seller" means a seller that has sales in at least five
4 member states, has total annual sales revenue of at least five hundred
5 million dollars, has a proprietary system that calculates the amount of
6 tax due each jurisdiction, and has entered into a performance agreement
7 with the member states that establishes a tax performance standard for
8 the seller. As used in this subsection (~~((+2))~~) (3)(h), a seller
9 includes an affiliated group of sellers using the same proprietary
10 system.

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

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

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

25 **PART XII**
26 **MISCELLANEOUS**

27 NEW SECTION. **Sec. 1201.** This act does not have any impact
28 whatsoever on the characterization of digital goods and digital codes
29 as tangible or intangible personal property for purposes of property
30 taxation and may not be used in any way in construing any provision of
31 Title 84 RCW.

32 NEW SECTION. **Sec. 1202.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 1203.** The repeals in sections 515 and 623 of
4 this act do not affect any existing right acquired or liability or
5 obligation incurred under the statutes repealed or under any rule or
6 order adopted under those statutes nor do they affect any proceedings
7 instituted under them.

8 NEW SECTION. **Sec. 1204.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 July 1, 2009.

12 NEW SECTION. **Sec. 1205.** Part headings used in this act are not
13 any part of the law."

14 Correct the title.

EFFECT: Extends amnesty to sales and use taxes assessed by the
Department prior to January 1, 2009. Provides a sales and use tax
exemption for programming on a pay-per-program basis if the sale of the
programming is subject to a franchise fee. Makes a technical change
regarding the location of a definition.

--- END ---