
SENATE BILL 6173

State of Washington

61st Legislature

2009 Regular Session

By Senator Prentice

1 AN ACT Relating to improving sales tax compliance; amending RCW
2 82.04.051, 82.04.060, 82.04.190, 82.08.841, 82.08.890, 82.08.900,
3 82.08.980, 82.12.841, 82.12.890, 82.12.900, 82.12.980, 82.32.045,
4 82.04.470, 82.08.050, 82.08.130, 82.14B.042, 82.14B.200, 82.32.087,
5 82.32.290, 82.32.291, 82.32.330, 82.72.040, and 82.72.070; reenacting
6 and amending RCW 82.04.050; adding new sections to chapter 82.08 RCW;
7 adding new sections to chapter 82.12 RCW; adding a new section to
8 chapter 82.14 RCW; adding a new section to chapter 82.32 RCW; creating
9 new sections; prescribing penalties; and providing an effective date.

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

11 **PART I**

12 **FINDING AND INTENT**

13 NEW SECTION. **Sec. 101.** The legislature finds that the department
14 of revenue's 2008 compliance study estimates that sales tax
15 noncompliance exceeds well over one hundred million dollars annually in
16 unpaid state and local sales and use taxes. The study further
17 indicates that sales tax noncompliance occurs most frequently for
18 construction at 80.7 percent of all firms in this industry.

1 The legislature intends to address this significant problem by
2 taking a two-pronged approach.

3 First, this act changes the excise taxation of construction
4 businesses and others who render services in respect to real property.
5 Beginning January 1, 2010: (1) The purchase of materials and
6 subcontractor services for all retail construction and other retail
7 real property improvement projects will become retail sales; (2)
8 contractors and other persons who render services in respect to real
9 property will pay retail sales tax on all such purchases; (3) to avoid
10 the pyramiding of sales tax, contractors and other persons who render
11 services in respect to real property will be entitled to claim a credit
12 on their excise tax returns for the amount of retail sales or use taxes
13 paid on the purchase or use of materials incorporated into, and
14 subcontractor services purchased for, retail construction and other
15 retail real property improvement projects; and (4) sales and use tax
16 exemptions are provided or modified so as not to affect the sales and
17 use taxation of construction projects within the scope of a sales and
18 use tax deferral certificate issued by the department of revenue or a
19 specific sales and use tax exemption provided in chapters 82.08 and
20 82.12 RCW.

21 Second, this act also eliminates the use of resale certificates to
22 document wholesale purchases. Resale certificates will be replaced
23 with seller's permits, which will be issued by the department of
24 revenue only to those businesses that make wholesale purchases, such as
25 retailers, wholesalers, and manufacturers. Businesses that do not make
26 wholesale purchases, such as construction businesses and most service
27 businesses, will not be entitled to a seller's permit.

28 **PART II**
29 **ADDRESSING THE IMPROPER USE OF RESALE CERTIFICATES BY**
30 **CONTRACTORS AND OTHER PERSONS WHO RENDER SERVICES IN**
31 **RESPECT TO REAL PROPERTY**

32 **Sec. 201.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are
33 each reenacted and amended to read as follows:

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

1 and including, among others, without limiting the scope hereof, persons
2 who install, repair, clean, alter, improve, construct, or decorate real
3 or personal property of or for consumers other than a sale to a person
4 who presents a (~~resale certificate under~~) seller's permit or uniform
5 exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

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

26 (e) Purchases for the purpose of providing the property to
27 consumers as part of competitive telephone service, as defined in RCW
28 82.04.065. The term shall include every sale of tangible personal
29 property which is used or consumed or to be used or consumed in the
30 performance of any activity classified as a "sale at retail" or "retail
31 sale" even though such property is resold or utilized as provided in
32 (a), (b), (c), (d), or (e) of this subsection following such use. The
33 term also means every sale of tangible personal property to persons
34 engaged in any business which is taxable under RCW 82.04.280 (2) and
35 (7), 82.04.290, and 82.04.2908; or

36 (f) Purchases for the purpose of satisfying the person's
37 obligations under an extended warranty as defined in subsection (7) of

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

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

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

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

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

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

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

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

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

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

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

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

33 (c) Credit bureau services;

34 (d) Automobile parking and storage garage services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 202.** RCW 82.04.051 and 1999 c 212 s 2 are each amended to
13 read as follows:

14 (1)(a) As used in RCW 82.04.050, the term "services rendered in
15 respect to" means those services that are directly related to the
16 constructing, building, repairing, improving, and decorating of
17 buildings or other structures and that are performed by a person who is
18 responsible for the performance of the constructing, building,
19 repairing, improving, or decorating activity.

20 (b) The term does not include services such as engineering,
21 architectural, surveying, flagging, accounting, legal, consulting, or
22 administrative services provided to the consumer of, or person
23 responsible for performing, the constructing, building, repairing,
24 improving, or decorating services.

25 (2) A contract or agreement under which a person is responsible for
26 both services that would otherwise be subject to tax as a service under
27 RCW 82.04.290(2) and also constructing, building, repairing, improving,
28 or decorating activities that would otherwise be subject to tax under
29 another section of this chapter is subject to the tax that applies to
30 the predominant activity under the contract or agreement.

31 (3) Unless otherwise provided by law, a contract or agreement under
32 which a person is responsible for activities that are subject to tax as
33 a service under RCW 82.04.290(2), and a subsequent contract or
34 agreement under which the same person is responsible for constructing,
35 building, repairing, improving, or decorating activities subject to tax
36 under another section of this chapter, shall not be combined and taxed

1 as a single activity if at the time of the first contract or agreement
2 it was not contemplated by the parties, as evidenced by the facts, that
3 the same person would be awarded both contracts.

4 (4)(a) As used in this section "responsible for the performance"
5 means that the person is obligated to perform all or a portion of the
6 activities, either personally or through a third party. (~~A person~~
7 ~~who~~))

8 (b) A person is not responsible for the performance of the work if
9 the person: (i) Reviews work for a consumer(~~(r)~~) or retailer(~~(r or~~
10 ~~wholesaler~~)) but does not supervise or direct the work (~~(is not~~
11 ~~responsible for the performance of the work. A person who~~); or (ii)
12 is financially obligated for the work, such as a bank, but (~~who~~) does
13 not have control over the work itself (~~(is not responsible for the~~
14 ~~performance of the work~~)).

15 **Sec. 203.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to
16 read as follows:

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

18 (1) Any sale of the following that is not a sale at retail:

19 (a) Tangible personal property(~~(r any sale of)~~);

20 (b) Services defined as a retail sale in RCW 82.04.050(2)(a)(~~(r any~~
21 ~~sale of)~~);

22 (c) Amusement or recreation services as defined in RCW
23 82.04.050(3)(a)(~~(r any sale of canned)~~);

24 (d) Prewritten computer software(~~(r)~~);

25 (e) Any sale of an extended warranty as defined in RCW
26 82.04.050(7)(~~(r or any sale of)~~);

27 (f) Competitive telephone service, ancillary services, or
28 telecommunications service as those terms are defined in RCW
29 82.04.065(~~(r which is not a sale at retail)~~); and

30 (2) Any charge made for labor and services rendered for persons who
31 are not consumers, in respect to (~~(real or)~~) personal property, if such
32 charge is expressly defined as a retail sale by RCW 82.04.050 when
33 rendered to or for consumers(~~(r PROVIDED, That)~~). The term "(~~(real~~
34 ~~or)~~) personal property" as used in this subsection (~~(shall)~~) (2) may
35 not include any natural products named in RCW 82.04.100.

1 **Sec. 204.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to
2 read as follows:

3 "Consumer" means the following:

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

28 (2)(a) Any person engaged in any business activity taxable under
29 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
30 uses any competitive telephone service, ancillary services, or
31 telecommunications service as those terms are defined in RCW 82.04.065,
32 other than for resale in the regular course of business; (c) any person
33 who purchases, acquires, or uses any service defined in RCW
34 82.04.050(2)(a), other than for resale in the regular course of
35 business or for the purpose of satisfying the person's obligations
36 under an extended warranty as defined in RCW 82.04.050(7); (d) any
37 person who purchases, acquires, or uses any amusement and recreation
38 service defined in RCW 82.04.050(3)(a), other than for resale in the

1 regular course of business; (e) any person who is an end user of
2 software; and (f) any person who purchases or acquires an extended
3 warranty as defined in RCW 82.04.050(7) other than for resale in the
4 regular course of business;

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

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

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

35 (6) Any person engaged in the business of constructing, repairing,
36 decorating, or improving new or existing buildings or other structures
37 under, upon, or above real property of or for the United States, any
38 instrumentality thereof, or a county or city housing authority created

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

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

25 (8) Any person engaged in the business of cleaning up for the
26 United States, or its instrumentalities, radioactive waste and other
27 byproducts of weapons production and nuclear research and development;
28 ((and))

29 (9) Any person who is an owner, lessee, or has the right of
30 possession of tangible personal property that, under the terms of an
31 extended warranty as defined in RCW 82.04.050(7), has been repaired or
32 is replacement property, but only with respect to the sale of or charge
33 made for the repairing of the tangible personal property or the
34 replacement property;

35 (10) Any person engaged in the business of constructing, repairing,
36 decorating, or improving new or existing buildings or other structures
37 under, upon, or above real property of or for consumers as defined in
38 subsection (4) of this section.

1 (a) A person is a consumer under this subsection in respect to:
2 (i) Tangible personal property incorporated into, installed in, or
3 attached to buildings or other structures located under, upon, or above
4 real property of or for consumers as defined in subsection (4) of this
5 section, by such person, during the course of constructing, repairing,
6 decorating, or improving such buildings or other structures; and (ii)
7 the purchase of labor and services defined as a retail sale in RCW
8 82.04.050(2)(b) for the purposes of fulfilling the purchaser's own
9 obligation to perform labor and services defined as a retail sale in
10 RCW 82.04.050(2) (b) or (c).

11 (b) A person who is a consumer under this subsection (10) may also
12 be a consumer under other provisions of this section; and

13 (11) Any person performing services described in RCW
14 82.04.050(3)(e).

15 (a) A person is a consumer under this subsection in respect to:
16 (i) Tangible personal property incorporated into, installed in, or
17 attached to real property by such person during the course of rendering
18 services described in RCW 82.04.050(3)(e); and (ii) the purchase of
19 services defined as a retail sale in RCW 82.04.050(3)(e) for the
20 purposes of fulfilling the purchaser's own obligation to perform
21 services defined as a retail sale in RCW 82.04.050(3)(e).

22 (b) A person who is a consumer under this subsection (11) may also
23 be a consumer under other provisions of this section.

24 NEW SECTION. Sec. 205. A new section is added to chapter 82.08
25 RCW to read as follows:

26 (1) For purposes of this section, the following definitions apply:

27 (a) "Construction services" means those services included within
28 the definition of retail sale in RCW 82.04.050 (2) (b) and (c) and
29 (3)(e).

30 (b) "Eligible taxpayer" means a taxpayer who:

31 (i) Makes sales of construction services in this state; and

32 (ii)(A) Has paid state sales or use taxes on the purchase or use of
33 tangible personal property that became an ingredient or component,
34 without intervening use, of buildings, other structures, or other real
35 property in respect to which the taxpayer rendered construction
36 services in this state; or

1 (B) Has paid state sales tax on the purchase of construction
2 services in order to fulfill the taxpayer's obligation to perform
3 construction services in this state.

4 (c) "State sales taxes" means a sales tax, as defined in RCW
5 82.56.010, imposed by this or any other state or by a local taxing
6 authority of a state other than Washington, including the tax imposed
7 in RCW 82.08.020.

8 (d) "State use taxes" means a use tax, as defined in RCW 82.56.010,
9 imposed by this or any other state or by a local taxing authority of a
10 state other than Washington, including the tax imposed in RCW
11 82.12.020.

12 (e) "Tax return" means a document a taxpayer files with the
13 department, or information transmitted electronically to the department
14 by the taxpayer, to report taxes due under this chapter.

15 (2) An eligible taxpayer is entitled to a credit against the tax
16 imposed in RCW 82.08.020 and otherwise required to be remitted to the
17 department. The credit is equal to the amount of any:

18 (a) Legally imposed state sales taxes properly paid by the taxpayer
19 on the purchase of tangible personal property that became an ingredient
20 or component, without intervening use, of buildings, other structures,
21 or other real property in respect to which the taxpayer rendered
22 construction services in this state taxable under RCW 82.08.020; and

23 (b) The amount of taxes imposed in RCW 82.08.020 properly paid by
24 the taxpayer on the purchase of construction services for the purposes
25 of fulfilling the taxpayer's obligation to perform construction
26 services in this state taxable under RCW 82.08.020.

27 (3) Credit under this section may not be claimed until:

28 (a) The tangible personal property in respect to which the credit
29 is claimed has become an ingredient or component of buildings, other
30 structures, or other real property in respect to which the taxpayer
31 rendered construction services in this state; and

32 (b) The construction services in respect to which the credit is
33 claimed have been performed.

34 (4) Credit may not be claimed for state sales tax liability accrued
35 but not paid to the seller. The amount of credit claimed on a tax
36 return may not exceed the amount of tax otherwise due under RCW
37 82.08.020 for the tax reporting period for which the credit is claimed.

1 Unused credit amounts may be carried forward and claimed on tax returns
2 for subsequent tax reporting periods. No refunds may be granted for
3 credits under this section.

4 (5) Taxpayers claiming a credit must keep and preserve records that
5 show the names of the sellers from whom the tangible personal property
6 or construction services were purchased, the date of the purchase, the
7 type of tangible personal property or construction services purchased,
8 the amount of the purchase, the sales taxes that were paid on the
9 tangible personal property or construction services, and information
10 about the project for which the tangible personal property or
11 construction services were purchased. The requirements in this
12 subsection may not be construed as a limitation on RCW 82.32.070.

13 (6) Nothing in this section may be construed to relieve an eligible
14 taxpayer from its obligation to pay the tax imposed in RCW 82.08.020 on
15 the purchase of tangible personal property that will become an
16 ingredient or component, without intervening use, of buildings, other
17 structures, or other real property in respect to which the taxpayer
18 will render construction services, or on the purchase of construction
19 services for the purposes of fulfilling the taxpayer's obligation to
20 perform construction services.

21 NEW SECTION. **Sec. 206.** A new section is added to chapter 82.12
22 RCW to read as follows:

23 (1) An eligible taxpayer is entitled to a credit against the tax
24 imposed under RCW 82.12.020 as provided in this section. Eligible
25 taxpayers claiming the credit must first pay the applicable state use
26 taxes and may then claim the credit.

27 (2) The credit is equal to the amount of any legally imposed state
28 use taxes properly paid by the taxpayer on the use of tangible personal
29 property that became an ingredient or component, without intervening
30 use, of buildings, other structures, or other real property in respect
31 to which the taxpayer rendered construction services in this state
32 taxable under RCW 82.08.020.

33 (3) Credit under this section may not be claimed until the tangible
34 personal property in respect to which the credit is claimed has become
35 an ingredient or component of buildings, other structures, or other
36 real property in respect to which the taxpayer rendered construction
37 services in this state.

1 (4) Credit may not be claimed for state use tax liability accrued
2 but not paid. The amount of credit claimed on a tax return may not
3 exceed the amount of tax otherwise due under RCW 82.12.020 for the tax
4 reporting period for which the credit is claimed. Unused credit
5 amounts may be carried forward and claimed on tax returns for
6 subsequent tax reporting periods. No refunds may be granted for
7 credits under this section.

8 (5) Taxpayers claiming a credit must keep and preserve records that
9 show the names of the sellers from whom the tangible personal property
10 was purchased, the date of the purchase, the type of tangible personal
11 property purchased, the amount of the purchase, the use taxes that were
12 paid on the tangible personal property, and information about the
13 project for which the tangible personal property was purchased.

14 (6) Nothing in this section may be construed to relieve an eligible
15 taxpayer from its obligation to pay the tax imposed in RCW 82.12.020 on
16 the use of tangible personal property that will become an ingredient or
17 component, without intervening use, of buildings, other structures, or
18 other real property in respect to which the taxpayer will render
19 construction services in this state.

20 (7) The definitions in section 205 of this act apply to this
21 section.

22 NEW SECTION. **Sec. 207.** A new section is added to chapter 82.14
23 RCW to read as follows:

24 (1)(a) A taxpayer who is entitled to claim a credit under section
25 205 or 206 of this act is also entitled to claim a credit against sales
26 and use taxes paid under this chapter and RCW 81.104.170.

27 (b) The credit is equal to the amount of any:

28 (i) Local sales and use taxes properly paid by the taxpayer on the
29 purchase or use of tangible personal property that became an ingredient
30 or component, without intervening use, of buildings, other structures,
31 or other real property in respect to which the taxpayer rendered
32 construction services in this state taxable under RCW 82.08.020; and

33 (ii) Local sales taxes properly paid by the taxpayer on the
34 purchase of construction services for the purposes of fulfilling the
35 taxpayer's own obligation to perform construction services in this
36 state taxable under RCW 82.08.020.

37 (2) Credit under this section may not be claimed until:

1 (a) The tangible personal property in respect to which the credit
2 is claimed has become an ingredient or component of buildings, other
3 structures, or other real property in respect to which the taxpayer
4 rendered construction services in this state; and

5 (b) The construction services in respect to which the credit is
6 claimed have been performed.

7 (3) Credit may not be claimed for local sales tax and local use tax
8 liability accrued but not paid. The amount of credit claimed on a tax
9 return may not exceed the amount of local sales and use taxes otherwise
10 due for the tax reporting period for which the credit is claimed.
11 Unused credit amounts may be carried forward and claimed on tax returns
12 for subsequent tax reporting periods. No refunds may be granted for
13 credits under this section.

14 (4) No credit may be allowed under this section, including any
15 associated credit claimed under section 205 or 206 of this act, if the
16 tax return does not identify, in a manner required by the department:

17 (a) In the case of a local sales tax, the location code representative
18 of where: (i) The tangible personal property, which is the subject of
19 the credit claim, was received; or (ii) the construction services,
20 which are the subject of the credit claim, were performed; or (b) in
21 the case of a local use tax, the location code used to report and pay
22 the tax for which the credit is claimed.

23 (5) Taxpayers claiming the credit must keep and preserve records
24 that show the names of the sellers from whom the tangible personal
25 property or construction services were purchased, the date of the
26 purchase, the type of tangible personal property or construction
27 services purchased, the amount of the purchase, the state and local
28 sales or use taxes that were paid on the tangible personal property or
29 construction services, and information about the project for which the
30 tangible personal property or construction services were purchased.

31 (6) Nothing in this section may be construed to relieve an eligible
32 taxpayer from its obligation to pay local sales taxes or local use
33 taxes on the purchase or use of tangible personal property that will
34 become an ingredient or component, without intervening use, of
35 buildings, other structures, or other real property in respect to which
36 the taxpayer will render construction services in this state, or local
37 sales taxes on the purchase of construction services for the purposes

1 of fulfilling the taxpayer's obligation to perform construction
2 services in this state.

3 (7) For purposes of this section:

4 (a) "Local sales taxes" means sales taxes imposed under the
5 authority of this chapter or RCW 81.104.170.

6 (b) "Local use taxes" means use taxes imposed under the authority
7 of this chapter or RCW 81.104.170.

8 (8) The definitions in section 205 of this act apply to this
9 section.

10 NEW SECTION. **Sec. 208.** A new section is added to chapter 82.08
11 RCW to read as follows:

12 (1) The tax imposed in RCW 82.08.020 does not apply to the sale to
13 a contractor of the following:

14 (a) Tangible personal property to be incorporated into, installed
15 in, or attached to buildings, other structures, or other real property,
16 if the real property is within the scope of a sales and use tax
17 deferral certificate for a tax-deferred project; and

18 (b) Construction services rendered in respect to a tax-deferred
19 project.

20 (2) The exemption is available only if the contractor provides the
21 seller with a copy of the sales and use tax deferral certificate issued
22 by the department for the project in respect to which the exempt
23 purchase relates. The seller must retain a copy of the certificate for
24 the seller's files.

25 (3)(a) The exemptions provided in this section do not apply to any
26 person to whom the department has issued a sales and use tax deferral
27 certificate, with respect to the tax-deferred project for which the
28 certificate was issued.

29 (b) Nothing in this section may be construed to change the sales
30 tax treatment of any person to whom the department has issued a sales
31 and use tax deferral certificate for a tax-deferred project.

32 (4) For purposes of this section, the following definitions apply:

33 (a) "Contractor" means a person engaged in the business of
34 rendering services included within the definition of retail sale in RCW
35 82.04.050 (2) (b) and (c) and (3)(e).

36 (b) "Construction services" means those services included within

1 the definition of retail sale in RCW 82.04.050 (2) (b) and (c) and
2 (3)(e).

3 (c) "Tax-deferred project" means a project for which the department
4 has issued a sales and use tax deferral certificate under RCW
5 36.100.090, 47.01.412, 47.46.060, 82.32.580, or chapter 82.60, 82.63,
6 82.74, 82.75, or 82.82 RCW.

7 NEW SECTION. **Sec. 209.** A new section is added to chapter 82.12
8 RCW to read as follows:

9 (1) The tax imposed in RCW 82.12.020 does not apply to the use by
10 a contractor of tangible personal property to be incorporated into,
11 installed in, or attached to buildings, other structures, or other real
12 property, without intervening use, if the real property is within the
13 scope of a sales and use tax deferral certificate for a tax-deferred
14 project.

15 (2)(a) The exemption provided in this section does not apply to any
16 person to whom the department has issued a sales and use tax deferral
17 certificate, with respect to the tax-deferred project for which the
18 certificate was issued.

19 (b) Nothing in this section may be construed to change the use tax
20 treatment of any person to whom the department has issued a sales and
21 use tax deferral certificate for a tax-deferred project.

22 (3) The definitions in section 208 of this act apply to this
23 section.

24 NEW SECTION. **Sec. 210.** A new section is added to chapter 82.08
25 RCW to read as follows:

26 (1) The tax imposed in RCW 82.08.020 does not apply to the sale to
27 a contractor of the following:

28 (a) Tangible personal property to be incorporated into, installed
29 in, or attached to buildings, other structures, or other real property
30 of or for a tribal member or an Indian tribe, if the real property is
31 located wholly in Indian country; and

32 (b) Construction services rendered in respect to real property
33 located wholly in Indian country.

34 (2) The exemption is available only if the contractor provides the
35 seller with an exemption certificate in a form and manner prescribed by

1 the department. The seller must retain a copy of the certificate for
2 the seller's files.

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

4 (a) "Contractor" means a person engaged in the business of
5 rendering services included within the definition of retail sale in RCW
6 82.04.050 (2) (b) and (c) and (3)(e).

7 (b) "Construction services" means those services included within
8 the definition of retail sale in RCW 82.04.050 (2) (b) and (c) and
9 (3)(e).

10 (c) "Indian country" has the same meaning as in 18 U.S.C. Sec.
11 1151.

12 (d) "Indian tribe" means an Indian nation, tribe, band, community,
13 or other entity recognized as an "Indian tribe" by the United States
14 Department of the Interior.

15 (e) "Tribal member" means a person on the tribal rolls of an Indian
16 tribe.

17 NEW SECTION. **Sec. 211.** A new section is added to chapter 82.12
18 RCW to read as follows:

19 (1) The tax imposed in RCW 82.12.020 does not apply to the use by
20 a contractor of tangible personal property to be incorporated into,
21 installed in, or attached to buildings, other structures, or other real
22 property of or for a tribal member or an Indian tribe, without
23 intervening use, if the real property is located wholly in Indian
24 country.

25 (2) The definitions in section 210 of this act apply to this
26 section.

27 **Sec. 212.** RCW 82.08.841 and 2005 c 420 s 2 are each amended to
28 read as follows:

29 (1) The tax levied by RCW 82.08.020 does not apply to:

30 (a) Sales of the following machinery and equipment to qualified
31 farmers: No-till drills, minimum-till drills, chisels, plows,
32 sprayers, discs, cultivators, harrows, mowers, swathers, power rakes,
33 balers, bale handlers, shredders, transplanters, tractors two hundred
34 fifty horsepower and over designed to pull conservation equipment on
35 steep hills and highly erodible lands, and combine components limited
36 to straw choppers, chaff spreaders, and stripper headers; and

1 (b) Labor and services rendered in respect to constructing hay
2 sheds of or for a qualified farmer(~~(s)~~) or to sales of tangible
3 personal property (~~(to qualified farmers)~~) that becomes an ingredient
4 or component of such hay sheds during the course of the constructing.

5 (2)(a) No application is necessary for the tax exemption in this
6 section. A person taking the exemption under this section must keep
7 records necessary for the department to verify eligibility. The
8 department may request from a qualified farmer, copies of farm service
9 agency or crop insurance records for verification purposes, however
10 information obtained from farm service agency or crop insurance records
11 is deemed taxpayer information under RCW 82.32.330 and is not
12 disclosable.

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

17 (3) The definitions in this subsection apply to this section.

18 (a) "Qualified farmer" means a farmer as defined in RCW 82.04.213
19 who has more than fifty percent of his or her tillable acres in cereal
20 grains and/or field and turf grass grown for seed in qualified
21 counties.

22 (b) "Qualified counties" means those counties in Washington state
23 where cereal grain production within the county exceeds fifteen
24 thousand acres.

25 (4) This section expires January 1, 2011.

26 **Sec. 213.** RCW 82.08.890 and 2006 c 151 s 2 are each amended to
27 read as follows:

28 (1) The tax levied by RCW 82.08.020 does not apply to sales (~~(to~~
29 ~~eligible persons)~~) of services rendered in respect to operating,
30 repairing, cleaning, altering, or improving of livestock nutrient
31 management equipment and facilities of or for eligible persons, or to
32 sales of tangible personal property that becomes an ingredient or
33 component of the equipment and facilities.

34 (2)(a) To be eligible, the equipment and facilities must be used
35 exclusively for activities necessary to maintain a livestock nutrient
36 management plan.

1 (b) The exemption applies to sales made after the livestock
2 nutrient management plan is: (i) Certified under chapter 90.64 RCW;
3 (ii) approved as part of the permit issued under chapter 90.48 RCW; or
4 (iii) approved as required under subsection (4)(c)(iii) of this
5 section.

6 (3)(a) The department of revenue must provide an exemption
7 certificate to an eligible person upon application by that person. The
8 department of agriculture must provide a list of eligible persons, as
9 defined in subsection (4)(c)(i) and (ii) of this section, to the
10 department of revenue. Conservation districts must maintain lists of
11 eligible persons as defined in subsection (4)(c)(iii) of this section
12 to allow the department of revenue to verify eligibility. The
13 application must be in a form and manner prescribed by the department
14 and must contain information regarding the location of the dairy or
15 animal feeding operation and other information the department may
16 require.

17 (b) A person claiming an exemption under this section must keep
18 records necessary for the department to verify eligibility under this
19 section. The exemption is available only when the buyer provides the
20 seller with an exemption certificate in a form and manner prescribed by
21 the department. If the buyer is not an eligible person, the buyer may
22 provide the seller with a copy of the exemption certificate of the
23 eligible person that owns the livestock nutrient management facility in
24 respect to which the claim of exemption relates. The seller must
25 retain a copy of the certificate for the seller's files.

26 (4) The definitions in this subsection apply to this section and
27 RCW 82.12.890 unless the context clearly requires otherwise:

28 (a) "Animal feeding operation" means a lot or facility, other than
29 an aquatic animal production facility, where the following conditions
30 are met:

31 (i) Animals, other than aquatic animals, have been, are, or will be
32 stabled or confined and fed or maintained for a total of forty-five
33 days or more in any twelve-month period; and

34 (ii) Crops, vegetation, forage growth, or postharvest residues are
35 not sustained in the normal growing season over any portion of the lot
36 or facility.

37 (b) "Conservation district" means a subdivision of state government
38 organized under chapter 89.08 RCW.

1 (c) "Eligible person" means a person (i) licensed to produce milk
2 under chapter 15.36 RCW who has a certified dairy nutrient management
3 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
4 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
5 owns an animal feeding operation and has a nutrient management plan
6 approved by a conservation district as meeting natural resource
7 conservation service field office technical guide standards.

8 (d) "Livestock nutrient management equipment and facilities" means
9 machinery, equipment, and structures used in the handling and treatment
10 of livestock manure, such as aerators, agitators, alley scrapers,
11 augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps,
12 separators, and tanks. The term also includes tangible personal
13 property that becomes an ingredient or component of the equipment and
14 facilities, including repair and replacement parts.

15 (e) "Permit" means either a state waste discharge permit or a
16 national pollutant discharge elimination system permit, or both.

17 **Sec. 214.** RCW 82.08.900 and 2006 c 151 s 4 are each amended to
18 read as follows:

19 (1) The tax levied by RCW 82.08.020 does not apply to:

20 (a) Sales to an eligible person (~~(establishing or operating)~~) of an
21 anaerobic digester; or (~~to~~)

22 (b) The sale of or charge made for labor and services rendered in
23 respect to installing, constructing, repairing, cleaning, altering, or
24 improving an anaerobic digester(~~(r)~~) of or for an eligible person; or
25 (~~to~~)

26 (c) Sales of tangible personal property that becomes an ingredient
27 or component of (~~the~~) an eligible person's anaerobic digester during
28 the course of installing, constructing, repairing, cleaning, altering,
29 or improving the anaerobic digester. (~~The anaerobic digester must be~~
30 used primarily to treat livestock manure.)

31 (2)(a) The department of revenue must provide an exemption
32 certificate to an eligible person upon application by that person. The
33 application must be in a form and manner prescribed by the department
34 and must contain information regarding the location of the facility and
35 other information as the department may require.

36 (b) A person claiming an exemption under this section must keep
37 records necessary for the department to verify eligibility under this

1 section. The exemption is available only when the buyer provides the
2 seller with an exemption certificate in a form and manner prescribed by
3 the department. If the person claiming an exemption under subsection
4 (1)(b) or (c) of this section is not an eligible person, the buyer may
5 provide the seller with a copy of the exemption certificate of the
6 eligible person that owns the anaerobic digester in respect to which
7 the claim of exemption relates. The seller must retain a copy of the
8 certificate for the seller's files.

9 (3) The definitions in this subsection apply to this section and
10 RCW 82.12.900 unless the context clearly requires otherwise:

11 (a) "Anaerobic digester" means a facility (~~(that processes)~~) used
12 primarily for processing manure from livestock into biogas and dried
13 manure using microorganisms in a decomposition process within a closed,
14 oxygen-free container.

15 (b) "Eligible person" means any person establishing or operating an
16 anaerobic digester to treat primarily livestock manure.

17 (c) "Primarily" means more than fifty percent measured by volume or
18 weight.

19 **Sec. 215.** RCW 82.08.980 and 2003 2nd sp.s. c 1 s 11 are each
20 amended to read as follows:

21 (1) The tax levied by RCW 82.08.020 shall not apply to charges made
22 for labor and services rendered in respect to the constructing of new
23 buildings (~~(by)~~) of or for a manufacturer engaged in the manufacturing
24 of superefficient airplanes or (~~(by)~~) of or for a port district, to be
25 leased to a manufacturer engaged in the manufacturing of superefficient
26 airplanes, to sales of tangible personal property that will be
27 incorporated as an ingredient or component of such buildings during the
28 course of the constructing, or to labor and services rendered in
29 respect to installing, during the course of constructing, building
30 fixtures not otherwise eligible for the exemption under RCW
31 82.08.02565(2)(b). The exemption is available only when the buyer
32 provides the seller with an exemption certificate in a form and manner
33 prescribed by the department. The seller shall retain a copy of the
34 certificate for the seller's files.

35 (2) No application is necessary for the tax exemption in this
36 section, however in order to qualify under this section before starting
37 construction the port district must have entered into an agreement with

1 the manufacturer to build such a facility. A person taking the
2 exemption under this section is subject to all the requirements of
3 chapter 82.32 RCW. In addition, the person must report as required
4 under RCW 82.32.545 if the person is a manufacturer of superefficient
5 airplanes.

6 (3) The exemption in this section applies to buildings, or parts of
7 buildings, that are used exclusively in the manufacturing of
8 superefficient airplanes, including buildings used for the storage of
9 raw materials and finished product.

10 (4) For the purposes of this section, "superefficient airplane" has
11 the meaning given in RCW 82.32.550.

12 (5) This section expires July 1, 2024.

13 **Sec. 216.** RCW 82.12.841 and 2005 c 420 s 3 are each amended to
14 read as follows:

15 (1) The tax levied by RCW 82.12.020 does not apply in respect to:

16 (a) The use of the following machinery and equipment by qualified
17 farmers: No-till drills, minimum-till drills, chisels, plows,
18 sprayers, discs, cultivators, harrows, mowers, swathers, power rakes,
19 balers, bale handlers, shredders, transplanters, tractors two hundred
20 fifty horsepower and over designed to pull conservation equipment on
21 steep hills and highly erodible lands, and combine components limited
22 to straw choppers, chaff spreaders, and stripper headers; and

23 (b) The use of tangible personal property that will be incorporated
24 as an ingredient or component of hay sheds (~~by~~) of a qualified
25 farmer, during the course of constructing such hay sheds.

26 (2) The eligibility requirements, conditions, and definitions in
27 RCW 82.08.841 apply to this section.

28 (3) This section expires January 1, 2011.

29 **Sec. 217.** RCW 82.12.890 and 2006 c 151 s 3 are each amended to
30 read as follows:

31 (1) The provisions of this chapter do not apply with respect to the
32 use (~~by an eligible person~~) of tangible personal property that
33 becomes an ingredient or component of livestock nutrient management
34 equipment and facilities of an eligible person, as defined in RCW
35 82.08.890, or to labor and services rendered in respect to repairing,
36 cleaning, altering, or improving eligible tangible personal property.

1 (2)(a) To be eligible, the equipment and facilities must be used
2 exclusively for activities necessary to maintain a livestock nutrient
3 management plan.

4 (b) The exemption applies to the use of tangible personal property
5 or labor and services made after the livestock nutrient management plan
6 is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of
7 the permit issued under chapter 90.48 RCW; or (iii) approved as
8 required under RCW 82.08.890(4)(c)(iii).

9 (3) The exemption certificate and recordkeeping requirements of RCW
10 82.08.890 apply to this section. The definitions in RCW 82.08.890
11 apply to this section.

12 **Sec. 218.** RCW 82.12.900 and 2006 c 151 s 5 are each amended to
13 read as follows:

14 The provisions of this chapter do not apply with respect to the use
15 of anaerobic digesters by eligible persons, tangible personal property
16 that becomes an ingredient or component of anaerobic digesters for
17 operation by an eligible person, or the use of services rendered in
18 respect to installing, repairing, cleaning, altering, or improving
19 eligible tangible personal property by an eligible person establishing
20 or operating an anaerobic digester, as defined in RCW 82.08.900. The
21 anaerobic digester must be used primarily to treat livestock manure.

22 **Sec. 219.** RCW 82.12.980 and 2003 2nd sp.s. c 1 s 12 are each
23 amended to read as follows:

24 (1) The provisions of this chapter do not apply with respect to the
25 use of tangible personal property that will be incorporated as an
26 ingredient or component of new buildings for use by a manufacturer
27 engaged in the manufacturing of superefficient airplanes or owned by a
28 port district and to be leased to a manufacturer engaged in the
29 manufacturing of superefficient airplanes, during the course of
30 constructing such buildings, or to labor and services rendered in
31 respect to installing, during the course of constructing, building
32 fixtures not otherwise eligible for the exemption under RCW
33 82.08.02565(2)(b).

34 (2) The eligibility requirements, conditions, and definitions in
35 RCW 82.08.980 apply to this section.

36 (3) This section expires July 1, 2024.

1 **Sec. 220.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in this chapter, payments of the
4 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,
5 along with reports and returns on forms prescribed by the department,
6 are due monthly within twenty-five days after the end of the month in
7 which the taxable activities occur.

8 (2)(a) Except as provided in (b) of this subsection, the department
9 of revenue may relieve any taxpayer or class of taxpayers from the
10 obligation of remitting monthly and may require the return to cover
11 other longer reporting periods, but in no event may returns be filed
12 for a period greater than one year. For these taxpayers, tax payments
13 are due on or before the last day of the month next succeeding the end
14 of the period covered by the return.

15 (b) The provisions of (a) of this subsection do not apply to
16 persons who makes retail sales as defined in RCW 82.04.050 (2) (b) or
17 (c) or (3)(e), if the department determines that the effective
18 administration of RCW 82.04.050, 82.04.051, 82.04.060, 82.04.190,
19 82.08.841, 82.08.890, 82.08.900, 82.08.980, 82.12.890, 82.12.900,
20 82.14.841, and sections 205 through 211 of this act requires the person
21 to file returns and remit taxes on a monthly basis.

22 (3) The department of revenue may also require verified annual
23 returns from any taxpayer, setting forth such additional information as
24 it may deem necessary to correctly determine tax liability.

25 (4) Notwithstanding subsections (1) and (2) of this section, the
26 department may relieve any person of the requirement to file returns if
27 the following conditions are met:

28 (a) The person's value of products, gross proceeds of sales, or
29 gross income of the business, from all business activities taxable
30 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per
31 year;

32 (b) The person's gross income of the business from all activities
33 taxable under chapter 82.16 RCW is less than twenty-four thousand
34 dollars per year; and

35 (c) The person is not required to collect or pay to the department
36 of revenue any other tax or fee which the department is authorized to
37 collect.

1 PART III

2 REPLACING RESALE CERTIFICATES WITH SELLER'S PERMITS
3 ISSUED BY THE DEPARTMENT OF REVENUE

4 NEW SECTION. Sec. 301. A new section is added to chapter 82.32
5 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

14 (iv) The department closes the permit holder's tax reporting
15 account with the department.

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

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

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

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

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

5 (8) As used in this section, "seller's permit" has the same meaning
6 as in RCW 82.04.470.

7 **Sec. 302.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
8 read as follows:

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

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

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

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

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

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

- 1 (c) The type of business engaged in;
- 2 (d) The categories of items or services to be purchased for resale
3 or that are (~~exempt~~) otherwise to be purchased at wholesale, unless
4 the buyer presents a blanket (~~resale certificate~~) seller's permit;
- 5 (e) The date on which the (~~certificate~~) permit was provided to
6 the seller;
- 7 (f) A statement that the items or services purchased either: (i)
8 Are purchased for resale in the regular course of business; or (ii) are
9 (~~exempt from tax pursuant to statute~~) otherwise purchased at
10 wholesale;
- 11 (g) A statement that the buyer acknowledges that the buyer is
12 solely responsible for purchasing within the categories specified on
13 the (~~certificate~~) permit and that misuse of the resale (~~or~~
14 ~~exemption~~) privilege claimed on the (~~certificate~~) permit subjects
15 the buyer to (~~a penalty of fifty percent of the tax due~~) revocation
16 of the seller's permit, penalties as provided in RCW 82.32.290 and
17 82.32.291, in addition to the tax, interest, and any other penalties
18 imposed by law;
- 19 (h) The name of the individual authorized to sign the
20 (~~certificate~~) permit, printed in a legible fashion;
- 21 (i) The signature of the authorized individual; (~~and~~)
- 22 (j) The name of the seller;
- 23 (k) The date the permit was issued, renewed, or reinstated by the
24 department;
- 25 (l) The date that the permit expires;
- 26 (m) Instructions for renewing the permit; and
- 27 (n) A statement that the department is authorized to obtain
28 information concerning the buyer's purchase of items or services under
29 the permit from the seller to verify whether the buyer was authorized
30 to purchase such items or services without payment of retail sales tax.
- 31 (~~(+5)~~) (4) Subsection (~~(+4)~~) (3)(h)(~~(7)~~) and (~~(1, and (j))~~) of
32 this section does not apply if the (~~certificate~~) permit is provided
33 in a format other than paper. If the (~~certificate~~) permit is
34 provided in a format other than paper, the name of the individual
35 providing the (~~certificate~~) permit must be included in the
36 (~~certificate~~) permit.
- 37 (5)(a) In lieu of a seller's permit issued by the department under

1 section 301 of this act, a seller may accept from a nonresident buyer
2 that is not required to be registered with the department under RCW
3 82.32.030 a properly completed:

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

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

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

11 (6) As used in this section, "seller's permit" means documentation
12 issued by the department under section 301 of this act and provided by
13 a buyer to a seller to substantiate a wholesale sale.

14 **Sec. 303.** RCW 82.08.050 and 2007 c 6 s 1202 are each amended to
15 read as follows:

16 (1) The tax hereby imposed shall be paid by the buyer to the
17 seller, and each seller shall collect from the buyer the full amount of
18 the tax payable in respect to each taxable sale in accordance with the
19 schedule of collections adopted by the department pursuant to the
20 provisions of RCW 82.08.060.

21 (2) The tax required by this chapter, to be collected by the
22 seller, shall be deemed to be held in trust by the seller until paid to
23 the department, and any seller who appropriates or converts the tax
24 collected to his or her own use or to any use other than the payment of
25 the tax to the extent that the money required to be collected is not
26 available for payment on the due date as prescribed in this chapter is
27 guilty of a gross misdemeanor.

28 (3) In case any seller fails to collect the tax herein imposed or,
29 having collected the tax, fails to pay it to the department in the
30 manner prescribed by this chapter, whether such failure is the result
31 of his or her own acts or the result of acts or conditions beyond his
32 or her control, he or she shall, nevertheless, be personally liable to
33 the state for the amount of the tax, unless the seller has taken from
34 the buyer a (~~resale certificate~~) seller's permit or uniform exemption
35 certificate authorized under RCW 82.04.470, a copy of a direct pay
36 permit issued under RCW 82.32.087, a direct mail form under RCW

1 82.32.730(5), or other information required under the streamlined sales
2 and use tax agreement, or information required under rules adopted by
3 the department.

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

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

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

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

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

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

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

34 (c) Sellers are relieved from personal liability for the amount of
35 tax if they obtain a blanket exemption certificate for a purchaser with
36 which the seller has a recurring business relationship. The department
37 may not request from a seller renewal of blanket certificates or
38 updates of exemption certificate information or data elements if there

1 is a recurring business relationship between the buyer and seller. For
2 purposes of this subsection (7)(c), a "recurring business relationship"
3 means at least one sale transaction within a period of twelve
4 consecutive months.

5 (8) The amount of tax, until paid by the buyer to the seller or to
6 the department, shall constitute a debt from the buyer to the seller
7 and any seller who fails or refuses to collect the tax as required with
8 intent to violate the provisions of this chapter or to gain some
9 advantage or benefit, either direct or indirect, and any buyer who
10 refuses to pay any tax due under this chapter is guilty of a
11 misdemeanor.

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

24 (10) Where a buyer has failed to pay to the seller the tax imposed
25 by this chapter and the seller has not paid the amount of the tax to
26 the department, the department may, in its discretion, proceed directly
27 against the buyer for collection of the tax, in which case a penalty of
28 ten percent may be added to the amount of the tax for failure of the
29 buyer to pay the same to the seller, regardless of when the tax may be
30 collected by the department; and all of the provisions of chapter 82.32
31 RCW, including those relative to interest and penalties, shall apply in
32 addition; and, for the sole purpose of applying the various provisions
33 of chapter 82.32 RCW, the twenty-fifth day of the month following the
34 tax period in which the purchase was made shall be considered as the
35 due date of the tax.

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

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

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

4 (ii) The taking of orders; or

5 (iii) The processing of payments; and

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

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

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

20 **Sec. 304.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended
21 to read as follows:

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

34 (2) A buyer who pays a tax on all purchases and subsequently
35 resells an article or service at retail, without intervening use by the
36 buyer, shall collect the tax from the purchaser as otherwise provided
37 by law and is entitled to a deduction or credit on the buyer's tax

1 return equal to, in the case of a deduction, the cost to the buyer of
2 the property or service resold upon which retail sales tax has been
3 paid, and in the case of a credit, the amount of state and local sales
4 taxes paid with respect to the property or service resold. The
5 deduction or credit is allowed only if the taxpayer keeps and preserves
6 records that show the names of the persons from whom the articles or
7 services were purchased, the date of the purchase, the type of articles
8 or services, the amount of the purchase, and the tax that was paid.

9 (3) The department (~~shall~~) must provide by rule for the refund or
10 credit of retail sales tax paid by a buyer for purchases that are later
11 (~~sold at wholesale~~) resold without intervening use by the buyer or
12 for purchases that otherwise meet the definition of wholesale sale.

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

17 **Sec. 305.** RCW 82.14B.042 and 2002 c 341 s 10 are each amended to
18 read as follows:

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

34 (2) If any local exchange company or radio communications service
35 company fails to collect the state enhanced 911 excise tax or, after
36 collecting the tax, fails to pay it to the department in the manner
37 prescribed by this chapter, whether such failure is the result of its

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

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

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

33 **Sec. 306.** RCW 82.14B.200 and 2002 c 341 s 12 are each amended to
34 read as follows:

35 (1) Unless a local exchange company or a radio communications
36 service company has taken from the buyer (~~(a resale certificate or~~
37 ~~equivalent document under RCW 82.04.470)~~) documentation, in a form and

1 manner prescribed by the department, stating that the buyer is not a
2 subscriber or is otherwise not liable for the tax, the burden of
3 proving that a sale of the use of a switched access line or radio
4 access line was not a sale to a subscriber or was not otherwise subject
5 to the tax is upon the person who made the sale.

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

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

25 **Sec. 307.** RCW 82.32.087 and 2001 c 188 s 2 are each amended to
26 read as follows:

27 (1) The director may grant a direct pay permit to a taxpayer who
28 demonstrates, to the satisfaction of the director, that the taxpayer
29 meets the requirements of this section. The direct pay permit allows
30 the taxpayer to accrue and remit directly to the department use tax on
31 the acquisition of tangible personal property or sales tax on the sale
32 of or charges made for labor and/or services, in accordance with all of
33 the applicable provisions of this title. Any taxpayer that uses a
34 direct pay permit shall remit state and local sales or use tax directly
35 to the department. The agreement by the purchaser to remit tax
36 directly to the department, rather than pay sales or use tax to the
37 seller, relieves the seller of the obligation to collect sales or use

1 tax and requires the buyer to pay use tax on the tangible personal
2 property and sales tax on the sale of or charges made for labor and/or
3 services.

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

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

13 (c) The director shall review a direct pay permit application in a
14 timely manner and shall notify the applicant, in writing, of the
15 approval or denial of the application. The department shall approve or
16 deny an application based on the applicant's ability to comply with
17 local government use tax coding capabilities and responsibilities;
18 requirements for vendor notification; recordkeeping obligations;
19 electronic data capabilities; and tax reporting procedures.
20 Additionally, an application may be denied if the director determines
21 that denial would be in the best interest of collecting taxes due under
22 this title. The department shall provide a direct pay permit to an
23 approved applicant with the notice of approval. The direct pay permit
24 shall clearly state that the holder is solely responsible for the
25 accrual and payment of the tax imposed under chapters 82.08 and 82.12
26 RCW and that the seller is relieved of liability to collect tax imposed
27 under chapters 82.08 and 82.12 RCW on all sales to the direct pay
28 permit holder. The taxpayer may petition the director for
29 reconsideration of a denial.

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

35 (3) Taxes for which the direct pay permit is used are due and
36 payable on the tax return for the reporting period in which the
37 taxpayer (a) receives the tangible personal property purchased or in

1 which the labor and/or services are performed or (b) receives an
2 invoice for such property or such labor and/or services, whichever
3 period is earlier.

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

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

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

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

29 (a) Purchases of meals or beverages;

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

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

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

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

5 **Sec. 308.** RCW 82.32.290 and 1985 c 414 s 2 are each amended to
6 read as follows:

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

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

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

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

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

18 (v) For any purchaser to fraudulently sign or furnish to a seller
19 a ~~((resale—certificate))~~ seller's permit or uniform exemption
20 certificate authorized under RCW 82.04.470 without intent to resell the
21 property purchased; or

22 (vi) For any person to fail or refuse to permit the examination of
23 any book, paper, account, record, or other data by the department or
24 its duly authorized agent; or to fail or refuse to permit the
25 inspection or appraisal of any property by the department or its duly
26 authorized agent; or to refuse to offer testimony or produce any record
27 as required.

28 (b) Any person violating any of the provisions of this subsection
29 (1) shall be guilty of a gross misdemeanor in accordance with chapter
30 9A.20 RCW.

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

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

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

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

4 (b) Any person violating any of the provisions of this subsection
5 (2) shall be guilty of a class C felony in accordance with chapter
6 9A.20 RCW.

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

16 **Sec. 309.** RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each amended
17 to read as follows:

18 Any person who uses a (~~resale certificate~~) seller's permit to
19 purchase items or services without payment of sales tax, or who uses a
20 uniform exemption certificate developed by the multistate tax
21 commission or approved by the streamlined sales and use tax agreement
22 governing board to claim a purchase for resale exemption, and who is
23 not entitled to use the seller's permit or exemption certificate for
24 the purchase shall be assessed a penalty of (~~fifty~~) one hundred
25 percent of the tax due, in addition to all other taxes, penalties, and
26 interest due, on the improperly purchased item or service. The
27 department may waive the penalty imposed under this section if it finds
28 that the use of the seller's permit or exemption certificate was due to
29 circumstances beyond the taxpayer's control or if the seller's permit
30 or exemption certificate was properly used for purchases for dual
31 purposes. The department shall define by rule what circumstances are
32 considered to be beyond the taxpayer's control.

33 **Sec. 310.** RCW 82.32.330 and 2008 c 81 s 11 are each amended to
34 read as follows:

35 (1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

33 (c) Disclosing the name of a taxpayer with a deficiency greater
34 than five thousand dollars and against whom a warrant under RCW
35 82.32.210 has been either issued or filed and remains outstanding for
36 a period of at least ten working days. The department (~~shall~~) is not
37 (~~be~~) required to disclose any information under this subsection if a
38 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued

1 a warrant that has not been filed; and (iii) has entered a deferred
2 payment arrangement with the department of revenue and is making
3 payments upon such deficiency that will fully satisfy the indebtedness
4 within twelve months;

5 (d) Disclosing the name of a taxpayer with a deficiency greater
6 than five thousand dollars and against whom a warrant under RCW
7 82.32.210 has been filed with a court of record and remains
8 outstanding;

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

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

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

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

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

37 (j) Disclosing any such return or tax information to the Department
38 of Justice, including the Bureau of Alcohol, Tobacco, Firearms and

1 Explosives within the Department of Justice, the Department of Defense,
2 the Immigration and Customs Enforcement and the Customs and Border
3 Protection agencies of the United States Department of Homeland
4 Security, the Coast Guard of the United States, and the United States
5 Department of Transportation, or any authorized representative
6 (~~thereof~~) of these federal agencies, for official purposes;

7 (k) Publishing or otherwise disclosing the text of a written
8 determination designated by the director as a precedent pursuant to RCW
9 82.32.410;

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

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

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

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

31 (p) Disclosing to a person against whom the department has asserted
32 liability as a successor under RCW 82.32.140 return or tax information
33 pertaining to the specific business of the taxpayer to which the person
34 has succeeded;

35 (q) Disclosing such return or tax information in the possession of
36 the department relating to the administration or enforcement of the
37 real estate excise tax imposed under chapter 82.45 RCW, including

1 information regarding transactions exempt or otherwise not subject to
2 tax; or

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

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

22 (b) Before disclosure of any tax return or tax information under
23 this subsection (4), the department (~~((shall))~~) must, through written
24 correspondence, inform the person in possession of the data, materials,
25 or documents to be disclosed. The correspondence (~~((shall))~~) must
26 clearly identify the data, materials, or documents to be disclosed.
27 The department may not disclose any tax return or tax information under
28 this subsection (4) until the time period allowed in (c) of this
29 subsection has expired or until the court has ruled on any challenge
30 brought under (c) of this subsection.

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

37 (i) The data, materials, or documents sought for disclosure are

1 cumulative or duplicative, or are obtainable from some other source
2 that is more convenient, less burdensome, or less expensive;

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

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

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

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

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

27 **Sec. 311.** RCW 82.72.040 and 2004 c 254 s 6 are each amended to
28 read as follows:

29 (1) Telephone program excise taxes must be paid by the subscriber
30 to the local exchange company providing the switched access line, and
31 each local exchange company shall collect from the subscriber the full
32 amount of the taxes payable. Telephone program excise taxes to be
33 collected by the local exchange company are deemed to be held in trust
34 by the local exchange company until paid to the department. Any local
35 exchange company that appropriates or converts the tax collected to its
36 own use or to any use other than the payment of the tax to the extent

1 that the money collected is not available for payment on the due date
2 as prescribed in this chapter is guilty of a gross misdemeanor.

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

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

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

31 **Sec. 312.** RCW 82.72.070 and 2004 c 254 s 9 are each amended to
32 read as follows:

33 (1) Unless a local exchange company has taken from the buyer (~~a~~
34 ~~resale certificate or equivalent document under RCW 82.04.470~~)
35 documentation, in a form and manner prescribed by the department,
36 stating that the buyer is not a subscriber or is otherwise not liable
37 for telephone program excise taxes, the burden of proving that a sale

1 of the use of a switched access line was not a sale to a subscriber or
2 was otherwise not subject to telephone program excise taxes is upon the
3 person who made the sale.

4 (2) If a local exchange company does not receive ((a resale
5 certificate)) documentation, in a form and manner prescribed by the
6 department, stating that the buyer is not a subscriber or is otherwise
7 not liable for telephone program excise taxes at the time of the sale,
8 have ((a resale certificate)) such documentation on file at the time of
9 the sale, or obtain ((a resale certificate)) such documentation from
10 the buyer within a reasonable time after the sale, the local exchange
11 company remains liable for the telephone program excise taxes as
12 provided in RCW 82.72.040, unless the local exchange company can
13 demonstrate facts and circumstances according to rules adopted by the
14 department that show the sale was properly made without payment of
15 telephone program excise taxes.

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

22 **PART IV**
23 **MISCELLANEOUS**

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

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

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

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

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

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

6 NEW SECTION. **Sec. 406.** If chapter . . ., Laws of 2009 (Engrossed
7 Substitute House Bill No. 2278 or any other bill making substantively
8 identical amendments to RCW 82.08.890 and 82.12.890) is enacted,
9 sections 213 and 217, chapter . . ., Laws of 2009 (section 213 and 217
10 of this act) are null and void.

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