

SB 6173 - H AMD 888

By Representative Hunter

ADOPTED AS AMENDED 4/23/2009

1 Strike everything after the enacting clause and insert the
2 following:
3

4
5 **"PART I**

6 **FINDING AND INTENT**

7
8 NEW SECTION. **Sec. 101.** The legislature finds that the department
9 of revenue's 2008 compliance study estimates that sales tax
10 noncompliance exceeds well over one hundred million dollars annually
11 in unpaid state and local sales and use taxes.

12 The legislature intends to address this significant problem by
13 eliminating the use of resale certificates to document wholesale
14 purchases. Resale certificates will be replaced with seller's
15 permits, which will be issued by the department of revenue only to
16 those businesses that make wholesale purchases, such as retailers,
17 wholesalers, manufacturers, and qualified contractors. Businesses
18 that do not make wholesale purchases, such as most service businesses,
19 will not be entitled to a seller's permit.
20

21 **PART II**

22 **REPLACING RESALE CERTIFICATES WITH SELLER'S PERMITS**

23 **ISSUED BY THE DEPARTMENT OF REVENUE**

24
25 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
26 RCW to read as follows:
27

1 (1) Taxpayers seeking a new seller's permit or to renew or
2 reinstate a seller's permit, other than taxpayers subject to the
3 provisions of section 202 of this act, must apply to the department in
4 a form and manner prescribed by the department. The department must
5 rule on applications within sixty days of receiving a complete
6 application. An application must be denied if the department
7 determines that, based on the nature of the applicant's business, the
8 applicant is not entitled to make purchases at wholesale or is
9 otherwise prohibited from using a seller's permit. The department may
10 also deny an application if it determines that denial would be in the
11 best interest of collecting taxes due under this title. The
12 department's decision whether to approve or deny an application may be
13 based on tax returns previously filed with the department by the
14 applicant, a current or previous examination of the applicant's books
15 and records by the department, information provided by the applicant
16 in the master application and the seller's permit application, and
17 other information available to the department.

18 (2) Notwithstanding subsection (1) of this section, the department
19 may issue a seller's permit to a taxpayer that has not applied for the
20 permit if it appears to the department's satisfaction, based on the
21 nature of the taxpayer's business activities and any other information
22 available to the department, that the taxpayer is entitled to make
23 purchases at wholesale.

24 (3) Seller's permits issued by the department will be in a form
25 prescribed by the department, which may include an electronic form,
26 and must contain a unique identifying number assigned by the
27 department.

28 (4)(a) Except as otherwise provided in this section, seller's
29 permits issued, renewed, or reinstated under this section will be
30 valid for a period of forty-eight months from the date of issuance,
31 renewal, or reinstatement.

32 (b) A seller's permit issued to taxpayers who register with the
33 department under RCW 82.32.030 after January 1, 2009, is valid for a
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1 period of twenty-four months and may be renewed for the period
2 prescribed in (a) of this subsection (4).

3 (c) A seller's permit is no longer valid if the permit holder's
4 certificate of registration is revoked by the department or the person
5 otherwise ceases to engage in business.

6 (5)(a) The department may revoke a seller's permit of a taxpayer
7 for any of the following reasons:

8 (i) The taxpayer used or allowed or caused its seller's permit to
9 be used to purchase any item or service without payment of sales tax,
10 but the taxpayer or other purchaser was not entitled to use the
11 seller's permit for the purchase;

12 (ii) The department issued the seller's permit to the taxpayer in
13 error;

14 (iii) The department determines that the taxpayer is no longer
15 entitled to make purchases at wholesale; or

16 (iv) The department determines that revocation of the seller's
17 permit would be in the best interest of collecting taxes due under
18 this title.

19 (b) The notice of revocation must be in writing and is effective
20 on the date specified in the revocation notice. The notice must also
21 advise the taxpayer of its right to a review by the department.

22 (c) The department may refuse to reinstate a seller's permit
23 revoked under (a)(i) of this subsection until all taxes, penalties,
24 and interest due on any improperly purchased item or service have been
25 paid in full. In the event a taxpayer whose seller's permit has been
26 revoked under this subsection reorganizes, the new business resulting
27 from the reorganization is not entitled to a seller's permit until all
28 taxes, penalties, and interest due on any improperly purchased item or
29 service have been paid in full.

30 (d) For purposes of this subsection, "reorganize" or
31 "reorganization" means: (i) The transfer, however effected, of a
32 majority of the assets of one business to another business where any
33 of the persons having an interest in the ownership or management in
34 the former business maintain an ownership or management interest in

1 the new business, either directly or indirectly; (ii) a mere change in
2 identity or form of ownership, however effected; or (iii) the new
3 business is a mere continuation of the former business based on
4 significant shared features such as owners, personnel, assets, or
5 general business activity.

6 (6) The department may provide lists of valid and revoked seller's
7 permit numbers on its web site.

8 (7) The department must provide by rule for the review of the
9 department's decision to deny, revoke, or refuse to reinstate a
10 seller's permit. Such review must be consistent with the requirements
11 of chapter 34.05 RCW.

12 (8) As part of its continuing efforts to educate taxpayers on
13 their sales and use tax responsibilities, the department will
14 educate taxpayers on the appropriate use of a seller's permit or
15 uniform exemption certificate authorized under RCW 82.04.470 and the
16 consequences of misusing such permits or exemption certificates.

17

18 **Sec. 202.** A new section is added to chapter 82.32 RCW to read as
19 follows:

20 (1)(a) Contractors seeking a new seller's permit or to renew or
21 reinstate a seller's permit must apply to the department in a form and
22 manner prescribed by the department.

23 (b) As part of the application, the contractor must report the
24 dollar amount of all purchases of materials and labor during the
25 preceding twelve months for retail construction activity,
26 speculative building, public road construction, and government
27 contracting. If the contractor was not engaged in business as a
28 contractor during the preceding twelve months, the contractor may
29 provide an estimate of the dollar amount of purchases of materials
30 and labor for retail construction activity, speculative building,
31 public road construction, and government contracting during the
32 twelve-month period for which the seller's permit will be valid.

33 (c) The department must rule on applications within sixty days
34 of receiving a complete application.

1 (d)(i) An application must be denied if:

2 (A) The department determines that the applicant is not
3 entitled to make purchases at wholesale;

4 (B) The application contains any material misstatement;

5 (C) The application is incomplete; or

6 (D) Less than twenty-five percent of the taxpayer's total
7 dollar amount of actual or, if applicable, estimated material and
8 labor purchases as reported on the application is for retail
9 construction activity performed by the applicant. However, the
10 department may approve an application not meeting the criteria in
11 this subsection (1)(d)(i)(D) if the department is satisfied that
12 approval is unlikely to jeopardize collection of the taxes due under
13 this title.

14 (ii) The department may also deny an application if the
15 department determines that denial would be in the best interest of
16 collecting taxes due under this title.

17 (e) Applications to renew a seller's permit may not be made
18 more than ninety days before the expiration of the seller's permit.

19 (2) Sellers' permits issued by the department will be in a form
20 prescribed by the department, which may include an electronic form,
21 and must contain a unique identifying number assigned by the
22 department.

23 (3)(a) Sellers' permits issued, renewed, or reinstated under
24 this section will be valid for a period of twelve months from the
25 date of issuance, renewal, or reinstatement.

26 (b) A seller's permit is no longer valid if the permit holder's
27 certificate of registration is revoked by the department or the
28 person otherwise ceases to engage in business.

29 (4)(a) The department may revoke a seller's permit of a
30 contractor for any of the following reasons:

31 (i) The contractor used or allowed or caused its seller's
32 permit to be used to purchase any item or service without payment of
33 sales tax, but the contractor or other purchaser was not entitled to
34 use the seller's permit for the purchase;

1 (ii) The department issued the seller's permit to the
2 contractor in error;

3 (iii) The department determines that the contractor is no
4 longer entitled to make purchases at wholesale; or

5 (iv) The department determines that revocation of the seller's
6 permit would be in the best interest of collecting taxes due under
7 this title.

8 (b) The notice of revocation must be in writing and is
9 effective on the date specified in the revocation notice. The
10 notice must also advise the contractor of its right to a review by
11 the department.

12 (c) The department may refuse to reinstate a seller's permit
13 revoked under (a)(i) of this subsection until all taxes, penalties,
14 and interest due on any improperly purchased item or service have
15 been paid in full. In the event a contractor whose seller's permit
16 has been revoked under this subsection reorganizes, the new business
17 resulting from the reorganization is not entitled to a seller's
18 permit until all taxes, penalties, and interest due on any
19 improperly purchased item or service have been paid in full.

20 (d) For purposes of this subsection, "reorganize" or
21 "reorganization" means: (i) The transfer, however effected, of a
22 majority of the assets of one business to another business where any
23 of the persons having an interest in the ownership or management in
24 the former business maintain an ownership or management interest in
25 the new business, either directly or indirectly; (ii) a mere change
26 in identity or form of ownership, however effected; or (iii) the new
27 business is a mere continuation of the former business based on
28 significant shared features such as owners, personnel, assets, or
29 general business activity.

30 (5) The department may provide lists of valid and revoked
31 sellers' permit numbers on its web site.

32 (6) The department must provide by rule for the review of the
33 department's decision to deny, revoke, or refuse to reinstate a
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1 seller's permit. Such review must be consistent with the
2 requirements of chapter 34.05 RCW.

3 (7) As part of its continuing efforts to educate taxpayers on
4 their sales and use tax responsibilities, the department will
5 educate taxpayers on the appropriate use of a seller's permit or
6 uniform exemption certificate authorized under RCW 82.04.470 and the
7 consequences of misusing such permits or exemption certificates.

8 (8) As used in this section, the following definitions apply:

9 (a) "Contractor" means a person who engages in any retail
10 construction activity, or who engages in any activity that brings
11 the person within the definition of consumer in RCW 82.04.190(3) or
12 (6), or who is a speculative builder as defined by rule of the
13 department.

14 (b) "Government contracting" means the activity described in
15 RCW 82.04.190(6).

16 (c) "Public road construction" means the activity described in
17 RCW 82.04.190(3).

18 (d) "Retail construction activity" means any activity defined
19 as a retail sale in RCW 82.04.050(2)(b) or (c).

20 (e) "Speculative building" means the activities of a
21 speculative builder as the term "speculative builder" is defined by
22 rule of the department.

23

24 NEW SECTION. **Sec. 203.** A new section is added to chapter
25 82.32 RCW to read as follows:

26 The department of revenue must, by January 1, 2011, develop a
27 system, as resources permit, allowing sellers to voluntarily verify
28 through electronic means the validity of sellers' permits presented
29 to sellers from their customers.

30

31 NEW SECTION. **Sec. 204.** A new section is added to chapter
32 82.32 RCW to read as follows:

33 A person must, upon request of the department, provide the
34 department with a copy of all sellers' permits, or uniform exemption

1 certificates as authorized in RCW 82.04.470, accepted by that person
2 during the period specified by the department.

3

4 **205.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to read
5 as follows:

6 (1) Unless a seller has taken from the buyer a (~~resale~~
7 ~~certificate~~) seller's permit, the burden of proving that a sale of
8 tangible personal property, extended warranty, or of services, was not
9 a sale at retail shall be upon the person who made it.

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

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

25 (4) ~~As used in this section, "resale certificate" means~~
26 ~~documentation provided by a buyer to a seller stating that the~~
27 ~~purchase is for resale in the regular course of business, or that the~~
28 ~~buyer is exempt from retail sales tax, and containing the following~~
29 ~~information))~~ A seller's permit must contain such information as
30 required by the department, which may include, but is not limited to:

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

32 (b) The (~~uniform business identifier or revenue registration~~
33 ~~number of the buyer, if the buyer is required to be registered))
34 seller's permit number issued by the department;~~

1 (c) The type of business engaged in;

2 (d) The categories of items or services to be purchased for resale
3 or that are ~~((exempt))~~ otherwise to be purchased at wholesale, unless
4 the buyer presents a blanket ~~((resale certificate))~~ seller's permit;

5 (e) The date on which the ~~((certificate))~~ permit was provided to
6 the seller;

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

11 (g) A statement that the buyer acknowledges that the buyer is
12 solely responsible for purchasing within the categories specified on
13 the ~~((certificate))~~ permit and that misuse of the resale ~~((or~~
14 ~~exemption))~~ privilege claimed on the ~~((certificate))~~ permit subjects
15 the buyer to ~~((a penalty of fifty percent of the tax due))~~ revocation
16 of the seller's permit, penalties as provided in RCW 82.32.290 and
17 82.32.291, in addition to the tax, interest, and any other penalties
18 imposed by law;

19 (h) The name of the individual authorized to sign the
20 ~~((certificate))~~ permit, printed in a legible fashion;

21 (i) The signature of the authorized individual; ~~((and))~~

22 (j) The name of the seller;

23 (k) The date the permit was issued, renewed, or reinstated by the
24 department;

25 (l) The date that the permit expires;

26 (m) Instructions for renewing the permit; and

27 (n) A statement that the department is authorized to obtain
28 information concerning the buyer's purchase of items or services under
29 the permit from the seller to verify whether the buyer was authorized
30 to purchase such items or services without payment of retail sales
31 tax.

32 ~~((+5))~~ (4) Subsection ~~((+4))~~ (3)(h)~~((,))~~ and (i)~~((, and (j)))~~ of
33 this section does not apply if the ~~((certificate))~~ permit is provided
34 in a format other than paper. If the ~~((certificate))~~ permit is

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

4 (5)(a) In lieu of a seller's permit issued by the department under
5 section 201 or 202 of this act, a seller may accept from a buyer that
6 is not required to be registered with the department under RCW
7 82.32.030 a properly completed:

8 (i) Uniform sales and use tax exemption certificate developed by
9 the multistate tax commission; or

10 (ii) Uniform exemption certificate approved by the streamlined
11 sales and use tax agreement governing board.

12 (b) A seller who accepts a properly completed exemption
13 certificate as authorized in (a) of this subsection is relieved of the
14 obligation to collect and remit retail sales tax.

15 (6) In lieu of a seller's permit issued by the department under
16 section 201 or 202 of this act, a seller may accept from a buyer that
17 is required to be registered with the department under RCW 82.32.030 a
18 properly completed uniform exemption certificate approved by the
19 streamlined sales and use tax agreement governing board as long as
20 that certificate includes the seller's permit number issued by the
21 department to the buyer.

22 (7) As used in this section, "seller's permit" means documentation
23 issued by the department under section 201 or 202 of this act and
24 provided by a buyer to a seller to substantiate a wholesale sale.

25
26 **Sec. 206.** RCW 82.08.050 and 2007 c 6 s 1202 are each amended to
27 read as follows:

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

33 (2) The tax required by this chapter, to be collected by the
34 seller, shall be deemed to be held in trust by the seller until paid

1 to the department, and any seller who appropriates or converts the tax
2 collected to his or her own use or to any use other than the payment
3 of the tax to the extent that the money required to be collected is
4 not available for payment on the due date as prescribed in this
5 chapter is guilty of a gross misdemeanor.

6 (3) In case any seller fails to collect the tax herein imposed or,
7 having collected the tax, fails to pay it to the department in the
8 manner prescribed by this chapter, whether such failure is the result
9 of his or her own acts or the result of acts or conditions beyond his
10 or her control, he or she shall, nevertheless, be personally liable to
11 the state for the amount of the tax, unless the seller has taken from
12 the buyer a (~~resale certificate~~) seller's permit or uniform
13 exemption certificate authorized under RCW 82.04.470, a copy of a
14 direct pay permit issued under RCW 82.32.087, a direct mail form under
15 RCW 82.32.730(5), or other information required under the streamlined
16 sales and use tax agreement, or information required under rules
17 adopted by the department.

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

21 (5) Sellers are not relieved from personal liability for the
22 amount of tax if they fraudulently fail to collect the tax or if they
23 solicit purchasers to participate in an unlawful claim of exemption.

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

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

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

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

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

16 (c) Sellers are relieved from personal liability for the amount of
17 tax if they obtain a blanket exemption certificate for a purchaser
18 with which the seller has a recurring business relationship. The
19 department may not request from a seller renewal of blanket
20 certificates or updates of exemption certificate information or data
21 elements if there is a recurring business relationship between the
22 buyer and seller. For purposes of this subsection (7)(c), a
23 "recurring business relationship" means at least one sale transaction
24 within a period of twelve consecutive months.

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

32 (9) The tax required by this chapter to be collected by the seller
33 shall be stated separately from the selling price in any sales invoice
34 or other instrument of sale. On all retail sales through vending

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

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

22 (11) Notwithstanding subsections (1) through (10) of this section,
23 any person making sales is not obligated to collect the tax imposed by
24 this chapter if:

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

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

28 (ii) The taking of orders; or

29 (iii) The processing of payments; and

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

1 (12) Subsection (11) of this section expires when: (a) The United
2 States congress grants individual states the authority to impose sales
3 and use tax collection duties on remote sellers; or (b) it is
4 determined by a court of competent jurisdiction, in a judgment not
5 subject to review, that a state can impose sales and use tax
6 collection duties on remote sellers.

7 (13) For purposes of this section, "seller" includes a certified
8 service provider, as defined in RCW 82.32.020, acting as agent for the
9 seller.

10
11 **Sec. 207.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each
12 amended to read as follows:

13 (1) If a buyer normally is engaged in both consuming and reselling
14 certain types of articles of tangible personal property and is not
15 able to determine at the time of purchase whether the particular
16 property acquired will be consumed or resold, the buyer may use a
17 ~~((resale certificate))~~ seller's permit or, if eligible, a uniform
18 exemption certificate authorized under RCW 82.04.470 for the entire
19 purchase if the buyer principally resells the articles according to
20 the general nature of the buyer's business. The buyer shall account
21 for the value of any articles purchased with a ~~((resale certificate))~~
22 seller's permit or uniform exemption certificate authorized under RCW
23 82.04.470 that are used by the buyer and remit the deferred sales tax
24 on the articles to the department.

25 (2) A buyer who pays a tax on all purchases and subsequently resells
26 an article or service at retail, without intervening use by the buyer,
27 shall collect the tax from the purchaser as otherwise provided by law
28 and is entitled to a deduction or credit on the buyer's tax return
29 equal to, in the case of a deduction, the cost to the buyer of the
30 property or service resold upon which retail sales tax has been paid,
31 and in the case of a credit, the amount of state and local sales taxes
32 paid with respect to the property or service resold. The deduction or
33 credit is allowed only if the taxpayer keeps and preserves records
34 that show the names of the persons from whom the articles or services

1 were purchased, the date of the purchase, the type of articles or
2 services, the amount of the purchase, and the tax that was paid.

3 (3) The department (~~shall~~) must provide by rule for the refund or
4 credit of retail sales tax paid by a buyer for purchases that are
5 later (~~sold at wholesale~~) resold without intervening use by the
6 buyer or for purchases that would otherwise have met the definition of
7 wholesale sale if the buyer had provided the seller with a seller's
8 permit or uniform exemption certificate as authorized in RCW
9 82.04.470.

10 (4) Nothing in this section may be construed to authorize a
11 deduction or credit in respect to the purchase of services if the
12 services are not of a type that can be sold at wholesale under the
13 definition of wholesale sale in RCW 82.04.060.

14
15 **Sec. 208.** RCW 82.14B.042 and 2002 c 341 s 10 are each amended to
16 read as follows:

17 (1) The state enhanced 911 excise taxes imposed by this chapter
18 must be paid by the subscriber to the local exchange company providing
19 the switched access line or the radio communications service company
20 providing the radio access line, and each local exchange company and
21 each radio communications service company shall collect from the
22 subscriber the full amount of the taxes payable. The state enhanced
23 911 excise taxes required by this chapter to be collected by the local
24 exchange company or the radio communications service company are
25 deemed to be held in trust by the local exchange company or the radio
26 communications service company until paid to the department. Any
27 local exchange company or radio communications service company that
28 appropriates or converts the tax collected to its own use or to any
29 use other than the payment of the tax to the extent that the money
30 collected is not available for payment on the due date as prescribed
31 in this chapter is guilty of a gross misdemeanor.

32 (2) If any local exchange company or radio communications service
33 company fails to collect the state enhanced 911 excise tax or, after
34 collecting the tax, fails to pay it to the department in the manner

1 prescribed by this chapter, whether such failure is the result of its
2 own act or the result of acts or conditions beyond its control, the
3 local exchange company or the radio communications service company is
4 personally liable to the state for the amount of the tax, unless the
5 local exchange company or the radio communications service company has
6 taken from the buyer in good faith (~~(a properly executed resale~~
7 ~~certificate under RCW 82.14B.200)~~) documentation, in a form and manner
8 prescribed by the department, stating that the buyer is not a
9 subscriber or is otherwise not liable for the state enhanced 911 tax.

10 (3) The amount of tax, until paid by the subscriber to the local
11 exchange company, the radio communications service company, or to the
12 department, constitutes a debt from the subscriber to the local
13 exchange company or the radio communications service company. Any
14 local exchange company or radio communications service company that
15 fails or refuses to collect the tax as required with intent to violate
16 the provisions of this chapter or to gain some advantage or benefit,
17 either direct or indirect, and any subscriber who refuses to pay any
18 tax due under this chapter is guilty of a misdemeanor. The state
19 enhanced 911 excise taxes required by this chapter to be collected by
20 the local exchange company or the radio communications service company
21 must be stated separately on the billing statement that is sent to the
22 subscriber.

23 (4) If a subscriber has failed to pay to the local exchange
24 company or the radio communications service company the state enhanced
25 911 excise taxes imposed by this chapter and the local exchange
26 company or the radio communications service company has not paid the
27 amount of the tax to the department, the department may, in its
28 discretion, proceed directly against the subscriber for collection of
29 the tax, in which case a penalty of ten percent may be added to the
30 amount of the tax for failure of the subscriber to pay the tax to the
31 local exchange company or the radio communications service company,
32 regardless of when the tax is collected by the department. Tax under
33 this chapter is due as provided under RCW 82.14B.061.

34

1 **Sec.209.** RCW 82.14B.200 and 2002 c 341 s 12 are each amended to
2 read as follows:

3 (1) Unless a local exchange company or a radio communications
4 service company has taken from the buyer (~~((a resale certificate or~~
5 ~~equivalent document under RCW 82.04.470))~~ documentation, in a form and
6 manner prescribed by the department, stating that the buyer is not a
7 subscriber or is otherwise not liable for the tax, the burden of
8 proving that a sale of the use of a switched access line or radio
9 access line was not a sale to a subscriber or was not otherwise
10 subject to the tax is upon the person who made the sale.

11 (2) If a local exchange company or a radio communications service
12 company does not receive (~~((a resale certificate))~~ documentation, in a
13 form and manner prescribed by the department, stating that the buyer
14 is not a subscriber or is otherwise not liable for the tax at the time
15 of the sale, have (~~((a resale certificate))~~ such documentation on file
16 at the time of the sale, or obtain (~~((a resale certificate))~~ such
17 documentation from the buyer within a reasonable time after the sale,
18 the local exchange company or the radio communications service company
19 remains liable for the tax as provided in RCW 82.14B.042, unless the
20 local exchange company or the radio communications service company can
21 demonstrate facts and circumstances according to rules adopted by the
22 department of revenue that show the sale was properly made without
23 payment of the state enhanced 911 excise tax.

24 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
25 state enhanced 911 excise taxes due but not paid as a result of the
26 improper use of (~~((a resale certificate))~~ documentation stating that
27 the buyer is not a subscriber or is otherwise not liable for the state
28 enhanced 911 tax. This subsection does not prohibit or restrict the
29 application of other penalties authorized by law.

30
31 **Sec.210.** RCW 82.32.087 and 2001 c 188 s 2 are each amended to
32 read as follows:

33 (1) The director may grant a direct pay permit to a taxpayer who
34 demonstrates, to the satisfaction of the director, that the taxpayer

1 meets the requirements of this section. The direct pay permit allows
2 the taxpayer to accrue and remit directly to the department use tax on
3 the acquisition of tangible personal property or sales tax on the sale
4 of or charges made for labor and/or services, in accordance with all
5 of the applicable provisions of this title. Any taxpayer that uses a
6 direct pay permit shall remit state and local sales or use tax
7 directly to the department. The agreement by the purchaser to remit
8 tax directly to the department, rather than pay sales or use tax to
9 the seller, relieves the seller of the obligation to collect sales or
10 use tax and requires the buyer to pay use tax on the tangible personal
11 property and sales tax on the sale of or charges made for labor and/or
12 services.

13 (2)(a) A taxpayer may apply for a permit under this section if the
14 taxpayer (i) is subject to mandatory use of electronic funds transfer
15 under RCW 82.32.080; or (ii) makes purchases subject to the taxes
16 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
17 dollars per calendar year.

18 (b) Application for a permit must be made in writing to the
19 director in a form and manner prescribed by the department. A
20 taxpayer who transacts business in two or more locations may submit
21 one application to cover the multiple locations.

22 (c) The director shall review a direct pay permit application in a
23 timely manner and shall notify the applicant, in writing, of the
24 approval or denial of the application. The department shall approve
25 or deny an application based on the applicant's ability to comply with
26 local government use tax coding capabilities and responsibilities;
27 requirements for vendor notification; recordkeeping obligations;
28 electronic data capabilities; and tax reporting procedures.
29 Additionally, an application may be denied if the director determines
30 that denial would be in the best interest of collecting taxes due
31 under this title. The department shall provide a direct pay permit to
32 an approved applicant with the notice of approval. The direct pay
33 permit shall clearly state that the holder is solely responsible for
34 the accrual and payment of the tax imposed under chapters 82.08 and

1 82.12 RCW and that the seller is relieved of liability to collect tax
2 imposed under chapters 82.08 and 82.12 RCW on all sales to the direct
3 pay permit holder. The taxpayer may petition the director for
4 reconsideration of a denial.

5 (d) A taxpayer who uses a direct pay permit must continue to
6 maintain records that are necessary to a determination of the tax
7 liability in accordance with this title. A direct pay permit is not
8 transferable and the use of a direct pay permit may not be assigned to
9 a third party.

10 (3) Taxes for which the direct pay permit is used are due and
11 payable on the tax return for the reporting period in which the
12 taxpayer (a) receives the tangible personal property purchased or in
13 which the labor and/or services are performed or (b) receives an
14 invoice for such property or such labor and/or services, whichever
15 period is earlier.

16 (4) The holder of a direct pay permit shall furnish a copy of the
17 direct pay permit to each vendor with whom the taxpayer has opted to
18 use a direct pay permit. Sellers who make sales upon which the sales
19 or use tax is not collected by reason of the provisions of this
20 section, in addition to existing requirements under this title, shall
21 maintain a copy of the direct pay permit and any such records or
22 information as the department may specify.

23 (5) A direct pay permit is subject to revocation by the director
24 at any time the department determines that the taxpayer has violated
25 any provision of this section or that revocation would be in the best
26 interests of collecting the taxes due under this title. The notice of
27 revocation must be in writing and is effective either as of the end of
28 the taxpayer's next normal reporting period or a date deemed
29 appropriate by the director and identified in the revocation notice.
30 The taxpayer may petition the director for reconsideration of a
31 revocation and reinstatement of the permit.

32 (6) Any taxpayer who chooses to no longer use a direct pay permit
33 or whose permit is revoked by the department, shall return the permit
34 to the department and immediately make a good faith effort to notify

1 all vendors to whom the permit was given, advising them that the
2 permit is no longer valid.

3 (7) Except as provided in this subsection, the direct pay permit
4 may be used for any purchase of tangible personal property and any
5 retail sale under RCW 82.04.050. The direct pay permit may not be
6 used for:

7 (a) Purchases of meals or beverages;

8 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
9 other property subject to requirements for title transactions by the
10 department of licensing;

11 (c) Purchases for which a (~~resale certificate~~) seller's permit
12 or uniform exemption certificate authorized under RCW 82.04.470 may be
13 used;

14 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
15 and (f), (3) (a) through (d), (f), and (g), and (5); or

16 (e) Other activities subject to tax under chapter 82.08 or 82.12
17 RCW that the department by rule designates, consistent with the
18 purposes of this section, as activities for which a direct pay permit
19 is not appropriate and may not be used.

20
21 **Sec.211.** RCW 82.32.290 and 1985 c 414 s 2 are each amended to
22 read as follows:

23 (1)(a) It shall be unlawful:

24 (i) For any person to engage in business without having obtained a
25 certificate of registration as provided in this chapter;

26 (ii) For the president, vice president, secretary, treasurer, or
27 other officer of any company to cause or permit the company to engage
28 in business without having obtained a certificate of registration as
29 provided in this chapter;

30 (iii) For any person to tear down or remove any order or notice
31 posted by the department;

32 (iv) For any person to aid or abet another in any attempt to evade
33 the payment of any tax or any part thereof;

1 (v) For any purchaser to fraudulently sign or furnish to a seller
2 a ~~((resale certificate))~~ seller's permit or uniform exemption
3 certificate authorized under RCW 82.04.470 without intent to resell
4 the property purchased; or

5 (vi) For any person to fail or refuse to permit the examination of
6 any book, paper, account, record, or other data by the department or
7 its duly authorized agent; or to fail or refuse to permit the
8 inspection or appraisal of any property by the department or its duly
9 authorized agent; or to refuse to offer testimony or produce any
10 record as required.

11 (b) Any person violating any of the provisions of this subsection
12 (1) shall be guilty of a gross misdemeanor in accordance with chapter
13 9A.20 RCW.

14 (2)(a) It shall be unlawful:

15 (i) For any person to engage in business after revocation of a
16 certificate of registration;

17 (ii) For the president, vice president, secretary, treasurer, or
18 other officer of any company to cause or permit the company to engage
19 in business after revocation of a certificate of registration; or

20 (iii) For any person to make any false or fraudulent return or
21 false statement in any return, with intent to defraud the state or
22 evade the payment of any tax or part thereof.

23 (b) Any person violating any of the provisions of this subsection
24 (2) shall be guilty of a class C felony in accordance with chapter
25 9A.20 RCW.

26 (3) In addition to the foregoing penalties, any person who
27 knowingly swears to or verifies any false or fraudulent return, or any
28 return containing any false or fraudulent statement with the intent
29 aforesaid, shall be guilty of the offense of perjury in the second
30 degree; and any company for which a false return, or a return
31 containing a false statement, as aforesaid, is made, shall be
32 punished, upon conviction thereof, by a fine of not more than one
33 thousand dollars. All penalties or punishments provided in this
34 section shall be in addition to all other penalties provided by law.

1 **Sec. 212.** RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each
2 amended to read as follows:

3 Any person who uses a (~~resale certificate~~) seller's permit to
4 purchase items or services without payment of sales tax, or who uses a
5 uniform exemption certificate developed by the multistate tax
6 commission or approved by the streamlined sales and use tax agreement
7 governing board to claim a purchase for resale exemption, and who is
8 not entitled to use the seller's permit or exemption certificate for
9 the purchase shall be assessed a penalty of fifty percent of the tax
10 due, in addition to all other taxes, penalties, and interest due, on
11 the improperly purchased item or service. The department may waive
12 the penalty imposed under this section if it finds that the use of the
13 seller's permit or exemption certificate was due to circumstances
14 beyond the taxpayer's control or if the seller's permit or exemption
15 certificate was properly used for purchases for dual purposes. The
16 department shall define by rule what circumstances are considered to
17 be beyond the taxpayer's control.

18
19 **Sec. 213.** RCW 82.32.330 and 2008 c 81 s 11 are each amended to
20 read as follows:

21 (1) For purposes of this section:

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

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

30 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
31 nature, source, or amount of the taxpayer's income, payments,
32 receipts, deductions, exemptions, credits, assets, liabilities, net
33 worth, tax liability deficiencies, overassessments, or tax payments,
34 whether taken from the taxpayer's books and records or any other

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

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

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

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

26 (2) Returns and tax information (~~(shall be))~~ are confidential and
27 privileged, and except as authorized by this section, neither the
28 department of revenue nor any other person may disclose any return or
29 tax information.

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

31 (a) Disclosing such return or tax information in a civil or
32 criminal judicial proceeding or an administrative proceeding;

33

34

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

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

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

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

1 making payments upon such deficiency that will fully satisfy the
2 indebtedness within twelve months;

3 (d) Disclosing the name of a taxpayer with a deficiency greater
4 than five thousand dollars and against whom a warrant under RCW
5 82.32.210 has been filed with a court of record and remains
6 outstanding;

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

9 (f) Disclosing such return or tax information, for official
10 purposes only, to the governor or attorney general, or to any state
11 agency, or to any committee or subcommittee of the legislature dealing
12 with matters of taxation, revenue, trade, commerce, the control of
13 industry or the professions;

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

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

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

1 (j) Disclosing any such return or tax information to the
2 Department of Justice, including the Bureau of Alcohol, Tobacco,
3 Firearms and Explosives within the Department of Justice, the
4 Department of Defense, the Immigration and Customs Enforcement and the
5 Customs and Border Protection agencies of the United States Department
6 of Homeland Security, the Coast Guard of the United States, and the
7 United States Department of Transportation, or any authorized
8 representative (~~thereof~~) of these federal agencies, for official
9 purposes;

10 (k) Publishing or otherwise disclosing the text of a written
11 determination designated by the director as a precedent pursuant to
12 RCW 82.32.410;

13 (l) Disclosing, in a manner that is not associated with other tax
14 information, the taxpayer name, entity type, business address, mailing
15 address, revenue tax registration numbers, seller's permit numbers and
16 the status of such permits, North American industry classification
17 system or standard industrial classification code of a taxpayer, and
18 the dates of opening and closing of business. This subsection
19 (~~shall~~) must not be construed as giving authority to the department
20 to give, sell, or provide access to any list of taxpayers for any
21 commercial purpose;

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

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

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

1 (p) Disclosing to a person against whom the department has
2 asserted liability as a successor under RCW 82.32.140 return or tax
3 information pertaining to the specific business of the taxpayer to
4 which the person has succeeded;

5 (q) Disclosing such return or tax information in the possession of
6 the department relating to the administration or enforcement of the
7 real estate excise tax imposed under chapter 82.45 RCW, including
8 information regarding transactions exempt or otherwise not subject to
9 tax; or

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

13 (4)(a) The department may disclose return or taxpayer information
14 to a person under investigation or during any court or administrative
15 proceeding against a person under investigation as provided in this
16 subsection (4). The disclosure must be in connection with the
17 department's official duties relating to an audit, collection
18 activity, or a civil or criminal investigation. The disclosure may
19 occur only when the person under investigation and the person in
20 possession of data, materials, or documents are parties to the return
21 or tax information to be disclosed. The department may disclose
22 return or tax information such as invoices, contracts, bills,
23 statements, resale or exemption certificates, or checks. However, the
24 department may not disclose general ledgers, sales or cash receipt
25 journals, check registers, accounts receivable/payable ledgers,
26 general journals, financial statements, expert's workpapers, income
27 tax returns, state tax returns, tax return workpapers, or other
28 similar data, materials, or documents.

29 (b) Before disclosure of any tax return or tax information under
30 this subsection (4), the department (~~shall~~) must, through written
31 correspondence, inform the person in possession of the data,
32 materials, or documents to be disclosed. The correspondence (~~shall~~)
33 must clearly identify the data, materials, or documents to be
34 disclosed. The department may not disclose any tax return or tax

1 information under this subsection (4) until the time period allowed in
2 (c) of this subsection has expired or until the court has ruled on any
3 challenge brought under (c) of this subsection.

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

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

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

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

20 (d) The department (~~shall~~) must reimburse reasonable expenses
21 for the production of data, materials, or documents incurred by the
22 person in possession of the data, materials, or documents to be
23 disclosed.

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

27 (5) Any person acquiring knowledge of any return or tax
28 information in the course of his or her employment with the department
29 of revenue and any person acquiring knowledge of any return or tax
30 information as provided under subsection (3)(f), (g), (h), (i), (j),
31 or (n) of this section, who discloses any such return or tax
32 information to another person not entitled to knowledge of such return
33 or tax information under the provisions of this section, is guilty of
34 a misdemeanor. If the person guilty of such violation is an officer

1 or employee of the state, such person (~~shall~~) must forfeit such
2 office or employment and (~~shall be~~) is incapable of holding any
3 public office or employment in this state for a period of two years
4 thereafter.

5
6 **Sec. 214.** RCW 82.72.040 and 2004 c 254 s 6 are each amended to
7 read as follows:

8 (1) Telephone program excise taxes must be paid by the subscriber
9 to the local exchange company providing the switched access line, and
10 each local exchange company shall collect from the subscriber the full
11 amount of the taxes payable. Telephone program excise taxes to be
12 collected by the local exchange company are deemed to be held in trust
13 by the local exchange company until paid to the department. Any local
14 exchange company that appropriates or converts the tax collected to
15 its own use or to any use other than the payment of the tax to the
16 extent that the money collected is not available for payment on the
17 due date as prescribed in this chapter is guilty of a gross
18 misdemeanor.

19 (2) If any local exchange company fails to collect telephone
20 program excise taxes or, after collecting the tax, fails to pay it to
21 the department in the manner prescribed by this chapter, whether such
22 failure is the result of its own act or the result of acts or
23 conditions beyond its control, the local exchange company is
24 personally liable to the state for the amount of the tax, unless the
25 local exchange company has taken from the buyer in good faith (~~a~~
26 ~~properly executed resale certificate under RCW 82.72.070~~)
27 documentation, in a form and manner prescribed by the department,
28 stating that the buyer is not a subscriber or is otherwise not liable
29 for telephone program excise taxes.

30 (3) The amount of tax, until paid by the subscriber to the local
31 exchange company or to the department, constitutes a debt from the
32 subscriber to the local exchange company. Any local exchange company
33 that fails or refuses to collect telephone program excise taxes as
34 required with intent to violate the provisions of this chapter or to

1 gain some advantage or benefit, either direct or indirect, and any
2 subscriber who refuses to pay any telephone excise tax is guilty of a
3 misdemeanor.

4 (4) If a subscriber has failed to pay to the local exchange
5 company the telephone program excise taxes and the local exchange
6 company has not paid the amount of the tax to the department, the
7 department may, in its discretion, proceed directly against the
8 subscriber for collection of the tax, in which case a penalty of ten
9 percent may be added to the amount of the tax for failure of the
10 subscriber to pay the tax to the local exchange company, regardless of
11 when the tax is collected by the department. Telephone program excise
12 taxes are due as provided under RCW 82.72.050.

13
14 **Sec. 215.** RCW 82.72.070 and 2004 c 254 s 9 are each amended to
15 read as follows:

16 (1) Unless a local exchange company has taken from the buyer ((a
17 ~~resale certificate or equivalent document under RCW 82.04.470)~~)
18 documentation, in a form and manner prescribed by the department,
19 stating that the buyer is not a subscriber or is otherwise not liable
20 for telephone program excise taxes, the burden of proving that a sale
21 of the use of a switched access line was not a sale to a subscriber or
22 was otherwise not subject to telephone program excise taxes is upon
23 the person who made the sale.

24 (2) If a local exchange company does not receive ((a ~~resale~~
25 ~~certificate~~)) documentation, in a form and manner prescribed by the
26 department, stating that the buyer is not a subscriber or is otherwise
27 not liable for telephone program excise taxes at the time of the sale,
28 have ((a ~~resale certificate~~)) such documentation on file at the time
29 of the sale, or obtain ((a ~~resale certificate~~)) such documentation
30 from the buyer within a reasonable time after the sale, the local
31 exchange company remains liable for the telephone program excise taxes
32 as provided in RCW 82.72.040, unless the local exchange company can
33 demonstrate facts and circumstances according to rules adopted by the
34

1 department that show the sale was properly made without payment of
2 telephone program excise taxes.

3 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
4 telephone program excise taxes that are due but not paid as a result
5 of the improper use of (~~a resale certificate~~) documentation stating
6 that the buyer is not a subscriber or is otherwise not liable for
7 telephone program excise taxes. This subsection does not prohibit or
8 restrict the application of other penalties authorized by law.

9
10

11 **PART III**

12 **Technical Changes**

13

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

16 (1) "Sale at retail" or "retail sale" means every sale of tangible
17 personal property (including articles produced, fabricated, or
18 imprinted) to all persons irrespective of the nature of their business
19 and including, among others, without limiting the scope hereof,
20 persons who install, repair, clean, alter, improve, construct, or
21 decorate real or personal property of or for consumers other than a
22 sale to a person who presents a (~~resale certificate under~~) seller's
23 permit or uniform exemption certificate in conformity with RCW
24 82.04.470 and who:

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

29 (b) Installs, repairs, cleans, alters, imprints, improves,
30 constructs, or decorates real or personal property of or for
31 consumers, if such tangible personal property becomes an ingredient or
32 component of such real or personal property without intervening use by
33 such person; or

34

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

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

12 (e) Purchases for the purpose of providing the property to
13 consumers as part of competitive telephone service, as defined in RCW
14 82.04.065. The term shall include every sale of tangible personal
15 property which is used or consumed or to be used or consumed in the
16 performance of any activity classified as a "sale at retail" or
17 "retail sale" even though such property is resold or utilized as
18 provided in (a), (b), (c), (d), or (e) of this subsection following
19 such use. The term also means every sale of tangible personal
20 property to persons engaged in any business which is taxable under RCW
21 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

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

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

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

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

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

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

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

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

32 (f) The furnishing of lodging and all other services by a hotel,
33 rooming house, tourist court, motel, trailer camp, and the granting of
34 any similar license to use real property, as distinguished from the

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

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

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

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

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

27 (c) Credit bureau services;

28 (d) Automobile parking and storage garage services;

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

34

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

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

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

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

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

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

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

21 (6) The term shall also include the sale of prewritten computer
22 software other than a sale to a person who presents a (~~resale~~
23 ~~certificate under~~) seller's permit or uniform exemption certificate
24 in conformity with RCW 82.04.470, regardless of the method of delivery
25 to the end user, but shall not include custom software or the
26 customization of prewritten computer software.

27 (7) The term shall also include the sale of or charge made for an
28 extended warranty to a consumer. For purposes of this subsection,
29 "extended warranty" means an agreement for a specified duration to
30 perform the replacement or repair of tangible personal property at no
31 additional charge or a reduced charge for tangible personal property,
32 labor, or both, or to provide indemnification for the replacement or
33 repair of tangible personal property, based on the occurrence of
34 specified events. The term "extended warranty" does not include an

1 agreement, otherwise meeting the definition of extended warranty in
2 this subsection, if no separate charge is made for the agreement and
3 the value of the agreement is included in the sales price of the
4 tangible personal property covered by the agreement. For purposes of
5 this subsection, "sales price" has the same meaning as in RCW
6 82.08.010.

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

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

30 (10) The term shall not include the sale of or charge made for
31 labor and services rendered in respect to the constructing, repairing,
32 decorating, or improving of new or existing buildings or other
33 structures under, upon, or above real property of or for the United
34 States, any instrumentality thereof, or a county or city housing

1 authority created pursuant to chapter 35.82 RCW, including the
2 installing, or attaching of any article of tangible personal property
3 therein or thereto, whether or not such personal property becomes a
4 part of the realty by virtue of installation. Nor shall the term
5 include the sale of services or charges made for the clearing of land
6 and the moving of earth of or for the United States, any
7 instrumentality thereof, or a county or city housing authority. Nor
8 shall the term include the sale of services or charges made for
9 cleaning up for the United States, or its instrumentalities,
10 radioactive waste and other byproducts of weapons production and
11 nuclear research and development.

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

18

19 **PART IV**

20 **MISCELLANEOUS**

21

22

23 NEW SECTION. **Sec. 401.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27

28 NEW SECTION. **Sec. 402.** This act must be liberally construed in
29 order to carry out its purposes.

30

31 NEW SECTION. **Sec. 403.** This act takes effect January 1, 2010.

32

33 NEW SECTION. **Sec. 404.** The effective date in section 403 of this
34 act may not be construed as preventing the department of revenue from

1 accepting applications for, or issuing, sellers' permits before
2 January 1, 2010, or taking any other action before January 1, 2010,
3 necessary to ensure the effective implementation of this act.

4
5 NEW SECTION. **Sec. 405.** Part headings used in this act are not
6 any part of the law."

7
8
9 **EFFECT:** Eliminates provisions of the bill requiring construction
10 contractors to pay sales tax at the time of purchase. Requires a
11 seller's permit in order for construction contractors to make tax
12 exempt wholesale purchases. Restores 50 percent penalty for misuse of
13 seller's permits (and uniform exemption certificates).

14

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