

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5089

60th Legislature
2007 Regular Session

Passed by the Senate February 2, 2007
YEAS 45 NAYS 3

President of the Senate

Passed by the House March 16, 2007
YEAS 76 NAYS 15

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5089** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

1 **Sec. 101.** RCW 82.32.020 and 2003 1st sp.s. c 13 s 16 are each
2 amended to read as follows:

3 For the purposes of this chapter:

4 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
5 the words and phrases "tax year," "taxable year," "person," "company,"
6 "gross proceeds of sales," "gross income of the business," "business,"
7 "engaging in business," "successor," "gross operating revenue," "gross
8 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
9 "extended warranty," and "value of products" shall apply equally to the
10 provisions of this chapter.

11 (2) The definitions in this subsection apply throughout this
12 chapter, unless the context clearly requires otherwise.

13 (a) "Agreement" means the streamlined sales and use tax agreement.

14 (b) "Associate member" means a petitioning state that is found to
15 be in compliance with the agreement and changes to its laws, rules, or
16 other authorities necessary to bring it into compliance are not in
17 effect, but are scheduled to take effect on or before January 1, 2008.
18 The petitioning states, by majority vote, may also grant associate
19 member status to a petitioning state that does not receive an
20 affirmative vote of three-fourths of the petitioning states upon a
21 finding that the state has achieved substantial compliance with the
22 terms of the agreement as a whole, but not necessarily each required
23 provision, measured qualitatively, and there is a reasonable
24 expectation that the state will achieve compliance by January 1, 2008.

25 (c) "Certified automated system" means software certified under the
26 agreement to calculate the tax imposed by each jurisdiction on a
27 transaction, determine the amount of tax to remit to the appropriate
28 state, and maintain a record of the transaction.

29 (d) "Certified service provider" means an agent certified under the
30 agreement to perform all of the seller's sales and use tax functions,
31 other than the seller's obligation to remit tax on its own purchases.

32 (e)(i) "Member state" means a state that:

33 (A) Has petitioned for membership in the agreement and submitted a
34 certificate of compliance; and

35 (B) Before the effective date of the agreement, has been found to
36 be in compliance with the requirements of the agreement by an
37 affirmative vote of three-fourths of the other petitioning states; or

1 (C) After the effective date of the agreement, has been found to be
2 in compliance with the agreement by a three-fourths vote of the entire
3 governing board of the agreement.

4 (ii) Membership by reason of (e)(i)(A) and (B) of this subsection
5 is effective on the first day of a calendar quarter at least sixty days
6 after at least ten states comprising at least twenty percent of the
7 total population, as determined by the 2000 federal census, of all
8 states imposing a state sales tax have petitioned for membership and
9 have either been found in compliance with the agreement or have been
10 found to be an associate member under section 704 of the agreement.

11 (iii) Membership by reason of (e)(i)(A) and (C) of this subsection
12 is effective on the state's proposed date of entry or the first day of
13 the calendar quarter after its petition is approved by the governing
14 board, whichever is later, and is at least sixty days after its
15 petition is approved.

16 (f) "Model 1 seller" means a seller that has selected a certified
17 service provider as its agent to perform all the seller's sales and use
18 tax functions, other than the seller's obligation to remit tax on its
19 own purchases.

20 (g) "Model 2 seller" means a seller that has selected a certified
21 automated system to perform part of its sales and use tax functions,
22 but retains responsibility for remitting the tax.

23 (h) "Model 3 seller" means a seller that has sales in at least five
24 member states, has total annual sales revenue of at least five hundred
25 million dollars, has a proprietary system that calculates the amount of
26 tax due each jurisdiction, and has entered into a performance agreement
27 with the member states that establishes a tax performance standard for
28 the seller. As used in this subsection (2)(h), a seller includes an
29 affiliated group of sellers using the same proprietary system.

30 (i) "Source" means the location in which the sale or use of
31 tangible personal property, an extended warranty, or a service, subject
32 to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
33 occur.

34 **Sec. 102.** RCW 82.08.037 and 2004 c 153 s 302 are each amended to
35 read as follows:

36 (1) A seller is entitled to a credit or refund for sales taxes

1 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
2 166, as amended or renumbered as of January 1, 2003.

3 (2) For purposes of this section, "bad debts" does not include:

4 (a) Amounts due on property that remains in the possession of the
5 seller until the full purchase price is paid;

6 (b) Expenses incurred in attempting to collect debt; and

7 (c) Repossessed property.

8 (3) If a credit or refund of sales tax is taken for a bad debt and
9 the debt is subsequently collected in whole or in part, the tax on the
10 amount collected must be paid and reported on the return filed for the
11 period in which the collection is made.

12 (4) Payments on a previously claimed bad debt are applied first
13 proportionally to the taxable price of the property or service and the
14 sales or use tax thereon, and secondly to interest, service charges,
15 and any other charges.

16 (5) If the seller uses a certified service provider as defined in
17 RCW (~~(82.58.010)~~) 82.32.020 to administer its sales tax
18 responsibilities, the certified service provider may claim, on behalf
19 of the seller, the credit or refund allowed by this section. The
20 certified service provider must credit or refund the full amount
21 received to the seller.

22 (6) The department shall allow an allocation of bad debts among
23 member states to the streamlined sales tax agreement, as defined in RCW
24 82.58.010(1), if the books and records of the person claiming bad debts
25 support the allocation.

26 **Sec. 103.** RCW 82.12.037 and 2004 c 153 s 304 are each amended to
27 read as follows:

28 (1) A seller is entitled to a credit or refund for use taxes
29 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
30 166, as amended or renumbered as of January 1, 2003.

31 (2) For purposes of this section, "bad debts" does not include:

32 (a) Amounts due on property that remains in the possession of the
33 seller until the full purchase price is paid;

34 (b) Expenses incurred in attempting to collect debt; and

35 (c) Repossessed property.

36 (3) If a credit or refund of use tax is taken for a bad debt and

1 the debt is subsequently collected in whole or in part, the tax on the
2 amount collected must be paid and reported on the return filed for the
3 period in which the collection is made.

4 (4) Payments on a previously claimed bad debt are applied first
5 proportionally to the taxable price of the property or service and the
6 sales or use tax thereon, and secondly to interest, service charges,
7 and any other charges.

8 (5) If the seller uses a certified service provider as defined in
9 RCW (~~82.58.010~~) 82.32.020 to administer its use tax responsibilities,
10 the certified service provider may claim, on behalf of the seller, the
11 credit or refund allowed by this section. The certified service
12 provider must credit or refund the full amount received to the seller.

13 (6) The department shall allow an allocation of bad debts among
14 member states to the streamlined sales and use tax agreement, as
15 defined in RCW 82.58.010(1), if the books and records of the person
16 claiming bad debts support the allocation.

17 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.32
18 RCW, to be codified between RCW 82.32.020 and 82.32.030, to read as
19 follows:

20 For purposes of compliance with the requirements of the agreement
21 only, and unless the context requires otherwise, the terms "product"
22 and "products" refer to tangible personal property, services, extended
23 warranties, and anything else that can be sold or used.

24 **Sec. 105.** RCW 82.02.210 and 2003 c 168 s 1 are each amended to
25 read as follows:

26 (1) It is the intent of the legislature that Washington join as a
27 member state in the streamlined sales and use tax agreement referred to
28 in chapter 82.58 RCW. The agreement provides for a simpler and more
29 uniform sales and use tax structure among states that have sales and
30 use taxes. The intent of the legislature is to bring Washington's
31 sales and use tax system into compliance with the agreement so that
32 Washington may join as a member state and have a voice in the
33 development and administration of the system, and to substantially
34 reduce the burden of tax compliance on sellers.

35 (2) Chapter 168, Laws of 2003 does not include changes to
36 Washington law that may be required in the future and that are not

1 fully developed under the agreement. These include, but are not
2 limited to, changes relating to on-line registration, reporting, and
3 remitting of payments by businesses for sales and use tax purposes,
4 monetary allowances for sellers and their agents, sourcing, and amnesty
5 for businesses registering under the agreement.

6 (3) It is the intent of the legislature that the provisions of
7 (~~chapters 82.08 and 82.12 RCW~~) this title relating to the
8 administration and collection of state and local sales and use taxes be
9 interpreted and applied consistently with the agreement.

10 (4) The department of revenue shall report to the fiscal committees
11 of the legislature on January 1, 2004, and each January 1st thereafter,
12 on the development of the agreement and shall recommend changes to the
13 sales and use tax structure and propose legislation as may be necessary
14 to keep Washington in compliance with the agreement.

15 **PART II**
16 **REGISTRATION**

17 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
18 RCW to read as follows:

19 (1) A seller, by written agreement, may appoint a person to
20 represent the seller as its agent. The seller's agent has authority to
21 register the seller with the department under RCW 82.32.030. An agent
22 may also be a certified service provider, with authority to perform all
23 the seller's sales and use tax functions, except that the seller
24 remains responsible for remitting the tax on its own purchases.

25 (2) The seller or its agent must provide the department with a copy
26 of the written agreement upon request.

27 **Sec. 202.** RCW 82.32.030 and 1996 c 111 s 2 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (2) and (3) of this section,
30 if any person engages in any business or performs any act upon which a
31 tax is imposed by the preceding chapters, he or she shall, under such
32 rules as the department of revenue shall prescribe, apply for and
33 obtain from the department a registration certificate. Such
34 registration certificate shall be personal and nontransferable and
35 shall be valid as long as the taxpayer continues in business and pays

1 the tax accrued to the state. In case business is transacted at two or
2 more separate places by one taxpayer, a separate registration
3 certificate for each place at which business is transacted with the
4 public shall be required. Each certificate shall be numbered and shall
5 show the name, residence, and place and character of business of the
6 taxpayer and such other information as the department of revenue deems
7 necessary and shall be posted in a conspicuous place at the place of
8 business for which it is issued. Where a place of business of the
9 taxpayer is changed, the taxpayer must return to the department the
10 existing certificate, and a new certificate will be issued for the new
11 place of business. No person required to be registered under this
12 section shall engage in any business taxable hereunder without first
13 being so registered. The department, by rule, may provide for the
14 issuance of certificates of registration to temporary places of
15 business.

16 (2) Unless the person is a dealer as defined in RCW 9.41.010,
17 registration under this section is not required if the following
18 conditions are met:

19 (a) A person's value of products, gross proceeds of sales, or gross
20 income of the business, from all business activities taxable under
21 chapter 82.04 RCW, is less than twelve thousand dollars per year;

22 (b) The person's gross income of the business from all activities
23 taxable under chapter 82.16 RCW is less than twelve thousand dollars
24 per year;

25 (c) The person is not required to collect or pay to the department
26 of revenue any other tax or fee which the department is authorized to
27 collect; and

28 (d) The person is not otherwise required to obtain a license
29 subject to the master application procedure provided in chapter 19.02
30 RCW.

31 (3) All persons who agree to collect and remit sales and use tax to
32 the department under the agreement must register through the central
33 registration system authorized under the agreement. Persons required
34 to register under subsection (1) of this section are not relieved of
35 that requirement because of registration under this subsection (3).

36 (4) Persons registered under subsection (3) of this section who are
37 not required to register under subsection (1) of this section and who

1 are not otherwise subject to the requirements of chapter 19.02 RCW are
2 not subject to the fees imposed by RCW 19.02.075.

3 **PART III**

4 **MONETARY ALLOWANCES AND VENDOR COMPENSATION**

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

7 (1) The department shall adopt by rule monetary allowances for
8 certified service providers, model 2 sellers, and model 3 sellers and
9 all other sellers that are not model 1 or model 2 sellers. The
10 department may be guided by the provisions for monetary allowances
11 adopted by the governing board of the agreement to determine the amount
12 of the allowances and the conditions under which they are allowed. The
13 monetary allowances must be reasonable and provide adequate incentive
14 for certified service providers and sellers to collect and remit sales
15 and use taxes under the agreement. Monetary allowances will be funded
16 solely from state sales and use taxes.

17 (2) For certified service providers, the monetary allowance may
18 include a base rate that applies to taxable transactions processed by
19 the certified service provider. Additionally, for a period not to
20 exceed twenty-four months following a seller's registration under RCW
21 82.32.030(3), the monetary allowance may include a percentage of tax
22 revenue generated by the seller.

23 (3) For model 2 sellers, the monetary allowance may include a base
24 rate and a percentage of revenue generated by a seller registering
25 under RCW 82.32.030(3), but shall not exceed a period of twenty-four
26 months.

27 (4) For model 3 sellers and all other sellers that are not model 1
28 sellers or model 2 sellers, the monetary allowance may include a
29 percentage of tax revenue generated by a seller registering under RCW
30 82.32.030(3), but shall not exceed a period of twenty-four months.

31 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.32
32 RCW to read as follows:

33 (1) The department may adopt by rule vendor compensation for
34 sellers collecting and remitting sales and use taxes. The vendor
35 compensation may include a base rate or a percentage of tax revenue

1 collected by the seller, and may vary by type of seller. The
2 department may be guided by the findings of the cost of collection
3 study performed under the agreement, by cost of collection studies
4 performed by the department, and by vendor compensation provided by
5 other states, to determine reasonable vendor compensation for sellers
6 for the costs to collect and remit sales and use taxes. Vendor
7 compensation will be funded solely from state sales and use taxes.

8 (2) A seller is not entitled to vendor compensation while the
9 seller or its certified service provider receives a monetary allowance
10 under section 301 of this act.

11 **PART IV**
12 **AMNESTY**

13 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
14 RCW to read as follows:

15 (1) No assessment for taxes imposed or authorized under chapters
16 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be
17 made by the department against a seller who:

18 (a) Within twelve months of the effective date of this state
19 becoming a member state of the agreement, registers under RCW
20 82.32.030(3) to collect and remit to the department the applicable
21 taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW
22 on sales made to buyers in this state in accordance with the terms of
23 the agreement, if the seller was not otherwise registered in this state
24 in the twelve-month period preceding the effective date of this state
25 becoming a member state of the agreement; and

26 (b) Continues to be registered and continues to collect and remit
27 to the department the applicable taxes imposed or authorized under
28 chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-
29 six months, absent the seller's fraud or intentional misrepresentation
30 of a material fact.

31 (2) The provisions of subsection (1) of this section preclude an
32 assessment for taxes imposed or authorized under chapters 82.08, 82.12,
33 and 82.14 RCW for sales made to buyers during the period the seller was
34 not registered in this state.

35 (3) The provisions of this section do not apply to any seller with
36 respect to:

1 (a) Any matter or matters for which the seller, before registering
2 to collect and remit the applicable taxes imposed or authorized under
3 chapters 82.08, 82.12, and 82.14 RCW, received notice from the
4 department of the commencement of an audit and which audit is not yet
5 finally resolved including any related administrative and judicial
6 processes;

7 (b) Taxes imposed or authorized under chapters 82.08, 82.12, and
8 82.14 RCW and collected or remitted to the department by the seller; or

9 (c) That seller's liability for taxes imposed or authorized under
10 chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a
11 buyer.

12 (4) The limitation periods for making an assessment or correction
13 of an assessment prescribed in RCW 82.32.050(3) and 82.32.100(3) do not
14 run during the thirty-six month period in subsection (1)(b) of this
15 section.

16 **PART V**
17 **SOURCING**

18 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
19 RCW to read as follows:

20 (1) Except as provided in subsections (5) through (7) of this
21 section, for purposes of collecting or paying sales or use taxes to the
22 appropriate jurisdictions, all sales at retail shall be sourced in
23 accordance with this subsection and subsections (2) through (4) of this
24 section.

25 (a) When tangible personal property, an extended warranty, or a
26 service defined as a retail sale under RCW 82.04.050 is received by the
27 purchaser at a business location of the seller, the sale is sourced to
28 that business location.

29 (b) When the tangible personal property, extended warranty, or a
30 service defined as a retail sale under RCW 82.04.050 is not received by
31 the purchaser at a business location of the seller, the sale is sourced
32 to the location where receipt by the purchaser or the purchaser's
33 donee, designated as such by the purchaser, occurs, including the
34 location indicated by instructions for delivery to the purchaser or
35 donee, known to the seller.

1 (c) When (a) and (b) of this subsection do not apply, the sale is
2 sourced to the location indicated by an address for the purchaser that
3 is available from the business records of the seller that are
4 maintained in the ordinary course of the seller's business when use of
5 this address does not constitute bad faith.

6 (d) When (a), (b), and (c) of this subsection do not apply, the
7 sale is sourced to the location indicated by an address for the
8 purchaser obtained during the consummation of the sale, including the
9 address of a purchaser's payment instrument, if no other address is
10 available, when use of this address does not constitute bad faith.

11 (e) When (a), (b), (c), or (d) of this subsection do not apply,
12 including the circumstance where the seller is without sufficient
13 information to apply those provisions, then the location shall be
14 determined by the address from which tangible personal property was
15 shipped, from which the digital good or the computer software delivered
16 electronically was first available for transmission by the seller, or
17 from which the extended warranty or service defined as a retail sale
18 under RCW 82.04.050 was provided, disregarding for these purposes any
19 location that merely provided the digital transfer of the product sold.

20 (2) The lease or rental of tangible personal property, other than
21 property identified in subsection (3) or (4) of this section, shall be
22 sourced as provided in this subsection.

23 (a) For a lease or rental that requires recurring periodic
24 payments, the first periodic payment is sourced the same as a retail
25 sale in accordance with subsection (1) of this section. Periodic
26 payments made subsequent to the first payment are sourced to the
27 primary property location for each period covered by the payment. The
28 primary property location shall be as indicated by an address for the
29 property provided by the lessee that is available to the lessor from
30 its records maintained in the ordinary course of business, when use of
31 this address does not constitute bad faith. The property location is
32 not altered by intermittent use at different locations, such as use of
33 business property that accompanies employees on business trips and
34 service calls.

35 (b) For a lease or rental that does not require recurring periodic
36 payments, the payment is sourced the same as a retail sale in
37 accordance with subsection (1) of this section.

1 (c) This subsection (2) does not affect the imposition or
2 computation of sales or use tax on leases or rentals based on a lump
3 sum or accelerated basis, or on the acquisition of property for lease.

4 (3) The lease or rental of motor vehicles, trailers, semitrailers,
5 or aircraft that do not qualify as transportation equipment shall be
6 sourced as provided in this subsection.

7 (a) For a lease or rental that requires recurring periodic
8 payments, each periodic payment is sourced to the primary property
9 location. The primary property location is as indicated by an address
10 for the property provided by the lessee that is available to the lessor
11 from its records maintained in the ordinary course of business, when
12 use of this address does not constitute bad faith. This location is
13 not altered by intermittent use at different locations.

14 (b) For a lease or rental that does not require recurring periodic
15 payments, the payment is sourced the same as a retail sale in
16 accordance with subsection (1) of this section.

17 (c) This subsection does not affect the imposition or computation
18 of sales or use tax on leases or rentals based on a lump sum or
19 accelerated basis, or on the acquisition of property for lease.

20 (4) The retail sale, including lease or rental, of transportation
21 equipment shall be sourced the same as a retail sale in accordance with
22 subsection (1) of this section.

23 (5)(a) A purchaser of direct mail that is not a holder of a direct
24 pay permit shall provide to the seller in conjunction with the purchase
25 either a direct mail form or information that shows the jurisdictions
26 to which the direct mail is delivered to recipients.

27 (i) Upon receipt of the direct mail form, the seller is relieved of
28 all obligations to collect, pay, or remit the applicable tax and the
29 purchaser is obligated to pay or remit the applicable tax on a direct
30 pay basis. A direct mail form shall remain in effect for all future
31 sales of direct mail by the seller to the purchaser until it is revoked
32 in writing.

33 (ii) Upon receipt of information from the purchaser showing the
34 jurisdictions to which the direct mail is delivered to recipients, the
35 seller shall collect the tax according to the delivery information
36 provided by the purchaser. In the absence of bad faith, the seller is
37 relieved of any further obligation to collect tax on any transaction

1 where the seller has collected tax pursuant to the delivery information
2 provided by the purchaser.

3 (b) If the purchaser of direct mail does not have a direct pay
4 permit and does not provide the seller with either a direct mail form
5 or delivery information as required by (a) of this subsection, the
6 seller shall collect the tax according to subsection (1)(e) of this
7 section. This subsection does not limit a purchaser's obligation for
8 sales or use tax to any state to which the direct mail is delivered.

9 (c) If a purchaser of direct mail provides the seller with
10 documentation of direct pay authority, the purchaser is not required to
11 provide a direct mail form or delivery information to the seller.

12 (6) The following are sourced to the location at or from which
13 delivery is made to the consumer:

14 (a) A retail sale of watercraft;

15 (b) A retail sale of a modular home, manufactured home, or mobile
16 home; and

17 (c) A retail sale, excluding the lease and rental, of a motor
18 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
19 transportation equipment.

20 (7) A retail sale of the providing of telecommunications services
21 or ancillary services, as those terms are defined in RCW 82.04.065,
22 shall be sourced in accordance with RCW 82.32.520.

23 (8) The definitions in this subsection apply throughout this
24 section.

25 (a) "Delivered electronically" means delivered to the purchaser by
26 means other than tangible storage media.

27 (b) "Direct mail" means printed material delivered or distributed
28 by United States mail or other delivery service to a mass audience or
29 to addressees on a mailing list provided by the purchaser or at the
30 direction of the purchaser when the cost of the items are not billed
31 directly to the recipients. "Direct mail" includes tangible personal
32 property supplied directly or indirectly by the purchaser to the direct
33 mail seller for inclusion in the package containing the printed
34 material. "Direct mail" does not include multiple items of printed
35 material delivered to a single address.

36 (c) "Receive" and "receipt" mean taking possession of tangible
37 personal property, making first use of services, or taking possession

1 or making first use of digital goods, whichever comes first. "Receive"
2 and "receipt" do not include possession by a shipping company on behalf
3 of the purchaser.

4 (d) "Transportation equipment" means:

5 (i) Locomotives and railcars that are used for the carriage of
6 persons or property in interstate commerce;

7 (ii) Trucks and truck tractors with a gross vehicle weight rating
8 of ten thousand one pounds or greater, trailers, semitrailers, or
9 passenger buses that are:

10 (A) Registered through the international registration plan; and

11 (B) Operated under authority of a carrier authorized and
12 certificated by the United States department of transportation or
13 another federal authority to engage in the carriage of persons or
14 property in interstate commerce;

15 (iii) Aircraft that are operated by air carriers authorized and
16 certificated by the United States department of transportation or
17 another federal or foreign authority to engage in the carriage of
18 persons or property in interstate or foreign commerce; or

19 (iv) Containers designed for use on and component parts attached or
20 secured on the items described in (d)(i) through (iii) of this
21 subsection.

22 (9) In those instances where there is no obligation on the part of
23 a seller to collect or remit this state's sales or use tax, the use of
24 tangible personal property or of a service, subject to use tax, is
25 sourced to the place of first use in this state. The definition of use
26 in RCW 82.12.010 applies to this subsection.

27 **Sec. 502.** RCW 82.14.020 and 2005 c 514 s 111 are each amended to
28 read as follows:

29 For purposes of this chapter:

30 (1) ~~((A retail sale consisting solely of the sale of tangible~~
31 ~~personal property shall be deemed to have occurred at the retail outlet~~
32 ~~at or from which delivery is made to the consumer;~~

33 ~~(2) A retail sale consisting essentially of the performance of~~
34 ~~personal, business, or professional services shall be deemed to have~~
35 ~~occurred at the place at which such services were primarily performed,~~
36 ~~except that for the performance of a tow truck service, as defined in~~

1 ~~RCW 46.55.010, the retail sale shall be deemed to have occurred at the~~
2 ~~place of business of the operator of the tow truck service;~~

3 ~~(3) A retail sale consisting of the rental of tangible personal~~
4 ~~property shall be deemed to have occurred (a) in the case of a rental~~
5 ~~involving periodic rental payments, at the place of primary use by the~~
6 ~~lessee during the period covered by each payment, or (b) in all other~~
7 ~~cases, at the place of first use by the lessee;~~

8 ~~(4) A retail sale within the scope of RCW 82.04.050(2), and a~~
9 ~~retail sale of taxable personal property to be installed by the seller~~
10 ~~shall be deemed to have occurred at the place where the labor and~~
11 ~~services involved were primarily performed;~~

12 ~~(5)(a) A retail sale consisting of the providing to a consumer of~~
13 ~~telephone service, as defined in RCW 82.04.065, other than a sale of~~
14 ~~tangible personal property under subsection (1) of this section or a~~
15 ~~rental of tangible personal property under subsection (3) of this~~
16 ~~section or a sale of mobile telecommunications services, shall be~~
17 ~~deemed to have occurred at the situs of the telephone or other~~
18 ~~instrument through which the telephone service is rendered;~~

19 ~~(b) A retail sale consisting of the providing of telecommunications~~
20 ~~services shall be sourced in accordance with RCW 82.32.520;~~

21 ~~(6) A retail sale of linen and uniform supply services is deemed to~~
22 ~~occur as provided in RCW 82.08.0202;~~

23 ~~(7) A retail sale consisting of an extended warranty shall be~~
24 ~~deemed to have occurred at the business location of the seller if the~~
25 ~~extended warranty is received by the purchaser at that location. If an~~
26 ~~extended warranty is not received by the purchaser at the business~~
27 ~~location of the seller, a retail sale of an extended warranty shall be~~
28 ~~deemed to have occurred at the location where receipt by the buyer~~
29 ~~occurs;~~

30 ~~(8)) "City" means a city or town;~~

31 ~~((9)) (2) The meaning ascribed to words and phrases in chapters~~
32 ~~82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as~~
33 ~~applicable, shall have full force and effect with respect to taxes~~
34 ~~imposed under authority of this chapter;~~

35 ~~((10)) (3) "Taxable event" shall mean any retail sale, or any~~
36 ~~use, upon which a state tax is imposed pursuant to chapter 82.08 or~~
37 ~~82.12 RCW, as they now exist or may hereafter be amended: PROVIDED,~~

1 HOWEVER, That the term shall not include a retail sale taxable pursuant
2 to RCW 82.08.150, as now or hereafter amended;

3 ((~~11~~)) (4) "Treasurer or other legal depository" shall mean the
4 treasurer or legal depository of a county or city.

5 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.14
6 RCW to read as follows:

7 Sales and use taxes authorized under this chapter shall be sourced
8 in accordance with section 501 of this act.

9 **PART VI**

10 **CONFIDENTIALITY AND PRIVACY PROTECTIONS FOR PERSONS USING**
11 **CERTIFIED SERVICE PROVIDERS**

12 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.32
13 RCW to read as follows:

14 (1) A fundamental precept of allowing the use of a certified
15 service provider is to preserve the privacy of consumers by protecting
16 their anonymity. With very limited exceptions, a certified service
17 provider shall perform its tax calculation, remittance, and reporting
18 functions without retaining the personally identifiable information of
19 consumers.

20 (2) The department shall provide public notification to consumers,
21 including purchasers claiming exemption from tax, of its practices
22 relating to the collection, use, and retention of personally
23 identifiable information.

24 (3) When personally identifiable information that has been
25 collected and retained is no longer required to ensure the validity of
26 exemptions from taxation by reason of the consumer's status or the
27 intended use of the goods or services purchased, the information shall
28 no longer be retained by the state of Washington.

29 (4) When personally identifiable information regarding an
30 individual is retained by or on behalf of the state of Washington, this
31 state shall provide reasonable access for the individual to his or her
32 own information and a right to correct any inaccurately recorded
33 information.

34 (5) If anyone other than a member state of the agreement, or other
35 than a person authorized by Washington law or the agreement, seeks to

1 discover personally identifiable information, the state of Washington
2 shall make a reasonable and timely effort to notify the individual of
3 the request.

4 (6) The provisions of this section may be enforced by petitioning
5 the superior court of Thurston county for injunctive relief.

6 **PART VII**
7 **TAXABILITY MATRIX AND OTHER INFORMATION PROVIDED BY**
8 **THE DEPARTMENT OF REVENUE**

9 NEW SECTION. **Sec. 701.** A new section is added to chapter 82.32
10 RCW to read as follows:

11 (1) The department shall complete a taxability matrix maintained by
12 the member states of the agreement in downloadable format. The matrix
13 contains terms defined in the agreement. The department shall provide
14 notice of changes in the taxability of products or services listed in
15 the matrix.

16 (2) Sellers and certified service providers are relieved from
17 liability to the state and to local jurisdictions for having charged or
18 collected the incorrect amount of sales or use tax if the error
19 resulted from reliance on erroneous information provided by the
20 department in the taxability matrix.

21 NEW SECTION. **Sec. 702.** A new section is added to chapter 82.32
22 RCW to read as follows:

23 (1) The department shall review software submitted to the governing
24 board of the agreement for certification as a certified automated
25 system under the terms of the agreement. The review shall include a
26 determination of whether the software adequately classifies this
27 state's product-based sales tax exemptions. Upon completing the
28 review, the department shall certify to the governing board its
29 acceptance or rejection of the classifications made by the system.

30 (2) Certified service providers and model 2 sellers shall be held
31 harmless and are not liable for sales or use taxes, nor interest or
32 penalties on those taxes, not collected due to reliance on the
33 certification of the department under subsection (1) of this section.

34 (3) The relief from liability provided to certified service
35 providers and model 2 sellers under subsection (2) of this section does

1 not apply with respect to the incorrect classification of an item or
2 transaction into a product-based exemption certified by the department
3 unless that item or transaction is contained in a listing of items or
4 transactions within a product definition approved by the governing
5 board or the department.

6 (4) If the department determines that an item or transaction is
7 incorrectly classified as to its taxability, it shall notify the
8 certified service provider or model 2 seller of the incorrect
9 classification. The certified service provider or model 2 seller has
10 ten days to revise the classification after receipt of notice from the
11 department. Upon the expiration of the ten days, the certified service
12 provider or model 2 seller is liable for the failure to collect the
13 correct amount of sales or use taxes.

14 NEW SECTION. **Sec. 703.** A new section is added to chapter 82.32
15 RCW to read as follows:

16 (1) Purchasers are relieved from liability for tax, interest, and
17 penalty for having failed to pay the correct amount of sales or use tax
18 in any of the following circumstances:

19 (a) A purchaser's seller or certified service provider relied on
20 erroneous data provided by the department on tax rates, boundaries,
21 taxing jurisdiction assignments, or in the taxability matrix completed
22 by the department pursuant to section 701 of this act;

23 (b) A purchaser holding a direct pay permit relied on erroneous
24 data provided by the department on tax rates, boundaries, taxing
25 jurisdiction assignments, or in the taxability matrix completed by the
26 department pursuant to section 701 of this act;

27 (c) A purchaser relied on erroneous data provided by the department
28 in the taxability matrix completed by the department pursuant to
29 section 701 of this act; or

30 (d) A purchaser relied on erroneous data provided by the department
31 on tax rates, boundaries, or taxing jurisdiction assignments.

32 (2) For purposes of this section, "penalty" means an amount imposed
33 for noncompliance that is not fraudulent, willful, or intentional that
34 is in addition to the correct amount of sales or use tax and interest.

35 **PART VIII**

1 **DELIVERY CHARGES**

2 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.08
3 RCW to read as follows:

4 When computing the tax levied by RCW 82.08.020, if a shipment
5 consists of taxable tangible personal property and nontaxable tangible
6 personal property, and delivery charges are included in the sales
7 price, the seller must collect and remit tax on the percentage of
8 delivery charges allocated to the taxable tangible personal property,
9 but does not have to collect and remit tax on the percentage allocated
10 to exempt tangible personal property. The seller may use either of the
11 following percentages to determine the taxable portion of the delivery
12 charges:

13 (1) A percentage based on the total sales price of the taxable
14 tangible personal property compared to the total sales price of all
15 tangible personal property in the shipment; or

16 (2) A percentage based on the total weight of the taxable tangible
17 personal property compared to the total weight of all tangible personal
18 property in the shipment.

19 NEW SECTION. **Sec. 802.** A new section is added to chapter 82.12
20 RCW to read as follows:

21 When computing the tax levied by RCW 82.12.020, if a shipment
22 consists of taxable tangible personal property and nontaxable tangible
23 personal property, and delivery charges are included in the purchase
24 price, the consumer must remit tax or the retailer must collect and
25 remit tax on the percentage of delivery charges allocated to the
26 taxable tangible personal property, but does not have to remit or
27 collect and remit tax on the percentage allocated to exempt tangible
28 personal property. The consumer or retailer may use either of the
29 following percentages to determine the taxable portion of the delivery
30 charges:

31 (1) A percentage based on the total purchase price of the taxable
32 tangible personal property compared to the total purchase price of all
33 tangible personal property in the shipment; or

34 (2) A percentage based on the total weight of the taxable tangible
35 personal property compared to the total weight of all tangible personal
36 property in the shipment.

1 manufacturing, as well as jurisdictions that house a concentration of
2 these industries and have made zoning decisions, infrastructure
3 investments, bonding decisions, and land use policy decisions based on
4 point of origin sales tax rules in place before the effective date of
5 this section, and the mitigation provided by sections 901 through 905
6 of this act is intended to help offset those negative implications; and

7 (h) It is important that the state of Washington maintain its
8 supply of industrial land for present and future economic development
9 activities, and local governments taking advantage of the mitigation
10 provided by sections 901 through 905 of this act should strive to
11 maintain the supply of industrial land available for economic
12 development efforts.

13 (2) The legislature intends that the streamlined sales and use tax
14 mitigation account established in section 902 of this act have the sole
15 objective of mitigating, for negatively affected local taxing
16 jurisdictions, the net local sales tax revenue reductions incurred as
17 a result of section 503 of this act and the chapter ..., Laws of 2007
18 (this act) amendments to RCW 82.14.020.

19 NEW SECTION. **Sec. 902.** A new section is added to chapter 82.14
20 RCW to read as follows:

21 (1) The streamlined sales and use tax mitigation account is created
22 in the state treasury. The state treasurer shall transfer into the
23 account from the general fund amounts as directed in section 903 of
24 this act. Expenditures from the account may be used only for the
25 purpose of mitigating the negative fiscal impacts to local taxing
26 jurisdictions as a result of section 503 of this act and the chapter
27 ..., Laws of 2007 (this act) amendments to RCW 82.14.020.

28 (2) Beginning July 1, 2008, the state treasurer, as directed by the
29 department, shall distribute the funds in the streamlined sales and use
30 tax mitigation account to local taxing jurisdictions in accordance with
31 section 903 of this act.

32 (3) The definitions in this subsection apply throughout this
33 section and RCW 82.14.390 and section 903 of this act.

34 (a) "Agreement" means the same as in RCW 82.32.020.

35 (b) "Local taxing jurisdiction" means counties, cities,
36 transportation authorities under RCW 82.14.045, public facilities

1 districts under chapters 36.100 and 35.57 RCW, public transportation
2 benefit areas under RCW 82.14.440, and regional transit authorities
3 under chapter 81.112 RCW, that impose a sales and use tax.

4 (c) "Loss" or "losses" means the local sales and use tax revenue
5 reduction to a local taxing jurisdiction resulting from the sourcing
6 provisions in section 502 of this act and the chapter ..., Laws of 2007
7 (this act) amendments to RCW 82.14.020.

8 (d) "Net loss" or "net losses" means a loss offset by any voluntary
9 compliance revenue.

10 (e) "Voluntary compliance revenue" means the local sales tax
11 revenue gain to each local taxing jurisdiction reported to the
12 department from persons registering through the central registration
13 system authorized under the agreement.

14 (f) "Working day" has the same meaning as in RCW 82.45.180.

15 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.14
16 RCW to read as follows:

17 (1) In order to mitigate local sales tax revenue net losses as a
18 result of the sourcing provisions of the streamlined sales and use tax
19 agreement under this title, the state treasurer shall transfer into the
20 streamlined sales and use tax mitigation account from the general fund
21 the sum of thirty-one million six hundred thousand dollars on July 1,
22 2008. On July 1, 2009, and each July 1st thereafter, the state
23 treasurer shall transfer into the streamlined sales and use tax
24 mitigation account from the general fund the sum required to mitigate
25 actual net losses as determined under this section.

26 (2) Beginning July 1, 2008, and continuing until the department
27 determines annual losses under subsection (3) of this section, the
28 department shall determine the amount of local sales tax net loss each
29 local taxing jurisdiction experiences as a result of the sourcing
30 provisions of the streamlined sales and use tax agreement under this
31 title each calendar quarter. The department shall determine losses by
32 analyzing and comparing data from tax return information and tax
33 collections for each local taxing jurisdiction before and after the
34 effective date of this section on a calendar quarter basis. The
35 department's analysis may be revised and supplemented in consultation
36 with the oversight committee as provided in subsection (4) of this
37 section. To determine net losses, the department shall reduce losses

1 by the amount of voluntary compliance revenue for the calendar quarter
2 analyzed. Beginning December 31, 2008, distributions shall be made
3 quarterly from the streamlined sales and use tax mitigation account by
4 the state treasurer, as directed by the department, to each local
5 taxing jurisdiction, other than public facilities districts for losses
6 in respect to taxes imposed under the authority of RCW 82.14.390, in an
7 amount representing its net losses for the previous calendar quarter.
8 Distributions shall be made on the last working day of each calendar
9 quarter and shall cease when distributions under subsection (3) of this
10 section begin.

11 (3)(a) By December 31, 2009, or such later date the department in
12 consultation with the oversight committee determines that sufficient
13 data is available, the department shall determine each local taxing
14 jurisdiction's annual loss. The department shall determine annual
15 losses by comparing at least twelve months of data from tax return
16 information and tax collections for each local taxing jurisdiction
17 before and after the effective date of this section. The department
18 shall not be required to determine annual losses on a recurring basis,
19 but may make any adjustments to annual losses as it deems proper as a
20 result of the annual reviews provided in (b) of this subsection.
21 Beginning the calendar quarter in which the department determines
22 annual losses, and each calendar quarter thereafter, distributions
23 shall be made from the streamlined sales and use tax mitigation account
24 by the state treasurer on the last working day of the calendar quarter,
25 as directed by the department, to each local taxing jurisdiction, other
26 than public facilities districts for losses in respect to taxes imposed
27 under the authority of RCW 82.14.390, in an amount representing one-
28 fourth of the jurisdiction's annual loss reduced by voluntary
29 compliance revenue reported during the previous calendar quarter.

30 (b) The department's analysis of annual losses shall be reviewed by
31 December 1st of each year and may be revised and supplemented in
32 consultation with the oversight committee as provided in subsection (4)
33 of this section.

34 (4) The department shall convene an oversight committee to assist
35 in the determination of losses. The committee shall include one
36 representative of one city whose revenues are increased, one
37 representative of one city whose revenues are reduced, one
38 representative of one county whose revenues are increased, one

1 representative of one county whose revenues are decreased, one
2 representative of one transportation authority under RCW 82.14.045
3 whose revenues are increased, and one representative of one
4 transportation authority under RCW 82.14.045 whose revenues are
5 reduced, as a result of section 503 of this act and the chapter ...,
6 Laws of 2007 (this act) amendments to RCW 82.14.020. Beginning July 1,
7 2008, the oversight committee shall meet quarterly with the department
8 to review and provide additional input and direction on the
9 department's analyses of losses. Local taxing jurisdictions may also
10 present to the oversight committee additional information to improve
11 the department's analyses of the jurisdiction's loss. Beginning
12 January 1, 2010, the oversight committee shall meet at least annually
13 with the department by December 1st.

14 (5) The rule-making provisions of chapter 34.05 RCW do not apply to
15 this section.

16 **Sec. 904.** RCW 82.14.390 and 2006 c 298 s 1 are each amended to
17 read as follows:

18 (1) Except as provided in subsection (~~((6))~~) (7) of this section,
19 the governing body of a public facilities district (a) created before
20 July 31, 2002, under chapter 35.57 or 36.100 RCW that commences
21 construction of a new regional center, or improvement or rehabilitation
22 of an existing new regional center, before January 1, 2004, or (b)
23 created before July 1, 2006, under chapter 35.57 RCW in a county or
24 counties in which there are no other public facilities districts on
25 June 7, 2006, and in which the total population in the public
26 facilities district is greater than ninety thousand that commences
27 construction of a new regional center before February 1, 2007, may
28 impose a sales and use tax in accordance with the terms of this
29 chapter. The tax is in addition to other taxes authorized by law and
30 shall be collected from those persons who are taxable by the state
31 under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable
32 event within the public facilities district. The rate of tax shall not
33 exceed 0.033 percent of the selling price in the case of a sales tax or
34 value of the article used in the case of a use tax.

35 (2)(a) The governing body of a public facilities district imposing
36 a sales and use tax under the authority of this section may increase
37 the rate of tax up to 0.037 percent if, within three fiscal years of

1 the effective date of this section, the department determines that, as
2 a result of section 503 of this act and the chapter ..., Laws of 2007
3 (this act) amendments to RCW 82.14.020, a public facilities district's
4 sales and use tax collections for fiscal years after the effective date
5 of this section have been reduced by a net loss of at least 0.50
6 percent from the fiscal year before the effective date of this section.
7 The fiscal year in which this section becomes effective is the first
8 fiscal year after the effective date of this section.

9 (b) The department shall determine sales and use tax collection net
10 losses under this section as provided in section 903 (2) and (3) of
11 this act. The department shall provide written notice of its
12 determinations to public facilities districts. Determinations by the
13 department of a public facilities district's sales and use tax
14 collection net losses as a result of section 503 of this act and the
15 chapter ..., Laws of 2007 (this act) amendments to RCW 82.14.020 are
16 final and not appealable.

17 (c) A public facilities district may increase its rate of tax after
18 it has received written notice from the department as provided in (b)
19 of this subsection. The increase in the rate of tax must be made in
20 0.001 percent increments and must be the least amount necessary to
21 mitigate the net loss in sales and use tax collections as a result of
22 section 503 of this act and the chapter ..., Laws of 2007 (this act)
23 amendments to RCW 82.14.020. The increase in the rate of tax is
24 subject to RCW 82.14.055.

25 (3) The tax imposed under subsection (1) of this section shall be
26 deducted from the amount of tax otherwise required to be collected or
27 paid over to the department of revenue under chapter 82.08 or 82.12
28 RCW. The department of revenue shall perform the collection of such
29 taxes on behalf of the county at no cost to the public facilities
30 district.

31 ~~((+3))~~ (4) No tax may be collected under this section before
32 August 1, 2000. The tax imposed in this section shall expire when the
33 bonds issued for the construction of the regional center and related
34 parking facilities are retired, but not more than twenty-five years
35 after the tax is first collected.

36 ~~((+4))~~ (5) Moneys collected under this section shall only be used
37 for the purposes set forth in RCW 35.57.020 and must be matched with an
38 amount from other public or private sources equal to thirty-three

1 percent of the amount collected under this section, provided that
2 amounts generated from nonvoter approved taxes authorized under chapter
3 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
4 RCW shall not constitute a public or private source. For the purpose
5 of this section, public or private sources includes, but is not limited
6 to cash or in-kind contributions used in all phases of the development
7 or improvement of the regional center, land that is donated and used
8 for the siting of the regional center, cash or in-kind contributions
9 from public or private foundations, or amounts attributed to private
10 sector partners as part of a public and private partnership agreement
11 negotiated by the public facilities district.

12 ~~((+5))~~ (6) The combined total tax levied under this section shall
13 not be greater than ~~((0.033))~~ 0.037 percent. If both a public
14 facilities district created under chapter 35.57 RCW and a public
15 facilities district created under chapter 36.100 RCW impose a tax under
16 this section, the tax imposed by a public facilities district created
17 under chapter 35.57 RCW shall be credited against the tax imposed by a
18 public facilities district created under chapter 36.100 RCW.

19 ~~((+6))~~ (7) A public facilities district created under chapter
20 36.100 RCW is not eligible to impose the tax under this section if the
21 legislative authority of the county where the public facilities
22 district is located has imposed a sales and use tax under RCW
23 82.14.0485 or 82.14.0494.

24 NEW SECTION. Sec. 905. A new section is added to chapter 44.28
25 RCW to read as follows:

26 (1) During calendar year 2010, the joint legislative audit and
27 review committee shall review the mitigation provisions for local
28 taxing jurisdictions under RCW 82.14.390 and section 903 of this act to
29 determine the extent to which the mitigation provisions address the
30 needs of local taxing jurisdictions for which the sourcing provisions
31 in section 503 of this act and the chapter ..., Laws of 2007 (this act)
32 amendments to RCW 82.14.020 had the greatest fiscal impact. In
33 conducting the study, the committee shall solicit input from the
34 oversight committee created in section 903 of this act and additional
35 local taxing jurisdictions as the committee determines. The department
36 of revenue and the state treasurer shall provide the committee with any
37 data within their purview that the committee considers necessary to

1 conduct the review. The committee shall report to the legislature the
2 results of its findings, and any recommendations for changes to the
3 mitigation provisions under RCW 82.14.390 and section 903 of this act,
4 by December 31, 2010.

5 (2) The definitions in section 902 of this act apply to this
6 section.

7 (3) This section expires July 1, 2011.

8 **PART X**

9 **TELECOMMUNICATIONS PROVISIONS**

10 **Sec. 1001.** RCW 82.32.520 and 2004 c 153 s 403 are each amended to
11 read as follows:

12 (1) Except for the defined telecommunications services listed in
13 subsection (3) of this section, the sale of ((telephone))
14 telecommunications service as defined in RCW 82.04.065 sold on a call-
15 by-call basis shall be sourced to (a) each level of taxing jurisdiction
16 where the call originates and terminates in that jurisdiction or (b)
17 each level of taxing jurisdiction where the call either originates or
18 terminates and in which the service address is also located.

19 (2) Except for the defined telecommunications services listed in
20 subsection (3) of this section, a sale of ((telephone))
21 telecommunications service as defined in RCW 82.04.065 sold on a basis
22 other than a call-by-call basis, is sourced to the customer's place of
23 primary use.

24 (3) The sales of ((telephone)) telecommunications service as
25 defined in RCW 82.04.065 that are listed in subsection (3) of this
26 section shall be sourced to each level of taxing jurisdiction as
27 follows:

28 (a) A sale of mobile telecommunications services, other than air-
29 ground radiotelephone service and prepaid calling service, is sourced
30 to the customer's place of primary use as required by RCW 82.08.066.

31 (b) A sale of postpaid calling service is sourced to the
32 origination point of the telecommunications signal as first identified
33 by either (i) the seller's telecommunications system, or (ii)
34 information received by the seller from its service provider, where the
35 system used to transport such signals is not that of the seller.

1 (c) A sale of prepaid calling service or a sale of a prepaid
2 wireless calling service is sourced as follows:

3 (i) When a prepaid calling service is received by the purchaser at
4 a business location of the seller, the sale is sourced to that business
5 location;

6 (ii) When a prepaid calling service is not received by the
7 purchaser at a business location of the seller, the sale is sourced to
8 the location where receipt by the purchaser or the purchaser's donee,
9 designated as such by the purchaser, occurs, including the location
10 indicated by instructions for delivery to the purchaser or donee, known
11 to the seller;

12 (iii) When (c)(i) and (ii) of this subsection do not apply, the
13 sale is sourced to the location indicated by an address for the
14 purchaser that is available from the business records of the seller
15 that are maintained in the ordinary course of the seller's business
16 when use of this address does not constitute bad faith;

17 (iv) When (c)(i), (ii), and (iii) of this subsection do not apply,
18 the sale is sourced to the location indicated by an address for the
19 purchaser obtained during the consummation of the sale, including the
20 address of a purchaser's payment instrument, if no other address is
21 available, when use of this address does not constitute bad faith;

22 (v) When (c)(i), (ii), (iii), and (iv) of this subsection do not
23 apply, including the circumstance where the seller is without
24 sufficient information to apply those provisions, then the location
25 shall be determined by the address from which tangible personal
26 property was shipped, from which the digital good or the computer
27 software delivered electronically was first available for transmission
28 by the seller, or from which the service defined as a retail sale under
29 RCW 82.04.050 was provided, disregarding for these purposes any
30 location that merely provided the digital transfer of the product sold;

31 (vi) In the case of a sale of (~~mobile telecommunications service~~
32 ~~that is a prepaid telecommunications~~) prepaid wireless calling
33 service, (c)(v) of this subsection shall include as an option the
34 location associated with the mobile telephone number.

35 (d) A sale of a private communication service is sourced as
36 follows:

37 (i) Service for a separate charge related to a customer channel

1 termination point is sourced to each level of jurisdiction in which
2 such customer channel termination point is located.

3 (ii) Service where all customer termination points are located
4 entirely within one jurisdiction or levels of jurisdiction is sourced
5 in such jurisdiction in which the customer channel termination points
6 are located.

7 (iii) Service for segments of a channel between two customer
8 channel termination points located in different jurisdictions and which
9 segment of channel are separately charged is sourced fifty percent in
10 each level of jurisdiction in which the customer channel termination
11 points are located.

12 (iv) Service for segments of a channel located in more than one
13 jurisdiction or levels of jurisdiction and which segments are not
14 separately billed is sourced in each jurisdiction based on the
15 percentage determined by dividing the number of customer channel
16 termination points in the jurisdiction by the total number of customer
17 channel termination points.

18 (4) The definitions in this subsection apply throughout this
19 chapter.

20 (a) "Air-ground radiotelephone service" means air-ground radio
21 service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered
22 as of January 1, 2003, in which common carriers are authorized to offer
23 and provide radio telecommunications service for hire to subscribers in
24 aircraft.

25 (b) "Call-by-call basis" means any method of charging for
26 telecommunications services where the price is measured by individual
27 calls.

28 (c) "Communications channel" means a physical or virtual path of
29 communications over which signals are transmitted between or among
30 customer channel termination points.

31 (d) "Customer" means the person or entity that contracts with the
32 seller of telecommunications services. If the end user of
33 telecommunications services is not the contracting party, the end user
34 of the telecommunications service is the customer of the
35 telecommunications service. "Customer" does not include a reseller of
36 telecommunications service or for mobile telecommunications service of
37 a serving carrier under an agreement to serve the customer outside the
38 home service provider's licensed service area.

1 (e) "Customer channel termination point" means the location where
2 the customer either inputs or receives the communications.

3 (f) "End user" means the person who uses the telecommunications
4 service. In the case of an entity, the term end user means the
5 individual who uses the service on behalf of the entity.

6 (g) "Home service provider" means the same as that term is defined
7 in RCW 82.04.065.

8 (h) "Mobile telecommunications service" means the same as that term
9 is defined in RCW 82.04.065.

10 (i) "Place of primary use" means the street address representative
11 of where the customer's use of the telecommunications service primarily
12 occurs, which must be the residential street address or the primary
13 business street address of the customer. In the case of mobile
14 telecommunications services, "place of primary use" must be within the
15 licensed service area of the home service provider.

16 (j) "Postpaid calling service" means the telecommunications service
17 obtained by making a payment on a call-by-call basis either through the
18 use of a credit card or payment mechanism such as a bank card, travel
19 card, credit card, or debit card, or by charge made to which a
20 telephone number that is not associated with the origination or
21 termination of the telecommunications service. A postpaid calling
22 service includes a telecommunications service, except a prepaid
23 wireless calling service, that would be a prepaid calling service
24 except it is not exclusively a telecommunications service.

25 (k) "Prepaid calling service" means the right to access exclusively
26 telecommunications services, which must be paid for in advance and
27 which enables the origination of calls using an access number and/or
28 authorization code, whether manually or electronically dialed, and that
29 is sold in predetermined units or dollars of which the number declines
30 with use in a known amount.

31 (l) "Prepaid wireless calling service" means a telecommunications
32 service that provides the right to use mobile wireless service as well
33 as other nontelecommunications services, including the download of
34 digital products delivered electronically, content, and ancillary
35 services, which must be paid for in advance that is sold in
36 predetermined units or dollars of which the number declines with use in
37 a known amount.

1 (m) "Private communication service" means a telecommunications
2 service that entitles the customer to exclusive or priority use of a
3 communications channel or group of channels between or among
4 termination points, regardless of the manner in which such channel or
5 channels are connected, and includes switching capacity, extension
6 lines, stations, and any other associated services that are provided in
7 connection with the use of such channel or channels.

8 ~~((m))~~ (n) "Service address" means:

9 (i) The location of the telecommunications equipment to which a
10 customer's call is charged and from which the call originates or
11 terminates, regardless of where the call is billed or paid;

12 (ii) If the location in ~~((m))~~ (n)(i) of this subsection is not
13 known, the origination point of the signal of the telecommunications
14 services first identified by either the seller's telecommunications
15 system or in information received by the seller from its service
16 provider, where the system used to transport such signals is not that
17 of the seller;

18 (iii) If the locations in ~~((m))~~ (n)(i) and (ii) of this
19 subsection are not known, the location of the customer's place of
20 primary use.

21 **Sec. 1002.** RCW 82.04.065 and 2002 c 67 s 2 are each amended to
22 read as follows:

23 (1) "Competitive telephone service" means the providing by any
24 person of telecommunications equipment or apparatus, or service related
25 to that equipment or apparatus such as repair or maintenance service,
26 if the equipment or apparatus is of a type which can be provided by
27 persons that are not subject to regulation as telephone companies under
28 Title 80 RCW and for which a separate charge is made.

29 ~~(2) ("Network telephone service" means the providing by any person
30 of access to a telephone network, telephone network switching service,
31 toll service, or coin telephone services, or the providing of
32 telephonic, video, data, or similar communication or transmission for
33 hire, via a telephone network, toll line or channel, cable, microwave,
34 or similar communication or transmission system. "Network telephone
35 service" includes the provision of transmission to and from the site of
36 an internet provider via a telephone network, toll line or channel,
37 cable, microwave, or similar communication or transmission system.~~

1 ~~"Network telephone service" does not include the providing of~~
2 ~~competitive telephone service, the providing of cable television~~
3 ~~service, the providing of broadcast services by radio or television~~
4 ~~stations, nor the provision of internet service as defined in RCW~~
5 ~~82.04.297, including the reception of dial in connection, provided at~~
6 ~~the site of the internet service provider.~~

7 ~~(3) "Telephone service" means competitive telephone service or~~
8 ~~network telephone service, or both, as defined in subsections (1) and~~
9 ~~(2) of this section.~~

10 ~~(4) "Telephone business" means the business of providing network~~
11 ~~telephone service, as defined in subsection (2) of this section. It~~
12 ~~includes cooperative or farmer line telephone companies or associations~~
13 ~~operating an exchange.~~

14 ~~(5)) "Ancillary services" means services that are associated with~~
15 ~~or incidental to the provision of "telecommunications services,"~~
16 ~~including but not limited to "detailed telecommunications billing,"~~
17 ~~"directory assistance," "vertical service," and "voice mail services."~~

18 ~~(3) "Conference-bridging service" means an ancillary service that~~
19 ~~links two or more participants of an audio or video conference call and~~
20 ~~may include the provision of a telephone number. "Conference-bridging~~
21 ~~service" does not include the telecommunications services used to reach~~
22 ~~the conference bridge.~~

23 ~~(4) "Detailed telecommunications billing service" means an~~
24 ~~ancillary service of separately stating information pertaining to~~
25 ~~individual calls on a customer's billing statement.~~

26 ~~(5) "Directory assistance" means an ancillary service of providing~~
27 ~~telephone number information, and/or address information.~~

28 ~~(6) "Vertical service" means an ancillary service that is offered~~
29 ~~in connection with one or more telecommunications services, that offers~~
30 ~~advanced calling features that allow customers to identify callers and~~
31 ~~to manage multiple calls and call connections, including conference-~~
32 ~~bridging services.~~

33 ~~(7) "Voice mail service" means an ancillary service that enables~~
34 ~~the customer to store, send, or receive recorded messages. "Voice mail~~
35 ~~service" does not include any vertical services that the customer may~~
36 ~~be required to have in order to use the voice mail service.~~

37 ~~(8) "Telecommunications service" means the electronic transmission,~~
38 ~~conveyance, or routing of voice, data, audio, video, or any other~~

1 information or signals to a point, or between or among points.
2 "Telecommunications service" includes such transmission, conveyance, or
3 routing in which computer processing applications are used to act on
4 the form, code, or protocol of the content for purposes of
5 transmission, conveyance, or routing without regard to whether such
6 service is referred to as voice over internet protocol services or is
7 classified by the federal communications commission as enhanced or
8 value added. "Telecommunications service" does not include:

9 (a) Data processing and information services that allow data to be
10 generated, acquired, stored, processed, or retrieved and delivered by
11 an electronic transmission to a purchaser where such purchaser's
12 primary purpose for the underlying transaction is the processed data or
13 information;

14 (b) Installation or maintenance of wiring or equipment on a
15 customer's premises;

16 (c) Tangible personal property;

17 (d) Advertising, including but not limited to directory
18 advertising;

19 (e) Billing and collection services provided to third parties;

20 (f) Internet access service;

21 (g) Radio and television audio and video programming services,
22 regardless of the medium, including the furnishing of transmission,
23 conveyance, and routing of such services by the programming service
24 provider. Radio and television audio and video programming services
25 include but are not limited to cable service as defined in 47 U.S.C.
26 Sec. 522(6) and audio and video programming services delivered by
27 commercial mobile radio service providers, as defined in section 20.3,
28 Title 47 C.F.R.;

29 (h) Ancillary services; or

30 (i) Digital products delivered electronically, including but not
31 limited to software, music, video, reading materials, or ring tones.

32 (9) "800 service" means a telecommunications service that allows a
33 caller to dial a toll-free number without incurring a charge for the
34 call. The service is typically marketed under the name "800," "855,"
35 "866," "877," and "888" toll-free calling, and any subsequent numbers
36 designated by the federal communications commission.

37 (10) "900 service" means an inbound toll telecommunications service
38 purchased by a subscriber that allows the subscriber's customers to

1 call in to the subscriber's prerecorded announcement or live service.
2 "900 service" does not include the charge for: Collection services
3 provided by the seller of the telecommunications services to the
4 subscriber, or services or products sold by the subscriber to the
5 subscriber's customer. The service is typically marketed under the
6 name "900" service, and any subsequent numbers designated by the
7 federal communications commission.

8 (11) "Fixed wireless service" means a telecommunications service
9 that provides radio communication between fixed points.

10 (12) "Mobile wireless service" means a telecommunications service
11 that is transmitted, conveyed, or routed regardless of the technology
12 used, whereby the origination and/or termination points of the
13 transmission, conveyance, or routing are not fixed, including, by way
14 of example only, telecommunications services that are provided by a
15 commercial mobile radio service provider.

16 (13) "Paging service" means a telecommunications service that
17 provides transmission of coded radio signals for the purpose of
18 activating specific pagers; these transmissions may include messages
19 and/or sounds.

20 (14) "Prepaid calling service" means the right to access
21 exclusively telecommunications services, which must be paid for in
22 advance and which enable the origination of calls using an access
23 number or authorization code, whether manually or electronically
24 dialed, and that is sold in predetermined units or dollars of which the
25 number declines with use in a known amount.

26 (15) "Prepaid wireless calling service" means a telecommunications
27 service that provides the right to use mobile wireless service as well
28 as other nontelecommunications services including the download of
29 digital products delivered electronically, content, and ancillary
30 services, which must be paid for in advance and that is sold in
31 predetermined units or dollars of which the number declines with use in
32 a known amount.

33 (16) "Private communications service" means a telecommunications
34 service that entitles the customer to exclusive or priority use of a
35 communications channel or group of channels between or among
36 termination points, regardless of the manner in which the channel or
37 channels are connected, and includes switching capacity, extension

1 lines, stations, and any other associated services that are provided in
2 connection with the use of the channel or channels.

3 (17) "Value-added nonvoice data service" means a service that
4 otherwise meets the definition of telecommunications services in which
5 computer processing applications are used to act on the form, content,
6 code, or protocol of the information or data primarily for a purpose
7 other than transmission, conveyance, or routing.

8 (18) "Charges for mobile telecommunications services" means any
9 charge for, or associated with, the provision of commercial mobile
10 radio service, as defined in section 20.3, Title 47 C.F.R. as in effect
11 on June 1, 1999, or any charge for, or associated with, a service
12 provided as an adjunct to a commercial mobile radio service, regardless
13 of whether individual transmissions originate or terminate within the
14 licensed service area of the mobile telecommunications service
15 provider.

16 ~~((+6+))~~ (19) "Customer" means: (a) The person or entity that
17 contracts with the home service provider for mobile telecommunications
18 services; or (b) the end user of the mobile telecommunications service,
19 if the end user of mobile telecommunications services is not the
20 contracting party, but this subsection ~~((+6+))~~ (19)(b) applies only for
21 the purpose of determining the place of primary use. The term does not
22 include a reseller of mobile telecommunications service, or a serving
23 carrier under an arrangement to serve the customer outside the home
24 service provider's licensed service area.

25 ~~((+7+))~~ (20) "Designated data base provider" means a person
26 representing all the political subdivisions of the state that is:

27 (a) Responsible for providing an electronic data base prescribed in
28 4 U.S.C. Sec. 119(a) if the state has not provided an electronic data
29 base; and

30 (b) Approved by municipal and county associations or leagues of the
31 state whose responsibility it would otherwise be to provide a data base
32 prescribed by 4 U.S.C. Secs. 116 through 126.

33 ~~((+8+))~~ (21) "Enhanced zip code" means a United States postal zip
34 code of nine or more digits.

35 ~~((+9+))~~ (22) "Home service provider" means the facilities-based
36 carrier or reseller with whom the customer contracts for the provision
37 of mobile telecommunications services.

1 ~~((10))~~ (23) "Licensed service area" means the geographic area in
2 which the home service provider is authorized by law or contract to
3 provide commercial mobile radio service to the customer.

4 ~~((11))~~ (24) "Mobile telecommunications service" means commercial
5 mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in
6 effect on June 1, 1999.

7 ~~((12))~~ (25) "Mobile telecommunications service provider" means a
8 home service provider or a serving carrier.

9 ~~((13))~~ (26) "Place of primary use" means the street address
10 representative of where the customer's use of the mobile
11 telecommunications service primarily occurs, which must be:

12 (a) The residential street address or the primary business street
13 address of the customer; and

14 (b) Within the licensed service area of the home service provider.

15 ~~((14))~~ (27) "Prepaid telephone calling service" means the right
16 to purchase exclusively telecommunications services that must be paid
17 for in advance, that enables the origination of calls using an access
18 number, authorization code, or both, whether manually or electronically
19 dialed, if the remaining amount of units of service that have been
20 prepaid is known by the provider of the prepaid service on a continuous
21 basis.

22 ~~((15))~~ (28) "Reseller" means a provider who purchases
23 telecommunications services from another telecommunications service
24 provider and then resells, uses as a component part of, or integrates
25 the purchased services into a mobile telecommunications service.
26 "Reseller" does not include a serving carrier with whom a home service
27 provider arranges for the services to its customers outside the home
28 service provider's licensed service area.

29 ~~((16))~~ (29) "Serving carrier" means a facilities-based carrier
30 providing mobile telecommunications service to a customer outside a
31 home service provider's or reseller's licensed service area.

32 ~~((17))~~ (30) "Taxing jurisdiction" means any of the several
33 states, the District of Columbia, or any territory or possession of the
34 United States, any municipality, city, county, township, parish,
35 transportation district, or assessment jurisdiction, or other political
36 subdivision within the territorial limits of the United States with the
37 authority to impose a tax, charge, or fee.

1 **Sec. 1003.** RCW 82.04.065 and 1997 c 304 s 5 are each amended to
2 read as follows:

3 (1) "Competitive telephone service" means the providing by any
4 person of telecommunications equipment or apparatus, or service related
5 to that equipment or apparatus such as repair or maintenance service,
6 if the equipment or apparatus is of a type which can be provided by
7 persons that are not subject to regulation as telephone companies under
8 Title 80 RCW and for which a separate charge is made.

9 (2) (~~"Network telephone service" means the providing by any person~~
10 ~~of access to a local telephone network, local telephone network~~
11 ~~switching service, toll service, or coin telephone services, or the~~
12 ~~providing of telephonic, video, data, or similar communication or~~
13 ~~transmission for hire, via a local telephone network, toll line or~~
14 ~~channel, cable, microwave, or similar communication or transmission~~
15 ~~system. "Network telephone service" includes interstate service,~~
16 ~~including toll service, originating from or received on~~
17 ~~telecommunications equipment or apparatus in this state if the charge~~
18 ~~for the service is billed to a person in this state. "Network~~
19 ~~telephone service" includes the provision of transmission to and from~~
20 ~~the site of an internet provider via a local telephone network, toll~~
21 ~~line or channel, cable, microwave, or similar communication or~~
22 ~~transmission system. "Network telephone service" does not include the~~
23 ~~providing of competitive telephone service, the providing of cable~~
24 ~~television service, the providing of broadcast services by radio or~~
25 ~~television stations, nor the provision of internet service as defined~~
26 ~~in RCW 82.04.297, including the reception of dial in connection,~~
27 ~~provided at the site of the internet service provider.~~

28 (3) ~~"Telephone service" means competitive telephone service or~~
29 ~~network telephone service, or both, as defined in subsections (1) and~~
30 ~~(2) of this section.~~

31 (4) ~~"Telephone business" means the business of providing network~~
32 ~~telephone service, as defined in subsection (2) of this section. It~~
33 ~~includes cooperative or farmer line telephone companies or associations~~
34 ~~operating an exchange)) "Ancillary services" means services that are~~
35 ~~associated with or incidental to the provision of "telecommunications~~
36 ~~services," including but not limited to "detailed telecommunications~~
37 ~~billing," "directory assistance," "vertical service," and "voice mail~~
38 ~~services."~~

1 (3) "Conference-bridging service" means an ancillary service that
2 links two or more participants of an audio or video conference call and
3 may include the provision of a telephone number. "Conference-bridging
4 service" does not include the telecommunications services used to reach
5 the conference bridge.

6 (4) "Detailed telecommunications billing service" means an
7 ancillary service of separately stating information pertaining to
8 individual calls on a customer's billing statement.

9 (5) "Directory assistance" means an ancillary service of providing
10 telephone number information, and/or address information.

11 (6) "Vertical service" means an ancillary service that is offered
12 in connection with one or more telecommunications services, that offers
13 advanced calling features that allow customers to identify callers and
14 to manage multiple calls and call connections, including conference-
15 bridging services.

16 (7) "Voice mail service" means an ancillary service that enables
17 the customer to store, send, or receive recorded messages. "Voice mail
18 service" does not include any vertical services that the customer may
19 be required to have in order to use the voice mail service.

20 (8) "Telecommunications service" means the electronic transmission,
21 conveyance, or routing of voice, data, audio, video, or any other
22 information or signals to a point, or between or among points.
23 "Telecommunications service" includes such transmission, conveyance, or
24 routing in which computer processing applications are used to act on
25 the form, code, or protocol of the content for purposes of
26 transmission, conveyance, or routing without regard to whether such
27 service is referred to as voice over internet protocol services or is
28 classified by the federal communications commission as enhanced or
29 value added. "Telecommunications service" does not include:

30 (a) Data processing and information services that allow data to be
31 generated, acquired, stored, processed, or retrieved and delivered by
32 an electronic transmission to a purchaser where such purchaser's
33 primary purpose for the underlying transaction is the processed data or
34 information;

35 (b) Installation or maintenance of wiring or equipment on a
36 customer's premises;

37 (c) Tangible personal property;

1 (d) Advertising, including but not limited to directory
2 advertising;

3 (e) Billing and collection services provided to third parties;

4 (f) Internet access service;

5 (g) Radio and television audio and video programming services,
6 regardless of the medium, including the furnishing of transmission,
7 conveyance, and routing of such services by the programming service
8 provider. Radio and television audio and video programming services
9 include but are not limited to cable service as defined in 47 U.S.C.
10 Sec. 522(6) and audio and video programming services delivered by
11 commercial mobile radio service providers, as defined in section 20.3,
12 Title 47 C.F.R.;

13 (h) Ancillary services; or

14 (i) Digital products delivered electronically, including but not
15 limited to software, music, video, reading materials, or ring tones.

16 (9) "800 service" means a telecommunications service that allows a
17 caller to dial a toll-free number without incurring a charge for the
18 call. The service is typically marketed under the name "800," "855,"
19 "866," "877," and "888" toll-free calling, and any subsequent numbers
20 designated by the federal communications commission.

21 (10) "900 service" means an inbound toll "telecommunications
22 service" purchased by a subscriber that allows the subscriber's
23 customers to call in to the subscriber's prerecorded announcement or
24 live service. "900 service" does not include the charge for:
25 Collection services provided by the seller of the telecommunications
26 services to the subscriber, or services or products sold by the
27 subscriber to the subscriber's customer. The service is typically
28 marketed under the name "900" service, and any subsequent numbers
29 designated by the federal communications commission.

30 (11) "Fixed wireless service" means a telecommunications service
31 that provides radio communication between fixed points.

32 (12) "Mobile wireless service" means a telecommunications service
33 that is transmitted, conveyed, or routed regardless of the technology
34 used, whereby the origination and/or termination points of the
35 transmission, conveyance, or routing are not fixed, including, by way
36 of example only, telecommunications services that are provided by a
37 commercial mobile radio service provider.

1 (13) "Paging service" means a telecommunications service that
2 provides transmission of coded radio signals for the purpose of
3 activating specific pagers; these transmissions may include messages
4 and/or sounds.

5 (14) "Prepaid calling service" means the right to access
6 exclusively telecommunications services, which must be paid for in
7 advance and which enable the origination of calls using an access
8 number or authorization code, whether manually or electronically
9 dialed, and that is sold in predetermined units or dollars of which the
10 number declines with use in a known amount.

11 (15) "Prepaid wireless calling service" means a telecommunications
12 service that provides the right to use mobile wireless service as well
13 as other nontelecommunications services including the download of
14 digital products delivered electronically, content, and ancillary
15 services, which must be paid for in advance and that is sold in
16 predetermined units or dollars of which the number declines with use in
17 a known amount.

18 (16) "Private communications service" means a telecommunications
19 service that entitles the customer to exclusive or priority use of a
20 communications channel or group of channels between or among
21 termination points, regardless of the manner in which the channel or
22 channels are connected, and includes switching capacity, extension
23 lines, stations, and any other associated services that are provided in
24 connection with the use of the channel or channels.

25 (17) "Value-added nonvoice data service" means a service that
26 otherwise meets the definition of telecommunications services in which
27 computer processing applications are used to act on the form, content,
28 code, or protocol of the information or data primarily for a purpose
29 other than transmission, conveyance, or routing.

30 **Sec. 1004.** RCW 82.04.050 and 2005 c 515 s 2 and 2005 c 514 s 101
31 are each reenacted and amended to read as follows:

32 (1) "Sale at retail" or "retail sale" means every sale of tangible
33 personal property (including articles produced, fabricated, or
34 imprinted) to all persons irrespective of the nature of their business
35 and including, among others, without limiting the scope hereof, persons
36 who install, repair, clean, alter, improve, construct, or decorate real

1 or personal property of or for consumers other than a sale to a person
2 who presents a resale certificate under RCW 82.04.470 and who:

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

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

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

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

23 (e) Purchases for the purpose of providing the property to
24 consumers as part of competitive telephone service, as defined in RCW
25 82.04.065. The term shall include every sale of tangible personal
26 property which is used or consumed or to be used or consumed in the
27 performance of any activity classified as a "sale at retail" or "retail
28 sale" even though such property is resold or utilized as provided in
29 (a), (b), (c), (d), or (e) of this subsection following such use. The
30 term also means every sale of tangible personal property to persons
31 engaged in any business which is taxable under RCW 82.04.280 (2) and
32 (7), 82.04.290, and 82.04.2908; or

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

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

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

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

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

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

1 (e) The sale of or charge made for labor and services rendered in
2 respect to automobile towing and similar automotive transportation
3 services, but not in respect to those required to report and pay taxes
4 under chapter 82.16 RCW;

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

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

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

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

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

35 (c) Credit bureau services;

36 (d) Automobile parking and storage garage services;

37 (e) Landscape maintenance and horticultural services but excluding
38 (i) horticultural services provided to farmers and (ii) pruning,

1 trimming, repairing, removing, and clearing of trees and brush near
2 electric transmission or distribution lines or equipment, if performed
3 by or at the direction of an electric utility;

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

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

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

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

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

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

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

24 (6) The term shall also include the sale of prewritten computer
25 software other than a sale to a person who presents a resale
26 certificate under RCW 82.04.470, regardless of the method of delivery
27 to the end user, but shall not include custom software or the
28 customization of prewritten computer software.

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

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

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

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

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

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

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

12 **Sec. 1005.** RCW 82.08.0289 and 2002 c 67 s 6 are each amended to
13 read as follows:

14 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

15 (a) (~~Network telephone service, other than toll service, to~~
16 ~~residential customers;~~

17 ~~(b) Network telephone service which is paid for by inserting coins~~
18 ~~in coin-operated telephones)) Local service;~~

19 (b) Coin-operated telephone service; and

20 (c) Mobile telecommunications services, including any toll service,
21 provided to a customer whose place of primary use is outside this
22 state.

23 (2) The definitions in RCW 82.04.065, as well as the definitions in
24 this subsection, apply to this section.

25 (a) (~~"Residential customer" means an individual subscribing to a~~
26 ~~residential class of telephone service)) "Local service" means
27 ancillary services and telecommunications service, other than toll
28 service, provided to an individual subscribing to a residential class
29 of telephone service.~~

30 (b) "Toll service" does not include customer access line charges
31 for access to a toll calling network.

32 (c) "Coin-operated telephone service" means a telecommunications
33 service paid for by inserting money into a telephone accepting direct
34 deposits of money to operate.

35 **Sec. 1006.** RCW 82.08.0289 and 1983 2nd ex.s. c 3 s 30 are each
36 amended to read as follows:

1 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

2 (a) (~~Network telephone service, other than toll service, to~~
3 ~~residential customers.~~

4 ~~(b) Network telephone service which is paid for by inserting coins~~
5 ~~in coin-operated telephones)) Local service; and~~

6 (b) Coin-operated telephone service.

7 (2) As used in this section:

8 (a) (~~"Network telephone service" has the meaning given in RCW~~
9 ~~82.04.065.~~

10 ~~(b) "Residential customer" means an individual subscribing to a~~
11 ~~residential class of telephone service)) "Local service" means~~

12 ancillary services and telecommunications service, as those terms are
13 defined in RCW 82.04.065, other than toll service, provided to an
14 individual subscribing to a residential class of telephone service.

15 ((~~e~~)) (b) "Toll service" does not include customer access line
16 charges for access to a toll calling network.

17 (c) "Coin-operated telephone service" means a telecommunications
18 service paid for by inserting money into a telephone accepting direct
19 deposits of money to operate.

20 **Sec. 1007.** RCW 82.04.060 and 2005 c 514 s 102 are each amended to
21 read as follows:

22 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of
23 tangible personal property, any sale of services defined as a retail
24 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation
25 services as defined in RCW 82.04.050(3)(a), any sale of canned
26 software, any sale of an extended warranty as defined in RCW
27 82.04.050(7), or any sale of (~~telephone~~) competitive telephone
28 service, ancillary services, or telecommunications service as those
29 terms are defined in RCW 82.04.065, which is not a sale at retail; and
30 (2) any charge made for labor and services rendered for persons who are
31 not consumers, in respect to real or personal property, if such charge
32 is expressly defined as a retail sale by RCW 82.04.050 when rendered to
33 or for consumers: PROVIDED, That the term "real or personal property"
34 as used in this subsection shall not include any natural products named
35 in RCW 82.04.100.

1 **Sec. 1008.** RCW 82.04.190 and 2005 c 514 s 103 are each amended to
2 read as follows:

3 "Consumer" means the following:

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

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

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

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

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

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

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

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

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

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

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

35 **Sec. 1009.** RCW 82.14B.020 and 2002 c 341 s 7 are each amended to
36 read as follows:

37 As used in this chapter:

1 (1) "Emergency services communication system" means a multicounty,
2 countywide, or districtwide radio or landline communications network,
3 including an enhanced 911 telephone system, which provides rapid public
4 access for coordinated dispatching of services, personnel, equipment,
5 and facilities for police, fire, medical, or other emergency services.

6 (2) "Enhanced 911 telephone system" means a public telephone system
7 consisting of a network, data base, and on-premises equipment that is
8 accessed by dialing 911 and that enables reporting police, fire,
9 medical, or other emergency situations to a public safety answering
10 point. The system includes the capability to selectively route
11 incoming 911 calls to the appropriate public safety answering point
12 that operates in a defined 911 service area and the capability to
13 automatically display the name, address, and telephone number of
14 incoming 911 calls at the appropriate public safety answering point.

15 (3) "Switched access line" means the telephone service line which
16 connects a subscriber's main telephone(s) or equivalent main
17 telephone(s) to the local exchange company's switching office.

18 (4) "Local exchange company" has the meaning ascribed to it in RCW
19 80.04.010.

20 (5) "Radio access line" means the telephone number assigned to or
21 used by a subscriber for two-way local wireless voice service available
22 to the public for hire from a radio communications service company.
23 Radio access lines include, but are not limited to, radio-telephone
24 communications lines used in cellular telephone service, personal
25 communications services, and network radio access lines, or their
26 functional and competitive equivalent. Radio access lines do not
27 include lines that provide access to one-way signaling service, such as
28 paging service, or to communications channels suitable only for data
29 transmission, or to nonlocal radio access line service, such as
30 wireless roaming service, or to a private telecommunications system.

31 (6) "Radio communications service company" has the meaning ascribed
32 to it in RCW 80.04.010, except that it does not include radio paging
33 providers. It does include those persons or entities that provide
34 commercial mobile radio services, as defined by 47 U.S.C. Sec.
35 332(d)(1), and both facilities-based and nonfacilities-based resellers.

36 (7) "Private telecommunications system" has the meaning ascribed to
37 it in RCW 80.04.010.

1 (8) "Subscriber" means the retail purchaser of telephone service as
2 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

3 (9) "Place of primary use" has the meaning ascribed to it in (~~the~~
4 ~~federal mobile telecommunications sourcing act, P.L. 106-252~~) RCW
5 82.04.065.

6 **Sec. 1010.** RCW 82.72.010 and 2004 c 254 s 3 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Switched access line" has the meaning provided in RCW
11 82.14B.020.

12 (2) "Local exchange company" has the meaning provided in RCW
13 80.04.010.

14 (3) "Subscriber" means the retail purchaser of telephone service as
15 telephone service is defined in RCW (~~(82.04.065(3))~~) 82.16.010.

16 (4) "Telephone program excise taxes" means the taxes on switched
17 access lines imposed by RCW 43.20A.725 and 80.36.430.

18 **Sec. 1011.** RCW 82.32.555 and 2004 c 76 s 1 are each amended to
19 read as follows:

20 If a taxing jurisdiction does not subject some charges for
21 (~~telephone~~) ancillary services or telecommunications service, as
22 those terms are defined in RCW 82.04.065, to taxation, but these
23 charges are aggregated with and not separately stated from charges that
24 are subject to taxation, then the charges for nontaxable (~~telephone~~)
25 ancillary services or telecommunications service, as those terms are
26 defined in RCW 82.04.065, may be subject to taxation unless the
27 (~~telephone~~) telecommunications service (~~or~~) provider or ancillary
28 services provider can reasonably identify charges not subject to the
29 tax, charge, or fee from its books and records that are kept in the
30 regular course of business and for purposes other than merely
31 allocating the sales price of an aggregated charge to the individually
32 aggregated items.

33 **Sec. 1012.** RCW 35A.82.055 and 2002 c 179 s 4 are each amended to
34 read as follows:

35 Any code city which imposes a license fee or tax upon the business

1 activity of engaging in the telephone business, as defined in RCW
2 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
3 income from the business shall impose the tax at a uniform rate on all
4 persons engaged in the telephone business in the code city.

5 This section does not apply to the providing of competitive
6 telephone service as defined in RCW 82.04.065 or to the providing of
7 payphone service as defined in RCW 35.21.710.

8 **Sec. 1013.** RCW 35A.82.060 and 2002 c 67 s 10 are each amended to
9 read as follows:

10 (1) Any code city which imposes a license fee or tax upon the
11 business activity of engaging in the telephone business which is
12 measured by gross receipts or gross income may impose the fee or tax,
13 if it desires, on one hundred percent of the total gross revenue
14 derived from intrastate toll telephone services subject to the fee or
15 tax: PROVIDED, That the city shall not impose the fee or tax on that
16 portion of network telephone service which represents charges to
17 another telecommunications company, as defined in RCW 80.04.010, for
18 connecting fees, switching charges, or carrier access charges relating
19 to intrastate toll telephone services, or for access to, or charges
20 for, interstate services, or charges for network telephone service that
21 is purchased for the purpose of resale, or charges for mobile
22 telecommunications services provided to customers whose place of
23 primary use is not within the city.

24 (2) Any city that imposes a license tax or fee under subsection (1)
25 of this section has the authority, rights, and obligations of a taxing
26 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

27 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
28 section.

29 **Sec. 1014.** RCW 35A.82.060 and 1989 c 103 s 3 are each amended to
30 read as follows:

31 Any code city which imposes a license fee or tax upon the business
32 activity of engaging in the telephone business, as defined in RCW
33 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
34 income may impose the fee or tax, if it desires, on one hundred percent
35 of the total gross revenue derived from intrastate toll telephone
36 services subject to the fee or tax: PROVIDED, That the city shall not

1 impose the fee or tax on that portion of network telephone service, as
2 defined in RCW ((82.04.065)) 82.16.010, which represents charges to
3 another telecommunications company, as defined in RCW 80.04.010, for
4 connecting fees, switching charges, or carrier access charges relating
5 to intrastate toll telephone services, or for access to, or charges
6 for, interstate services, or charges for network telephone service that
7 is purchased for the purpose of resale.

8 **Sec. 1015.** RCW 35A.82.065 and 1989 c 103 s 4 are each amended to
9 read as follows:

10 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
11 imposes a tax upon business activities measured by gross receipts or
12 gross income from sales, may impose such tax on that portion of network
13 telephone service, as defined in RCW ((82.04.065)) 82.16.010, which
14 represents charges to another telecommunications company, as defined in
15 RCW 80.04.010, for connecting fees, switching charges, or carrier
16 access charges relating to intrastate toll services, or charges for
17 network telephone service that is purchased for the purpose of resale.
18 Such tax shall be levied at the same rate as is applicable to other
19 competitive telephone service as defined in RCW 82.04.065.

20 **Sec. 1016.** RCW 35.21.712 and 2002 c 179 s 2 are each amended to
21 read as follows:

22 Any city which imposes a license fee or tax upon the business
23 activity of engaging in the telephone business, as defined in RCW
24 ((82.04.065)) 82.16.010, which is measured by gross receipts or gross
25 income from the business shall impose the tax at a uniform rate on all
26 persons engaged in the telephone business in the city.

27 This section does not apply to the providing of competitive
28 telephone service as defined in RCW 82.04.065 or to the providing of
29 payphone service as defined in RCW 35.21.710.

30 **Sec. 1017.** RCW 35.21.714 and 2002 c 67 s 9 are each amended to
31 read as follows:

32 (1) Any city which imposes a license fee or tax upon the business
33 activity of engaging in the telephone business which is measured by
34 gross receipts or gross income may impose the fee or tax, if it
35 desires, on one hundred percent of the total gross revenue derived from

1 intrastate toll telephone services subject to the fee or tax:
2 PROVIDED, That the city shall not impose the fee or tax on that portion
3 of network telephone service which represents charges to another
4 telecommunications company, as defined in RCW 80.04.010, for connecting
5 fees, switching charges, or carrier access charges relating to
6 intrastate toll telephone services, or for access to, or charges for,
7 interstate services, or charges for network telephone service that is
8 purchased for the purpose of resale, or charges for mobile
9 telecommunications services provided to customers whose place of
10 primary use is not within the city.

11 (2) Any city that imposes a license tax or fee under subsection (1)
12 of this section has the authority, rights, and obligations of a taxing
13 jurisdiction as provided in RCW 82.32.490 through 82.32.510.

14 (3) The definitions in RCW 82.04.065 and 82.16.010 apply to this
15 section.

16 **Sec. 1018.** RCW 35.21.714 and 1989 c 103 s 1 are each amended to
17 read as follows:

18 Any city which imposes a license fee or tax upon the business
19 activity of engaging in the telephone business, as defined in RCW
20 ((~~82.04.065~~)) 82.16.010, which is measured by gross receipts or gross
21 income may impose the fee or tax, if it desires, on one hundred percent
22 of the total gross revenue derived from intrastate toll telephone
23 services subject to the fee or tax: PROVIDED, That the city shall not
24 impose the fee or tax on that portion of network telephone service, as
25 defined in RCW ((~~82.04.065~~)) 82.16.010, which represents charges to
26 another telecommunications company, as defined in RCW 80.04.010, for
27 connecting fees, switching charges, or carrier access charges relating
28 to intrastate toll telephone services, or for access to, or charges
29 for, interstate services, or charges for network telephone service that
30 is purchased for the purpose of resale.

31 **Sec. 1019.** RCW 35.21.715 and 1989 c 103 s 2 are each amended to
32 read as follows:

33 Notwithstanding RCW 35.21.714 or 35A.82.060, any city or town which
34 imposes a tax upon business activities measured by gross receipts or
35 gross income from sales, may impose such tax on that portion of network
36 telephone service, as defined in RCW ((~~82.04.065~~)) 82.16.010, which

1 represents charges to another telecommunications company, as defined in
2 RCW 80.04.010, for connecting fees, switching charges, or carrier
3 access charges relating to intrastate toll services, or charges for
4 network telephone service that is purchased for the purpose of resale.
5 Such tax shall be levied at the same rate as is applicable to other
6 competitive telephone service as defined in RCW 82.04.065.

7 **Sec. 1020.** RCW 35.21.860 and 2000 c 83 s 8 are each amended to
8 read as follows:

9 (1) No city or town may impose a franchise fee or any other fee or
10 charge of whatever nature or description upon the light and power, or
11 gas distribution businesses, as defined in RCW 82.16.010, or telephone
12 business, as defined in RCW ((82.04.065)) 82.16.010, or service
13 provider for use of the right of way, except:

14 (a) A tax authorized by RCW 35.21.865 may be imposed;

15 (b) A fee may be charged to such businesses or service providers
16 that recovers actual administrative expenses incurred by a city or town
17 that are directly related to receiving and approving a permit, license,
18 and franchise, to inspecting plans and construction, or to the
19 preparation of a detailed statement pursuant to chapter 43.21C RCW;

20 (c) Taxes permitted by state law on service providers;

21 (d) Franchise requirements and fees for cable television services
22 as allowed by federal law; and

23 (e) A site-specific charge pursuant to an agreement between the
24 city or town and a service provider of personal wireless services
25 acceptable to the parties for:

26 (i) The placement of new structures in the right of way regardless
27 of height, unless the new structure is the result of a mandated
28 relocation in which case no charge will be imposed if the previous
29 location was not charged;

30 (ii) The placement of replacement structures when the replacement
31 is necessary for the installation or attachment of wireless facilities,
32 and the overall height of the replacement structure and the wireless
33 facility is more than sixty feet; or

34 (iii) The placement of personal wireless facilities on structures
35 owned by the city or town located in the right of way. However, a
36 site-specific charge shall not apply to the placement of personal

1 wireless facilities on existing structures, unless the structure is
2 owned by the city or town.

3 A city or town is not required to approve the use permit for the
4 placement of a facility for personal wireless services that meets one
5 of the criteria in this subsection absent such an agreement. If the
6 parties are unable to agree on the amount of the charge, the service
7 provider may submit the amount of the charge to binding arbitration by
8 serving notice on the city or town. Within thirty days of receipt of
9 the initial notice, each party shall furnish a list of acceptable
10 arbitrators. The parties shall select an arbitrator; failing to agree
11 on an arbitrator, each party shall select one arbitrator and the two
12 arbitrators shall select a third arbitrator for an arbitration panel.
13 The arbitrator or arbitrators shall determine the charge based on
14 comparable siting agreements involving public land and rights of way.
15 The arbitrator or arbitrators shall not decide any other disputed
16 issues, including but not limited to size, location, and zoning
17 requirements. Costs of the arbitration, including compensation for the
18 arbitrator's services, must be borne equally by the parties
19 participating in the arbitration and each party shall bear its own
20 costs and expenses, including legal fees and witness expenses, in
21 connection with the arbitration proceeding.

22 (2) Subsection (1) of this section does not prohibit franchise fees
23 imposed on an electrical energy, natural gas, or telephone business, by
24 contract existing on April 20, 1982, with a city or town, for the
25 duration of the contract, but the franchise fees shall be considered
26 taxes for the purposes of the limitations established in RCW 35.21.865
27 and 35.21.870 to the extent the fees exceed the costs allowable under
28 subsection (1) of this section.

29 **Sec. 1021.** RCW 35.102.020 and 2003 c 79 s 2 are each amended to
30 read as follows:

31 Chapter 79, Laws of 2003 does not apply to taxes on any service
32 that historically or traditionally has been taxed as a utility business
33 for municipal tax purposes, such as:

34 (1) A light and power business or a natural gas distribution
35 business, as defined in RCW 82.16.010;

36 (2) A telephone business, as defined in RCW (~~82.04.065~~)
37 82.16.010;

- 1 (3) Cable television services;
- 2 (4) Sewer or water services;
- 3 (5) Drainage services;
- 4 (6) Solid waste services; or
- 5 (7) Steam services.

6 **Sec. 1022.** RCW 82.04.530 and 2004 c 153 s 410 are each amended to
7 read as follows:

8 For purposes of this chapter, a ~~((telephone—business))~~
9 telecommunications service provider other than a mobile
10 telecommunications service provider must calculate gross proceeds of
11 ~~((retail))~~ sales in a manner consistent with the sourcing rules
12 provided in RCW 82.32.520. The department may adopt rules to implement
13 this section, including rules that provide a formulary method of
14 determining gross proceeds that reasonably approximates the taxable
15 activity of a telephone business.

16 **Sec. 1023.** RCW 82.16.010 and 1996 c 150 s 1 are each amended to
17 read as follows:

18 For the purposes of this chapter, unless otherwise required by the
19 context:

20 (1) "Railroad business" means the business of operating any
21 railroad, by whatever power operated, for public use in the conveyance
22 of persons or property for hire. It shall not, however, include any
23 business herein defined as an urban transportation business.

24 (2) "Express business" means the business of carrying property for
25 public hire on the line of any common carrier operated in this state,
26 when such common carrier is not owned or leased by the person engaging
27 in such business.

28 (3) "Railroad car business" means the business of operating stock
29 cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank
30 cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any
31 other kinds of cars used for transportation of property or persons upon
32 the line of any railroad operated in this state when such railroad is
33 not owned or leased by the person engaging in such business.

34 (4) "Water distribution business" means the business of operating
35 a plant or system for the distribution of water for hire or sale.

1 (5) "Light and power business" means the business of operating a
2 plant or system for the generation, production or distribution of
3 electrical energy for hire or sale and/or for the wheeling of
4 electricity for others.

5 (6) "Telegraph business" means the business of affording
6 telegraphic communication for hire.

7 (7) "Gas distribution business" means the business of operating a
8 plant or system for the production or distribution for hire or sale of
9 gas, whether manufactured or natural.

10 (8) "Motor transportation business" means the business (except
11 urban transportation business) of operating any motor propelled vehicle
12 by which persons or property of others are conveyed for hire, and
13 includes, but is not limited to, the operation of any motor propelled
14 vehicle as an auto transportation company (except urban transportation
15 business), common carrier or contract carrier as defined by RCW
16 81.68.010 and 81.80.010: PROVIDED, That "motor transportation
17 business" shall not mean or include the transportation of logs or other
18 forest products exclusively upon private roads or private highways.

19 (9) "Urban transportation business" means the business of operating
20 any vehicle for public use in the conveyance of persons or property for
21 hire, insofar as (a) operating entirely within the corporate limits of
22 any city or town, or within five miles of the corporate limits thereof,
23 or (b) operating entirely within and between cities and towns whose
24 corporate limits are not more than five miles apart or within five
25 miles of the corporate limits of either thereof. Included herein, but
26 without limiting the scope hereof, is the business of operating
27 passenger vehicles of every type and also the business of operating
28 cartage, pickup, or delivery services, including in such services the
29 collection and distribution of property arriving from or destined to a
30 point within or without the state, whether or not such collection or
31 distribution be made by the person performing a local or interstate
32 line-haul of such property.

33 (10)(a) "Public service business" means any of the businesses
34 defined in (~~subdivisions~~) subsections (1), (2), (3), (4), (5), (6),
35 (7), (8), and (9) of this section or any business subject to control by
36 the state, or having the powers of eminent domain and the duties
37 incident thereto, or any business hereafter declared by the legislature
38 to be of a public service nature, except telephone business (~~as~~

1 ~~defined in RCW 82.04.065))~~ and low-level radioactive waste site
2 operating companies as redefined in RCW 81.04.010. It includes, among
3 others, without limiting the scope hereof: Airplane transportation,
4 boom, dock, ferry, pipe line, toll bridge, toll logging road, water
5 transportation and wharf businesses.

6 (b) The definitions in this subsection (10)(b) apply throughout
7 this subsection (10).

8 (i) "Competitive telephone service" has the same meaning as in RCW
9 82.04.065.

10 (ii) "Network telephone service" means the providing by any person
11 of access to a telephone network, telephone network switching service,
12 toll service, or coin telephone services, or the providing of
13 telephonic, video, data, or similar communication or transmission for
14 hire, via a telephone network, toll line or channel, cable, microwave,
15 or similar communication or transmission system. "Network telephone
16 service" includes the provision of transmission to and from the site of
17 an internet provider via a telephone network, toll line or channel,
18 cable, microwave, or similar communication or transmission system.
19 "Network telephone service" does not include the providing of
20 competitive telephone service, the providing of cable television
21 service, the providing of broadcast services by radio or television
22 stations, nor the provision of internet service as defined in RCW
23 82.04.297, including the reception of dial-in connection, provided at
24 the site of the internet service provider.

25 (iii) "Telephone business" means the business of providing network
26 telephone service. It includes cooperative or farmer line telephone
27 companies or associations operating an exchange.

28 (iv) "Telephone service" means competitive telephone service or
29 network telephone service, or both, as defined in (b)(i) and (ii) of
30 this subsection.

31 (11) "Tugboat business" means the business of operating tugboats,
32 towboats, wharf boats or similar vessels in the towing or pushing of
33 vessels, barges or rafts for hire.

34 (12) "Gross income" means the value proceeding or accruing from the
35 performance of the particular public service or transportation business
36 involved, including operations incidental thereto, but without any
37 deduction on account of the cost of the commodity furnished or sold,

1 the cost of materials used, labor costs, interest, discount, delivery
2 costs, taxes, or any other expense whatsoever paid or accrued and
3 without any deduction on account of losses.

4 (13) The meaning attributed, in chapter 82.04 RCW, to the term "tax
5 year," "person," "value proceeding or accruing," "business," "engaging
6 in business," "in this state," "within this state," "cash discount" and
7 "successor" shall apply equally in the provisions of this chapter.

8 **Sec. 1024.** RCW 82.14B.030 and 2002 c 341 s 8 and 2002 c 67 § 8 are
9 each reenacted and amended to read as follows:

10 (1) The legislative authority of a county may impose a county
11 enhanced 911 excise tax on the use of switched access lines in an
12 amount not exceeding fifty cents per month for each switched access
13 line. The amount of tax shall be uniform for each switched access
14 line. Each county shall provide notice of such tax to all local
15 exchange companies serving in the county at least sixty days in advance
16 of the date on which the first payment is due.

17 (2) The legislative authority of a county may also impose a county
18 enhanced 911 excise tax on the use of radio access lines whose place of
19 primary use is located within the county in an amount not exceeding
20 fifty cents per month for each radio access line. The amount of tax
21 shall be uniform for each radio access line. (~~The location of a radio
22 access line is the customer's place of primary use as defined in RCW
23 82.04.065.~~) The county shall provide notice of such tax to all radio
24 communications service companies serving in the county at least sixty
25 days in advance of the date on which the first payment is due. Any
26 county imposing this tax shall include in its ordinance a refund
27 mechanism whereby the amount of any tax ordered to be refunded by the
28 judgment of a court of record, or as a result of the resolution of any
29 appeal therefrom, shall be refunded to the radio communications service
30 company or local exchange company that collected the tax, and those
31 companies shall reimburse the subscribers who paid the tax. The
32 ordinance shall further provide that to the extent the subscribers who
33 paid the tax cannot be identified or located, the tax paid by those
34 subscribers shall be returned to the county.

35 (3) A state enhanced 911 excise tax is imposed on all switched
36 access lines in the state. The amount of tax shall not exceed twenty
37 cents per month for each switched access line. The tax shall be

1 uniform for each switched access line. The tax imposed under this
2 subsection shall be remitted to the department of revenue by local
3 exchange companies on a tax return provided by the department. Tax
4 proceeds shall be deposited by the treasurer in the enhanced 911
5 account created in RCW 38.52.540.

6 (4) A state enhanced 911 excise tax is imposed on all radio access
7 lines whose place of primary use is located within the state in an
8 amount of twenty cents per month for each radio access line. The tax
9 shall be uniform for each radio access line. The tax imposed under
10 this section shall be remitted to the department of revenue by radio
11 communications service companies, including those companies that resell
12 radio access lines, on a tax return provided by the department. Tax
13 proceeds shall be deposited by the treasurer in the enhanced 911
14 account created in RCW 38.52.540. The tax imposed under this section
15 is not subject to the state sales and use tax or any local tax.

16 (5) By August 31st of each year the state enhanced 911 coordinator
17 shall recommend the level for the next year of the state enhanced 911
18 excise tax imposed by subsection (3) of this section, based on a
19 systematic cost and revenue analysis, to the utilities and
20 transportation commission. The commission shall by the following
21 October 31st determine the level of the state enhanced 911 excise tax
22 for the following year.

23 **PART XI**
24 **DURABLE MEDICAL EQUIPMENT**

25 **Sec. 1101.** RCW 82.08.0283 and 2004 c 153 s 101 are each amended to
26 read as follows:

27 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

28 (a) Prosthetic devices prescribed, fitted, or furnished for an
29 individual by a person licensed under the laws of this state to
30 prescribe, fit, or furnish prosthetic devices, and the components of
31 such prosthetic devices;

32 (b) Medicines of mineral, animal, and botanical origin prescribed,
33 administered, dispensed, or used in the treatment of an individual by
34 a person licensed under chapter 18.36A RCW; and

35 (c) Medically prescribed oxygen, including, but not limited to,
36 oxygen concentrator systems, oxygen enricher systems, liquid oxygen

1 systems, and gaseous, bottled oxygen systems prescribed for an
2 individual by a person licensed under chapter 18.57 or 18.71 RCW for
3 use in the medical treatment of that individual.

4 (2) In addition, the tax levied by RCW 82.08.020 shall not apply to
5 charges made for labor and services rendered in respect to the
6 repairing, cleaning, altering, or improving of any of the items
7 exempted under subsection (1) of this section.

8 (3) The exemption in subsection (1) of this section shall not apply
9 to sales of durable medical equipment, other than as specified in
10 subsection (1)(c) of this section, or mobility enhancing equipment.

11 (4) The definitions in this subsection apply throughout this
12 section.

13 (a) "Prosthetic device" means a replacement, corrective, or
14 supportive device, including repair and replacement parts for a
15 prosthetic device, worn on or in the body to:

- 16 (i) Artificially replace a missing portion of the body;
- 17 (ii) Prevent or correct a physical deformity or malfunction; or
- 18 (iii) Support a weak or deformed portion of the body.

19 (b) "Durable medical equipment" means equipment, including repair
20 and replacement parts for durable medical equipment that:

- 21 (i) Can withstand repeated use;
- 22 (ii) Is primarily and customarily used to serve a medical purpose;
- 23 (iii) Generally is not useful to a person in the absence of illness
24 or injury; and
- 25 (iv) (~~Does not work~~) Is not worn in or on the body.

26 (c) "Mobility enhancing equipment" means equipment, including
27 repair and replacement parts for mobility enhancing equipment that:

- 28 (i) Is primarily and customarily used to provide or increase the
29 ability to move from one place to another and that is appropriate for
30 use either in a home or a motor vehicle;
- 31 (ii) Is not generally used by persons with normal mobility; and
- 32 (iii) Does not include any motor vehicle or equipment on a motor
33 vehicle normally provided by a motor vehicle manufacturer.

34 (d) The terms "durable medical equipment" and "mobility enhancing
35 equipment" are mutually exclusive.

36 **Sec. 1102.** RCW 82.12.0277 and 2004 c 153 s 109 are each amended to
37 read as follows:

1 (1) The provisions of this chapter shall not apply in respect to
2 the use of:

3 (a) Prosthetic devices prescribed, fitted, or furnished for an
4 individual by a person licensed under the laws of this state to
5 prescribe, fit, or furnish prosthetic devices, and the components of
6 such prosthetic devices;

7 (b) Medicines of mineral, animal, and botanical origin prescribed,
8 administered, dispensed, or used in the treatment of an individual by
9 a person licensed under chapter 18.36A RCW; and

10 (c) Medically prescribed oxygen, including, but not limited to,
11 oxygen concentrator systems, oxygen enricher systems, liquid oxygen
12 systems, and gaseous, bottled oxygen systems prescribed for an
13 individual by a person licensed under chapter 18.57 or 18.71 RCW for
14 use in the medical treatment of that individual.

15 (2) In addition, the provisions of this chapter shall not apply in
16 respect to the use of labor and services rendered in respect to the
17 repairing, cleaning, altering, or improving of any of the items
18 exempted under subsection (1) of this section.

19 (3) The exemption provided by subsection (1) of this section shall
20 not apply to the use of durable medical equipment, other than as
21 specified in subsection (1)(c) of this section, or mobility enhancing
22 equipment.

23 (4) "Prosthetic device," "durable medical equipment," and "mobility
24 enhancing equipment" have the same meanings as in RCW 82.08.0283.

25 **Sec. 1103.** RCW 82.08.803 and 2004 c 153 s 104 are each amended to
26 read as follows:

27 (~~The tax levied by RCW 82.08.020 shall not apply to~~) (1) An
28 exemption from the tax imposed by RCW 82.08.020 in the form of a refund
29 is provided for sales of nebulizers, including repair (~~and~~),
30 replacement, and component parts for such nebulizers, for human use
31 pursuant to a prescription. In addition, the tax levied by RCW
32 82.08.020 shall not apply to charges made for labor and services
33 rendered in respect to the repairing, cleaning, altering, or improving
34 of nebulizers. "Nebulizer" means a device, not a building fixture,
35 that converts a liquid medication into a mist so that it can be
36 inhaled.

1 provide by rule the categories of items or services that must be
2 specified on resale certificates and the business classifications that
3 may use a blanket resale certificate.

4 ~~((+5+))~~ (4) As used in this section, "resale certificate" means
5 documentation provided by a buyer to a seller stating that the purchase
6 is for resale in the regular course of business, or that the buyer is
7 exempt from retail sales tax, and containing the following information:

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

9 (b) The uniform business identifier or revenue registration number
10 of the buyer, if the buyer is required to be registered;

11 (c) The type of business engaged in;

12 (d) The categories of items or services to be purchased for resale
13 or that are exempt, unless the buyer ~~((is in a business classification
14 that may))~~ presents a blanket resale certificate ~~((as provided by the
15 department by rule))~~;

16 (e) The date on which the certificate was provided;

17 (f) A statement that the items or services purchased either: (i)
18 Are purchased for resale in the regular course of business; or (ii) are
19 exempt from tax pursuant to statute;

20 (g) A statement that the buyer acknowledges that the buyer is
21 solely responsible for purchasing within the categories specified on
22 the certificate and that misuse of the resale or exemption privilege
23 claimed on the certificate subjects the buyer to a penalty of fifty
24 percent of the tax due, in addition to the tax, interest, and any other
25 penalties imposed by law;

26 (h) The name of the individual authorized to sign the certificate,
27 printed in a legible fashion;

28 (i) The signature of the authorized individual; and

29 (j) The name of the seller.

30 ~~((+6+))~~ (5) Subsection ~~((+5+))~~ (4)(h), (i), and (j) of this section
31 does not apply if the certificate is provided in a format other than
32 paper. If the certificate is provided in a format other than paper,
33 the name of the individual providing the certificate must be included
34 in the certificate.

35 **Sec. 1202.** RCW 82.08.050 and 2003 c 168 s 203, 2003 c 76 s 3, and
36 2003 c 53 s 400 are each reenacted and amended to read as follows:

37 (1) The tax hereby imposed shall be paid by the buyer to the

1 seller, and each seller shall collect from the buyer the full amount of
2 the tax payable in respect to each taxable sale in accordance with the
3 schedule of collections adopted by the department pursuant to the
4 provisions of RCW 82.08.060.

5 (2) The tax required by this chapter, to be collected by the
6 seller, shall be deemed to be held in trust by the seller until paid to
7 the department, and any seller who appropriates or converts the tax
8 collected to his or her own use or to any use other than the payment of
9 the tax to the extent that the money required to be collected is not
10 available for payment on the due date as prescribed in this chapter is
11 guilty of a gross misdemeanor.

12 (3) In case any seller fails to collect the tax herein imposed or,
13 having collected the tax, fails to pay it to the department in the
14 manner prescribed by this chapter, whether such failure is the result
15 of his or her own acts or the result of acts or conditions beyond his
16 or her control, he or she shall, nevertheless, be personally liable to
17 the state for the amount of the tax, unless the seller has taken from
18 the buyer a resale certificate under RCW 82.04.470, a copy of a direct
19 pay permit issued under RCW 82.32.087, a direct mail form under section
20 501(5) of this act, or other information required under the streamlined
21 sales and use tax agreement, or information required under rules
22 adopted by the department.

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

26 ~~((+4))~~ (5) Sellers are not relieved from personal liability for
27 the amount of tax if they fraudulently fail to collect the tax or if
28 they solicit purchasers to participate in an unlawful claim of
29 exemption.

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

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

36 (b) Washington provides an exemption certificate that clearly and
37 affirmatively indicates that the claimed exemption is not available in

1 Washington. Graying out exemption reason types on a uniform form and
2 posting it on the department's web site is a clear and affirmative
3 indication that the grayed out exemptions are not available.

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

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

17 (c) Sellers are relieved from personal liability for the amount of
18 tax if they obtain a blanket exemption certificate for a purchaser with
19 which the seller has a recurring business relationship. The department
20 may not request from a seller renewal of blanket certificates or
21 updates of exemption certificate information or data elements if there
22 is a recurring business relationship between the buyer and seller. For
23 purposes of this subsection (7)(c), a "recurring business relationship"
24 means at least one sale transaction within a period of twelve
25 consecutive months.

26 (8) The amount of tax, until paid by the buyer to the seller or to
27 the department, shall constitute a debt from the buyer to the seller
28 and any seller who fails or refuses to collect the tax as required with
29 intent to violate the provisions of this chapter or to gain some
30 advantage or benefit, either direct or indirect, and any buyer who
31 refuses to pay any tax due under this chapter is guilty of a
32 misdemeanor.

33 ((+5)) (9) The tax required by this chapter to be collected by the
34 seller shall be stated separately from the selling price in any sales
35 invoice or other instrument of sale. On all retail sales through
36 vending machines, the tax need not be stated separately from the
37 selling price or collected separately from the buyer. For purposes of
38 determining the tax due from the buyer to the seller and from the

1 seller to the department it shall be conclusively presumed that the
2 selling price quoted in any price list, sales document, contract or
3 other agreement between the parties does not include the tax imposed by
4 this chapter, but if the seller advertises the price as including the
5 tax or that the seller is paying the tax, the advertised price shall
6 not be considered the selling price.

7 ~~((+6+))~~ (10) Where a buyer has failed to pay to the seller the tax
8 imposed by this chapter and the seller has not paid the amount of the
9 tax to the department, the department may, in its discretion, proceed
10 directly against the buyer for collection of the tax, in which case a
11 penalty of ten percent may be added to the amount of the tax for
12 failure of the buyer to pay the same to the seller, regardless of when
13 the tax may be collected by the department; and all of the provisions
14 of chapter 82.32 RCW, including those relative to interest and
15 penalties, shall apply in addition; and, for the sole purpose of
16 applying the various provisions of chapter 82.32 RCW, the twenty-fifth
17 day of the month following the tax period in which the purchase was
18 made shall be considered as the due date of the tax.

19 ~~((+7+))~~ (11) Notwithstanding subsections (1) through ~~((+6+))~~ (10)
20 of this section, any person making sales is not obligated to collect
21 the tax imposed by this chapter if:

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

- 24 (i) The storage, dissemination, or display of advertising;
- 25 (ii) The taking of orders; or
- 26 (iii) The processing of payments; and

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

32 ~~((+8+))~~ (12) Subsection ~~((+7+))~~ (11) of this section expires when:

- 33 (a) The United States congress grants individual states the authority
- 34 to impose sales and use tax collection duties on remote sellers; or (b)
- 35 it is determined by a court of competent jurisdiction, in a judgment
- 36 not subject to review, that a state can impose sales and use tax
- 37 collection duties on remote sellers.

1 ~~where taxable and exempt tangible personal property have been bundled~~
2 ~~together and sold by the seller as a single product or piece of~~
3 ~~merchandise)).~~

4 When tangible personal property is rented or leased under
5 circumstances that the consideration paid does not represent a
6 reasonable rental for the use of the articles so rented or leased, the
7 "selling price" shall be determined as nearly as possible according to
8 the value of such use at the places of use of similar products of like
9 quality and character under such rules as the department may prescribe.

10 "Selling price" or "sales price" does not include: Discounts,
11 including cash, term, or coupons that are not reimbursed by a third
12 party that are allowed by a seller and taken by a purchaser on a sale;
13 interest, financing, and carrying charges from credit extended on the
14 sale of tangible personal property, extended warranties, or services,
15 if the amount is separately stated on the invoice, bill of sale, or
16 similar document given to the purchaser; and any taxes legally imposed
17 directly on the consumer that are separately stated on the invoice,
18 bill of sale, or similar document given to the purchaser;

19 (2)(a) "Seller" means every person, including the state and its
20 departments and institutions, making sales at retail or retail sales to
21 a buyer, purchaser, or consumer, whether as agent, broker, or
22 principal, except "seller" does not mean:

23 (i) The state and its departments and institutions when making
24 sales to the state and its departments and institutions; or

25 (ii) A professional employer organization when a covered employee
26 coemployed with the client under the terms of a professional employer
27 agreement engages in activities that constitute a sale at retail that
28 is subject to the tax imposed by this chapter. In such cases, the
29 client, and not the professional employer organization, is deemed to be
30 the seller and is responsible for collecting and remitting the tax
31 imposed by this chapter.

32 (b) For the purposes of (a) of this subsection, the terms "client,"
33 "covered employee," "professional employer agreement," and
34 "professional employer organization" have the same meanings as in RCW
35 82.04.540.

36 (3) "Buyer," "purchaser," and "consumer" include, without limiting
37 the scope hereof, every individual, receiver, assignee, trustee in
38 bankruptcy, trust, estate, firm, copartnership, joint venture, club,

1 company, joint stock company, business trust, corporation, association,
2 society, or any group of individuals acting as a unit, whether mutual,
3 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
4 quasi municipal corporation, and also the state, its departments and
5 institutions and all political subdivisions thereof, irrespective of
6 the nature of the activities engaged in or functions performed, and
7 also the United States or any instrumentality thereof;

8 (4) "Delivery charges" means charges by the seller of personal
9 property or services for preparation and delivery to a location
10 designated by the purchaser of personal property or services including,
11 but not limited to, transportation, shipping, postage, handling,
12 crating, and packing;

13 (5) "Direct mail" means printed material delivered or distributed
14 by United States mail or other delivery service to a mass audience or
15 to addressees on a mailing list provided by the purchaser or at the
16 direction of the purchaser when the cost of the items are not billed
17 directly to the recipients. "Direct mail" includes tangible personal
18 property supplied directly or indirectly by the purchaser to the direct
19 mail seller for inclusion in the package containing the printed
20 material. "Direct mail" does not include multiple items of printed
21 material delivered to a single address;

22 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
23 year," "taxable year," "person," "company," "sale," "sale at retail,"
24 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
25 in business," "cash discount," "successor," "consumer," "in this state"
26 and "within this state" shall apply equally to the provisions of this
27 chapter;

28 (7) For the purposes of the taxes imposed under this chapter and
29 under chapter 82.12 RCW, "tangible personal property" means personal
30 property that can be seen, weighed, measured, felt, or touched, or that
31 is in any other manner perceptible to the senses. Tangible personal
32 property includes electricity, water, gas, steam, and prewritten
33 computer software;

34 (8) "Extended warranty" has the same meaning as in RCW
35 82.04.050(7).

36 **Sec. 1302.** RCW 82.08.010 and 2006 c 301 s 2 are each amended to
37 read as follows:

1 For the purposes of this chapter:

2 (1)(a) "Selling price" includes "sales price." "Sales price" means
3 the total amount of consideration, except separately stated trade-in
4 property of like kind, including cash, credit, property, and services,
5 for which tangible personal property, extended warranties, or services
6 defined as a "retail sale" under RCW 82.04.050 are sold, leased, or
7 rented, valued in money, whether received in money or otherwise. No
8 deduction from the total amount of consideration is allowed for the
9 following: ~~((a))~~ (i) The seller's cost of the property sold; ~~((b))~~
10 (ii) the cost of materials used, labor or service cost, interest,
11 losses, all costs of transportation to the seller, all taxes imposed on
12 the seller, and any other expense of the seller; ~~((c))~~ (iii) charges
13 by the seller for any services necessary to complete the sale, other
14 than delivery and installation charges; ~~((d))~~ (iv) delivery charges;
15 ~~((e))~~ and (v) installation charges ~~((; and (f) the value of exempt~~
16 ~~tangible personal property given to the purchaser where taxable and~~
17 ~~exempt tangible personal property have been bundled together and sold~~
18 ~~by the seller as a single product or piece of merchandise)).~~

19 When tangible personal property is rented or leased under
20 circumstances that the consideration paid does not represent a
21 reasonable rental for the use of the articles so rented or leased, the
22 "selling price" shall be determined as nearly as possible according to
23 the value of such use at the places of use of similar products of like
24 quality and character under such rules as the department may prescribe.

25 (b) "Selling price" or "sales price" does not include: Discounts,
26 including cash, term, or coupons that are not reimbursed by a third
27 party that are allowed by a seller and taken by a purchaser on a sale;
28 interest, financing, and carrying charges from credit extended on the
29 sale of tangible personal property, extended warranties, or services,
30 if the amount is separately stated on the invoice, bill of sale, or
31 similar document given to the purchaser; and any taxes legally imposed
32 directly on the consumer that are separately stated on the invoice,
33 bill of sale, or similar document given to the purchaser;

34 (c) "Selling price" or "sales price" includes consideration
35 received by the seller from a third party if:

36 (i) The seller actually receives consideration from a party other
37 than the purchaser, and the consideration is directly related to a
38 price reduction or discount on the sale;

1 (ii) The seller has an obligation to pass the price reduction or
2 discount through to the purchaser;

3 (iii) The amount of the consideration attributable to the sale is
4 fixed and determinable by the seller at the time of the sale of the
5 item to the purchaser: and

6 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

7 (A) The purchaser presents a coupon, certificate, or other
8 documentation to the seller to claim a price reduction or discount
9 where the coupon, certificate, or documentation is authorized,
10 distributed, or granted by a third party with the understanding that
11 the third party will reimburse any seller to whom the coupon,
12 certificate, or documentation is presented;

13 (B) The purchaser identifies himself or herself to the seller as a
14 member of a group or organization entitled to a price reduction or
15 discount, however a "preferred customer" card that is available to any
16 patron does not constitute membership in such a group; or

17 (C) The price reduction or discount is identified as a third party
18 price reduction or discount on the invoice received by the purchaser or
19 on a coupon, certificate, or other documentation presented by the
20 purchaser.

21 (2)(a) "Seller" means every person, including the state and its
22 departments and institutions, making sales at retail or retail sales to
23 a buyer, purchaser, or consumer, whether as agent, broker, or
24 principal, except "seller" does not mean:

25 (i) The state and its departments and institutions when making
26 sales to the state and its departments and institutions; or

27 (ii) A professional employer organization when a covered employee
28 coemployed with the client under the terms of a professional employer
29 agreement engages in activities that constitute a sale at retail that
30 is subject to the tax imposed by this chapter. In such cases, the
31 client, and not the professional employer organization, is deemed to be
32 the seller and is responsible for collecting and remitting the tax
33 imposed by this chapter.

34 (b) For the purposes of (a) of this subsection, the terms "client,"
35 "covered employee," "professional employer agreement," and
36 "professional employer organization" have the same meanings as in RCW
37 82.04.540.

1 (3) "Buyer," "purchaser," and "consumer" include, without limiting
2 the scope hereof, every individual, receiver, assignee, trustee in
3 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
4 company, joint stock company, business trust, corporation, association,
5 society, or any group of individuals acting as a unit, whether mutual,
6 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
7 quasi municipal corporation, and also the state, its departments and
8 institutions and all political subdivisions thereof, irrespective of
9 the nature of the activities engaged in or functions performed, and
10 also the United States or any instrumentality thereof;

11 (4) "Delivery charges" means charges by the seller of personal
12 property or services for preparation and delivery to a location
13 designated by the purchaser of personal property or services including,
14 but not limited to, transportation, shipping, postage, handling,
15 crating, and packing;

16 (5) "Direct mail" means printed material delivered or distributed
17 by United States mail or other delivery service to a mass audience or
18 to addressees on a mailing list provided by the purchaser or at the
19 direction of the purchaser when the cost of the items are not billed
20 directly to the recipients. "Direct mail" includes tangible personal
21 property supplied directly or indirectly by the purchaser to the direct
22 mail seller for inclusion in the package containing the printed
23 material. "Direct mail" does not include multiple items of printed
24 material delivered to a single address;

25 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
26 year," "taxable year," "person," "company," "sale," "sale at retail,"
27 "retail sale," "sale at wholesale," "wholesale," "business," "engaging
28 in business," "cash discount," "successor," "consumer," "in this state"
29 and "within this state" shall apply equally to the provisions of this
30 chapter;

31 (7) For the purposes of the taxes imposed under this chapter and
32 under chapter 82.12 RCW, "tangible personal property" means personal
33 property that can be seen, weighed, measured, felt, or touched, or that
34 is in any other manner perceptible to the senses. Tangible personal
35 property includes electricity, water, gas, steam, and prewritten
36 computer software;

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

1 **PART XIV**

2 **BUNDLED TRANSACTIONS**

3 NEW SECTION. **Sec. 1401.** A new section is added to chapter 82.08
4 RCW to read as follows:

5 The definitions in this section apply throughout this chapter,
6 unless the context clearly requires otherwise.

7 (1)(a) "Bundled transaction" means the retail sale of two or more
8 products, except real property and services to real property, where:

9 (i) The products are otherwise distinct and identifiable; and

10 (ii) The products are sold for one nonitemized price.

11 (b) A bundled transaction does not include the sale of any products
12 in which the sales price varies, or is negotiable, based on the
13 selection by the purchaser of the products included in the transaction.

14 (2) "Distinct and identifiable products" does not include:

15 (a) Packaging such as containers, boxes, sacks, bags, and bottles,
16 or other materials such as wrapping, labels, tags, and instruction
17 guides, that accompany the retail sale of the products and are
18 incidental or immaterial to the retail sale thereof. Examples of
19 packaging that are incidental or immaterial include grocery sacks,
20 shoeboxes, dry cleaning garment bags, and express delivery envelopes
21 and boxes;

22 (b) A product provided free of charge with the required purchase of
23 another product. A product is provided free of charge if the sales
24 price of the product purchased does not vary depending on the inclusion
25 of the product provided free of charge; or

26 (c) Items included in the definition of sales price in RCW
27 82.08.010.

28 (3) "One nonitemized price" does not include a price that is
29 separately identified by product on binding sales or other supporting
30 sales-related documentation made available to the customer in paper or
31 electronic form including, but not limited to, an invoice, bill of
32 sale, receipt, contract, service agreement, lease agreement, periodic
33 notice of rates and services, rate card, or price list.

34 (4) A transaction that otherwise meets the definition of a bundled
35 transaction is not a bundled transaction if it is:

36 (a) The retail sale of tangible personal property and a service
37 where the tangible personal property is essential to the use of the

1 service, and is provided exclusively in connection with the service,
2 and the true object of the transaction is the service; or

3 (b) The retail sale of services where one service is provided that
4 is essential to the use or receipt of a second service and the first
5 service is provided exclusively in connection with the second service
6 and the true object of the transaction is the second service; or

7 (c) A transaction that includes taxable products and nontaxable
8 products and the purchase price or sales price of the taxable products
9 is de minimis;

10 (i) As used in this subsection (4)(c), de minimis means the
11 seller's purchase price or sales price of the taxable products is ten
12 percent or less of the total purchase price or sales price of the
13 bundled products;

14 (ii) Sellers shall use either the purchase price or the sales price
15 of the products to determine if the taxable products are de minimis;

16 (iii) Sellers shall use the full term of a service contract to
17 determine if the taxable products are de minimis; or

18 (d) The retail sale of exempt tangible personal property and
19 taxable tangible personal property where:

20 (i) The transaction includes food and food ingredients, drugs,
21 durable medical equipment, mobility enhancing equipment, over-the-
22 counter drugs, prosthetic devices, all as defined in this chapter, or
23 medical supplies; and

24 (ii) Where the seller's purchase price or sales price of the
25 taxable tangible personal property is fifty percent or less of the
26 total purchase price or sales price of the bundled tangible personal
27 property. Sellers may not use a combination of the purchase price and
28 sales price of the tangible personal property when making the fifty
29 percent determination for a transaction.

30 NEW SECTION. **Sec. 1402.** A new section is added to chapter 82.08
31 RCW to read as follows:

32 (1) A bundled transaction is subject to the tax imposed by RCW
33 82.08.020 if the retail sale of any of its component products would be
34 subject to the tax imposed by RCW 82.08.020.

35 (2) The transactions described in section 1401(4) (a) and (b) of
36 this act are subject to the tax imposed by RCW 82.08.020 if the service
37 that is the true object of the transaction is subject to the tax

1 imposed by RCW 82.08.020. If the service that is the true object of
2 the transaction is not subject to the tax imposed by RCW 82.08.020, the
3 transaction is not subject to the tax imposed by RCW 82.08.020.

4 (3) The transaction described in section 1401(4)(c) of this act is
5 not subject to the tax imposed by RCW 82.08.020.

6 (4) The transaction described in section 1401(4)(d) of this act is
7 not subject to the tax imposed by RCW 82.08.020.

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

11 (a) If the price is attributable to products that are taxable and
12 products that are not taxable, the portion of the price attributable to
13 the nontaxable products are subject to the tax imposed by RCW 82.08.020
14 unless the seller can identify by reasonable and verifiable standards
15 the portion from its books and records that are kept in the regular
16 course of business for other purposes, including, but not limited to,
17 nontax purposes;

18 (b) If the price is attributable to products that are subject to
19 tax at different tax rates, the total price is attributable to the
20 products subject to the tax at the highest tax rate unless the seller
21 can identify by reasonable and verifiable standards the portion of the
22 price attributable to the products subject to the tax imposed by RCW
23 82.08.020 at the lower rate from its books and records that are kept in
24 the regular course of business for other purposes, including, but not
25 limited to, nontax purposes.

26 NEW SECTION. **Sec. 1403.** A new section is added to chapter 82.12
27 RCW to read as follows:

28 (1) The use of each product acquired in a bundled transaction is
29 subject to the tax imposed by RCW 82.12.020 if the use of any of its
30 component products is subject to the tax imposed by RCW 82.12.020.

31 (2) The use of each product acquired in a transaction described in
32 section 1401(4) (a) or (b) of this act is subject to the tax imposed by
33 RCW 82.12.020 if the service that is the true object of the transaction
34 is subject to the tax imposed by RCW 82.12.020. If the service that is
35 the true object of the transaction is not subject to the tax imposed by
36 RCW 82.12.020, the use of each product acquired in the transaction is
37 not subject to the tax imposed by RCW 82.12.020.

1 (3) The use of each product acquired in a transaction described in
2 section 1401(4)(c) of this act is not subject to the tax imposed by RCW
3 82.12.020.

4 (4) The use of each product in a transaction described in section
5 1401(4)(d) of this act is not subject to the tax imposed by RCW
6 82.12.020.

7 (5) The definitions in section 1401 of this act apply to this
8 section.

9 **PART XV**

10 **GEOGRAPHIC INFORMATION SYSTEM**

11 **Sec. 1501.** RCW 82.32.430 and 2003 c 168 s 207 are each amended to
12 read as follows:

13 (1) A person who collects and remits sales or use tax to the
14 department and who calculates the tax using geographic information
15 system technology developed and provided by the department shall be
16 held harmless and is not liable for the difference in amount due nor
17 subject to penalties or interest in regards to rate calculation errors
18 resulting from the proper use of such technology.

19 (2) Except as provided in subsection (3) of this section, the
20 department shall notify sellers who collect and remit sales or use tax
21 to the department of changes in boundaries and rates to taxes imposed
22 ~~((by))~~ under the authority of chapter 82.14 RCW no later than sixty
23 days before the effective date of the change.

24 (3) The department shall notify sellers who collect and remit sales
25 or use tax to the department and make sales from printed catalogs of
26 changes, as to such sales, of boundaries and rates to taxes imposed
27 ~~((by))~~ under the authority of chapter 82.14 RCW no later than one
28 hundred twenty days before the effective date of the change.

29 (4) Sellers who have not received timely notice of rate and
30 boundary changes under subsections (2) and (3) of this section due to
31 actions or omissions of the department are not liable for the
32 difference in the amount due until they have received the appropriate
33 period of notice. Purchasers are liable for any uncollected amounts of
34 tax.

35 (5)(a) Except as provided in (b) of this subsection, sellers
36 registered with the department under RCW 82.32.030(3) and certified

1 service providers must use the address-based geographic information
2 technology system developed and provided by the department to calculate
3 the tax to be collected and remitted to the department and to determine
4 the appropriate local jurisdictions entitled to the tax.

5 (b)(i) Upon a showing that using the address-based geographic
6 information technology system would cause undue hardship, a seller may
7 be temporarily held harmless and not liable for the difference in
8 amount due nor subject to penalties or interest in regards to rate
9 calculation errors resulting from the proper use of zip code-based
10 technology provided by the department for the period in which relief is
11 granted. The department shall notify local taxing jurisdictions of the
12 identity of sellers granted relief under this section and the period
13 for which relief is granted.

14 (ii) The department shall reimburse local taxing jurisdictions for
15 differences in amount due on account of such rate calculation errors
16 occurring during the period in which relief is granted. Purchasers are
17 liable for any uncollected amounts of tax. The department shall retain
18 amounts collected from purchasers that have been reimbursed to local
19 taxing jurisdictions under this subsection (5)(b)(ii).

20 **Sec. 1502.** RCW 82.32.330 and 2006 c 177 s 7 are each amended to
21 read as follows:

22 (1) For purposes of this section:

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

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

31 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
32 nature, source, or amount of the taxpayer's income, payments, receipts,
33 deductions, exemptions, credits, assets, liabilities, net worth, tax
34 liability deficiencies, overassessments, or tax payments, whether taken
35 from the taxpayer's books and records or any other source, (iii)
36 whether the taxpayer's return was, is being, or will be examined or
37 subject to other investigation or processing, (iv) a part of a written

1 determination that is not designated as a precedent and disclosed
2 pursuant to RCW 82.32.410, or a background file document relating to a
3 written determination, and (v) other data received by, recorded by,
4 prepared by, furnished to, or collected by the department of revenue
5 with respect to the determination of the existence, or possible
6 existence, of liability, or the amount thereof, of a person under the
7 laws of this state for a tax, penalty, interest, fine, forfeiture, or
8 other imposition, or offense: PROVIDED, That data, material, or
9 documents that do not disclose information related to a specific or
10 identifiable taxpayer do not constitute tax information under this
11 section. Except as provided by RCW 82.32.410, nothing in this chapter
12 shall require any person possessing data, material, or documents made
13 confidential and privileged by this section to delete information from
14 such data, material, or documents so as to permit its disclosure;

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

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

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

22 (2) Returns and tax information shall be confidential and
23 privileged, and except as authorized by this section, neither the
24 department of revenue nor any other person may disclose any return or
25 tax information.

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

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

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

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

35 (b) Disclosing, subject to such requirements and conditions as the
36 director shall prescribe by rules adopted pursuant to chapter 34.05
37 RCW, such return or tax information regarding a taxpayer to such
38 taxpayer or to such person or persons as that taxpayer may designate in

1 a request for, or consent to, such disclosure, or to any other person,
2 at the taxpayer's request, to the extent necessary to comply with a
3 request for information or assistance made by the taxpayer to such
4 other person: PROVIDED, That tax information not received from the
5 taxpayer shall not be so disclosed if the director determines that such
6 disclosure would compromise any investigation or litigation by any
7 federal, state, or local government agency in connection with the civil
8 or criminal liability of the taxpayer or another person, or that such
9 disclosure would identify a confidential informant, or that such
10 disclosure is contrary to any agreement entered into by the department
11 that provides for the reciprocal exchange of information with other
12 government agencies which agreement requires confidentiality with
13 respect to such information unless such information is required to be
14 disclosed to the taxpayer by the order of any court;

15 (c) Disclosing the name of a taxpayer with a deficiency greater
16 than five thousand dollars and against whom a warrant under RCW
17 82.32.210 has been either issued or filed and remains outstanding for
18 a period of at least ten working days. The department shall not be
19 required to disclose any information under this subsection if a
20 taxpayer: (i) Has been issued a tax assessment; (ii) has been issued
21 a warrant that has not been filed; and (iii) has entered a deferred
22 payment arrangement with the department of revenue and is making
23 payments upon such deficiency that will fully satisfy the indebtedness
24 within twelve months;

25 (d) Disclosing the name of a taxpayer with a deficiency greater
26 than five thousand dollars and against whom a warrant under RCW
27 82.32.210 has been filed with a court of record and remains
28 outstanding;

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

31 (f) Disclosing such return or tax information, for official
32 purposes only, to the governor or attorney general, or to any state
33 agency, or to any committee or subcommittee of the legislature dealing
34 with matters of taxation, revenue, trade, commerce, the control of
35 industry or the professions;

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

1 (h) Disclosing any such return or tax information to a peace
2 officer as defined in RCW 9A.04.110 or county prosecuting attorney, for
3 official purposes. The disclosure may be made only in response to a
4 search warrant, subpoena, or other court order, unless the disclosure
5 is for the purpose of criminal tax enforcement. A peace officer or
6 county prosecuting attorney who receives the return or tax information
7 may disclose that return or tax information only for use in the
8 investigation and a related court proceeding, or in the court
9 proceeding for which the return or tax information originally was
10 sought;

11 (i) Disclosing any such return or tax information to the proper
12 officer of the internal revenue service of the United States, the
13 Canadian government or provincial governments of Canada, or to the
14 proper officer of the tax department of any state or city or town or
15 county, for official purposes, but only if the statutes of the United
16 States, Canada or its provincial governments, or of such other state or
17 city or town or county, as the case may be, grants substantially
18 similar privileges to the proper officers of this state;

19 (j) Disclosing any such return or tax information to the Department
20 of Justice, including the Bureau of Alcohol, Tobacco, Firearms and
21 Explosives within the Department of Justice, the Department of Defense,
22 the Immigration and Customs Enforcement and the Customs and Border
23 Protection agencies of the United States Department of Homeland
24 Security, the Coast Guard of the United States, and the United States
25 Department of Transportation, or any authorized representative thereof,
26 for official purposes;

27 (k) Publishing or otherwise disclosing the text of a written
28 determination designated by the director as a precedent pursuant to RCW
29 82.32.410;

30 (l) Disclosing, in a manner that is not associated with other tax
31 information, the taxpayer name, entity type, business address, mailing
32 address, revenue tax registration numbers, North American industry
33 classification system or standard industrial classification code of a
34 taxpayer, and the dates of opening and closing of business. This
35 subsection shall not be construed as giving authority to the department
36 to give, sell, or provide access to any list of taxpayers for any
37 commercial purpose;

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

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

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

13 (p) Disclosing to a person against whom the department has asserted
14 liability as a successor under RCW 82.32.140 return or tax information
15 pertaining to the specific business of the taxpayer to which the person
16 has succeeded;

17 (q) Disclosing such return or tax information in the possession of
18 the department relating to the administration or enforcement of the
19 real estate excise tax imposed under chapter 82.45 RCW, including
20 information regarding transactions exempt or otherwise not subject to
21 tax; ((~~or~~))

22 (r) Disclosing the least amount of return or tax information
23 necessary for the reports required in RCW 82.32.640 (4) and (5) when
24 the number of taxpayers included in the reports or any part of the
25 reports cannot be classified to prevent the identification of taxpayers
26 or particular returns, reports, tax information, or items in the
27 possession of the department; or

28 (s) Disclosing to local taxing jurisdictions the identity of
29 sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for
30 which relief is granted.

31 (4)(a) The department may disclose return or taxpayer information
32 to a person under investigation or during any court or administrative
33 proceeding against a person under investigation as provided in this
34 subsection (4). The disclosure must be in connection with the
35 department's official duties relating to an audit, collection activity,
36 or a civil or criminal investigation. The disclosure may occur only
37 when the person under investigation and the person in possession of
38 data, materials, or documents are parties to the return or tax

1 information to be disclosed. The department may disclose return or tax
2 information such as invoices, contracts, bills, statements, resale or
3 exemption certificates, or checks. However, the department may not
4 disclose general ledgers, sales or cash receipt journals, check
5 registers, accounts receivable/payable ledgers, general journals,
6 financial statements, expert's workpapers, income tax returns, state
7 tax returns, tax return workpapers, or other similar data, materials,
8 or documents.

9 (b) Before disclosure of any tax return or tax information under
10 this subsection (4), the department shall, through written
11 correspondence, inform the person in possession of the data, materials,
12 or documents to be disclosed. The correspondence shall clearly
13 identify the data, materials, or documents to be disclosed. The
14 department may not disclose any tax return or tax information under
15 this subsection (4) until the time period allowed in (c) of this
16 subsection has expired or until the court has ruled on any challenge
17 brought under (c) of this subsection.

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

24 (i) The data, materials, or documents sought for disclosure are
25 cumulative or duplicative, or are obtainable from some other source
26 that is more convenient, less burdensome, or less expensive;

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

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

34 (d) The department shall reimburse reasonable expenses for the
35 production of data, materials, or documents incurred by the person in
36 possession of the data, materials, or documents to be disclosed.

37 (e) Requesting information under (b) of this subsection that may

1 indicate that a taxpayer is under investigation does not constitute a
2 disclosure of tax return or tax information under this section.

3 (5) Any person acquiring knowledge of any return or tax information
4 in the course of his or her employment with the department of revenue
5 and any person acquiring knowledge of any return or tax information as
6 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
7 section, who discloses any such return or tax information to another
8 person not entitled to knowledge of such return or tax information
9 under the provisions of this section, is guilty of a misdemeanor. If
10 the person guilty of such violation is an officer or employee of the
11 state, such person shall forfeit such office or employment and shall be
12 incapable of holding any public office or employment in this state for
13 a period of two years thereafter.

14 **PART XVI**

15 **RELIEF FOR CERTAIN SELLERS IMPACTED BY THE CHANGE TO**
16 **DESTINATION SOURCING**

17 NEW SECTION. **Sec. 1601.** A new section is added to chapter 82.32
18 RCW to read as follows:

19 (1) Notwithstanding any other provision in this chapter, no
20 interest or penalties may be imposed on any taxpayer because of errors
21 in collecting or remitting the correct amount of local sales tax
22 arising out of changes in local sales and use tax sourcing rules
23 implemented under section 503 of this act and the chapter . . ., Laws
24 of 2007 (this act) amendments to RCW 82.14.020 if the taxpayer
25 establishes that:

26 (a) Immediately before the effective date of section 503 of this
27 act the taxpayer was registered with the department and engaged in
28 making sales of tangible personal property that the taxpayer delivered
29 to locations away from its place of business; and

30 (b) During the calendar year for which the error was made the
31 taxpayer:

32 (i) Has gross income of the business less than five hundred
33 thousand dollars;

34 (ii) Has at least five percent of its gross income from sales
35 subject to sales tax derived from sales of tangible personal property
36 delivered to physical locations away from its place of business; and

1 (iii) Has at least one percent of its gross income from sales
2 subject to sales tax derived from deliveries of tangible personal
3 property to destinations in local jurisdictions imposing sales tax
4 other than the one to which the taxpayer reported the most local sales
5 tax.

6 (2) The relief from penalty and interest provided by subsection (1)
7 of this section does not apply with respect to transactions occurring
8 more than four years after the close of the calendar year in which
9 section 503 of this act becomes effective.

10 NEW SECTION. **Sec. 1602.** A new section is added to chapter 82.32
11 RCW to read as follows:

12 (1) Eligible taxpayers may either:

13 (a) Use the services of a certified service provider at no cost to
14 themselves for tax reporting periods up to two years after the
15 effective date of section 503 of this act; or

16 (b) Claim a credit against the tax imposed under RCW 82.08.020(1)
17 collected and otherwise required to be remitted by the taxpayer as a
18 seller and the tax imposed under RCW 82.04.220. The amount of the
19 credit is equal to the amount of costs incurred within one year of the
20 effective date of section 503 of this act in order to comply with
21 changes in local sales and use tax sourcing rules implemented under
22 section 503 of this act and the chapter . . . , Laws of 2007 (this act)
23 amendments to RCW 82.14.020.

24 (i) The total amount of credit claimed under this subsection (1)(b)
25 may not exceed one thousand dollars.

26 (ii) The credit may be claimed until it is used. No refunds may be
27 granted for the credit. The costs that may be used in the calculation
28 of the credit include goods and services purchased, and labor costs
29 incurred, for the purpose of complying with the local sales tax
30 sourcing rules.

31 (2) The use of a certified service provider under subsection (1)(a)
32 of this section must begin within one year after the effective date of
33 section 503 of this act, but not before the effective date of section
34 503 of this act.

35 (3) The credit under subsection (1)(b) of this section must first
36 be claimed within one year after the effective date of section 503 of

1 this act, but not before the effective date of section 503 of this act.
2 This subsection does not affect the ability of a taxpayer to claim
3 unused credit until it is used.

4 (4) For purposes of subsection (1) of this section, an "eligible
5 taxpayer" means a taxpayer that:

6 (a) Immediately before the effective date of section 503 of this
7 act was registered with the department and engaged in making sales of
8 tangible personal property that the taxpayer delivered to physical
9 locations away from its place of business; and

10 (b) During the calendar year in which section 503 of this act
11 becomes effective:

12 (i) Has a physical presence in Washington;

13 (ii) Has gross income of the business less than five hundred
14 thousand dollars;

15 (iii) Has at least five percent of its gross income from sales
16 subject to sales tax derived from sales of tangible personal property
17 delivered to physical locations away from its place of business; and

18 (iv) Has at least one percent of its gross income from sales
19 subject to sales tax derived from deliveries of tangible personal
20 property to destinations in local jurisdictions imposing sales tax
21 other than the one to which the taxpayer reported the most local sales
22 tax.

23 (5) Certified service providers agreeing to provide services to
24 eligible taxpayers under subsection (1)(a) of this section shall be
25 compensated for those services by retaining as a fee an amount adopted
26 by rule by the department. The department may be guided by the
27 provisions for monetary allowances adopted by the governing board of
28 the agreement to determine the amount of the fee. The fee must be
29 reasonable and provide adequate incentive for certified service
30 providers to provide services to eligible taxpayers. The fee will be
31 funded solely from state sales taxes.

32 (6) Taxpayers that use certified service provider services under
33 subsection (1)(a) of this section but are not eligible taxpayers are
34 immediately liable to the department for the amount retained by the
35 certified service provider as a fee for providing those services to the
36 taxpayer. All administrative provisions of this chapter applicable to
37 the collection of taxes apply to amounts due under this subsection. If
38 any amounts due under this subsection are not paid by the due date of

1 any notice informing the taxpayer of such liability, the department
2 shall apply interest, but not penalties, to amounts remaining due.
3 Interest assessed under this subsection shall be at the rate provided
4 for delinquent excise taxes under this chapter from the day after the
5 due date until the amount due under this subsection is paid in full.

6 (7) Taxpayers that claim a credit under subsection (1)(b) of this
7 section but are not eligible taxpayers are immediately liable to the
8 department for the amount of credit claimed. If any amounts due under
9 this subsection are not paid by the due date of any notice informing
10 the taxpayer of such liability, the department shall apply interest,
11 but not penalties, to amounts remaining due. Interest assessed under
12 this subsection shall be at the rate provided for delinquent excise
13 taxes under this chapter from the day after the due date until the
14 amount due under this subsection is paid in full.

15 (8) No application is necessary for either the use of certified
16 service providers under subsection (1)(a) of this section or the tax
17 credit under subsection (1)(b) of this section. The taxpayer must keep
18 records necessary for the department to determine eligibility under
19 this section. The department may prescribe rules and procedures
20 regarding the administration of this section.

21 **PART XVII**

22 **MISCELLANEOUS PROVISIONS**

23 **Sec. 1701.** 2004 c 153 s 502 (uncodified) is amended to read as
24 follows:

25 (1) If a court of competent jurisdiction enters a final judgment on
26 the merits that is based on federal or state law, is no longer subject
27 to appeal, and substantially limits or impairs the essential elements
28 of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of
29 2002, then sections 1 through 6, 8 through 17, and 19, chapter 67, Laws
30 of 2002 ~~((is))~~ are null and void in ~~((its))~~ their entirety.

31 ~~((If the contingency in subsection (1) of this section occurs,~~
32 ~~section 502, chapter 168, Laws of 2003 is null and void.~~

33 ~~(3))~~ If the contingency in subsection (1) of this section occurs,
34 section 410, chapter 153, Laws of 2004 is null and void.

35 (3) If the contingency in subsection (1) of this section occurs,

1 sections 1002, 1005, 1013, 1017, 1022, and 1024 of this act are null
2 and void.

3 NEW SECTION. Sec. 1702. Part headings used in this act are not
4 any part of the law.

5 NEW SECTION. Sec. 1703. This act does not affect any existing
6 right acquired or liability or obligation incurred under the sections
7 amended or repealed in this act or under any rule or order adopted
8 under those sections, nor does it affect any proceeding instituted
9 under those sections.

10 NEW SECTION. Sec. 1704. Sections 101 through 105, 201, 202, 401,
11 501 through 503, 601, 701 through 703, 801, 802, 901 through 905, 1001,
12 1002, 1004, 1005, 1007 through 1013, 1015 through 1017, 1019 through
13 1024, 1101 through 1104, 1201 through 1203, 1302, 1401 through 1403,
14 1501, 1502, and 1601 of this act take effect July 1, 2008.

15 NEW SECTION. Sec. 1705. (1) Section 302 of this act takes effect
16 when:

17 (a) The United States congress grants individual states the
18 authority to impose sales and use tax collection duties on remote
19 sellers; or

20 (b) It is determined by a court of competent jurisdiction, in a
21 judgment not subject to review, that a state can impose sales and use
22 tax collection duties on remote sellers.

23 (2) The department of revenue shall provide notice to affected
24 taxpayers, the legislature, and others as deemed appropriate by the
25 department, if either of the contingencies in this section occurs.

26 NEW SECTION. Sec. 1706. Section 1301 of this act expires July 1,
27 2008.

28 NEW SECTION. Sec. 1707. Sections 1003, 1006, 1014, and 1018 of
29 this act take effect the later of: The date chapter 67, Laws of 2002,
30 becomes null and void; or July 1, 2008.

1 NEW SECTION. **Sec. 1708.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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