
HOUSE BILL 2221

State of Washington 61st Legislature 2009 Regular Session

By Representatives Eddy and Williams

Read first time 02/16/09. Referred to Committee on Finance.

1 AN ACT Relating to excise taxation of certain cosmetic medical
2 services; amending RCW 82.12.020, 82.04.060, 82.04.190, 82.12.010,
3 82.12.035, and 82.12.0251; reenacting and amending RCW 82.04.050;
4 adding a new section to chapter 82.32 RCW; adding a new section to
5 chapter 82.04 RCW; and providing an effective date.

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

7 **Sec. 1.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are
8 each reenacted and amended to read as follows:

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

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

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

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

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

17 (e) Purchases for the purpose of providing the property to
18 consumers as part of competitive telephone service, as defined in RCW
19 82.04.065. The term shall include every sale of tangible personal
20 property which is used or consumed or to be used or consumed in the
21 performance of any activity classified as a "sale at retail" or "retail
22 sale" even though such property is resold or utilized as provided in
23 (a), (b), (c), (d), or (e) of this subsection following such use. The
24 term also means every sale of tangible personal property to persons
25 engaged in any business which is taxable under RCW 82.04.280 (2) and
26 (7), 82.04.290, and 82.04.2908; or

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

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

35 (a) The installing, repairing, cleaning, altering, imprinting, or
36 improving of tangible personal property of or for consumers, including
37 charges made for the mere use of facilities in respect thereto, but
38 excluding charges made for the use of self-service laundry facilities,

1 and also excluding sales of laundry service to nonprofit health care
2 facilities, and excluding services rendered in respect to live animals,
3 birds and insects;

4 (b) The constructing, repairing, decorating, or improving of new or
5 existing buildings or other structures under, upon, or above real
6 property of or for consumers, including the installing or attaching of
7 any article of tangible personal property therein or thereto, whether
8 or not such personal property becomes a part of the realty by virtue of
9 installation, and shall also include the sale of services or charges
10 made for the clearing of land and the moving of earth excepting the
11 mere leveling of land used in commercial farming or 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 of
16 performing such construction, repair, or improvement and the property
17 is then reconveyed by title, possession, or any other means to the
18 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 services
23 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
35 renting or leasing of real property, and it shall be presumed that the
36 occupancy of real property for a continuous period of one month or more
37 constitutes a rental or lease of real property and not a mere license
38 to use or enjoy the same. For the purposes of this subsection, it

1 shall be presumed that the sale of and charge made for the furnishing
2 of lodging for a continuous period of one month or more to a person is
3 a rental or lease of real property and not a mere license to enjoy the
4 same;

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

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

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

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

23 (c) Credit bureau services;

24 (d) Automobile parking and storage garage services;

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

30 (f) Service charges associated with tickets to professional
31 sporting events; (~~and~~)

32 (g) The following personal services: Physical fitness services,
33 tanning salon services, tattoo parlor services, steam bath services,
34 turkish bath services, escort services, and dating services; and

35 (h) Cosmetic medical services.

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

37 (i) The renting or leasing of tangible personal property to
38 consumers; and

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

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

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

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

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

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

1 used or to be used primarily for foot or vehicular traffic including
2 mass transportation vehicles of any kind.

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

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

34 (11) The term shall not include the sale of or charge made for
35 labor, services, or tangible personal property pursuant to agreements
36 providing maintenance services for bus, rail, or rail fixed guideway
37 equipment when a regional transit authority is the recipient of the

1 labor, services, or tangible personal property, and a transit agency,
2 as defined in RCW 81.104.015, performs the labor or services.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW
4 to read as follows:

5 The sales and use taxes collected under RCW 82.08.020 and 82.12.020
6 on cosmetic medical services, as defined in section 3 of this act, must
7 be deposited into the health services account in RCW 43.72.900 and used
8 solely for children's health care services.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW
10 to read as follows:

11 (1) "Cosmetic medical service" means any medical procedure
12 performed on an individual by a person licensed or regulated in a
13 health profession as described in RCW 18.120.020, and any services
14 directly related to the performance of the medical procedure, that is
15 directed at improving the individual's appearance and that is not
16 medically necessary to promote the proper function of the body or
17 prevent or treat physical illness or disease. "Cosmetic medical
18 service" includes, but is not limited to, cosmetic surgery, hair
19 transplants, cosmetic injections, cosmetic soft tissue fillers,
20 dermabrasion and chemical peel, laser hair removal, laser skin
21 resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic
22 dentistry. Any medical procedure performed on abnormal structures
23 caused by or related to congenital defects, developmental
24 abnormalities, trauma, infection, tumors, or disease, including
25 procedures to improve function or give a more normal appearance, is
26 medically necessary. Services covered by the individual's medical or
27 dental insurance or that are deductible by the individual as medical
28 expenses for purposes of federal income tax are presumed to be
29 medically necessary services.

30 (2) "Cosmetic surgery" means the surgical reshaping of normal
31 structures on the body to improve the body image, self-esteem, or
32 appearance of an individual.

33 (3) "Services directly related to the performance of the medical
34 procedure" include occupancy at medical facilities and services
35 provided by an anesthesiologist, surgeon, or other licensed or
36 regulated health professional described in RCW 18.120.020. Services

1 required for or directly related to cosmetic medical services do not
2 include evaluation and referral by a primary care physician or
3 consultation or treatment by a counselor, psychologist, or
4 psychiatrist.

5 (4) An individual claiming that a medical procedure, otherwise
6 meeting the definition of cosmetic medical service in this section, is
7 not a cosmetic medical service must complete and provide to the seller
8 an affidavit in a form and manner prescribed by the department
9 documenting that the procedure is medically necessary to promote the
10 proper function of the body or prevent or treat physical illness or
11 disease. The seller must retain a copy of the affidavit for the
12 seller's files.

13 **Sec. 4.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to
14 read as follows:

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

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

34 (3) The provisions of this chapter do not apply in respect to the
35 use of any article of tangible personal property, extended warranty, or
36 service taxable under RCW 82.04.050 (2)(a) (~~or~~), (3)(a), or (3)(h)
37 purchased at retail or acquired by lease, gift, or bailment if the sale

1 to, or the use by, the present user or his bailor or donor has already
2 been subjected to the tax under chapter 82.08 RCW or this chapter and
3 the tax has been paid by the present user or by his bailor or donor.

4 (4) Except as provided in this section, payment by one purchaser or
5 user of tangible personal property, extended warranty, or service of
6 the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect
7 of exempting any other purchaser or user of the same property, extended
8 warranty, or service from the taxes imposed by such chapters. If the
9 sale to, or the use by, the present user or his or her bailor or donor
10 has already been subjected to the tax under chapter 82.08 RCW or this
11 chapter and the tax has been paid by the present user or by his or her
12 bailor or donor; or in respect to the use of property acquired by
13 bailment and the tax has once been paid based on reasonable rental as
14 determined by RCW 82.12.060 measured by the value of the article at
15 time of first use multiplied by the tax rate imposed by chapter 82.08
16 RCW or this chapter as of the time of first use; or in respect to the
17 use of any article of tangible personal property acquired by bailment,
18 if the property was acquired by a previous bailee from the same bailor
19 for use in the same general activity and the original bailment was
20 prior to June 9, 1961, the tax imposed by this chapter does not apply.

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

28 **Sec. 5.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to read
29 as follows:

30 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of
31 tangible personal property, any sale of services defined as a retail
32 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
33 services as defined in RCW 82.04.050(3)(a), any sale of canned
34 software, any sale of cosmetic medical services defined as a retail
35 sale in RCW 82.04.050(3)(h), any sale of an extended warranty as
36 defined in RCW 82.04.050(7), or any sale of competitive telephone
37 service, ancillary services, or telecommunications service as those

1 terms are defined in RCW 82.04.065, which is not a sale at retail; and
2 (2) any charge made for labor and services rendered for persons who are
3 not consumers, in respect to real or personal property, if such charge
4 is expressly defined as a retail sale by RCW 82.04.050 when rendered to
5 or for consumers(~~(+ PROVIDED, That))~~). The term "real or personal
6 property" as used in this subsection (~~(shall)~~) does not include any
7 natural products named in RCW 82.04.100.

8 **Sec. 6.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to read
9 as follows:

10 "Consumer" means the following:

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

35 (2)(a) Any person engaged in any business activity taxable under
36 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
37 uses any competitive telephone service, ancillary services, or

1 telecommunications service as those terms are defined in RCW 82.04.065,
2 other than for resale in the regular course of business; (c) any person
3 who purchases, acquires, or uses any service defined in RCW
4 82.04.050(2)(a), any service described in RCW 82.04.050(3)(h), other
5 than for resale in the regular course of business or for the purpose of
6 satisfying the person's obligations under an extended warranty as
7 defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or
8 uses any amusement and recreation service defined in RCW
9 82.04.050(3)(a), other than for resale in the regular course of
10 business; (e) any person who is an end user of software; and (f) any
11 person who purchases or acquires an extended warranty as defined in RCW
12 82.04.050(7) other than for resale in the regular course of business;

13 (3) Any person engaged in the business of contracting for the
14 building, repairing or improving of any street, place, road, highway,
15 easement, right-of-way, mass public transportation terminal or parking
16 facility, bridge, tunnel, or trestle which is owned by a municipal
17 corporation or political subdivision of the state of Washington or by
18 the United States and which is used or to be used primarily for foot or
19 vehicular traffic including mass transportation vehicles of any kind as
20 defined in RCW 82.04.280, in respect to tangible personal property when
21 such person incorporates such property as an ingredient or component of
22 such publicly owned street, place, road, highway, easement,
23 right-of-way, mass public transportation terminal or parking facility,
24 bridge, tunnel, or trestle by installing, placing or spreading the
25 property in or upon the right-of-way of such street, place, road,
26 highway, easement, bridge, tunnel, or trestle or in or upon the site of
27 such mass public transportation terminal or parking facility;

28 (4) Any person who is an owner, lessee or has the right of
29 possession to or an easement in real property which is being
30 constructed, repaired, decorated, improved, or otherwise altered by a
31 person engaged in business, excluding only (a) municipal corporations
32 or political subdivisions of the state in respect to labor and services
33 rendered to their real property which is used or held for public road
34 purposes, and (b) the United States, instrumentalities thereof, and
35 county and city housing authorities created pursuant to chapter 35.82
36 RCW in respect to labor and services rendered to their real property.
37 Nothing contained in this or any other subsection of this definition
38 shall be construed to modify any other definition of "consumer";

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

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

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

33 (8) Any person engaged in the business of cleaning up for the
34 United States, or its instrumentalities, radioactive waste and other
35 byproducts of weapons production and nuclear research and development;
36 and

37 (9) Any person who is an owner, lessee, or has the right of
38 possession of tangible personal property that, under the terms of an

1 extended warranty as defined in RCW 82.04.050(7), has been repaired or
2 is replacement property, but only with respect to the sale of or charge
3 made for the repairing of the tangible personal property or the
4 replacement property.

5 **Sec. 7.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to read
6 as follows:

7 For the purposes of this chapter:

8 (1) "Purchase price" means the same as sales price as defined in
9 RCW 82.08.010.

10 (2)(a) "Value of the article used" shall be the purchase price for
11 the article of tangible personal property, the use of which is taxable
12 under this chapter. The term also includes, in addition to the
13 purchase price, the amount of any tariff or duty paid with respect to
14 the importation of the article used. In case the article used is
15 acquired by lease or by gift or is extracted, produced, or manufactured
16 by the person using the same or is sold under conditions wherein the
17 purchase price does not represent the true value thereof, the value of
18 the article used shall be determined as nearly as possible according to
19 the retail selling price at place of use of similar products of like
20 quality and character under such rules as the department may prescribe.

21 (b) In case the articles used are acquired by bailment, the value
22 of the use of the articles so used shall be in an amount representing
23 a reasonable rental for the use of the articles so bailed, determined
24 as nearly as possible according to the value of such use at the places
25 of use of similar products of like quality and character under such
26 rules as the department of revenue may prescribe. In case any such
27 articles of tangible personal property are used in respect to the
28 construction, repairing, decorating, or improving of, and which become
29 or are to become an ingredient or component of, new or existing
30 buildings or other structures under, upon, or above real property of or
31 for the United States, any instrumentality thereof, or a county or city
32 housing authority created pursuant to chapter 35.82 RCW, including the
33 installing or attaching of any such articles therein or thereto,
34 whether or not such personal property becomes a part of the realty by
35 virtue of installation, then the value of the use of such articles so
36 used shall be determined according to the retail selling price of such
37 articles, or in the absence of such a selling price, as nearly as

1 possible according to the retail selling price at place of use of
2 similar products of like quality and character or, in the absence of
3 either of these selling price measures, such value may be determined
4 upon a cost basis, in any event under such rules as the department of
5 revenue may prescribe.

6 (c) In the case of articles owned by a user engaged in business
7 outside the state which are brought into the state for no more than one
8 hundred eighty days in any period of three hundred sixty-five
9 consecutive days and which are temporarily used for business purposes
10 by the person in this state, the value of the article used shall be an
11 amount representing a reasonable rental for the use of the articles,
12 unless the person has paid tax under this chapter or chapter 82.08 RCW
13 upon the full value of the article used, as defined in (a) of this
14 subsection.

15 (d) In the case of articles manufactured or produced by the user
16 and used in the manufacture or production of products sold or to be
17 sold to the department of defense of the United States, the value of
18 the articles used shall be determined according to the value of the
19 ingredients of such articles.

20 (e) In the case of an article manufactured or produced for purposes
21 of serving as a prototype for the development of a new or improved
22 product, the value of the article used shall be determined by: (i) The
23 retail selling price of such new or improved product when first offered
24 for sale; or (ii) the value of materials incorporated into the
25 prototype in cases in which the new or improved product is not offered
26 for sale.

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

31 (3) "Value of the service used" means the purchase price for the
32 service, the use of which is taxable under this chapter. If the
33 service is received by gift or under conditions wherein the purchase
34 price does not represent the true value thereof, the value of the
35 service used shall be determined as nearly as possible according to the
36 retail selling price at place of use of similar services of like
37 quality and character under rules the department may prescribe;

1 (4) "Value of the extended warranty used" means the purchase price
2 for the extended warranty, the use of which is taxable under this
3 chapter. If the extended warranty is received by gift or under
4 conditions wherein the purchase price does not represent the true value
5 of the extended warranty, the value of the extended warranty used shall
6 be determined as nearly as possible according to the retail selling
7 price at place of use of similar extended warranties of like quality
8 and character under rules the department may prescribe;

9 (5) "Use," "used," "using," or "put to use" shall have their
10 ordinary meaning, and shall mean:

11 (a) With respect to tangible personal property, the first act
12 within this state by which the taxpayer takes or assumes dominion or
13 control over the article of tangible personal property (as a consumer),
14 and include installation, storage, withdrawal from storage,
15 distribution, or any other act preparatory to subsequent actual use or
16 consumption within this state;

17 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
18 first act within this state after the service has been performed by
19 which the taxpayer takes or assumes dominion or control over the
20 article of tangible personal property upon which the service was
21 performed (as a consumer), and includes installation, storage,
22 withdrawal from storage, distribution, or any other act preparatory to
23 subsequent actual use or consumption of the article within this state;
24 ((and))

25 (c) With respect to an extended warranty, the first act within this
26 state after the extended warranty has been acquired by which the
27 taxpayer takes or assumes dominion or control over the article of
28 tangible personal property to which the extended warranty applies, and
29 includes installation, storage, withdrawal from storage, distribution,
30 or any other act preparatory to subsequent actual use or consumption of
31 the article within this state; and

32 (d) With respect to a service described in RCW 82.04.050(3)(h), the
33 first presence within this state by the taxpayer after the service has
34 been performed upon that taxpayer;

35 (6) "Taxpayer" and "purchaser" include all persons included within
36 the meaning of the word "buyer" and the word "consumer" as defined in
37 chapters 82.04 and 82.08 RCW;

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

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

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

19 (8) "Extended warranty" has the same meaning as in RCW
20 82.04.050(7);

21 (9) The meaning ascribed to words and phrases in chapters 82.04 and
22 82.08 RCW, insofar as applicable, shall have full force and effect with
23 respect to taxes imposed under the provisions of this chapter.
24 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
25 and 82.08 RCW insofar as applicable, shall also mean any person who
26 distributes or displays, or causes to be distributed or displayed, any
27 article of tangible personal property, except newspapers, the primary
28 purpose of which is to promote the sale of products or services. With
29 respect to property distributed to persons within this state by a
30 consumer as defined in this subsection (9), the use of the property
31 shall be deemed to be by such consumer.

32 **Sec. 8.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to read
33 as follows:

34 A credit shall be allowed against the taxes imposed by this chapter
35 upon the use of tangible personal property, extended warranty, or
36 services taxable under RCW 82.04.050 (2)(a) (~~(or)~~), (3)(a), or (3)(h),
37 in the state of Washington in the amount that the present user thereof

1 or his or her bailor or donor has paid a retail sales or use tax with
2 respect to such property, extended warranty, or service to any other
3 state, possession, territory, or commonwealth of the United States, any
4 political subdivision thereof, the District of Columbia, and any
5 foreign country or political subdivision thereof, prior to the use of
6 such property, extended warranty, or service in Washington.

7 **Sec. 9.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to
8 read as follows:

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

11 (1) Of any article of tangible personal property, and services that
12 were rendered in respect to such property, brought into the state of
13 Washington by a nonresident thereof for his or her use or enjoyment
14 while temporarily within the state of Washington unless such property
15 is used in conducting a nontransitory business activity within the
16 state of Washington;

17 (2) By a nonresident of Washington of a motor vehicle or trailer
18 which is registered or licensed under the laws of the state of his or
19 her residence, and which is not required to be registered or licensed
20 under the laws of Washington, including motor vehicles or trailers
21 exempt pursuant to a declaration issued by the department of licensing
22 under RCW 46.85.060, and services rendered outside the state of
23 Washington in respect to such property;

24 (3) Of household goods, personal effects, and private motor
25 vehicles, and services rendered in respect to such property, by a bona
26 fide resident of Washington, or nonresident members of the armed forces
27 who are stationed in Washington pursuant to military orders, if such
28 articles and services were acquired and used by such person in another
29 state while a bona fide resident thereof and such acquisition and use
30 occurred more than ninety days prior to the time he or she entered
31 Washington. For purposes of this subsection, private motor vehicles do
32 not include motor homes;

33 (4) Of any service defined as a retail sale in RCW 82.04.050(3)(h)
34 by a nonresident of Washington;

35 (5) Of an extended warranty, to the extent that the property
36 covered by the extended warranty is exempt under this section from the
37 tax imposed under this chapter.

1 For purposes of this section, "state" means a state of the United
2 States, any political subdivision thereof, the District of Columbia,
3 and any foreign country or political subdivision thereof, and
4 "services" means services defined as retail sales in RCW
5 82.04.050(2)(a).

6 NEW SECTION. **Sec. 10.** This act takes effect October 1, 2009.

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