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HOUSE BILL 2539

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State of Washington

63rd Legislature

2014 Regular Session

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

Read first time 01/20/14. 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, 82.08.0291, 82.12.020, 82.12.02595, 82.12.035, 82.12.040,  
4 82.12.860, and 82.32.087; reenacting and amending RCW 82.04.190 and  
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, or  
12 imprinted) to all persons irrespective of the nature of their business  
13 and including, among others, without limiting the scope hereof, persons  
14 who install, repair, clean, alter, improve, construct, or decorate real  
15 or personal property of or for consumers other than a sale to a person  
16 who:

17 (i) Purchases for the purpose of resale as tangible personal  
18 property in the regular course of business without intervening use by

1 such person, but a purchase for the purpose of resale by a regional  
2 transit authority under RCW 81.112.300 is not a sale for resale; or

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

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

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

19 (v) Purchases for the purpose of providing the property to  
20 consumers as part of competitive telephone service, as defined in RCW  
21 82.04.065; or

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

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

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

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

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

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

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

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

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

36 (f) The furnishing of lodging and all other services by a hotel,  
37 rooming house, tourist court, motel, trailer camp, and the granting of  
38 any similar license to use real property, as distinguished from the

1 renting or leasing of real property, and it is presumed that the  
2 occupancy of real property for a continuous period of one month or more  
3 constitutes a rental or lease of real property and not a mere license  
4 to use or enjoy the same. For the purposes of this subsection, it is  
5 presumed that the sale of and charge made for the furnishing of lodging  
6 for a continuous period of one month or more to a person is a rental or  
7 lease of real property and not a mere license to enjoy the same;

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

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

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

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

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

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

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

37 ~~(B) "Opportunity to dance" means that an establishment provides a~~  
38 ~~designated physical space, on either a temporary or permanent basis,~~

1 ~~where customers are allowed to dance and the establishment either~~  
2 ~~advertises or otherwise makes customers aware that it has an area for~~  
3 ~~dancing;~~

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

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

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

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

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

14 ~~(g))~~ (f) The following personal services: ~~((Physical fitness~~  
15 ~~services,))~~ Tanning salon services, tattoo parlor services, steam bath  
16 services, turkish bath services, escort services, and dating services;  
17 and

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

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

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

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

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

37 (D) Separately stated charges for physical therapy provided by a  
38 physical therapist, as those terms are defined in RCW 18.74.010, or

1 occupational therapy provided by an occupational therapy practitioner,  
2 as those terms are defined in RCW 18.59.020, when performed pursuant to  
3 a referral from an authorized health care practitioner or in  
4 consultation with an authorized health care practitioner. For the  
5 purposes of this subsection (3)(g)(ii)(D), an authorized health care  
6 practitioner means a health care practitioner licensed under chapter  
7 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or 18.71A RCW;

8 (E) Rent or association fees charged by a landlord or residential  
9 association to a tenant or residential owner with access to an athletic  
10 or fitness facility maintained by the landlord or residential  
11 association, unless the rent or fee varies depending on whether the  
12 tenant or owner has access to the facility;

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

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

24 (H) Yoga, tai chi, or chi gong classes held at a community center,  
25 park, gymnasium, college or university, hospital or other medical  
26 facility, private residence, or any facility that is not primarily used  
27 for physical fitness activities other than yoga, tai chi, or chi gong  
28 classes.

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

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

35 (A) "Athletic or fitness facility" means an indoor or outdoor  
36 facility or portion of a facility that is primarily used for: Exercise  
37 classes; strength and conditioning programs; personal training  
38 services; tennis, racquetball, handball, squash, or pickleball; yoga;

1 boxing, kickboxing, wrestling, martial arts, or mixed martial arts  
2 training; or other activities requiring the use of exercise or strength  
3 training equipment, such as treadmills, elliptical machines, stair  
4 climbers, stationary cycles, rowing machines, pilates equipment, balls,  
5 climbing ropes, jump ropes, and weightlifting equipment.

6 (B) "Physical fitness activities" means activities that involve  
7 physical exertion for the purpose of improving or maintaining the  
8 general fitness, strength, flexibility, conditioning, or health of the  
9 participant.

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

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

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

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

27 The term "retail sale" does not include the sale of or charge made  
28 for:

29 (i) Custom software; or

30 (ii) The customization of prewritten computer software.

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

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

1 (B) For purposes of this subsection (6)(b)(ii), "data processing"  
2 means the systematic performance of operations on data to extract the  
3 required information in an appropriate form or to convert the data to  
4 usable information. Data processing includes check processing, image  
5 processing, form processing, survey processing, payroll processing,  
6 claim processing, and similar activities.

7 (7) The term also includes the sale of or charge made for an  
8 extended warranty to a consumer. For purposes of this subsection,  
9 "extended warranty" means an agreement for a specified duration to  
10 perform the replacement or repair of tangible personal property at no  
11 additional charge or a reduced charge for tangible personal property,  
12 labor, or both, or to provide indemnification for the replacement or  
13 repair of tangible personal property, based on the occurrence of  
14 specified events. The term "extended warranty" does not include an  
15 agreement, otherwise meeting the definition of extended warranty in  
16 this subsection, if no separate charge is made for the agreement and  
17 the value of the agreement is included in the sales price of the  
18 tangible personal property covered by the agreement. For purposes of  
19 this subsection, "sales price" has the same meaning as in RCW  
20 82.08.010.

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

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

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

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

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

31 (b) A retail sale of digital goods, digital codes, or digital  
32 automated services under this subsection (8) includes any services  
33 provided by the seller exclusively in connection with the digital  
34 goods, digital codes, or digital automated services, whether or not a  
35 separate charge is made for such services.

36 (c) For purposes of this subsection, "permanent" means perpetual or  
37 for an indefinite or unspecified length of time. A right of permanent  
38 use is presumed to have been granted unless the agreement between the



1 seller and the purchaser specifies or the circumstances surrounding the  
2 transaction suggest or indicate that the right to use terminates on the  
3 occurrence of a condition subsequent.

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

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

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

33 (12) The term does not include the sale of or charge made for labor  
34 and services rendered in respect to the constructing, repairing,  
35 decorating, or improving of new or existing buildings or other  
36 structures under, upon, or above real property of or for the United  
37 States, any instrumentality thereof, or a county or city housing  
38 authority created pursuant to chapter 35.82 RCW, including the

1 installing, or attaching of any article of tangible personal property  
2 therein or thereto, whether or not such personal property becomes a  
3 part of the realty by virtue of installation. Nor does the term  
4 include the sale of services or charges made for the clearing of land  
5 and the moving of earth of or for the United States, any  
6 instrumentality thereof, or a county or city housing authority. Nor  
7 does the term include the sale of services or charges made for cleaning  
8 up for the United States, or its instrumentalities, radioactive waste  
9 and other by-products of weapons production and nuclear research and  
10 development.

11 (13) The term does not include the sale of or charge made for  
12 labor, services, or tangible personal property pursuant to agreements  
13 providing maintenance services for bus, rail, or rail fixed guideway  
14 equipment when a regional transit authority is the recipient of the  
15 labor, services, or tangible personal property, and a transit agency,  
16 as defined in RCW 81.104.015, performs the labor or services.

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

20 (15)(a) The term "sale at retail" or "retail sale" includes amounts  
21 charged, however labeled, to consumers to engage in any of the  
22 activities listed in this subsection (15)(a), including the furnishing  
23 of any associated equipment or, except as otherwise provided in this  
24 subsection, providing instruction in such activities, where such  
25 charges are not otherwise defined as a "sale at retail" or "retail  
26 sale" in this section:

27 (i)(A) Golf, including any variant in which either golf balls or  
28 golf clubs are used, such as miniature golf, hitting golf balls at a  
29 driving range, and golf simulators, and including fees charged by a  
30 golf course to a player for using his or her own cart.

31 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except as  
32 otherwise provided in this subsection (15)(a)(i)(B), the term "sale at  
33 retail" or "retail sale" does not include amounts charged to  
34 participate in, or conduct, a golf tournament or other competitive  
35 event. However, amounts paid by event participants to the golf  
36 facility operator are retail sales under this subsection (15)(a)(i).  
37 Likewise, amounts paid by the event organizer to the golf facility are

1 retail sales under this subsection (15)(a)(i), if such amounts vary  
2 based on the number of event participants;  
3 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
4 paragliding, parasailing, and similar activities;  
5 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
6 ping pong, and similar games;  
7 (iv) Access to amusement park, theme park, and water park  
8 facilities, including but not limited to charges for admission and  
9 locker or cabana rentals. Discrete charges for rides or other  
10 attractions or entertainment that are in addition to the charge for  
11 admission are not a retail sale under this subsection (15)(a)(iv). For  
12 the purposes of this subsection, an amusement park or theme park is a  
13 location that provides permanently affixed amusement rides, games, and  
14 other entertainment, but does not include parks or zoos for which the  
15 primary purpose is the exhibition of wildlife, or fairs, carnivals, and  
16 festivals as defined in (b)(i) of this subsection;  
17 (v) Batting cage activities;  
18 (vi) Bowling, but not including competitive events, except that  
19 amounts paid by the event participants to the bowling alley operator  
20 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
21 paid by the event organizer to the operator of the bowling alley are  
22 retail sales under this subsection (15)(a)(vi), if such amounts vary  
23 based on the number of event participants;  
24 (vii) Climbing on artificial climbing structures, whether indoors  
25 or outdoors;  
26 (viii) Day trips for sightseeing purposes;  
27 (ix) Bungee jumping, zip lining, and riding inside a ball, whether  
28 inflatable or otherwise;  
29 (x) Horseback riding offered to the public, where the seller  
30 furnishes the horse to the buyer and providing instruction is not the  
31 primary focus of the activity, including guided rides, but not  
32 including therapeutic horseback riding provided by an instructor  
33 certified by a nonprofit organization that offers national or  
34 international certification for therapeutic riding instructors;  
35 (xi) Fishing, including providing access to private fishing areas  
36 and charter or guided fishing, except that fishing contests and license  
37 fees imposed by a government entity are not a retail sale under this  
38 subsection;

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

4 (xiii) Swimming, but only in respect to (A) recreational or fitness  
5 swimming that is open to the public, such as open swim, lap swimming,  
6 and special events like kids night out and pool parties during open  
7 swim time, and (B) pool parties for private events, such as birthdays,  
8 family gatherings, and employee outings. Fees for swimming lessons, to  
9 participate in swim meets and other competitions, or to join a swim  
10 team, club, or aquatic facility are not retail sales under this  
11 subsection (15)(a)(xiii);

12 (xiv) Go-karting, bumper cars, and other motorized activities where  
13 the seller provides the vehicle and the premises where the buyer will  
14 operate the vehicle;

15 (xv) Indoor or outdoor playground activities, such as inflatable  
16 bounce structures and other inflatables; mazes; trampolines; slides;  
17 ball pits; games of tag, including lazer tag and soft-dart tag; and  
18 human gyroscope rides, regardless of whether such activities occur at  
19 the seller's place of business, but not including playground activities  
20 provided for children by a licensed child day care center or licensed  
21 family day care provider as those terms are defined in RCW 43.215.010;

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

28 (xvii) Paintball and airsoft activities;

29 (xviii) Skating, including ice skating, roller skating, and inline  
30 skating, but only in respect to discrete charges to members of the  
31 public to engage in skating activities, but not including skating  
32 lessons, competitive events, team activities, or fees to join or renew  
33 a membership at a skating facility, club, or other organization;

34 (xix) Nonmotorized snow sports and activities, such as downhill and  
35 cross-country skiing, snowboarding, ski jumping, sledding, snow tubing,  
36 snowshoeing, and similar snow sports and activities, whether engaged in  
37 outdoors or in an indoor facility with or without snow, but only in  
38 respect to discrete charges to the public for the use of land or

1 facilities to engage in nonmotorized snow sports and activities, such  
2 as fees, however labeled, for the use of ski lifts and tows and daily  
3 or season passes for access to trails or other areas where nonmotorized  
4 snow sports and activities are conducted. However, fees for permits  
5 issued by a governmental entity to park a vehicle on or access public  
6 lands, or permits or leases granted by an owner of private timberland  
7 for recreational access to areas used primarily for growing and  
8 harvesting timber, are not retail sales under this subsection  
9 (15)(a)(xix); and

10 (xx) Scuba diving; snorkeling; river rafting; surfing;  
11 kiteboarding; flyboarding; water slides; inflatables, such as water  
12 pillows, water trampolines, and water rollers; and similar water sports  
13 and activities.

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

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

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

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

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

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

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

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

5       (a) Tangible personal property;

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

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

10       (d) Prewritten computer software;

11       (e) Services described in RCW 82.04.050(6)(b);

12       (f) Extended warranties as defined in RCW 82.04.050(7);

13       (g) Competitive telephone service, ancillary services, or  
14 telecommunications service as those terms are defined in RCW 82.04.065;  
15 or

16       (h) Digital goods, digital codes, or digital automated services;

17       (2) Any charge made for labor and services rendered for persons who  
18 are not consumers, in respect to real or personal property, if such  
19 charge is expressly defined as a retail sale by RCW 82.04.050 when  
20 rendered to or for consumers. For the purposes of this subsection (2),  
21 "real or personal property" does not include any natural products named  
22 in RCW 82.04.100; and

23       (3) The sale of any service for resale, if the sale is excluded  
24 from the definition of "sale at retail" and "retail sale" in RCW  
25 82.04.050(14).

26       **Sec. 3.** RCW 82.04.190 and 2010 c 111 s 202 and 2010 c 106 s 204  
27 are each reenacted and amended to read as follows:

28       "Consumer" means the following:

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

35       (a) Resale as tangible personal property in the regular course of  
36 business;

1 (b) Incorporating such property as an ingredient or component of  
2 real or personal property when installing, repairing, cleaning,  
3 altering, imprinting, improving, constructing, or decorating such real  
4 or personal property of or for consumers;

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

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

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

19 (2)(a) Any person engaged in any business activity taxable under  
20 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
21 uses any competitive telephone service, ancillary services, or  
22 telecommunications service as those terms are defined in RCW 82.04.065,  
23 other than for resale in the regular course of business; (c) any person  
24 who purchases, acquires, or uses any service defined in RCW  
25 82.04.050(2) (a) or (g), other than for resale in the regular course of  
26 business or for the purpose of satisfying the person's obligations  
27 under an extended warranty as defined in RCW 82.04.050(7); (d) any  
28 person who (~~purchases, acquires, or uses any amusement and recreation~~  
29 ~~service defined in RCW 82.04.050(3)(a))~~ makes a purchase meeting the  
30 definition of "sale at retail" and "retail sale" under RCW  
31 82.04.050(15), other than for resale in the regular course of business;  
32 (e) any person who purchases or acquires an extended warranty as  
33 defined in RCW 82.04.050(7) other than for resale in the regular course  
34 of business; and (f) any person who is an end user of software. For  
35 purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who  
36 purchases or otherwise acquires prewritten computer software, who  
37 provides services described in RCW 82.04.050(6)(b) and who will charge

1 consumers for the right to access and use the prewritten computer  
2 software, is not an end user of the prewritten computer software;

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

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

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

33 (6) Any person engaged in the business of constructing, repairing,  
34 decorating, or improving new or existing buildings or other structures  
35 under, upon, or above real property of or for the United States, any  
36 instrumentality thereof, or a county or city housing authority created  
37 pursuant to chapter 35.82 RCW, including the installing or attaching of  
38 any article of tangible personal property therein or thereto, whether



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

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

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

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

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

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

34 (b) For purposes of consuming the service described in RCW  
35 82.04.050(6)(b) in producing for sale a new product, but only if such  
36 service becomes a component of the new product. For purposes of this  
37 subsection (10), "product" means a digital product, an article of

1 tangible personal property, or the service described in RCW  
2 82.04.050(6)(b);

3 (11)(a) Any end user of a digital product or digital code.  
4 "Consumer" does not include any person who is not an end user of a  
5 digital product or a digital code and purchases, acquires, owns, holds,  
6 or uses any digital product or digital code for purposes of consuming  
7 the digital product or digital code in producing for sale a new  
8 product, but only if the digital product or digital code becomes a  
9 component of the new product. A digital code becomes a component of a  
10 new product if the digital good or digital automated service acquired  
11 through the use of the digital code becomes incorporated into a new  
12 product. For purposes of this subsection, "product" has the same  
13 meaning as in subsection (10) of this section.

14 (b)(i) For purposes of this subsection, "end user" means any  
15 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives  
16 by contract a digital product for further commercial broadcast,  
17 rebroadcast, transmission, retransmission, licensing, relicensing,  
18 distribution, redistribution or exhibition of the product, in whole or  
19 in part, to others. A person that purchases digital products or  
20 digital codes for the purpose of giving away such products or codes  
21 will not be considered to have engaged in the distribution or  
22 redistribution of such products or codes and will be treated as an end  
23 user;

24 (ii) If a purchaser of a digital code does not receive the  
25 contractual right to further redistribute, after the digital code is  
26 redeemed, the underlying digital product to which the digital code  
27 relates, then the purchaser of the digital code is an end user. If the  
28 purchaser of the digital code receives the contractual right to further  
29 redistribute, after the digital code is redeemed, the underlying  
30 digital product to which the digital code relates, then the purchaser  
31 of the digital code is not an end user. A purchaser of a digital code  
32 who has the contractual right to further redistribute the digital code  
33 is an end user if that purchaser does not have the right to further  
34 redistribute, after the digital code is redeemed, the underlying  
35 digital product to which the digital code relates; and

36 (12) Any person who provides services described in RCW  
37 82.04.050(9). Any such person is a consumer with respect to the  
38 purchase, acquisition, or use of the tangible personal property that

1 the person provides along with an operator in rendering services  
2 defined as a retail sale in RCW 82.04.050(9). Any such person may also  
3 be a consumer under other provisions of this section.

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

6 The tax imposed by RCW 82.08.020 (~~shall~~) does not apply to (~~the~~  
7 ~~sale of amusement and recreation services, or personal services~~  
8 ~~specified in RCW 82.04.050(3)(g))~~ sales defined as a sale at retail  
9 and retail sale under RCW 82.04.050 (3)(g) or (15), by a nonprofit  
10 youth organization, as defined in RCW 82.04.4271, to members of the  
11 organization; nor shall the tax apply to physical fitness classes  
12 provided by a local government.

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

15 For the purposes of this chapter:

16 (1) The meaning ascribed to words and phrases in chapters 82.04 and  
17 82.08 RCW, insofar as applicable, has full force and effect with  
18 respect to taxes imposed under the provisions of this chapter.  
19 "Consumer," in addition to the meaning ascribed to it in chapters 82.04  
20 and 82.08 RCW insofar as applicable, also means any person who  
21 distributes or displays, or causes to be distributed or displayed, any  
22 article of tangible personal property, except newspapers, the primary  
23 purpose of which is to promote the sale of products or services. With  
24 respect to property distributed to persons within this state by a  
25 consumer as defined in this subsection (1), the use of the property is  
26 deemed to be by such consumer.

27 (2) "Extended warranty" has the same meaning as in RCW  
28 82.04.050(7).

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

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

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

12 (b) For the purposes of (a) of this subsection, the terms "client,"  
13 "covered employee," "professional employer agreement," and  
14 "professional employer organization" have the same meanings as in RCW  
15 82.04.540.

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

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

21 (a) With respect to tangible personal property, except for natural  
22 gas and manufactured gas, the first act within this state by which the  
23 taxpayer takes or assumes dominion or control over the article of  
24 tangible personal property (as a consumer), and include installation,  
25 storage, withdrawal from storage, distribution, or any other act  
26 preparatory to subsequent actual use or consumption within this state;

27 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
28 first act within this state after the service has been performed by  
29 which the taxpayer takes or assumes dominion or control over the  
30 article of tangible personal property upon which the service was  
31 performed (as a consumer), and includes installation, storage,  
32 withdrawal from storage, distribution, or any other act preparatory to  
33 subsequent actual use or consumption of the article within this state;

34 (c) With respect to an extended warranty, the first act within this  
35 state after the extended warranty has been acquired by which the  
36 taxpayer takes or assumes dominion or control over the article of  
37 tangible personal property to which the extended warranty applies, and

1 includes installation, storage, withdrawal from storage, distribution,  
2 or any other act preparatory to subsequent actual use or consumption of  
3 the article within this state;

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

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

11 (f) With respect to a service defined as a retail sale in RCW  
12 82.04.050(6)(b), the first act within this state by which the taxpayer,  
13 as a consumer, accesses the prewritten computer software;

14 (g) With respect to a service defined as a retail sale in RCW  
15 82.04.050(2)(g), the first act within this state after the service has  
16 been performed by which the taxpayer, as a consumer, views, accesses,  
17 downloads, possesses, stores, opens, manipulates, or otherwise uses or  
18 enjoys the digital good upon which the service was performed; and

19 (h) With respect to natural gas or manufactured gas, the use of  
20 which is taxable under RCW 82.12.022, including gas that is also  
21 taxable under the authority of RCW 82.14.230, the first act within this  
22 state by which the taxpayer consumes the gas by burning the gas or  
23 storing the gas in the taxpayer's own facilities for later consumption  
24 by the taxpayer.

25 (7)(a) "Value of the article used" is the purchase price for the  
26 article of tangible personal property, the use of which is taxable  
27 under this chapter. The term also includes, in addition to the  
28 purchase price, the amount of any tariff or duty paid with respect to  
29 the importation of the article used. In case the article used is  
30 acquired by lease or by gift or is extracted, produced, or manufactured  
31 by the person using the same or is sold under conditions wherein the  
32 purchase price does not represent the true value thereof, the value of  
33 the article used is determined as nearly as possible according to the  
34 retail selling price at place of use of similar products of like  
35 quality and character under such rules as the department may prescribe.

36 (b) In case the articles used are acquired by bailment, the value  
37 of the use of the articles so used must be in an amount representing a  
38 reasonable rental for the use of the articles so bailed, determined as

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

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

29 (d) In the case of articles manufactured or produced by the user  
30 and used in the manufacture or production of products sold or to be  
31 sold to the department of defense of the United States, the value of  
32 the articles used is determined according to the value of the  
33 ingredients of such articles.

34 (e) In the case of an article manufactured or produced for purposes  
35 of serving as a prototype for the development of a new or improved  
36 product, the value of the article used is determined by: (i) The  
37 retail selling price of such new or improved product when first offered

1 for sale; or (ii) the value of materials incorporated into the  
2 prototype in cases in which the new or improved product is not offered  
3 for sale.

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

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

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

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

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

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

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

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

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

14 (d) Extended warranty; or

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

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

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

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

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

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

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

35 (2) The provisions of this chapter do not apply in respect to the  
36 use of any article of tangible personal property, extended warranty,  
37 digital good, digital code, digital automated service, or service  
38 taxable under RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~) or (6)(b), if



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

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

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

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

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

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

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

32 (4)(a) Except as provided in (b) of this subsection (4), the tax is  
33 levied and must be collected in an amount equal to the value of the  
34 article used, value of the digital good or digital code used, value of  
35 the extended warranty used, or value of the service used by the  
36 taxpayer, multiplied by the applicable rates in effect for the retail  
37 sales tax under RCW 82.08.020.

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

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

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

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

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

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

29 ~~((4) This chapter does not apply to the donation of amusement and  
30 recreation services without intervening use to a nonprofit organization  
31 or state or local governmental entity, to the use by a nonprofit  
32 organization or state or local governmental entity of amusement and  
33 recreation services, or to the subsequent use of the services by a  
34 person to whom the services are donated or bailed in furtherance of the  
35 purpose for which the services were originally donated. As used in  
36 this subsection, "amusement and recreation services" has the meaning in  
37 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 upon  
4 the use in this state of tangible personal property, extended warranty,  
5 digital good, digital code, digital automated service, or services  
6 defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~)  
7 or (6)(b), in the amount that the present user thereof or his or her  
8 bailor or donor has paid a legally imposed retail sales or use tax with  
9 respect to such property, extended warranty, digital good, digital  
10 code, digital automated service, or service defined as a retail sale in  
11 RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~) or (6)(b) to any other state,  
12 possession, territory, or commonwealth of the United States, any  
13 political subdivision thereof, the District of Columbia, and any  
14 foreign country or political subdivision thereof.

15       **Sec. 9.** RCW 82.12.040 and 2011 1st sp.s. c 20 s 103 are each  
16 amended to read as follows:

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

1 state, and must keep the rules current with future court  
2 interpretations of the Constitution of the United States.

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

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

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

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

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

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

36 (ii) The taking of orders; or

37 (iii) The processing of payments; and

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

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

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

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

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

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

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

35 (a) "Federal credit union" means a credit union organized and  
36 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 and  
5 operating under the laws of another state or United States territory or  
6 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 on  
15 the acquisition of tangible personal property or sales tax on the sale  
16 of or charges made for labor and/or services, in accordance with all of  
17 the applicable provisions of this title. Any taxpayer that uses a  
18 direct pay permit shall remit state and local sales or use tax directly  
19 to the department. The agreement by the purchaser to remit tax  
20 directly to the department, rather than pay sales or use tax to the  
21 seller, relieves the seller of the obligation to collect sales or use  
22 tax and requires the buyer to pay use tax on the tangible personal  
23 property and sales tax on the sale of or charges made for labor and/or  
24 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 imposed  
29 under chapter 82.08 or 82.12 RCW in excess of ten million dollars per  
30 calendar year. For the purposes of this section, "tax liability" means  
31 the amount required to be remitted to the department for taxes  
32 administered under this chapter, except for the taxes imposed or  
33 authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33  
34 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 taxpayer

1 who transacts business in two or more locations may submit one  
2 application to cover the multiple locations.

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

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

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

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

1 (5) A direct pay permit is subject to revocation by the director at  
2 any time the department determines that the taxpayer has violated any  
3 provision of this section or that revocation would be in the best  
4 interests of collecting the taxes due under this title. The notice of  
5 revocation must be in writing and is effective either as of the end of  
6 the taxpayer's next normal reporting period or a date deemed  
7 appropriate by the director and identified in the revocation notice.  
8 The taxpayer may petition the director for reconsideration of a  
9 revocation and reinstatement of the permit.

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

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

19 (a) Purchases of meals or beverages;

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

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

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

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

32 NEW SECTION. **Sec. 12.** RCW 82.12.02917 (Exemptions--Use of  
33 amusement and recreation services by nonprofit youth organization) and  
34 1999 c 358 s 7 are each repealed.

35 NEW SECTION. **Sec. 13.** The repeal in section 12 of this act does  
36 not affect any existing right acquired or liability or obligation



1 incurred under the statute repealed or under any rule or order adopted  
2 under that statute nor does it affect any proceedings instituted under  
3 the statute repealed.

4 NEW SECTION. **Sec. 14.** This act takes effect January 1, 2015.

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