

**SB 6173 - H AMD 888**

By Representative Hunter

NOT CONSIDERED 04/26/2009

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

3 **"PART I**  
4 **FINDING AND INTENT**

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

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

17 **PART II**  
18 **REPLACING RESALE CERTIFICATES WITH SELLER'S PERMITS**  
19 **ISSUED BY THE DEPARTMENT OF REVENUE**

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

22 (1) Taxpayers seeking a new seller's permit or to renew or  
23 reinstate a seller's permit, other than taxpayers subject to the  
24 provisions of section 202 of this act, must apply to the department in  
25 a form and manner prescribed by the department. The department must  
26 rule on applications within sixty days of receiving a complete  
27 application. An application must be denied if the department

1 determines that, based on the nature of the applicant's business, the  
2 applicant is not entitled to make purchases at wholesale or is  
3 otherwise prohibited from using a seller's permit. The department may  
4 also deny an application if it determines that denial would be in the  
5 best interest of collecting taxes due under this title. The  
6 department's decision whether to approve or deny an application may be  
7 based on tax returns previously filed with the department by the  
8 applicant, a current or previous examination of the applicant's books  
9 and records by the department, information provided by the applicant in  
10 the master application and the seller's permit application, and other  
11 information available to the department.

12 (2) Notwithstanding subsection (1) of this section, the department  
13 may issue a seller's permit to a taxpayer that has not applied for the  
14 permit if it appears to the department's satisfaction, based on the  
15 nature of the taxpayer's business activities and any other information  
16 available to the department, that the taxpayer is entitled to make  
17 purchases at wholesale.

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

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

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

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

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

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

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

3 (iii) The department determines that the taxpayer is no longer  
4 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 this  
7 title.

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

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

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

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

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

35 (8) As part of its continuing efforts to educate taxpayers on their  
36 sales and use tax responsibilities, the department will educate  
37 taxpayers on the appropriate use of a seller's permit or uniform

1 exemption certificate authorized under RCW 82.04.470 and the  
2 consequences of misusing such permits or exemption certificates.

3 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32  
4 RCW to read as follows:

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

8 (b) As part of the application, the contractor must report the  
9 dollar amount of all purchases of materials and labor during the  
10 preceding twelve months for retail construction activity, speculative  
11 building, public road construction, and government contracting. If the  
12 contractor was not engaged in business as a contractor during the  
13 preceding twelve months, the contractor may provide an estimate of the  
14 dollar amount of purchases of materials and labor for retail  
15 construction activity, speculative building, public road construction,  
16 and government contracting during the twelve-month period for which the  
17 seller's permit will be valid.

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

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

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

23 (B) The application contains any material misstatement;

24 (C) The application is incomplete; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (6) 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 (7) As part of its continuing efforts to educate taxpayers on their  
13 sales and use tax responsibilities, the department will educate  
14 taxpayers on the appropriate use of a seller's permit or uniform  
15 exemption certificate authorized under RCW 82.04.470 and the  
16 consequences of misusing such permits or exemption certificates.

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

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

22 (b) "Government contracting" means the activity described in RCW  
23 82.04.190(6).

24 (c) "Public road construction" means the activity described in RCW  
25 82.04.190(3).

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

28 (e) "Speculative building" means the activities of a speculative  
29 builder as the term "speculative builder" is defined by rule of the  
30 department.

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

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



- 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) are  
9 (~~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 tax.
- 31 (~~(+5)~~) (4) Subsection (~~(+4)~~) (3)(h)(~~(7)~~) and (i)(~~(7)~~ ~~and~~ (~~j~~)) of  
32 this section does not apply if the (~~certificate~~) permit is provided  
33 in a format other than paper. If the (~~certificate~~) permit is  
34 provided in a format other than paper, the name of the individual  
35 providing the (~~certificate~~) permit must be included in the  
36 (~~certificate~~) permit.
- 37 (5)(a) In lieu of a seller's permit issued by the department under



1 section 201 or 202 of this act, a seller may accept from a buyer that  
2 is not required to be registered with the department under RCW  
3 82.32.030 a properly completed:

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

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

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

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

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

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

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

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

35 (3) In case any seller fails to collect the tax herein imposed or,  
36 having collected the tax, fails to pay it to the department in the  
37 manner prescribed by this chapter, whether such failure is the result

1 of his or her own acts or the result of acts or conditions beyond his  
2 or her control, he or she shall, nevertheless, be personally liable to  
3 the state for the amount of the tax, unless the seller has taken from  
4 the buyer a (~~resale certificate~~) seller's permit or uniform exemption  
5 certificate authorized under RCW 82.04.470, a copy of a direct pay  
6 permit issued under RCW 82.32.087, a direct mail form under RCW  
7 82.32.730(5), or other information required under the streamlined sales  
8 and use tax agreement, or information required under rules adopted by  
9 the department.

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

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

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

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

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

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

32 (b) If the seller has not obtained an exemption certificate or all  
33 relevant data elements required under the streamlined sales and use tax  
34 agreement within the period allowed subsequent to the date of sale, the  
35 seller may, within one hundred twenty days, or a longer period as may  
36 be provided by rule by the department, subsequent to a request for  
37 substantiation by the department, either prove that the transaction was

1 not subject to tax by other means or obtain a fully completed exemption  
2 certificate from the purchaser, taken in good faith.

3 (c) Sellers are relieved from personal liability for the amount of  
4 tax if they obtain a blanket exemption certificate for a purchaser with  
5 which the seller has a recurring business relationship. The department  
6 may not request from a seller renewal of blanket certificates or  
7 updates of exemption certificate information or data elements if there  
8 is a recurring business relationship between the buyer and seller. For  
9 purposes of this subsection (7)(c), a "recurring business relationship"  
10 means at least one sale transaction within a period of twelve  
11 consecutive months.

12 (8) The amount of tax, until paid by the buyer to the seller or to  
13 the department, shall constitute a debt from the buyer to the seller  
14 and any seller who fails or refuses to collect the tax as required with  
15 intent to violate the provisions of this chapter or to gain some  
16 advantage or benefit, either direct or indirect, and any buyer who  
17 refuses to pay any tax due under this chapter is guilty of a  
18 misdemeanor.

19 (9) The tax required by this chapter to be collected by the seller  
20 shall be stated separately from the selling price in any sales invoice  
21 or other instrument of sale. On all retail sales through vending  
22 machines, the tax need not be stated separately from the selling price  
23 or collected separately from the buyer. For purposes of determining  
24 the tax due from the buyer to the seller and from the seller to the  
25 department it shall be conclusively presumed that the selling price  
26 quoted in any price list, sales document, contract or other agreement  
27 between the parties does not include the tax imposed by this chapter,  
28 but if the seller advertises the price as including the tax or that the  
29 seller is paying the tax, the advertised price shall not be considered  
30 the selling price.

31 (10) Where a buyer has failed to pay to the seller the tax imposed  
32 by this chapter and the seller has not paid the amount of the tax to  
33 the department, the department may, in its discretion, proceed directly  
34 against the buyer for collection of the tax, in which case a penalty of  
35 ten percent may be added to the amount of the tax for failure of the  
36 buyer to pay the same to the seller, regardless of when the tax may be  
37 collected by the department; and all of the provisions of chapter 82.32  
38 RCW, including those relative to interest and penalties, shall apply in

1 addition; and, for the sole purpose of applying the various provisions  
2 of chapter 82.32 RCW, the twenty-fifth day of the month following the  
3 tax period in which the purchase was made shall be considered as the  
4 due date of the tax.

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

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

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

11 (ii) The taking of orders; or

12 (iii) The processing of payments; and

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

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

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

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

29 (1) If a buyer normally is engaged in both consuming and reselling  
30 certain types of articles of tangible personal property and is not able  
31 to determine at the time of purchase whether the particular property  
32 acquired will be consumed or resold, the buyer may use a ((resale  
33 certificate)) seller's permit or, if eligible, a uniform exemption  
34 certificate authorized under RCW 82.04.470 for the entire purchase if  
35 the buyer principally resells the articles according to the general  
36 nature of the buyer's business. The buyer shall account for the value  
37 of any articles purchased with a ((resale certificate)) seller's permit

1 or uniform exemption certificate authorized under RCW 82.04.470 that  
2 are used by the buyer and remit the deferred sales tax on the articles  
3 to the department.

4 (2) A buyer who pays a tax on all purchases and subsequently  
5 resells an article or service at retail, without intervening use by the  
6 buyer, shall collect the tax from the purchaser as otherwise provided  
7 by law and is entitled to a deduction or credit on the buyer's tax  
8 return equal to, in the case of a deduction, the cost to the buyer of  
9 the property or service resold upon which retail sales tax has been  
10 paid, and in the case of a credit, the amount of state and local sales  
11 taxes paid with respect to the property or service resold. The  
12 deduction or credit is allowed only if the taxpayer keeps and preserves  
13 records that show the names of the persons from whom the articles or  
14 services were purchased, the date of the purchase, the type of articles  
15 or services, the amount of the purchase, and the tax that was paid.

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

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

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

28 (1) The state enhanced 911 excise taxes imposed by this chapter  
29 must be paid by the subscriber to the local exchange company providing  
30 the switched access line or the radio communications service company  
31 providing the radio access line, and each local exchange company and  
32 each radio communications service company shall collect from the  
33 subscriber the full amount of the taxes payable. The state enhanced  
34 911 excise taxes required by this chapter to be collected by the local  
35 exchange company or the radio communications service company are deemed  
36 to be held in trust by the local exchange company or the radio  
37 communications service company until paid to the department. Any local

1 exchange company or radio communications service company that  
2 appropriates or converts the tax collected to its own use or to any use  
3 other than the payment of the tax to the extent that the money  
4 collected is not available for payment on the due date as prescribed in  
5 this chapter is guilty of a gross misdemeanor.

6 (2) If any local exchange company or radio communications service  
7 company fails to collect the state enhanced 911 excise tax or, after  
8 collecting the tax, fails to pay it to the department in the manner  
9 prescribed by this chapter, whether such failure is the result of its  
10 own act or the result of acts or conditions beyond its control, the  
11 local exchange company or the radio communications service company is  
12 personally liable to the state for the amount of the tax, unless the  
13 local exchange company or the radio communications service company has  
14 taken from the buyer in good faith (~~(a properly executed resale~~  
15 ~~certificate under RCW 82.14B.200)) documentation, in a form and manner  
16 prescribed by the department, stating that the buyer is not a  
17 subscriber or is otherwise not liable for the state enhanced 911 tax.~~

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

31 (4) If a subscriber has failed to pay to the local exchange company  
32 or the radio communications service company the state enhanced 911  
33 excise taxes imposed by this chapter and the local exchange company or  
34 the radio communications service company has not paid the amount of the  
35 tax to the department, the department may, in its discretion, proceed  
36 directly against the subscriber for collection of the tax, in which  
37 case a penalty of ten percent may be added to the amount of the tax for  
38 failure of the subscriber to pay the tax to the local exchange company

1 or the radio communications service company, regardless of when the tax  
2 is collected by the department. Tax under this chapter is due as  
3 provided under RCW 82.14B.061.

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

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

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

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

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

35 (1) The director may grant a direct pay permit to a taxpayer who  
36 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 of  
5 the applicable provisions of this title. Any taxpayer that uses a  
6 direct pay permit shall remit state and local sales or use tax directly  
7 to the department. The agreement by the purchaser to remit tax  
8 directly to the department, rather than pay sales or use tax to the  
9 seller, relieves the seller of the obligation to collect sales or use  
10 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 taxpayer  
20 who transacts business in two or more locations may submit one  
21 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 or  
25 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 under  
31 this title. The department shall provide a direct pay permit to an  
32 approved applicant with the notice of approval. The direct pay permit  
33 shall clearly state that the holder is solely responsible for the  
34 accrual and payment of the tax imposed under chapters 82.08 and 82.12  
35 RCW and that the seller is relieved of liability to collect tax imposed  
36 under chapters 82.08 and 82.12 RCW on all sales to the direct pay  
37 permit holder. The taxpayer may petition the director for  
38 reconsideration of a denial.



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

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

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

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

28 (6) Any taxpayer who chooses to no longer use a direct pay permit  
29 or whose permit is revoked by the department, shall return the permit  
30 to the department and immediately make a good faith effort to notify  
31 all vendors to whom the permit was given, advising them that the permit  
32 is no longer valid.

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

37 (a) Purchases of meals or beverages;

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

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

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

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

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

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

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

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

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

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

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

30 (vi) For any person to fail or refuse to permit the examination of  
31 any book, paper, account, record, or other data by the department or  
32 its duly authorized agent; or to fail or refuse to permit the  
33 inspection or appraisal of any property by the department or its duly  
34 authorized agent; or to refuse to offer testimony or produce any record  
35 as required.

36 (b) Any person violating any of the provisions of this subsection

1 (1) shall be guilty of a gross misdemeanor in accordance with chapter  
2 9A.20 RCW.

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

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

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

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

12 (b) Any person violating any of the provisions of this subsection  
13 (2) shall be guilty of a class C felony in accordance with chapter  
14 9A.20 RCW.

15 (3) In addition to the foregoing penalties, any person who  
16 knowingly swears to or verifies any false or fraudulent return, or any  
17 return containing any false or fraudulent statement with the intent  
18 aforesaid, shall be guilty of the offense of perjury in the second  
19 degree; and any company for which a false return, or a return  
20 containing a false statement, as aforesaid, is made, shall be punished,  
21 upon conviction thereof, by a fine of not more than one thousand  
22 dollars. All penalties or punishments provided in this section shall  
23 be in addition to all other penalties provided by law.

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

26 Any person who uses a (~~resale certificate~~) seller's permit to  
27 purchase items or services without payment of sales tax, or who uses a  
28 uniform exemption certificate developed by the multistate tax  
29 commission or approved by the streamlined sales and use tax agreement  
30 governing board to claim a purchase for resale exemption, and who is  
31 not entitled to use the seller's permit or exemption certificate for  
32 the purchase shall be assessed a penalty of fifty percent of the tax  
33 due, in addition to all other taxes, penalties, and interest due, on  
34 the improperly purchased item or service. The department may waive the  
35 penalty imposed under this section if it finds that the use of the  
36 seller's permit or exemption certificate was due to circumstances  
37 beyond the taxpayer's control or if the seller's permit or exemption

1 certificate was properly used for purchases for dual purposes. The  
2 department shall define by rule what circumstances are considered to be  
3 beyond the taxpayer's control.

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

6 (1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

21 (b) Disclosing, subject to such requirements and conditions as the  
22 director (~~(shall)~~) prescribes by rules adopted pursuant to chapter  
23 34.05 RCW, such return or tax information regarding a taxpayer to such  
24 taxpayer or to such person or persons as that taxpayer may designate in  
25 a request for, or consent to, such disclosure, or to any other person,  
26 at the taxpayer's request, to the extent necessary to comply with a  
27 request for information or assistance made by the taxpayer to such  
28 other person(~~(÷—PROVIDED, That)~~). However, tax information not  
29 received from the taxpayer (~~(shall)~~) must not be so disclosed if the  
30 director determines that such disclosure would compromise any  
31 investigation or litigation by any federal, state, or local government  
32 agency in connection with the civil or criminal liability of the  
33 taxpayer or another person, or that such disclosure would identify a  
34 confidential informant, or that such disclosure is contrary to any  
35 agreement entered into by the department that provides for the  
36 reciprocal exchange of information with other government agencies which  
37 agreement requires confidentiality with respect to such information

1 unless such information is required to be disclosed to the taxpayer by  
2 the order of any court;

3 (c) 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 either issued or filed and remains outstanding for  
6 a period of at least ten working days. The department (~~(shall)~~) is not  
7 (~~be~~) required to disclose any information under this subsection if a  
8 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued  
9 a warrant that has not been filed; and (iii) has entered a deferred  
10 payment arrangement with the department of revenue and is making  
11 payments upon such deficiency that will fully satisfy the indebtedness  
12 within twelve months;

13 (d) Disclosing the name of a taxpayer with a deficiency greater  
14 than five thousand dollars and against whom a warrant under RCW  
15 82.32.210 has been filed with a court of record and remains  
16 outstanding;

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

19 (f) Disclosing such return or tax information, for official  
20 purposes only, to the governor or attorney general, or to any state  
21 agency, or to any committee or subcommittee of the legislature dealing  
22 with matters of taxation, revenue, trade, commerce, the control of  
23 industry or the professions;

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

27 (h) Disclosing any such return or tax information to a peace  
28 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for  
29 official purposes. The disclosure may be made only in response to a  
30 search warrant, subpoena, or other court order, unless the disclosure  
31 is for the purpose of criminal tax enforcement. A peace officer or  
32 county prosecuting attorney who receives the return or tax information  
33 may disclose that return or tax information only for use in the  
34 investigation and a related court proceeding, or in the court  
35 proceeding for which the return or tax information originally was  
36 sought;

37 (i) Disclosing any such return or tax information to the proper  
38 officer of the internal revenue service of the United States, the

1 Canadian government or provincial governments of Canada, or to the  
2 proper officer of the tax department of any state or city or town or  
3 county, for official purposes, but only if the statutes of the United  
4 States, Canada or its provincial governments, or of such other state or  
5 city or town or county, as the case may be, grants substantially  
6 similar privileges to the proper officers of this state;

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

15 (k) Publishing or otherwise disclosing the text of a written  
16 determination designated by the director as a precedent pursuant to RCW  
17 82.32.410;

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

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

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

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

1 (p) Disclosing to a person against whom the department has asserted  
2 liability as a successor under RCW 82.32.140 return or tax information  
3 pertaining to the specific business of the taxpayer to which the person  
4 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 activity,  
18 or a civil or criminal investigation. The disclosure may occur only  
19 when the person under investigation and the person in possession of  
20 data, materials, or documents are parties to the return or tax  
21 information to be disclosed. The department may disclose return or tax  
22 information such as invoices, contracts, bills, statements, resale or  
23 exemption certificates, or checks. However, the department may not  
24 disclose general ledgers, sales or cash receipt journals, check  
25 registers, accounts receivable/payable ledgers, general journals,  
26 financial statements, expert's workpapers, income tax returns, state  
27 tax returns, tax return workpapers, or other similar data, materials,  
28 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, materials,  
32 or documents to be disclosed. The correspondence (~~shall~~) must  
33 clearly identify the data, materials, or documents to be disclosed.  
34 The department may not disclose any tax return or tax information under  
35 this subsection (4) until the time period allowed in (c) of this  
36 subsection has expired or until the court has ruled on any challenge  
37 brought under (c) of this subsection.



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

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

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

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

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

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

23 (5) Any person acquiring knowledge of any return or tax information  
24 in the course of his or her employment with the department of revenue  
25 and any person acquiring knowledge of any return or tax information as  
26 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this  
27 section, who discloses any such return or tax information to another  
28 person not entitled to knowledge of such return or tax information  
29 under the provisions of this section, is guilty of a misdemeanor. If  
30 the person guilty of such violation is an officer or employee of the  
31 state, such person (~~shall~~) must forfeit such office or employment and  
32 (~~shall be~~) is incapable of holding any public office or employment in  
33 this state for a period of two years thereafter.

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

36 (1) Telephone program excise taxes must be paid by the subscriber  
37 to the local exchange company providing the switched access line, and

1 each local exchange company shall collect from the subscriber the full  
2 amount of the taxes payable. Telephone program excise taxes to be  
3 collected by the local exchange company are deemed to be held in trust  
4 by the local exchange company until paid to the department. Any local  
5 exchange company that appropriates or converts the tax collected to its  
6 own use or to any use other than the payment of the tax to the extent  
7 that the money collected is not available for payment on the due date  
8 as prescribed in this chapter is guilty of a gross misdemeanor.

9 (2) If any local exchange company fails to collect telephone  
10 program excise taxes or, after collecting the tax, fails to pay it to  
11 the department in the manner prescribed by this chapter, whether such  
12 failure is the result of its own act or the result of acts or  
13 conditions beyond its control, the local exchange company is personally  
14 liable to the state for the amount of the tax, unless the local  
15 exchange company has taken from the buyer in good faith (~~a properly~~  
16 ~~executed resale certificate under RCW 82.72.070~~) documentation, in a  
17 form and manner prescribed by the department, stating that the buyer is  
18 not a subscriber or is otherwise not liable for telephone program  
19 excise taxes.

20 (3) The amount of tax, until paid by the subscriber to the local  
21 exchange company or to the department, constitutes a debt from the  
22 subscriber to the local exchange company. Any local exchange company  
23 that fails or refuses to collect telephone program excise taxes as  
24 required with intent to violate the provisions of this chapter or to  
25 gain some advantage or benefit, either direct or indirect, and any  
26 subscriber who refuses to pay any telephone excise tax is guilty of a  
27 misdemeanor.

28 (4) If a subscriber has failed to pay to the local exchange company  
29 the telephone program excise taxes and the local exchange company has  
30 not paid the amount of the tax to the department, the department may,  
31 in its discretion, proceed directly against the subscriber for  
32 collection of the tax, in which case a penalty of ten percent may be  
33 added to the amount of the tax for failure of the subscriber to pay the  
34 tax to the local exchange company, regardless of when the tax is  
35 collected by the department. Telephone program excise taxes are due as  
36 provided under RCW 82.72.050.



1 who install, repair, clean, alter, improve, construct, or decorate real  
2 or personal property of or for consumers other than a sale to a person  
3 who presents a (~~resale certificate under~~) seller's permit or uniform  
4 exemption certificate in conformity with 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 the  
4 sale of or charge made for tangible personal property consumed and/or  
5 for labor and services rendered in respect to the following:

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

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

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

28 (d) The cleaning, fumigating, razing, or moving of existing  
29 buildings or structures, but shall not include the charge made for  
30 janitorial services; and for purposes of this section the term  
31 "janitorial services" shall mean those cleaning and caretaking services  
32 ordinarily performed by commercial janitor service businesses  
33 including, but not limited to, wall and window washing, floor cleaning  
34 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
35 The term "janitorial services" does not include painting, papering,  
36 repairing, furnace or septic tank cleaning, snow removal or  
37 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 presumed that the  
8 occupancy of real property for a continuous period of one month or more  
9 constitutes a rental or lease of real property and not a mere license  
10 to use or enjoy the same. For the purposes of this subsection, it  
11 shall be presumed that the sale of and charge made for the furnishing  
12 of lodging for a continuous period of one month or more to a person is  
13 a rental or lease of real property and not a mere license to enjoy the  
14 same;

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

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

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

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

33 (c) Credit bureau services;

34 (d) Automobile parking and storage garage services;

35 (e) Landscape maintenance and horticultural services but excluding  
36 (i) horticultural services provided to farmers and (ii) pruning,  
37 trimming, repairing, removing, and clearing of trees and brush near

1 electric transmission or distribution lines or equipment, if performed  
2 by or at the direction of an electric utility;

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

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

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

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

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

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

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

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

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

1 the value of the agreement is included in the sales price of the  
2 tangible personal property covered by the agreement. For purposes of  
3 this subsection, "sales price" has the same meaning as in RCW  
4 82.08.010.

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

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

28 (10) The term shall not include the sale of or charge made for  
29 labor and services rendered in respect to the constructing, repairing,  
30 decorating, or improving of new or existing buildings or other  
31 structures under, upon, or above real property of or for the United  
32 States, any instrumentality thereof, or a county or city housing  
33 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 the term  
37 include the sale of services or charges made for the clearing of land  
38 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 the term include the sale of services or charges made for  
3 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) The term shall not include the sale of or charge made for  
7 labor, services, or tangible personal property pursuant to agreements  
8 providing maintenance services for bus, rail, or rail fixed guideway  
9 equipment when a regional transit authority is the recipient of the  
10 labor, services, or tangible personal property, and a transit agency,  
11 as defined in RCW 81.104.015, performs the labor or services.

12 **PART IV**  
13 **MISCELLANEOUS**

14 NEW SECTION. **Sec. 401.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

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

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

21 NEW SECTION. **Sec. 404.** The effective date in section 403 of this  
22 act may not be construed as preventing the department of revenue from  
23 accepting applications for, or issuing, seller's permits before January  
24 1, 2010, adopting rules, or taking any other action before January 1,  
25 2010, necessary to ensure the effective implementation of this act.

26 NEW SECTION. **Sec. 405.** By December 1, 2009, the finance committee  
27 of the house of representatives and the joint legislative task force on  
28 the underground economy in the Washington state construction industry,  
29 shall each prepare a report that reviews the issues and concerns that  
30 need to be addressed by the legislature as a result of the changes made  
31 in this act. The reports shall include any recommendations on

1 potential modifications to the provisions of this act. The department  
2 of revenue shall provide necessary support and information.

3 NEW SECTION. **Sec. 406.** Part headings used in this act are not any  
4 part of the law."

5 Correct the title.

--- END ---