

SUBSTITUTE HOUSE BILL 2620

State of Washington 61st Legislature 2010 Regular Session

By House Finance (originally sponsored by Representatives Hunter and Moeller; by request of Department of Revenue)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to excise taxation of certain products and services
2 provided or furnished electronically; amending RCW 82.04.190,
3 82.04.192, 82.04.257, 82.04.2907, 82.04.297, 82.32.080, 35.102.130,
4 82.08.02082, 82.08.02087, 82.12.02082, 82.12.02087, 82.32.532, and
5 82.32.533; reenacting and amending RCW 82.04.050 and 82.08.195;
6 creating new sections; and providing an effective date.

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

PART I

BACKGROUND AND PURPOSE

10 NEW SECTION. **Sec. 101.** The 2009 legislature enacted Engrossed
11 Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act
12 relating to the excise taxation of certain products and services
13 provided or furnished electronically. The bill took effect July 26,
14 2009.

15 Engrossed Substitute House Bill No. 2075, at eighty-five pages, was
16 a comprehensive piece of legislation that made major changes to state
17 and local sales and use taxes, as well as the state business and
18 occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was

1 a complex piece of legislation because of the intricate
2 interrelationship between the sales tax and the business and occupation
3 tax and also because the bill affects the taxation of products and
4 services that involve technologies that are changing rapidly.

5 Because of the complexity and length of Engrossed Substitute House
6 Bill No. 2075, it was the legislature's expectation that, in the course
7 of implementing the bill, ambiguities and unintended consequences would
8 be discovered, which, if not corrected, will unsettle expectations.
9 Thus, the legislature further anticipated that it would need to
10 consider legislation in the 2010 legislative session to address these
11 issues.

12 Therefore, the purpose of this act is to clarify ambiguities,
13 correct unintended consequences, restore expectations, and conform the
14 law to the original intent of the legislature.

15 **PART II**
16 **DEFINITIONS**

17 **Sec. 201.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301
18 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

37 (b) The constructing, repairing, decorating, or improving of new or
38 existing buildings or other structures under, upon, or above real

1 property of or for consumers, including the installing or attaching of
2 any article of tangible personal property therein or thereto, whether
3 or not such personal property becomes a part of the realty by virtue of
4 installation, and shall also include the sale of services or charges
5 made for the clearing of land and the moving of earth excepting the
6 mere leveling of land used in commercial farming or agriculture;

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

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

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

27 (f) The furnishing of lodging and all other services by a hotel,
28 rooming house, tourist court, motel, trailer camp, and the granting of
29 any similar license to use real property, as distinguished from the
30 renting or leasing of real property, and it is presumed that the
31 occupancy of real property for a continuous period of one month or more
32 constitutes a rental or lease of real property and not a mere license
33 to use or enjoy the same. For the purposes of this subsection, it
34 shall be presumed that the sale of and charge made for the furnishing
35 of lodging for a continuous period of one month or more to a person is
36 a rental or lease of real property and not a mere license to enjoy the
37 same;

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

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

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

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

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

21 (c) Credit bureau services;

22 (d) Automobile parking and storage garage services;

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

28 (f) Service charges associated with tickets to professional
29 sporting events; and

30 (g) The following personal services: Physical fitness services,
31 tanning salon services, tattoo parlor services, steam bath services,
32 turkish bath services, escort services, and dating services.

33 (4)(a) The term also includes:

34 (i) The renting or leasing of tangible personal property to
35 consumers; and

36 (ii) Providing tangible personal property along with an operator
37 for a fixed or indeterminate period of time. A consideration of this
38 is that the operator is necessary for the tangible personal property to

1 perform as designed. For the purpose of this subsection (4)(a)(ii), an
2 operator must do more than maintain, inspect, or set up the tangible
3 personal property.

4 (b) The term does not include the renting or leasing of tangible
5 personal property where the lease or rental is for the purpose of
6 sublease or subrent.

7 (5) The term also includes the providing of "competitive telephone
8 service," "telecommunications service," or "ancillary services," as
9 those terms are defined in RCW 82.04.065, to consumers.

10 (6)(a) The term also includes the sale of prewritten computer
11 software other than a sale to a person who presents a seller's permit
12 or uniform exemption certificate in conformity with RCW 82.04.470,
13 regardless of the method of delivery to the end user. For purposes of
14 this subsection (6)(a), the sale of prewritten computer software
15 includes the sale of or charge made for a key or an enabling or
16 activation code, where the key or code is required to activate
17 prewritten computer software and put the software into use. There is
18 no separate sale of the key or code from the prewritten computer
19 software, regardless of how the sale may be characterized by the vendor
20 or by the purchaser.

21 The term "retail sale" does not include the sale of or charge made
22 for:

23 (i) Custom software; or

24 (ii) The customization of prewritten computer software.

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

30 (ii)(A) The service described in (b)(i) of this subsection (6)
31 includes the right to access and use prewritten computer software to
32 perform data processing.

33 (B) For purposes of this subsection (6)(b)(ii), "data processing"
34 means the systematic performance of operations on data to extract the
35 required information in an appropriate form or to convert the data to
36 usable information. Data processing includes check processing, image
37 processing, form processing, survey processing, payroll processing,
38 claim processing, and similar activities.

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

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

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

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

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

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

25 (b) A retail sale of digital goods, digital codes, or digital
26 automated services under this subsection (8) includes any services
27 provided by the seller exclusively in connection with the digital
28 goods, digital codes, or digital automated services, whether or not a
29 separate charge is made for such services.

30 (c) For purposes of this subsection, "permanent" means perpetual or
31 for an indefinite or unspecified length of time. A right of permanent
32 use is presumed to have been granted unless the agreement between the
33 seller and the purchaser specifies or the circumstances surrounding the
34 transaction suggest or indicate that the right to use terminates on the
35 occurrence of a condition subsequent.

36 (9) The term does not include the sale of or charge made for labor
37 and services rendered in respect to the building, repairing, or
38 improving of any street, place, road, highway, easement, right-of-way,

1 mass public transportation terminal or parking facility, bridge,
2 tunnel, or trestle which is owned by a municipal corporation or
3 political subdivision of the state or by the United States and which is
4 used or to be used primarily for foot or vehicular traffic including
5 mass transportation vehicles of any kind.

6 (10) The term also does not include sales of chemical sprays or
7 washes to persons for the purpose of postharvest treatment of fruit for
8 the prevention of scald, fungus, mold, or decay, nor does it include
9 sales of feed, seed, seedlings, fertilizer, agents for enhanced
10 pollination including insects such as bees, and spray materials to:

11 (a) Persons who participate in the federal conservation reserve
12 program, the environmental quality incentives program, the wetlands
13 reserve program, and the wildlife habitat incentives program, or their
14 successors administered by the United States department of agriculture;

15 (b) farmers for the purpose of producing for sale any agricultural
16 product; and (c) farmers acting under cooperative habitat development
17 or access contracts with an organization exempt from federal income tax
18 under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department
19 of fish and wildlife to produce or improve wildlife habitat on land
20 that the farmer owns or leases.

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

37 (12) The term does not include the sale of or charge made for
38 labor, services, or tangible personal property pursuant to agreements

1 providing maintenance services for bus, rail, or rail fixed guideway
2 equipment when a regional transit authority is the recipient of the
3 labor, services, or tangible personal property, and a transit agency,
4 as defined in RCW 81.104.015, performs the labor or services.

5 **Sec. 202.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to
6 read as follows:

7 "Consumer" means the following:

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

32 (2)(a) Any person engaged in any business activity taxable under
33 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
34 uses any competitive telephone service, ancillary services, or
35 telecommunications service as those terms are defined in RCW 82.04.065,
36 other than for resale in the regular course of business; (c) any person
37 who purchases, acquires, or uses any service defined in RCW

1 82.04.050(2) (a) or (g), other than for resale in the regular course of
2 business or for the purpose of satisfying the person's obligations
3 under an extended warranty as defined in RCW 82.04.050(7); (d) any
4 person who purchases, acquires, or uses any amusement and recreation
5 service defined in RCW 82.04.050(3)(a), other than for resale in the
6 regular course of business; (e) any person who purchases or acquires an
7 extended warranty as defined in RCW 82.04.050(7) other than for resale
8 in the regular course of business; and (f) any person who is an end
9 user of software. For purposes of this subsection (2)(f) and RCW
10 82.04.050(6), a person who purchases or otherwise acquires prewritten
11 computer software, who provides services described in RCW
12 82.04.050(6)(b) and who will charge consumers for the right to access
13 and use the prewritten computer software, is not an end user of the
14 prewritten computer software;

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

30 (4) Any person who is an owner, lessee or has the right of
31 possession to or an easement in real property which is being
32 constructed, repaired, decorated, improved, or otherwise altered by a
33 person engaged in business, excluding only (a) municipal corporations
34 or political subdivisions of the state in respect to labor and services
35 rendered to their real property which is used or held for public road
36 purposes, and (b) the United States, instrumentalities thereof, and
37 county and city housing authorities created pursuant to chapter 35.82

1 RCW in respect to labor and services rendered to their real property.
2 Nothing contained in this or any other subsection of this definition
3 shall be construed to modify any other definition of "consumer";

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

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

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

36 (8) Any person engaged in the business of cleaning up for the
37 United States, or its instrumentalities, radioactive waste and other
38 by-products of weapons production and nuclear research and development;

1 (9) Any person who is an owner, lessee, or has the right of
2 possession of tangible personal property that, under the terms of an
3 extended warranty as defined in RCW 82.04.050(7), has been repaired or
4 is replacement property, but only with respect to the sale of or charge
5 made for the repairing of the tangible personal property or the
6 replacement property;

7 (10) Any person who purchases, acquires, or uses services described
8 in RCW 82.04.050(6)(b) other than:

9 (a) For resale in the regular course of business; or

10 (b) For purposes of consuming the service described in RCW
11 82.04.050(6)(b) in producing for sale a new product, but only if such
12 service becomes a component of the new product. For purposes of this
13 subsection (10), "product" means a digital product, an article of
14 tangible personal property, or the service described in RCW
15 82.04.050(6)(b); and

16 (11)(a) Any end user of a digital product or digital code.
17 "Consumer" does not include any person who is not an end user of a
18 digital product or a digital code and purchases, acquires, owns, holds,
19 or uses any digital product or digital code for purposes of consuming
20 the digital product or digital code in producing for sale a new
21 product, but only if the digital product or digital code becomes a
22 component of the new product. A digital code becomes a component of a
23 new product if the digital good or digital automated service acquired
24 through the use of the digital code becomes incorporated into a new
25 product. For purposes of this subsection, "product" has the same
26 meaning as in subsection (10) of this section.

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

37 (ii) If a purchaser of a digital code does not receive the
38 contractual right to further redistribute, after the digital code is

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

11 **Sec. 203.** RCW 82.04.192 and 2009 c 535 s 201 are each amended to
12 read as follows:

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

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

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

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

22 (i) Any service that primarily involves the application of human
23 effort by the seller, and the human effort originated after the
24 customer requested the service;

25 (ii) The loaning or transferring of money or the purchase, sale, or
26 transfer of financial instruments. For purposes of this subsection
27 (3)(b)(ii), "financial instruments" include cash, accounts receivable
28 and payable, loans and notes receivable and payable, debt securities,
29 equity securities, as well as derivative contracts such as forward
30 contracts, swap contracts, and options;

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

32 (iv) Payment processing services;

33 (v) Parimutuel wagering and handicapping contests as authorized by
34 chapter 67.16 RCW;

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

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

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

4 (ix) Online educational programs provided by a:

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

6 (B) An institution of higher education as defined in sections 1001
7 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C.
8 Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of
9 this subsection (3)(b)(ix)(B), an online educational program must be
10 encompassed within the institution's accreditation;

11 (x) Live presentations, such as lectures, seminars, workshops, or
12 courses, where participants are connected to other participants via the
13 internet or telecommunications equipment, which allows audience members
14 and the presenter or instructor to give, receive, and discuss
15 information with each other in real time;

16 (xi) Travel agent services, including online travel services, and
17 automated systems used by travel agents to book reservations;

18 ((+xi)) (xii)(A) A service that allows the person receiving the
19 service to make online sales of products or services, digital or
20 otherwise, using either: (I) The service provider's web site; or (II)
21 the service recipient's web site, but only when the service provider's
22 technology is used in creating or hosting the service recipient's web
23 site or is used in processing orders from customers using the service
24 recipient's web site.

25 (B) The service described in this subsection (3)(b)((+xi)) (xii)
26 does not include the underlying sale of the products or services,
27 digital or otherwise, by the person receiving the service; ((and

28 ~~(xii) Online classified~~) (xiii) Advertising services. For
29 purposes of this subsection (3)(b)(xiii), "advertising services" means
30 all services directly related to the creation, preparation, production,
31 or the dissemination of advertisements. Advertising services include
32 layout, art direction, graphic design, mechanical preparation,
33 production supervision, placement, and rendering advice to a client
34 concerning the best methods of advertising that client's products or
35 services. Advertising services also include online referrals, search
36 engine marketing and lead generation optimization, web campaign
37 planning, the acquisition of advertising space in the internet media,
38 and the monitoring and evaluation of web site traffic for purposes of

1 determining the effectiveness of an advertising campaign. Advertising
2 services do not include web hosting services and domain name
3 registration;

4 (xiv) The mere storage of digital products, digital codes, computer
5 software, or master copies of software. This exclusion from the
6 definition of digital automated services includes providing space on a
7 server for web hosting or the backing up of data or other information;

8 (xv) Data processing services. For purposes of this subsection
9 (3)(b)(xv), "data processing service" means a primarily automated
10 service provided to a business or other organization where the primary
11 object of the service is the systematic performance of operations by
12 the service provider on data supplied in whole or in part by the
13 customer to extract the required information in an appropriate form or
14 to convert the data to usable information. Data processing services
15 include check processing, image processing, form processing, survey
16 processing, payroll processing, claim processing, and similar
17 activities. Data processing does not include the service described in
18 RCW 82.04.050(6)(b); and

19 (xvi) Digital goods.

20 (4) "Digital books" means works that are generally recognized in
21 the ordinary and usual sense as books.

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

33 (6)(a) "Digital goods," except as provided in (b) of this
34 subsection (6), means sounds, images, data, facts, or information, or
35 any combination thereof, transferred electronically, including, but not
36 limited to, specified digital products and other products transferred
37 electronically not included within the definition of specified digital
38 products.

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

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

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

5 (iii) The internet and internet access as those terms are defined
6 in RCW 82.04.297;

7 (iv)(A) Except as provided in (b)(iv)(B) of this subsection (6),
8 the representation of a personal or professional service in electronic
9 form, such as an electronic copy of an engineering report prepared by
10 an engineer, ((that)) where the service primarily involves the
11 application of human effort by the service provider, and the human
12 effort originated after the customer requested the service((+and)).

13 (B) The exclusion in (b)(iv)(A) of this subsection (6) does not
14 apply to photographers in respect to amounts received for the taking of
15 photographs that are transferred electronically to the customer, but
16 only if the customer is an end user, as defined in RCW 82.04.190(11),
17 of the photographs. Such amounts are considered to be for the sale of
18 digital goods; and

19 (v) ((Digital automated services and)) Services and activities
20 excluded from the definition of digital automated services in
21 subsection (3)(b)(i) through (xv) of this section and not otherwise
22 described in (b)(i) through (iv) of this subsection (6).

23 (7) "Digital products" means digital goods and digital automated
24 services.

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

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

33 (10) "Subscription radio services" means the sale of audio
34 programming by a radio broadcaster as defined in RCW 82.08.02081,
35 except as otherwise provided in this subsection. "Subscription radio
36 services" does not include audio programming that is sold on a pay-per-
37 program basis or that allows the buyer to access a library of programs
38 at any time for a specific charge for that service.

1 ~~report the tax imposed in this chapter in an electronic format provided~~
2 ~~by the department)) is subject to the mandatory electronic filing and~~
3 ~~payment requirements in RCW 82.32.080.~~

4 **Sec. 302.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
5 read as follows:

6 (1) Upon every person engaging within this state in the business of
7 receiving income from royalties or charges in the nature of royalties
8 for the granting of intangible rights, such as copyrights, licenses,
9 patents, or franchise fees, the amount of tax with respect to (~~such~~)
10 the business (~~shall be~~) is equal to the gross income from royalties
11 or charges in the nature of royalties from the business multiplied by
12 the rate of 0.484 percent.

13 (2) For the purposes of this section, "royalties" means
14 compensation for the use of intangible property, such as copyrights,
15 patents, licenses, franchises, trademarks, trade names, and similar
16 items. It does not include compensation for any natural resource, the
17 licensing of prewritten computer software to the end user, or the
18 licensing (~~or use~~) of digital goods, digital codes, or digital
19 automated services to the end user as defined in RCW 82.04.190(11).

20 **Sec. 303.** RCW 82.04.297 and 2009 c 535 s 408 are each amended to
21 read as follows:

22 (1) The provision of internet access is subject to tax under RCW
23 82.04.290(2).

24 (2)(a) Except as provided in (b) of this subsection, "internet" and
25 "internet access" have the same meaning as those terms are defined in
26 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
27 existing on July 1, 2009.

28 (b) "Internet access" does not include telecommunications service
29 purchased, used, or sold by a person that provides a service that
30 enables users to connect to the internet to access content,
31 information, or other services offered over the internet, to the extent
32 such telecommunications service is purchased, used, or sold: (i) To
33 provide such service; or (ii) to otherwise enable users to access
34 content, information, or other services offered over the internet.

35 (3) Unless the context clearly requires otherwise, the definitions
36 in this section apply throughout this chapter.

1 **Sec. 304.** RCW 82.32.080 and 2009 c 176 s 2 are each amended to
2 read as follows:

3 (1) When authorized by the department, payment of the tax may be
4 made by uncertified check under such rules as the department
5 prescribes, but, if a check so received is not paid by the bank on
6 which it is drawn, the taxpayer, by whom such check is tendered, will
7 remain liable for payment of the tax and for all legal penalties, the
8 same as if such check had not been tendered.

9 (2)(a) Except as otherwise provided in this subsection, payment of
10 the tax must be made by electronic funds transfer, as defined in RCW
11 82.32.085, if the taxpayer is required to file and remit its taxes on
12 a monthly basis. As an alternative to electronic funds transfer, the
13 department may authorize other forms of electronic payment, such as
14 credit card and e-check. All taxes administered by this chapter are
15 subject to this requirement except the taxes authorized by chapters
16 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent
17 of this subsection to require electronic payment for those taxes
18 reported on the department's combined excise tax return or any
19 successor return. The mandatory electronic payment requirement in this
20 subsection also applies to taxpayers who: (i) Are subject to the tax
21 imposed in RCW 82.04.257 but for whom the department has authorized a
22 tax reporting frequency that is less frequent than monthly; or (ii)
23 meet the threshold for filing and remitting taxes on a monthly basis as
24 established by rule of the department but for whom the department has
25 authorized a less frequent reporting frequency, when such authorization
26 became effective on or after July 26, 2009.

27 (b) The department, for good cause, may waive the electronic
28 payment requirement in this subsection for any taxpayer. In the
29 discretion of the department, a waiver under this subsection may be
30 made temporary or permanent, and may be made on the department's own
31 motion.

32 (c) The department is authorized to accept payment of taxes by
33 electronic funds transfer or other acceptable forms of electronic
34 payment from taxpayers that are not subject to the mandatory electronic
35 payment requirements in this subsection.

36 (3)(a) Except as otherwise provided in this subsection, returns
37 must be filed electronically using the department's online tax filing
38 service, if the taxpayer is required to file and remit its taxes on a

1 monthly basis. The mandatory electronic filing requirement in this
2 subsection also applies to taxpayers who: (i) Are subject to the tax
3 imposed in RCW 82.04.257 but for whom the department has authorized a
4 tax reporting frequency that is less frequent than monthly; or (ii)
5 meet the threshold for filing and remitting taxes on a monthly basis as
6 established by rule of the department but for whom the department has
7 authorized a less frequent reporting frequency, when such authorization
8 became effective on or after July 26, 2009.

9 (b) The department, for good cause, may waive the electronic filing
10 requirement in this subsection for any taxpayer. In the discretion of
11 the department, a waiver under this subsection may be made temporary or
12 permanent, and may be made on the department's own motion.

13 (c) The department is authorized to (~~accept payment of taxes by~~
14 ~~electronic funds transfer or other acceptable forms of electronic~~
15 ~~payment~~) allow electronic filing of returns from taxpayers that are
16 not subject to the mandatory electronic (~~payment~~) filing requirements
17 in this subsection.

18 (4)(a)(i) The department, for good cause shown, may extend the time
19 for making and filing any return, and may grant such reasonable
20 additional time within which to make and file returns as it may deem
21 proper, but any permanent extension granting the taxpayer a reporting
22 date without penalty more than ten days beyond the due date, and any
23 extension in excess of thirty days must be conditional on deposit with
24 the department of an amount to be determined by the department which
25 (~~shall be~~) is approximately equal to the estimated tax liability for
26 the reporting period or periods for which the extension is granted. In
27 the case of a permanent extension or a temporary extension of more than
28 thirty days the deposit must be deposited within the state treasury
29 with other tax funds and a credit recorded to the taxpayer's account
30 which may be applied to taxpayer's liability upon cancellation of the
31 permanent extension or upon reporting of the tax liability where an
32 extension of more than thirty days has been granted.

33 (ii) The department must review the requirement for deposit at
34 least annually and may require a change in the amount of the deposit
35 required when it believes that such amount does not approximate the tax
36 liability for the reporting period or periods for which the extension
37 is granted.

1 (b) During a state of emergency declared under RCW 43.06.010(12),
2 the department, on its own motion or at the request of any taxpayer
3 affected by the emergency, may extend the time for making or filing any
4 return as the department deems proper. The department may not require
5 any deposit as a condition for granting an extension under this
6 subsection (4)(b).

7 (5) The department must keep full and accurate records of all funds
8 received and disbursed by it. Subject to the provisions of RCW
9 82.32.105 and 82.32.350, the department must apply the payment of the
10 taxpayer first against penalties and interest, and then upon the tax,
11 without regard to any direction of the taxpayer.

12 (6) The department may refuse to accept any return that is not
13 accompanied by a remittance of the tax shown to be due thereon or that
14 is not filed electronically as required in this section. When such
15 return is not accepted, the taxpayer is deemed to have failed or
16 refused to file a return and is subject to the procedures provided in
17 RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The
18 above authority to refuse to accept a return may not apply when a
19 return is timely filed electronically and a timely payment has been
20 made by electronic funds transfer or other form of electronic payment
21 as authorized by the department.

22 (7) Except for returns and remittances required to be transmitted
23 to the department electronically under this section and except as
24 otherwise provided in this chapter, a return or remittance that is
25 transmitted to the department by United States mail is deemed filed or
26 received on the date shown by the post office cancellation mark stamped
27 upon the envelope containing it. A return or remittance that is
28 transmitted to the department electronically is deemed filed or
29 received according to procedures set forth by the department.

30 (8)(a) For purposes of subsections (2) and (3) of this section,
31 "good cause" means the inability of a taxpayer to comply with the
32 requirements of subsection (2) or (3) of this section because:

33 (i) The taxpayer does not have the equipment or software necessary
34 to enable the taxpayer to comply with subsection (2) or (3) of this
35 section;

36 (ii) The equipment or software necessary to enable the taxpayer to
37 comply with subsection (2) or (3) of this section is not functioning
38 properly;

1 (iii) The taxpayer does not have access to the internet using the
2 taxpayer's own equipment;

3 (iv) The taxpayer does not have a bank account or a credit card;

4 (v) The taxpayer's bank is unable to send or receive electronic
5 funds transfer transactions; or

6 (vi) Some other circumstance or condition exists that, in the
7 department's judgment, prevents the taxpayer from complying with the
8 requirements of subsection (2) or (3) of this section.

9 (b) "Good cause" also includes any circumstance that, in the
10 department's judgment, supports the efficient or effective
11 administration of the tax laws of this state, including providing
12 relief from the requirements of subsection (2) or (3) of this section
13 to any taxpayer that is voluntarily collecting and remitting this
14 state's sales or use taxes on sales to Washington customers but has no
15 legal requirement to be registered with the department.

16 **Sec. 305.** RCW 35.102.130 and 2003 c 79 s 13 are each amended to
17 read as follows:

18 A city that imposes a business and occupation tax (~~(shall)~~) must
19 provide for the allocation and apportionment of a person's gross
20 income, other than persons subject to the provisions of chapter 82.14A
21 RCW, as follows:

22 (1) Gross income derived from all activities other than those taxed
23 as service or royalties (~~(shall)~~) must be allocated to the location
24 where the activity takes place.

25 (a) In the case of sales of tangible personal property, the
26 activity takes place where delivery to the buyer occurs.

27 (b)(i) In the case of sales of digital products, the activity takes
28 place where delivery to the buyer occurs. The delivery of digital
29 products will be deemed to occur at:

30 (A) The seller's place of business if the purchaser receives the
31 digital product at the seller's place of business;

32 (B) If not received at the seller's place of business, the location
33 where the purchaser or the purchaser's donee, designated as such by the
34 purchaser, receives the digital product, including the location
35 indicated by instructions for delivery to the purchaser or donee, known
36 to the seller;

1 (C) If the location where the purchaser or the purchaser's donee
2 receives the digital product is not known, the purchaser's address
3 maintained in the ordinary course of the seller's business when use of
4 this address does not constitute bad faith;

5 (D) If no address for the purchaser is maintained in the ordinary
6 course of the seller's business, the purchaser's address obtained
7 during the consummation of the sale, including the address of a
8 purchaser's payment instrument, if no other address is available, when
9 use of this address does not constitute bad faith; and

10 (E) If no address for the purchaser is obtained during the
11 consummation of the sale, the address where the digital good or digital
12 code is first made available for transmission by the seller or the
13 address from which the digital automated service or service described
14 in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these
15 purposes any location that merely provided the digital transfer of the
16 product sold.

17 (ii) If none of the methods in (b)(i) of this subsection (1) for
18 determining where the delivery of digital products occurs are available
19 after a good faith effort by the taxpayer to apply the methods provided
20 in (b)(i)(A) through (E) of this subsection (1), then the city and the
21 taxpayer may mutually agree to employ any other method to effectuate an
22 equitable allocation of income from the sale of digital products. The
23 taxpayer will be responsible for petitioning the city to use an
24 alternative method under this subsection (1)(b)(ii). The city may
25 employ an alternative method for allocating the income from the sale of
26 digital products if the methods provided in (b)(i)(A) through (E) of
27 this subsection (1) are not available and the taxpayer and the city are
28 unable to mutually agree on an alternative method to effectuate an
29 equitable allocation of income from the sale of digital products.

30 (iii) For purposes of this subsection (1)(b), the following
31 definitions apply:

32 (A) "Digital automated services," "digital codes," and "digital
33 goods" have the same meaning as in RCW 82.04.192;

34 (B) "Digital products" means digital goods, digital codes, digital
35 automated services, and the services described in RCW 82.04.050 (2)(g)
36 and (6)(b); and

37 (C) "Receive" has the same meaning as in RCW 82.32.730.

1 (c) If a business activity allocated under this subsection (1)
2 takes place in more than one city and all cities impose a gross
3 receipts tax, a credit (~~shall~~) must be allowed as provided in RCW
4 35.102.060; if not all of the cities impose a gross receipts tax, the
5 affected cities (~~shall~~) must allow another credit or allocation
6 system as they and the taxpayer agree.

7 (2) Gross income derived as royalties from the granting of
8 intangible rights (~~shall~~) must be allocated to the commercial
9 domicile of the taxpayer.

10 (3) Gross income derived from activities taxed as services shall be
11 apportioned to a city by multiplying apportionable income by a
12 fraction, the numerator of which is the payroll factor plus the
13 service-income factor and the denominator of which is two.

14 (a) The payroll factor is a fraction, the numerator of which is the
15 total amount paid in the city during the tax period by the taxpayer for
16 compensation and the denominator of which is the total compensation
17 paid everywhere during the tax period. Compensation is paid in the
18 city if:

19 (i) The individual is primarily assigned within the city;

20 (ii) The individual is not primarily assigned to any place of
21 business for the tax period and the employee performs fifty percent or
22 more of his or her service for the tax period in the city; or

23 (iii) The individual is not primarily assigned to any place of
24 business for the tax period, the individual does not perform fifty
25 percent or more of his or her service in any city(~~+~~), and the
26 employee resides in the city.

27 (b) The service income factor is a fraction, the numerator of which
28 is the total service income of the taxpayer in the city during the tax
29 period, and the denominator of which is the total service income of the
30 taxpayer everywhere during the tax period. Service income is in the
31 city if:

32 (i) The customer location is in the city; or

33 (ii) The income-producing activity is performed in more than one
34 location and a greater proportion of the service-income-producing
35 activity is performed in the city than in any other location, based on
36 costs of performance, and the taxpayer is not taxable at the customer
37 location; or

1 (iii) The service-income-producing activity is performed within the
2 city, and the taxpayer is not taxable in the customer location.

3 (c) If the allocation and apportionment provisions of this
4 subsection do not fairly represent the extent of the taxpayer's
5 business activity in the city or cities in which the taxpayer does
6 business, the taxpayer may petition for or the tax administrators may
7 jointly require, in respect to all or any part of the taxpayer's
8 business activity, that one of the following methods be used jointly by
9 the cities to allocate or apportion gross income, if reasonable:

10 (i) Separate accounting;

11 (ii) The use of a single factor;

12 (iii) The inclusion of one or more additional factors that will
13 fairly represent the taxpayer's business activity in the city; or

14 (iv) The employment of any other method to effectuate an equitable
15 allocation and apportionment of the taxpayer's income.

16 (4) The definitions in this subsection apply throughout this
17 section.

18 (a) "Apportionable income" means the gross income of the business
19 taxable under the service classifications of a city's gross receipts
20 tax, including income received from activities outside the city if the
21 income would be taxable under the service classification if received
22 from activities within the city, less any exemptions or deductions
23 available.

24 (b) "Compensation" means wages, salaries, commissions, and any
25 other form of remuneration paid to individuals for personal services
26 that are or would be included in the individual's gross income under
27 the federal internal revenue code.

28 (c) "Individual" means any individual who, under the usual common
29 law rules applicable in determining the employer-employee relationship,
30 has the status of an employee of that taxpayer.

31 (d) "Customer location" means the city or unincorporated area of a
32 county where the majority of the contacts between the taxpayer and the
33 customer take place.

34 (e) "Primarily assigned" means the business location of the
35 taxpayer where the individual performs his or her duties.

36 (f) "Service-taxable income" or "service income" means gross income
37 of the business subject to tax under either the service or royalty
38 classification.

1 (g) "Tax period" means the calendar year during which tax liability
2 is accrued. If taxes are reported by a taxpayer on a basis more
3 frequent than once per year, taxpayers shall calculate the factors for
4 the previous calendar year for reporting in the current calendar year
5 and correct the reporting for the previous year when the factors are
6 calculated for that year, but not later than the end of the first
7 quarter of the following year.

8 (h) "Taxable in the customer location" means either that a taxpayer
9 is subject to a gross receipts tax in the customer location for the
10 privilege of doing business, or that the government where the customer
11 is located has the authority to subject the taxpayer to gross receipts
12 tax regardless of whether, in fact, the government does so.

13 **PART IV**
14 **SALES TAX EXEMPTIONS**

15 **Sec. 401.** RCW 82.08.02082 and 2009 c 535 s 503 are each amended to
16 read as follows:

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

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

29 ~~(b))~~ a business or other organization for the purpose of making
30 the digital good or digital automated service, including a digital good
31 or digital automated service acquired through the use of a digital
32 code, or service defined as a retail sale in RCW 82.04.050(6)(b)
33 available free of charge for the use or enjoyment of ((others)) the
34 general public. The exemption provided in this section does not apply
35 unless the purchaser has the legal right to broadcast, rebroadcast,

1 transmit, retransmit, license, relicense, distribute, redistribute, or
2 exhibit the product, in whole or in part, to the general public.

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

7 (3) For purposes of this section, "general public" means all
8 persons and not limited or restricted to a particular class of persons,
9 except that the general public includes:

10 (a) A class of persons that is defined as all persons residing or
11 owning property within the boundaries of a state, political subdivision
12 of a state, or a municipal corporation; and

13 (b) With respect to libraries, authorized library patrons.

14 **Sec. 402.** RCW 82.08.02087 and 2009 c 535 s 504 are each amended to
15 read as follows:

16 (1) The tax imposed by RCW 82.08.020 does not apply to the sale to
17 a business of ~~((standard))~~ digital ~~((information))~~ goods, and services
18 rendered in respect to ~~((standard))~~ digital ~~((information))~~ goods,
19 where the ~~((standard))~~ digital ~~((information))~~ goods and services
20 rendered in respect to digital goods are purchased solely for business
21 purposes. The exemption provided by this section also applies to the
22 sale to a business of a digital code if all of the digital goods to be
23 obtained through the use of the code will be used solely for business
24 purposes.

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

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

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

35 (b) ~~(("Standard digital information" means a digital good~~
36 ~~consisting primarily of data, facts, or information, or any combination~~

1 ~~thereof, not generated or compiled for a specific client or customer.)~~)
2 "Services rendered in respect to digital goods" means those services
3 defined as a retail sale in RCW 82.04.050(2)(g).

4 **PART V**

5 **USE TAX EXEMPTIONS**

6 **Sec. 501.** RCW 82.12.02082 and 2009 c 535 s 603 are each amended to
7 read as follows:

8 ~~((The provisions of this chapter do not apply to the use of digital~~
9 ~~goods, digital codes, digital automated services, or services defined~~
10 ~~as a retail sale in RCW 82.04.050(6)(b) for purposes of: (1) Consuming~~
11 ~~the digital good, digital code, digital automated service, or service~~
12 ~~defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale~~
13 ~~a new product, where the digital good, digital code, digital automated~~
14 ~~service, or service defined as a retail sale in RCW 82.04.050(6)(b)~~
15 ~~becomes an ingredient or component of the new product. A digital code~~
16 ~~becomes an ingredient or component of a new product if the digital good~~
17 ~~or digital automated service acquired through the use of the digital~~
18 ~~code becomes an ingredient or component of a new product; or~~

19 (2)) The provisions of this chapter do not apply to the use by a
20 business or other organization of digital goods, digital codes, digital
21 automated services, or services defined as a retail sale in RCW
22 82.04.050(6)(b) for the purpose of making the digital good or digital
23 automated service, including a digital good or digital automated
24 service acquired through the use of a digital code, or service defined
25 as a retail sale in RCW 82.04.050(6)(b) available free of charge for
26 the use or enjoyment of ((others)) the general public. For purposes of
27 this section, "general public" has the same meaning as in RCW
28 82.08.02082. The exemption provided in this section does not apply
29 unless the user has the legal right to broadcast, rebroadcast,
30 transmit, retransmit, license, relicense, distribute, redistribute, or
31 exhibit the product, in whole or in part, to the general public.

32 **Sec. 502.** RCW 82.12.02087 and 2009 c 535 s 607 are each amended to
33 read as follows:

34 (1) The provisions of this chapter do not apply to the use by a
35 business of ((standard)) digital ((information)) goods, and services

1 rendered in respect to ((standard)) digital ((information)) goods,
2 where the ((standard)) digital ((information)) goods and services
3 rendered in respect to digital goods are used solely for business
4 purposes. The exemption provided by this section also applies to the
5 use by a business of a digital code if all of the digital goods to be
6 obtained through the use of the code will be used solely for business
7 purposes.

8 (2) For purposes of this section, the definitions in RCW
9 82.08.02087 apply.

10 **PART VI**

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

13 **Sec. 601.** RCW 82.08.195 and 2009 c 535 s 801 and 2009 c 483 s 3
14 are each reenacted and amended to read as follows:

15 (1) Except as provided in subsection (6) of this section, a bundled
16 transaction is subject to the tax imposed by RCW 82.08.020 if the
17 retail sale of any of its component products would be subject to the
18 tax imposed by RCW 82.08.020.

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

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

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

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

32 (a) If the price is attributable to products that are taxable and
33 products that are not taxable, the portion of the price attributable to
34 the nontaxable products are subject to the tax imposed by RCW 82.08.020
35 unless the seller can identify by reasonable and verifiable standards

1 the portion from its books and records that are kept in the regular
2 course of business for other purposes including, but not limited to,
3 nontax purposes;

4 (b) If the price is attributable to products that are subject to
5 tax at different tax rates, the total price is attributable to the
6 products subject to the tax at the highest tax rate unless the seller
7 can identify by reasonable and verifiable standards the portion of the
8 price attributable to the products subject to the tax imposed by RCW
9 82.08.020 at the lower rate from its books and records that are kept in
10 the regular course of business for other purposes including, but not
11 limited to, nontax purposes.

12 (6) The tax imposed by RCW 82.08.020 does not apply in respect to
13 a bundled transaction consisting entirely of the sale of services or of
14 services and prepared food, if the sale is to a resident, sixty-two
15 years of age or older, of a qualified low-income senior housing
16 facility by the lessor or operator of the facility. A single bundled
17 transaction involving both spouses of a marital community or both
18 domestic partners of a domestic partnership meets the age requirement
19 in this subsection if at least one of the spouses or domestic partners
20 is at least sixty-two years of age. For purposes of this subsection,
21 "qualified low-income senior housing facility" has the same meaning as
22 in RCW 82.08.0293.

23 (7) In the case of the sale of a code that provides a purchaser
24 with the right to obtain more than one digital product(~~(7)~~) or one or
25 more digital products and (~~which may also include the right to~~
26 ~~obtain~~) other products or services, and all of the products and
27 services, digital or otherwise, to be obtained through the use of the
28 code do not have the same sales and use tax treatment, for purposes of
29 the tax imposed by RCW 82.08.020:

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

32 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire
33 selling price of the code, except as provided in (b)(ii) of this
34 subsection (7).

35 (ii) If the seller can identify by reasonable and verifiable
36 standards the portion of the selling price attributable to the products
37 and services that are not subject to the tax imposed by RCW 82.08.020
38 from its books and records that are kept in the regular course of

1 business for other purposes including, but not limited to, nontax
2 purposes, the tax imposed by RCW 82.08.020 does not apply to that
3 portion of the selling price of the code attributable to the products
4 and services that are not subject to the tax imposed by RCW 82.08.020
5 nor to that portion of the selling price of the code attributable to
6 any digital goods, the sale of which is exempt under RCW 82.08.02087.

7 **PART VII**
8 **NEXUS**

9 **Sec. 701.** RCW 82.32.532 and 2009 c 535 s 901 are each amended to
10 read as follows:

11 (1) For purposes of the taxes imposed in this title, the department
12 of revenue may not consider a person's ownership of, or rights in,
13 computer software as defined in RCW 82.04.215, including computer
14 software used in providing a digital automated service; master copies
15 of software; digital goods or digital codes residing on servers located
16 in this state in determining whether the person has substantial nexus
17 with this state.

18 (2) For purposes of this section, "substantial nexus" means the
19 requisite connection that a person has with a state to allow the state
20 to subject the person to the state's taxing authority, consistent with
21 the commerce clause of the United States Constitution.

22 **PART VIII**
23 **AMNESTY**

24 **Sec. 801.** RCW 82.32.533 and 2009 c 535 s 1001 are each amended to
25 read as follows:

26 (1) Except as provided in subsection (2) of this section, no person
27 may be held liable for the failure to collect or pay state and local
28 sales and use taxes accrued before July 26, 2009, on the sale or use of
29 digital goods or of services defined as a retail sale in RCW
30 82.04.050(2)(a) and rendered in respect to digital goods.

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

1 (3) Nothing in this section may be construed as authorizing the
2 refund of state and local sales and use taxes properly paid on the sale
3 or use, before July 26, 2009, of digital goods (~~((before July 26, 2009))~~)
4 or of services defined as a retail sale in RCW 82.04.050(2)(a) and
5 rendered in respect to digital goods.

6 (4) A person is not entitled to a credit or refund of any business
7 and occupation tax paid in excess of that properly due as a result of
8 the person paying tax on its income earned from the sale of eligible
9 digital products and services at the tax rate provided in RCW
10 82.04.290(2)(a) rather than the tax rate provided in RCW 82.04.250(1),
11 unless the person requesting the credit or refund has paid the proper
12 amount of state and local sales taxes due on the sales of the eligible
13 digital products and services that generated the income in respect to
14 which the business and occupation tax credit or refund is sought. For
15 purposes of this subsection, "eligible digital products and services"
16 means: (a) Digital goods; and (b) services defined as a retail sale in
17 RCW 82.04.050(2)(a) and rendered in respect to digital goods.

18 (5) For purposes of this section, "digital goods" has the same
19 meaning as in RCW 82.04.192.

20 **PART IX**
21 **MISCELLANEOUS**

22 NEW SECTION. Sec. 901. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. Sec. 902. (1) Except as provided in subsection (2)
27 of this section, this act applies both prospectively and retroactively
28 to July 26, 2009.

29 (2) Sections 202, 402, and 502 of this act, and those provisions of
30 sections 401 and 501 of this act that eliminate the sales and use tax
31 exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively
32 only.

1 NEW SECTION. **Sec. 903.** This act takes effect July 1, 2010.

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