

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1550

64th Legislature
2015 Regular Session

Passed by the House March 3, 2015
Yeas 70 Nays 27

Speaker of the House of Representatives

Passed by the Senate April 22, 2015
Yeas 38 Nays 9

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1550** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1550

Passed Legislature - 2015 Regular Session

State of Washington

64th Legislature

2015 Regular Session

By Representatives Carlyle, Nealey, Reykdal, and Wylie; by request of Department of Revenue

Read first time 01/22/15. Referred to Committee on Finance.

1 AN ACT Relating to simplifying the taxation of amusement,
2 recreation, and physical fitness services; amending RCW 82.04.050,
3 82.04.060, 82.04.190, 82.08.0291, 82.12.020, 82.12.02595, 82.12.035,
4 82.12.040, 82.12.860, and 82.32.087; reenacting and amending RCW
5 82.12.010; creating a new section; repealing RCW 82.12.02917; and
6 providing an effective date.

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

8 **Sec. 1.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
9 amended to read as follows:

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

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

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

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

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

18 (v) Purchases for the purpose of providing the property to
19 consumers as part of competitive telephone service, as defined in RCW
20 82.04.065; or

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

26 (b) The term includes every sale of tangible personal property
27 that is used or consumed or to be used or consumed in the performance
28 of any activity defined as a "sale at retail" or "retail sale" even
29 though such property is resold or used as provided in (a)(i) through
30 (vi) of this subsection following such use.

31 (c) The term also means every sale of tangible personal property
32 to persons engaged in any business that is taxable under RCW
33 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

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

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

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

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

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

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

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

1 furnishing of lodging for a continuous period of one month or more to
2 a person is a rental or lease of real property and not a mere license
3 to enjoy the same;

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

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

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

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

24 ~~(ii) Until July 1, 2017, amusement and recreation services do not
25 include the opportunity to dance provided by an establishment in
26 exchange for a cover charge.~~

27 ~~(iii) For purposes of this subsection (3)(a):~~

28 ~~(A) "Cover charge" means a charge, regardless of its label, to
29 enter an establishment or added to the purchaser's bill by an
30 establishment or otherwise collected after entrance to the
31 establishment, and the purchaser is provided the opportunity to dance
32 in exchange for payment of the charge.~~

33 ~~(B) "Opportunity to dance" means that an establishment provides a
34 designated physical space, on either a temporary or permanent basis,
35 where customers are allowed to dance and the establishment either
36 advertises or otherwise makes customers aware that it has an area for
37 dancing;~~

38 ~~(b)) Abstract, title insurance, and escrow services;~~

39 ~~((c)) (b) Credit bureau services;~~

40 ~~((d)) (c) Automobile parking and storage garage services;~~

1 ~~((e))~~ (d) Landscape maintenance and horticultural services but
2 excluding (i) horticultural services provided to farmers and (ii)
3 pruning, trimming, repairing, removing, and clearing of trees and
4 brush near electric transmission or distribution lines or equipment,
5 if performed by or at the direction of an electric utility;

6 ~~((f))~~ (e) Service charges associated with tickets to
7 professional sporting events; ~~((and~~

8 ~~(g))~~ (f) The following personal services: ~~((Physical fitness~~
9 ~~services,))~~ Tanning salon services, tattoo parlor services, steam
10 bath services, turkish bath services, escort services, and dating
11 services; and

12 (g)(i) Operating an athletic or fitness facility, including all
13 charges for the use of such a facility or for any associated services
14 and amenities, except as provided in (g)(ii) of this subsection.

15 (ii) Notwithstanding anything to the contrary in (g)(i) of this
16 subsection (3), the term "sale at retail" and "retail sale" under
17 this subsection does not include:

18 (A) Separately stated charges for the use of an athletic or
19 fitness facility where such use is primarily for a purpose other than
20 engaging in or receiving instruction in a physical fitness activity;

21 (B) Separately stated charges for the use of a discrete portion
22 of an athletic or fitness facility, other than a pool, where such
23 discrete portion of the facility does not by itself meet the
24 definition of "athletic or fitness facility" in this subsection;

25 (C) Separately stated charges for services, such as advertising,
26 massage, nutritional consulting, and body composition testing, that
27 do not require the customer to engage in physical fitness activities
28 to receive the service. The exclusion in this subsection
29 (3)(g)(ii)(C) does not apply to personal training services and
30 instruction in a physical fitness activity;

31 (D) Separately stated charges for physical therapy provided by a
32 physical therapist, as those terms are defined in RCW 18.74.010, or
33 occupational therapy provided by an occupational therapy
34 practitioner, as those terms are defined in RCW 18.59.020, when
35 performed pursuant to a referral from an authorized health care
36 practitioner or in consultation with an authorized health care
37 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
38 authorized health care practitioner means a health care practitioner
39 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or
40 18.71A RCW;

1 (E) Rent or association fees charged by a landlord or residential
2 association to a tenant or residential owner with access to an
3 athletic or fitness facility maintained by the landlord or
4 residential association, unless the rent or fee varies depending on
5 whether the tenant or owner has access to the facility;

6 (F) Services provided in the regular course of employment by an
7 employee with access to an athletic or fitness facility maintained by
8 the employer for use without charge by its employees or their family
9 members;

10 (G) The provision of access to an athletic or fitness facility by
11 an educational institution to its students and staff. However,
12 charges made by an educational institution to its alumni or other
13 members of the public for the use of any of the educational
14 institution's athletic or fitness facilities are a retail sale under
15 this subsection (3)(g). For purposes of this subsection
16 (3)(g)(ii)(G), "educational institution" has the same meaning as in
17 RCW 82.04.170; and

18 (H) Yoga, tai chi, or chi gong classes held at a community
19 center, park, gymnasium, college or university, hospital or other
20 medical facility, private residence, or any facility that is not
21 primarily used for physical fitness activities other than yoga, tai
22 chi, or chi gong classes.

23 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
24 to affect the taxation of sales made by the operator of an athletic
25 or fitness facility, where such sales are defined as a retail sale
26 under any provision of this section other than this subsection (3).

27 (iv) For the purposes of this subsection (3)(g), the following
28 definitions apply:

29 (A) "Athletic or fitness facility" means an indoor or outdoor
30 facility or portion of a facility that is primarily used for:
31 Exercise classes; strength and conditioning programs; personal
32 training services; tennis, racquetball, handball, squash, or
33 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or
34 mixed martial arts training; or other activities requiring the use of
35 exercise or strength training equipment, such as treadmills,
36 elliptical machines, stair climbers, stationary cycles, rowing
37 machines, pilates equipment, balls, climbing ropes, jump ropes, and
38 weightlifting equipment.

39 (B) "Physical fitness activities" means activities that involve
40 physical exertion for the purpose of improving or maintaining the

1 general fitness, strength, flexibility, conditioning, or health of
2 the participant.

3 (4)(a) The term also includes the renting or leasing of tangible
4 personal property to consumers.

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

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

11 (6)(a) The term also includes the sale of prewritten computer
12 software to a consumer, regardless of the method of delivery to the
13 end user. For purposes of this subsection (6)(a), the sale of
14 prewritten computer software includes the sale of or charge made for
15 a key or an enabling or activation code, where the key or code is
16 required to activate prewritten computer software and put the
17 software into use. There is no separate sale of the key or code from
18 the prewritten computer software, regardless of how the sale may be
19 characterized by the vendor or by the purchaser.

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

22 (i) Custom software; or

23 (ii) The customization of prewritten computer software.

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

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

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

38 (7) The term also includes the sale of or charge made for an
39 extended warranty to a consumer. For purposes of this subsection,
40 "extended warranty" means an agreement for a specified duration to

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

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

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

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

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

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

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

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

33 (9) The term also includes the charge made for providing tangible
34 personal property along with an operator for a fixed or indeterminate
35 period of time. A consideration of this is that the operator is
36 necessary for the tangible personal property to perform as designed.
37 For the purpose of this subsection (9), an operator must do more than
38 maintain, inspect, or set up the tangible personal property.

39 (10) The term does not include the sale of or charge made for
40 labor and services rendered in respect to the building, repairing, or

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

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

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

39 (13) The term does not include the sale of or charge made for
40 labor, services, or tangible personal property pursuant to agreements

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

5 (14) The term does not include the sale for resale of any service
6 described in this section if the sale would otherwise constitute a
7 "sale at retail" and "retail sale" under this section.

8 (15)(a) The term "sale at retail" or "retail sale" includes
9 amounts charged, however labeled, to consumers to engage in any of
10 the activities listed in this subsection (15)(a), including the
11 furnishing of any associated equipment or, except as otherwise
12 provided in this subsection, providing instruction in such
13 activities, where such charges are not otherwise defined as a "sale
14 at retail" or "retail sale" in this section:

15 (i)(A) Golf, including any variant in which either golf balls or
16 golf clubs are used, such as miniature golf, hitting golf balls at a
17 driving range, and golf simulators, and including fees charged by a
18 golf course to a player for using his or her own cart. However,
19 charges for golf instruction are not a retail sale, provided that if
20 the instruction involves the use of a golfing facility that would
21 otherwise require the payment of a fee, such as green fees or driving
22 range fees, such fees, including the applicable retail sales tax,
23 must be separately identified and charged by the golfing facility
24 operator to the instructor or the person receiving the instruction.

25 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
26 as otherwise provided in this subsection (15)(a)(i)(B), the term
27 "sale at retail" or "retail sale" does not include amounts charged to
28 participate in, or conduct, a golf tournament or other competitive
29 event. However, amounts paid by event participants to the golf
30 facility operator are retail sales under this subsection (15)(a)(i).
31 Likewise, amounts paid by the event organizer to the golf facility
32 are retail sales under this subsection (15)(a)(i), if such amounts
33 vary based on the number of event participants;

34 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,
35 paragliding, parasailing, and similar activities;

36 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
37 ping pong, and similar games;

38 (iv) Access to amusement park, theme park, and water park
39 facilities, including but not limited to charges for admission and
40 locker or cabana rentals. Discrete charges for rides or other

1 attractions or entertainment that are in addition to the charge for
2 admission are not a retail sale under this subsection (15)(a)(iv).
3 For the purposes of this subsection, an amusement park or theme park
4 is a location that provides permanently affixed amusement rides,
5 games, and other entertainment, but does not include parks or zoos
6 for which the primary purpose is the exhibition of wildlife, or
7 fairs, carnivals, and festivals as defined in (b)(i) of this
8 subsection;

9 (v) Batting cage activities;

10 (vi) Bowling, but not including competitive events, except that
11 amounts paid by the event participants to the bowling alley operator
12 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
13 paid by the event organizer to the operator of the bowling alley are
14 retail sales under this subsection (15)(a)(vi), if such amounts vary
15 based on the number of event participants;

16 (vii) Climbing on artificial climbing structures, whether indoors
17 or outdoors;

18 (viii) Day trips for sightseeing purposes;

19 (ix) Bungee jumping, zip lining, and riding inside a ball,
20 whether inflatable or otherwise;

21 (x) Horseback riding offered to the public, where the seller
22 furnishes the horse to the buyer and providing instruction is not the
23 primary focus of the activity, including guided rides, but not
24 including therapeutic horseback riding provided by an instructor
25 certified by a nonprofit organization that offers national or
26 international certification for therapeutic riding instructors;

27 (xi) Fishing, including providing access to private fishing areas
28 and charter or guided fishing, except that fishing contests and
29 license fees imposed by a government entity are not a retail sale
30 under this subsection;

31 (xii) Guided hunting and hunting at game farms and shooting
32 preserves, except that hunting contests and license fees imposed by a
33 government entity are not a retail sale under this subsection;

34 (xiii) Swimming, but only in respect to (A) recreational or
35 fitness swimming that is open to the public, such as open swim, lap
36 swimming, and special events like kids night out and pool parties
37 during open swim time, and (B) pool parties for private events, such
38 as birthdays, family gatherings, and employee outings. Fees for
39 swimming lessons, to participate in swim meets and other

1 competitions, or to join a swim team, club, or aquatic facility are
2 not retail sales under this subsection (15)(a)(xiii);

3 (xiv) Go-karting, bumper cars, and other motorized activities
4 where the seller provides the vehicle and the premises where the
5 buyer will operate the vehicle;

6 (xv) Indoor or outdoor playground activities, such as inflatable
7 bounce structures and other inflatables; mazes; trampolines; slides;
8 ball pits; games of tag, including laser tag and soft-dart tag; and
9 human gyroscope rides, regardless of whether such activities occur at
10 the seller's place of business, but not including playground
11 activities provided for children by a licensed child day care center
12 or licensed family day care provider as those terms are defined in
13 RCW 43.215.010;

14 (xvi) Shooting sports and activities, such as target shooting,
15 skeet, trap, sporting clays, "5" stand, and archery, but only in
16 respect to discrete charges to members of the public to engage in
17 these activities, but not including fees to enter a competitive
18 event, instruction that is entirely or predominately classroom based,
19 or to join or renew a membership at a club, range, or other facility;

20 (xvii) Paintball and airsoft activities;

21 (xviii) Skating, including ice skating, roller skating, and
22 inline skating, but only in respect to discrete charges to members of
23 the public to engage in skating activities, but not including skating
24 lessons, competitive events, team activities, or fees to join or
25 renew a membership at a skating facility, club, or other
26 organization;

27 (xix) Nonmotorized snow sports and activities, such as downhill
28 and cross-country skiing, snowboarding, ski jumping, sledding, snow
29 tubing, snowshoeing, and similar snow sports and activities, whether
30 engaged in outdoors or in an indoor facility with or without snow,
31 but only in respect to discrete charges to the public for the use of
32 land or facilities to engage in nonmotorized snow sports and
33 activities, such as fees, however labeled, for the use of ski lifts
34 and tows and daily or season passes for access to trails or other
35 areas where nonmotorized snow sports and activities are conducted.
36 However, fees for the following are not retail sales under this
37 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
38 issued by a governmental entity to park a vehicle on or access public
39 lands; and (C) permits or leases granted by an owner of private

1 timberland for recreational access to areas used primarily for
2 growing and harvesting timber; and

3 (xx) Scuba diving; snorkeling; river rafting; surfing;
4 kiteboarding; flyboarding; water slides; inflatables, such as water
5 pillows, water trampolines, and water rollers; and similar water
6 sports and activities.

7 (b) Notwithstanding anything to the contrary in this subsection
8 (15), the term "sale at retail" or "retail sale" does not include
9 charges:

10 (i) Made for admission to, and rides or attractions at, fairs,
11 carnivals, and festivals. For the purposes of this subsection, fairs,
12 carnivals, and festivals are events that do not exceed twenty-one
13 days and a majority of the amusement rides, if any, are not affixed
14 to real property;

15 (ii) Made by an educational institution to its students and staff
16 for activities defined as retail sales by (a)(i) through (xx) of this
17 subsection. However, charges made by an educational institution to
18 its alumni or other members of the general public for these
19 activities are a retail sale under this subsection (15). For purposes
20 of this subsection (15)(b)(ii), "educational institution" has the
21 same meaning as in RCW 82.04.170;

22 (iii) Made by a vocational school for commercial diver training
23 that is licensed by the workforce training and education coordinating
24 board under chapter 28C.10 RCW; or

25 (iv) Made for day camps offered by a nonprofit organization or
26 state or local governmental entity that provide youth not older than
27 age eighteen, or that are focused on providing individuals with
28 disabilities or mental illness, the opportunity to participate in a
29 variety of supervised activities.

30 **Sec. 2.** RCW 82.04.060 and 2010 c 106 s 203 are each amended to
31 read as follows:

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

33 (1) Any sale, which is not a sale at retail, of:

34 (a) Tangible personal property;

35 (b) Services defined as a retail sale in RCW 82.04.050(2) (a) or
36 (g);

37 (~~(c) ((Amusement or recreation services as defined))~~) Activities
38 defined as a retail sale in RCW 82.04.050(~~(+3)~~(a)) (15);

39 (d) Prewritten computer software;

- 1 (e) Services described in RCW 82.04.050(6)(b);
2 (f) Extended warranties as defined in RCW 82.04.050(7);
3 (g) Competitive telephone service, ancillary services, or
4 telecommunications service as those terms are defined in RCW
5 82.04.065; or
6 (h) Digital goods, digital codes, or digital automated services;
7 (2) Any charge made for labor and services rendered for persons
8 who are not consumers, in respect to real or personal property, if
9 such charge is expressly defined as a retail sale by RCW 82.04.050
10 when rendered to or for consumers. For the purposes of this
11 subsection (2), "real or personal property" does not include any
12 natural products named in RCW 82.04.100; and
13 (3) The sale of any service for resale, if the sale is excluded
14 from the definition of "sale at retail" and "retail sale" in RCW
15 82.04.050(14).

16 **Sec. 3.** RCW 82.04.190 and 2014 c 97 s 302 are each amended to
17 read as follows:

18 "Consumer" means the following:

19 (1) Any person who purchases, acquires, owns, holds, or uses any
20 article of tangible personal property irrespective of the nature of
21 the person's business and including, among others, without limiting
22 the scope hereof, persons who install, repair, clean, alter, improve,
23 construct, or decorate real or personal property of or for consumers
24 other than for the purpose of:

25 (a) Resale as tangible personal property in the regular course of
26 business;

27 (b) Incorporating such property as an ingredient or component of
28 real or personal property when installing, repairing, cleaning,
29 altering, imprinting, improving, constructing, or decorating such
30 real or personal property of or for consumers;

31 (c) Consuming such property in producing for sale as a new
32 article of tangible personal property or a new substance, of which
33 such property becomes an ingredient or component or as a chemical
34 used in processing, when the primary purpose of such chemical is to
35 create a chemical reaction directly through contact with an
36 ingredient of a new article being produced for sale;

37 (d) Consuming the property purchased in producing ferrosilicon
38 which is subsequently used in producing magnesium for sale, if the

1 primary purpose of such property is to create a chemical reaction
2 directly through contact with an ingredient of ferrosilicon; or

3 (e) Satisfying the person's obligations under an extended
4 warranty as defined in RCW 82.04.050(7), if such tangible personal
5 property replaces or becomes an ingredient or component of property
6 covered by the extended warranty without intervening use by such
7 person;

8 (2)(a) Any person engaged in any business activity taxable under
9 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires,
10 or uses any competitive telephone service, ancillary services, or
11 telecommunications service as those terms are defined in RCW
12 82.04.065, other than for resale in the regular course of business;
13 (c) any person who purchases, acquires, or uses any service defined
14 in RCW 82.04.050(2) (a) or (g), other than for resale in the regular
15 course of business or for the purpose of satisfying the person's
16 obligations under an extended warranty as defined in RCW
17 82.04.050(7); (d) any person who (~~purchases, acquires, or uses any~~
18 ~~amusement and recreation service defined in RCW~~
19 ~~82.04.050(3)(a))~~makes a purchase meeting the definition of "sale at
20 retail" and "retail sale" under RCW 82.04.050(15), other than for
21 resale in the regular course of business; (e) any person who
22 purchases or acquires an extended warranty as defined in RCW
23 82.04.050(7) other than for resale in the regular course of business;
24 and (f) any person who is an end user of software. For purposes of
25 this subsection (2)(f) and RCW 82.04.050(6), a person who purchases
26 or otherwise acquires prewritten computer software, who provides
27 services described in RCW 82.04.050(6)(b) and who will charge
28 consumers for the right to access and use the prewritten computer
29 software, is not an end user of the prewritten computer software;

30 (3) Any person engaged in the business of contracting for the
31 building, repairing or improving of any street, place, road, highway,
32 easement, right-of-way, mass public transportation terminal or
33 parking facility, bridge, tunnel, or trestle which is owned by a
34 municipal corporation or political subdivision of the state of
35 Washington or by the United States and which is used or to be used
36 primarily for foot or vehicular traffic including mass transportation
37 vehicles of any kind as defined in RCW 82.04.280, in respect to
38 tangible personal property when such person incorporates such
39 property as an ingredient or component of such publicly owned street,
40 place, road, highway, easement, right-of-way, mass public

1 transportation terminal or parking facility, bridge, tunnel, or
2 trestle by installing, placing or spreading the property in or upon
3 the right-of-way of such street, place, road, highway, easement,
4 bridge, tunnel, or trestle or in or upon the site of such mass public
5 transportation terminal or parking facility;

6 (4) Any person who is an owner, lessee or has the right of
7 possession to or an easement in real property which is being
8 constructed, repaired, decorated, improved, or otherwise altered by a
9 person engaged in business, excluding only (a) municipal corporations
10 or political subdivisions of the state in respect to labor and
11 services rendered to their real property which is used or held for
12 public road purposes, and (b) the United States, instrumentalities
13 thereof, and county and city housing authorities created pursuant to
14 chapter 35.82 RCW in respect to labor and services rendered to their
15 real property. Nothing contained in this or any other subsection of
16 this definition (~~(shall)~~)may be construed to modify any other
17 definition of "consumer";

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

22 (6) Any person engaged in the business of constructing,
23 repairing, decorating, or improving new or existing buildings or
24 other structures under, upon, or above real property of or for the
25 United States, any instrumentality thereof, or a county or city
26 housing authority created pursuant to chapter 35.82 RCW, including
27 the installing or attaching of any article of tangible personal
28 property therein or thereto, whether or not such personal property
29 becomes a part of the realty by virtue of installation; also, any
30 person engaged in the business of clearing land and moving earth of
31 or for the United States, any instrumentality thereof, or a county or
32 city housing authority created pursuant to chapter 35.82 RCW. Any
33 such person is a consumer within the meaning of this subsection in
34 respect to tangible personal property incorporated into, installed
35 in, or attached to such building or other structure by such person,
36 except that consumer does not include any person engaged in the
37 business of constructing, repairing, decorating, or improving new or
38 existing buildings or other structures under, upon, or above real
39 property of or for the United States, or any instrumentality thereof,

1 if the investment project would qualify for sales and use tax
2 deferral under chapter 82.63 RCW if undertaken by a private entity;

3 (7) Any person who is a lessor of machinery and equipment, the
4 rental of which is exempt from the tax imposed by RCW 82.08.020 under
5 RCW 82.08.02565, with respect to the sale of or charge made for
6 tangible personal property consumed in respect to repairing the
7 machinery and equipment, if the tangible personal property has a
8 useful life of less than one year. Nothing contained in this or any
9 other subsection of this section may be construed to modify any other
10 definition of "consumer";

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

15 (9) Any person who is an owner, lessee, or has the right of
16 possession of tangible personal property that, under the terms of an
17 extended warranty as defined in RCW 82.04.050(7), has been repaired
18 or is replacement property, but only with respect to the sale of or
19 charge made for the repairing of the tangible personal property or
20 the replacement property;

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

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

24 (b) For purposes of consuming the service described in RCW
25 82.04.050(6)(b) in producing for sale a new product, but only if such
26 service becomes a component of the new product. For purposes of this
27 subsection (10), "product" means a digital product, an article of
28 tangible personal property, or the service described in RCW
29 82.04.050(6)(b);

30 (11)(a) Any end user of a digital product or digital code.
31 "Consumer" does not include any person who is not an end user of a
32 digital product or a digital code and purchases, acquires, owns,
33 holds, or uses any digital product or digital code for purposes of
34 consuming the digital product or digital code in producing for sale a
35 new product, but only if the digital product or digital code becomes
36 a component of the new product. A digital code becomes a component of
37 a new product if the digital good or digital automated service
38 acquired through the use of the digital code becomes incorporated
39 into a new product. For purposes of this subsection, "product" has
40 the same meaning as in subsection (10) of this section.

1 (b)(i) For purposes of this subsection, "end user" means any
2 taxpayer as defined in RCW 82.12.010 other than a taxpayer who
3 receives by contract a digital product for further commercial
4 broadcast, rebroadcast, transmission, retransmission, licensing,
5 relicensing, distribution, redistribution or exhibition of the
6 product, in whole or in part, to others. A person that purchases
7 digital products or digital codes for the purpose of giving away such
8 products or codes will not be considered to have engaged in the
9 distribution or redistribution of such products or codes and will be
10 treated as an end user;

11 (ii) If a purchaser of a digital code does not receive the
12 contractual right to further redistribute, after the digital code is
13 redeemed, the underlying digital product to which the digital code
14 relates, then the purchaser of the digital code is an end user. If
15 the purchaser of the digital code receives the contractual right to
16 further redistribute, after the digital code is redeemed, the
17 underlying digital product to which the digital code relates, then
18 the purchaser of the digital code is not an end user. A purchaser of
19 a digital code who has the contractual right to further redistribute
20 the digital code is an end user if that purchaser does not have the
21 right to further redistribute, after the digital code is redeemed,
22 the underlying digital product to which the digital code relates;

23 (12) Any person who provides services described in RCW
24 82.04.050(9). Any such person is a consumer with respect to the
25 purchase, acquisition, or use of the tangible personal property that
26 the person provides along with an operator in rendering services
27 defined as a retail sale in RCW 82.04.050(9). Any such person may
28 also be a consumer under other provisions of this section;

29 (13) Any person who purchases, acquires, owns, holds, or uses
30 chemical sprays or washes for the purpose of postharvest treatment of
31 fruit for the prevention of scald, fungus, mold, or decay, or who
32 purchases feed, seed, seedlings, fertilizer, agents for enhanced
33 pollination including insects such as bees, and spray materials, is
34 not a consumer of such items, but only to the extent that the items:

35 (a) Are used in relation to the person's participation in the
36 federal conservation reserve program, the environmental quality
37 incentives program, the wetlands reserve program, the wildlife
38 habitat incentives program, or their successors administered by the
39 United States department of agriculture;

1 (b) Are for use by a farmer for the purpose of producing for sale
2 any agricultural product; or

3 (c) Are for use by a farmer to produce or improve wildlife
4 habitat on land the farmer owns or leases while acting under
5 cooperative habitat development or access contracts with an
6 organization exempt from federal income tax under 26 U.S.C. Sec.
7 501(c)(3) of the federal internal revenue code or the Washington
8 state department of fish and wildlife; and

9 (14) A regional transit authority is not a consumer with respect
10 to labor, services, or tangible personal property purchased pursuant
11 to agreements providing maintenance services for bus, rail, or rail
12 fixed guideway equipment when a transit agency, as defined in RCW
13 81.104.015, performs the labor or services.

14 **Sec. 4.** RCW 82.08.0291 and 2000 c 103 s 8 are each amended to
15 read as follows:

16 The tax imposed by RCW 82.08.020 (~~shall~~) does not apply to
17 (~~the sale of amusement and recreation services, or personal services~~
18 ~~specified in RCW 82.04.050(3)(g)~~) sales defined as a sale at retail
19 and retail sale under RCW 82.04.050 (3)(g) or (15), by a nonprofit
20 youth organization, as defined in RCW 82.04.4271, to members of the
21 organization; (~~nor shall~~)and the tax does not apply to physical
22 fitness classes provided by a local government.

23 **Sec. 5.** RCW 82.12.010 and 2010 c 127 s 4 are each reenacted and
24 amended to read as follows:

25 For the purposes of this chapter:

26 (1) The meaning ascribed to words and phrases in chapters 82.04
27 and 82.08 RCW, insofar as applicable, has full force and effect with
28 respect to taxes imposed under the provisions of this chapter.
29 "Consumer," in addition to the meaning ascribed to it in chapters
30 82.04 and 82.08 RCW insofar as applicable, also means any person who
31 distributes or displays, or causes to be distributed or displayed,
32 any article of tangible personal property, except newspapers, the
33 primary purpose of which is to promote the sale of products or
34 services. With respect to property distributed to persons within this
35 state by a consumer as defined in this subsection (1), the use of the
36 property is deemed to be by such consumer.

37 (2) "Extended warranty" has the same meaning as in RCW
38 82.04.050(7).

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

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

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

19 (b) For the purposes of (a) of this subsection, the terms
20 "client," "covered employee," "professional employer agreement," and
21 "professional employer organization" have the same meanings as in RCW
22 82.04.540.

23 (5) "Taxpayer" and "purchaser" include all persons included
24 within the meaning of the word "buyer" and the word "consumer" as
25 defined in chapters 82.04 and 82.08 RCW.

26 (6) "Use," "used," "using," or "put to use" have their ordinary
27 meaning, and mean:

28 (a) With respect to tangible personal property, except for
29 natural gas and manufactured gas, the first act within this state by
30 which the taxpayer takes or assumes dominion or control over the
31 article of tangible personal property (as a consumer), and include
32 installation, storage, withdrawal from storage, distribution, or any
33 other act preparatory to subsequent actual use or consumption within
34 this state;

35 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
36 first act within this state after the service has been performed by
37 which the taxpayer takes or assumes dominion or control over the
38 article of tangible personal property upon which the service was
39 performed (as a consumer), and includes installation, storage,
40 withdrawal from storage, distribution, or any other act preparatory

1 to subsequent actual use or consumption of the article within this
2 state;

3 (c) With respect to an extended warranty, the first act within
4 this state after the extended warranty has been acquired by which the
5 taxpayer takes or assumes dominion or control over the article of
6 tangible personal property to which the extended warranty applies,
7 and includes installation, storage, withdrawal from storage,
8 distribution, or any other act preparatory to subsequent actual use
9 or consumption of the article within this state;

10 (d) With respect to a digital good or digital code, the first act
11 within this state by which the taxpayer, as a consumer, views,
12 accesses, downloads, possesses, stores, opens, manipulates, or
13 otherwise uses or enjoys the digital good or digital code;

14 (e) With respect to a digital automated service, the first act
15 within this state by which the taxpayer, as a consumer, uses, enjoys,
16 or otherwise receives the benefit of the service;

17 (f) With respect to a service defined as a retail sale in RCW
18 82.04.050(6)(b), the first act within this state by which the
19 taxpayer, as a consumer, accesses the prewritten computer software;

20 (g) With respect to a service defined as a retail sale in RCW
21 82.04.050(2)(g), the first act within this state after the service
22 has been performed by which the taxpayer, as a consumer, views,
23 accesses, downloads, possesses, stores, opens, manipulates, or
24 otherwise uses or enjoys the digital good upon which the service was
25 performed; and

26 (h) With respect to natural gas or manufactured gas, the use of
27 which is taxable under RCW 82.12.022, including gas that is also
28 taxable under the authority of RCW 82.14.230, the first act within
29 this state by which the taxpayer consumes the gas by burning the gas
30 or storing the gas in the taxpayer's own facilities for later
31 consumption by the taxpayer.

32 (7)(a) "Value of the article used" is the purchase price for the
33 article of tangible personal property, the use of which is taxable
34 under this chapter. The term also includes, in addition to the
35 purchase price, the amount of any tariff or duty paid with respect to
36 the importation of the article used. In case the article used is
37 acquired by lease or by gift or is extracted, produced, or
38 manufactured by the person using the same or is sold under conditions
39 wherein the purchase price does not represent the true value thereof,
40 the value of the article used is determined as nearly as possible

1 according to the retail selling price at place of use of similar
2 products of like quality and character under such rules as the
3 department may prescribe.

4 (b) In case the articles used are acquired by bailment, the value
5 of the use of the articles so used must be in an amount representing
6 a reasonable rental for the use of the articles so bailed, determined
7 as nearly as possible according to the value of such use at the
8 places of use of similar products of like quality and character under
9 such rules as the department of revenue may prescribe. In case any
10 such articles of tangible personal property are used in respect to
11 the construction, repairing, decorating, or improving of, and which
12 become or are to become an ingredient or component of, new or
13 existing buildings or other structures under, upon, or above real
14 property of or for the United States, any instrumentality thereof, or
15 a county or city housing authority created pursuant to chapter 35.82
16 RCW, including the installing or attaching of any such articles
17 therein or thereto, whether or not such personal property becomes a
18 part of the realty by virtue of installation, then the value of the
19 use of such articles so used is determined according to the retail
20 selling price of such articles, or in the absence of such a selling
21 price, as nearly as possible according to the retail selling price at
22 place of use of similar products of like quality and character or, in
23 the absence of either of these selling price measures, such value may
24 be determined upon a cost basis, in any event under such rules as the
25 department of revenue may prescribe.

26 (c) In the case of articles owned by a user engaged in business
27 outside the state which are brought into the state for no more than
28 one hundred eighty days in any period of three hundred sixty-five
29 consecutive days and which are temporarily used for business purposes
30 by the person in this state, the value of the article used must be an
31 amount representing a reasonable rental for the use of the articles,
32 unless the person has paid tax under this chapter or chapter 82.08
33 RCW upon the full value of the article used, as defined in (a) of
34 this subsection.

35 (d) In the case of articles manufactured or produced by the user
36 and used in the manufacture or production of products sold or to be
37 sold to the department of defense of the United States, the value of
38 the articles used is determined according to the value of the
39 ingredients of such articles.

1 (e) In the case of an article manufactured or produced for
2 purposes of serving as a prototype for the development of a new or
3 improved product, the value of the article used is determined by: (i)
4 The retail selling price of such new or improved product when first
5 offered for sale; or (ii) the value of materials incorporated into
6 the prototype in cases in which the new or improved product is not
7 offered for sale.

8 (f) In the case of an article purchased with a direct pay permit
9 under RCW 82.32.087, the value of the article used is determined by
10 the purchase price of such article if, but for the use of the direct
11 pay permit, the transaction would have been subject to sales tax.

12 (8) "Value of the digital good or digital code used" means the
13 purchase price for the digital good or digital code, the use of which
14 is taxable under this chapter. If the digital good or digital code is
15 acquired other than by purchase, the value of the digital good or
16 digital code must be determined as nearly as possible according to
17 the retail selling price at place of use of similar digital goods or
18 digital codes of like quality and character under rules the
19 department may prescribe.

20 (9) "Value of the extended warranty used" means the purchase
21 price for the extended warranty, the use of which is taxable under
22 this chapter. If the extended warranty is received by gift or under
23 conditions wherein the purchase price does not represent the true
24 value of the extended warranty, the value of the extended warranty
25 used is determined as nearly as possible according to the retail
26 selling price at place of use of similar extended warranties of like
27 quality and character under rules the department may prescribe.

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

36 **Sec. 6.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each
37 amended to read as follows:

1 (1) There is levied and collected from every person in this state
2 a tax or excise for the privilege of using within this state as a
3 consumer any:

4 (a) Article of tangible personal property acquired by the user in
5 any manner, including tangible personal property acquired at a casual
6 or isolated sale, and including by-products used by the manufacturer
7 thereof, except as otherwise provided in this chapter, irrespective
8 of whether the article or similar articles are manufactured or are
9 available for purchase within this state;

10 (b) Prewritten computer software, regardless of the method of
11 delivery, but excluding prewritten computer software that is either
12 provided free of charge or is provided for temporary use in viewing
13 information, or both;

14 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
15 (g)(~~(,---(3)(a),~~) or (6)(b), excluding services defined as a retail
16 sale in RCW 82.04.050(6)(b) that are provided free of charge;

17 (d) Extended warranty; or

18 (e)(i) Digital good, digital code, or digital automated service,
19 including the use of any services provided by a seller exclusively in
20 connection with digital goods, digital codes, or digital automated
21 services, whether or not a separate charge is made for such services.

22 (ii) With respect to the use of digital goods, digital automated
23 services, and digital codes acquired by purchase, the tax imposed in
24 this subsection (1)(e) applies in respect to:

25 (A) Sales in which the seller has granted the purchaser the right
26 of permanent use;

27 (B) Sales in which the seller has granted the purchaser a right
28 of use that is less than permanent;

29 (C) Sales in which the purchaser is not obligated to make
30 continued payment as a condition of the sale; and

31 (D) Sales in which the purchaser is obligated to make continued
32 payment as a condition of the sale.

33 (iii) With respect to digital goods, digital automated services,
34 and digital codes acquired other than by purchase, the tax imposed in
35 this subsection (1)(e) applies regardless of whether or not the
36 consumer has a right of permanent use or is obligated to make
37 continued payment as a condition of use.

38 (2) The provisions of this chapter do not apply in respect to the
39 use of any article of tangible personal property, extended warranty,
40 digital good, digital code, digital automated service, or service

1 taxable under RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~) or (6)(b), if
2 the sale to, or the use by, the present user or the present user's
3 bailor or donor has already been subjected to the tax under chapter
4 82.08 RCW or this chapter and the tax has been paid by the present
5 user or by the present user's bailor or donor.

6 (3)(a) Except as provided in this section, payment of the tax
7 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
8 of tangible personal property, extended warranty, digital good,
9 digital code, digital automated service, or other service does not
10 have the effect of exempting any other purchaser or user of the same
11 property, extended warranty, digital good, digital code, digital
12 automated service, or other service from the taxes imposed by such
13 chapters.

14 (b) The tax imposed by this chapter does not apply:

15 (i) If the sale to, or the use by, the present user or his or her
16 bailor or donor has already been subjected to the tax under chapter
17 82.08 RCW or this chapter and the tax has been paid by the present
18 user or by his or her bailor or donor;

19 (ii) In respect to the use of any article of tangible personal
20 property acquired by bailment and the tax has once been paid based on
21 reasonable rental as determined by RCW 82.12.060 measured by the
22 value of the article at time of first use multiplied by the tax rate
23 imposed by chapter 82.08 RCW or this chapter as of the time of first
24 use;

25 (iii) In respect to the use of any article of tangible personal
26 property acquired by bailment, if the property was acquired by a
27 previous bailee from the same bailor for use in the same general
28 activity and the original bailment was prior to June 9, 1961; or

29 (iv) To the use of digital goods or digital automated services,
30 which were obtained through the use of a digital code, if the sale of
31 the digital code to, or the use of the digital code by, the present
32 user or the present user's bailor or donor has already been subjected
33 to the tax under chapter 82.08 RCW or this chapter and the tax has
34 been paid by the present user or by the present user's bailor or
35 donor.

36 (4)(a) Except as provided in (b) of this subsection (4), the tax
37 is levied and must be collected in an amount equal to the value of
38 the article used, value of the digital good or digital code used,
39 value of the extended warranty used, or value of the service used by

1 the taxpayer, multiplied by the applicable rates in effect for the
2 retail sales tax under RCW 82.08.020.

3 (b) In the case of a seller required to collect use tax from the
4 purchaser, the tax must be collected in an amount equal to the
5 purchase price multiplied by the applicable rate in effect for the
6 retail sales tax under RCW 82.08.020.

7 (5) For purposes of the tax imposed in this section, "person"
8 includes anyone within the definition of "buyer," "purchaser," and
9 "consumer" in RCW 82.08.010.

10 **Sec. 7.** RCW 82.12.02595 and 2009 c 535 s 615 are each amended to
11 read as follows:

12 (1) This chapter does not apply to the use by a nonprofit
13 charitable organization or state or local governmental entity of
14 personal property that has been donated to the nonprofit charitable
15 organization or state or local governmental entity, or to the
16 subsequent use of the property by a person to whom the property is
17 donated or bailed in furtherance of the purpose for which the
18 property was originally donated.

19 (2) This chapter does not apply to the donation of personal
20 property without intervening use to a nonprofit charitable
21 organization, or to the incorporation of tangible personal property
22 without intervening use into real or personal property of or for a
23 nonprofit charitable organization in the course of installing,
24 repairing, cleaning, altering, imprinting, improving, constructing,
25 or decorating the real or personal property for no charge.

26 (3) This chapter does not apply to the use by a nonprofit
27 charitable organization of labor and services rendered in respect to
28 installing, repairing, cleaning, altering, imprinting, or improving
29 personal property provided to the charitable organization at no
30 charge, or to the donation of such services.

31 ~~((4) This chapter does not apply to the donation of amusement
32 and recreation services without intervening use to a nonprofit
33 organization or state or local governmental entity, to the use by a
34 nonprofit organization or state or local governmental entity of
35 amusement and recreation services, or to the subsequent use of the
36 services by a person to whom the services are donated or bailed in
37 furtherance of the purpose for which the services were originally
38 donated. As used in this subsection, "amusement and recreation
39 services" has the meaning in RCW 82.04.050(3)(a).))~~

1 **Sec. 8.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to
2 read as follows:

3 A credit is allowed against the taxes imposed by this chapter
4 upon the use in this state of tangible personal property, extended
5 warranty, digital good, digital code, digital automated service, or
6 services defined as a retail sale in RCW 82.04.050 (2) (a) or (g)((~~7~~
7 ~~(3)(a)~~)) or (6)(b), in the amount that the present user thereof or
8 his or her bailor or donor has paid a legally imposed retail sales or
9 use tax with respect to such property, extended warranty, digital
10 good, digital code, digital automated service, or service defined as
11 a retail sale in RCW 82.04.050 (2) (a) or (g)((~~7~~~~(3)(a)~~)) or (6)(b)
12 to any other state, possession, territory, or commonwealth of the
13 United States, any political subdivision thereof, the District of
14 Columbia, and any foreign country or political subdivision thereof.

15 **Sec. 9.** RCW 82.12.040 and 2015 c 1 s 11 (Initiative Measure No.
16 594) are each amended to read as follows:

17 (1) Every person who maintains in this state a place of business
18 or a stock of goods, or engages in business activities within this
19 state, ((~~shall~~))must obtain from the department a certificate of
20 registration, and ((~~shall~~))must, at the time of making sales of
21 tangible personal property, digital goods, digital codes, digital
22 automated services, extended warranties, or sales of any service
23 defined as a retail sale in RCW 82.04.050 (2) (a) or (g)((~~7~~~~(3)(a)~~))
24 or (6)(b), or making transfers of either possession or title, or
25 both, of tangible personal property for use in this state, collect
26 from the purchasers or transferees the tax imposed under this
27 chapter. The tax to be collected under this section must be in an
28 amount equal to the purchase price multiplied by the rate in effect
29 for the retail sales tax under RCW 82.08.020. For the purposes of
30 this chapter, the phrase "maintains in this state a place of
31 business" ((~~shall~~)) includes the solicitation of sales and/or taking
32 of orders by sales agents or traveling representatives. For the
33 purposes of this chapter, "engages in business activity within this
34 state" includes every activity which is sufficient under the
35 Constitution of the United States for this state to require
36 collection of tax under this chapter. The department must in rules
37 specify activities which constitute engaging in business activity
38 within this state, and must keep the rules current with future court
39 interpretations of the Constitution of the United States.

1 (2) Every person who engages in this state in the business of
2 acting as an independent selling agent for persons who do not hold a
3 valid certificate of registration, and who receives compensation by
4 reason of sales of tangible personal property, digital goods, digital
5 codes, digital automated services, extended warranties, or sales of
6 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)
7 (~~(3)(a)~~) or (6)(b), of his or her principals for use in this
8 state, must, at the time such sales are made, collect from the
9 purchasers the tax imposed on the purchase price under this chapter,
10 and for that purpose is deemed a retailer as defined in this chapter.

11 (3) The tax required to be collected by this chapter is deemed to
12 be held in trust by the retailer until paid to the department, and
13 any retailer who appropriates or converts the tax collected to the
14 retailer's own use or to any use other than the payment of the tax
15 provided herein to the extent that the money required to be collected
16 is not available for payment on the due date as prescribed is guilty
17 of a misdemeanor. In case any seller fails to collect the tax herein
18 imposed or having collected the tax, fails to pay the same to the
19 department in the manner prescribed, whether such failure is the
20 result of the seller's own acts or the result of acts or conditions
21 beyond the seller's control, the seller is nevertheless personally
22 liable to the state for the amount of such tax, unless the seller has
23 taken from the buyer a copy of a direct pay permit issued under RCW
24 82.32.087.

25 (4) Any retailer who refunds, remits, or rebates to a purchaser,
26 or transferee, either directly or indirectly, and by whatever means,
27 all or any part of the tax levied by this chapter is guilty of a
28 misdemeanor.

29 (5) Notwithstanding subsections (1) through (4) of this section,
30 any person making sales is not obligated to collect the tax imposed
31 by this chapter if:

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

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

35 (ii) The taking of orders; or

36 (iii) The processing of payments; and

37 (b) The activities are conducted electronically via a web site on
38 a server or other computer equipment located in Washington that is
39 not owned or operated by the person making sales into this state nor

1 owned or operated by an affiliated person. "Affiliated persons" has
2 the same meaning as provided in RCW 82.04.424.

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

9 (7) Notwithstanding subsections (1) through (4) of this section,
10 any person making sales is not obligated to collect the tax imposed
11 by this chapter if the person would have been obligated to collect
12 retail sales tax on the sale absent a specific exemption provided in
13 chapter 82.08 RCW, and there is no corresponding use tax exemption in
14 this chapter. Nothing in this subsection (7) may be construed as
15 relieving purchasers from liability for reporting and remitting the
16 tax due under this chapter directly to the department.

17 (8) Notwithstanding subsections (1) through (4) of this section,
18 any person making sales is not obligated to collect the tax imposed
19 by this chapter if the state is prohibited under the Constitution or
20 laws of the United States from requiring the person to collect the
21 tax imposed by this chapter.

22 (9) Notwithstanding subsections (1) through (4) of this section,
23 any licensed dealer facilitating a firearm sale or transfer between
24 two unlicensed persons by conducting background checks under chapter
25 9.41 RCW is not obligated to collect the tax imposed by this chapter.

26 **Sec. 10.** RCW 82.12.860 and 2009 c 535 s 621 are each amended to
27 read as follows:

28 (1) This chapter does not apply to state credit unions with
29 respect to the use of any article of tangible personal property,
30 digital good, digital code, digital automated service, service
31 defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~)
32 or (6)(b), or extended warranty, acquired from a federal credit
33 union, foreign credit union, or out-of-state credit union as a result
34 of a merger or conversion.

35 (2) For purposes of this section, the following definitions
36 apply:

37 (a) "Federal credit union" means a credit union organized and
38 operating under the laws of the United States.

1 (b) "Foreign credit union" means a credit union organized and
2 operating under the laws of another country or other foreign
3 jurisdiction.

4 (c) "Out-of-state credit union" means a credit union organized
5 and operating under the laws of another state or United States
6 territory or possession.

7 (d) "State credit union" means a credit union organized and
8 operating under the laws of this state.

9 **Sec. 11.** RCW 82.32.087 and 2010 c 112 s 10 are each amended to
10 read as follows:

11 (1) The director may grant a direct pay permit to a taxpayer who
12 demonstrates, to the satisfaction of the director, that the taxpayer
13 meets the requirements of this section. The direct pay permit allows
14 the taxpayer to accrue and remit directly to the department use tax
15 on the acquisition of tangible personal property or sales tax on the
16 sale of or charges made for labor and/or services, in accordance with
17 all of the applicable provisions of this title. Any taxpayer that
18 uses a direct pay permit (~~shall~~)must remit state and local sales or
19 use tax directly to the department. The agreement by the purchaser to
20 remit tax directly to the department, rather than pay sales or use
21 tax to the seller, relieves the seller of the obligation to collect
22 sales or use tax and requires the buyer to pay use tax on the
23 tangible personal property and sales tax on the sale of or charges
24 made for labor and/or services.

25 (2)(a) A taxpayer may apply for a permit under this section if:
26 (i) The taxpayer's cumulative tax liability is reasonably expected to
27 be two hundred forty thousand dollars or more in the current calendar
28 year; or (ii) the taxpayer makes purchases subject to the taxes
29 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
30 dollars per calendar year. For the purposes of this section, "tax
31 liability" means the amount required to be remitted to the department
32 for taxes administered under this chapter, except for the taxes
33 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,
34 82.29A, and 84.33 RCW.

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

1 (c) The director must review a direct pay permit application in a
2 timely manner and (~~shall~~) must notify the applicant, in writing, of
3 the approval or denial of the application. The department must
4 approve or deny an application based on the applicant's ability to
5 comply with local government use tax coding capabilities and
6 responsibilities; requirements for vendor notification; recordkeeping
7 obligations; electronic data capabilities; and tax reporting
8 procedures. Additionally, an application may be denied if the
9 director determines that denial would be in the best interest of
10 collecting taxes due under this title. The department must provide a
11 direct pay permit to an approved applicant with the notice of
12 approval. The direct pay permit (~~shall~~)must clearly state that the
13 holder is solely responsible for the accrual and payment of the tax
14 imposed under chapters 82.08 and 82.12 RCW and that the seller is
15 relieved of liability to collect tax imposed under chapters 82.08 and
16 82.12 RCW on all sales to the direct pay permit holder. The taxpayer
17 may petition the director for reconsideration of a denial.

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

23 (3) Taxes for which the direct pay permit is used are due and
24 payable on the tax return for the reporting period in which the
25 taxpayer (a) receives the tangible personal property purchased or in
26 which the labor and/or services are performed or (b) receives an
27 invoice for such property or such labor and/or services, whichever
28 period is earlier.

29 (4) The holder of a direct pay permit must furnish a copy of the
30 direct pay permit to each vendor with whom the taxpayer has opted to
31 use a direct pay permit. Sellers who make sales upon which the sales
32 or use tax is not collected by reason of the provisions of this
33 section, in addition to existing requirements under this title, must
34 maintain a copy of the direct pay permit and any such records or
35 information as the department may specify.

36 (5) A direct pay permit is subject to revocation by the director
37 at any time the department determines that the taxpayer has violated
38 any provision of this section or that revocation would be in the best
39 interests of collecting the taxes due under this title. The notice of
40 revocation must be in writing and is effective either as of the end

1 of the taxpayer's next normal reporting period or a date deemed
2 appropriate by the director and identified in the revocation notice.
3 The taxpayer may petition the director for reconsideration of a
4 revocation and reinstatement of the permit.

5 (6) Any taxpayer who chooses to no longer use a direct pay permit
6 or whose permit is revoked by the department, must return the permit
7 to the department and immediately make a good faith effort to notify
8 all vendors to whom the permit was given, advising them that the
9 permit is no longer valid.

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

14 (a) Purchases of meals or beverages;

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

18 (c) Purchases for which a reseller permit or other documentation
19 authorized under RCW 82.04.470 may be used;

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

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

27 NEW SECTION. **Sec. 12.** RCW 82.12.02917 (Exemptions--Use of
28 amusement and recreation services by nonprofit youth organization)
29 and 1999 c 358 s 7 are each repealed.

30 NEW SECTION. **Sec. 13.** The repeal in section 12 of this act does
31 not affect any existing right acquired or liability or obligation
32 incurred under the statute repealed or under any rule or order
33 adopted under that statute nor does it affect any proceedings
34 instituted under the statute repealed.

35 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2016.

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