AN ACT Relating to documenting wholesale sales for excise tax purposes; amending RCW 82.32.780, 82.32.783, 82.32.785, 82.32.787, and 82.32.290; amending 2009 c 563 § 101 (uncodified); reenacting and amending RCW 82.04.470, 82.08.050, 82.08.130, 82.32.087, 82.32.291, 82.32.330, 82.04.050, and 34.05.328; adding a new section to chapter 82.32 RCW; creating a new section; and providing an effective date.

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

Sec. 1. 2009 c 563 s 101 (uncodified) is amended to read as follows:

The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with (seller's) reseller permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as
retailers, wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a (seller's) reseller permit.

Sec. 2. RCW 82.32.780 and 2009 c 563 s 201 are each amended to read as follows:

(1)(a) Taxpayers seeking to obtain a new (seller's) reseller permit or to renew or reinstate a (seller's) reseller permit, other than taxpayers subject to the provisions of RCW 82.32.783, must apply to the department in a form and manner prescribed by the department. The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

(b) An application must be denied if:

(i) The department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a (seller's) reseller permit.

(ii) The application contains any material misstatement; or

(iii) The application is incomplete.

(c) The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title.

(d) The department's decision (whether) to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the (seller's) reseller permit application, and other information available to the department.

(e) The department must refuse to accept an application to renew a reseller permit that is received more than ninety days before the expiration of the reseller permit.
(2) Notwithstanding subsection (1) of this section, the department may issue or renew a ((seller's)) reseller permit ((to)) for a taxpayer that has not applied for the permit or renewal of the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

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

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

(b)(i) A ((seller's)) reseller permit ((issued to taxpayers who register with the department under RCW 82.32.030 after January 1, 2009,)) is valid for a period of twenty-four months and may be renewed for the period prescribed in (a) of this subsection ((4)) (3) if the permit is issued to a taxpayer who:

(A) Is not registered with the department under RCW 82.32.030;

(B) Has been registered with the department under RCW 82.32.030 for a continuous period of less than one year as of the date that the department received the taxpayer's application for a reseller permit;

(C) Was on nonreporting status as authorized under RCW 82.32.045(4) at the time that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit;

(D) Has filed tax returns reporting no business activity for purposes of sales and business and occupation taxes for the twelve-month period immediately preceding the date that the department received the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit; or

(E) Has failed to file tax returns covering any part of the twelve-month period immediately preceding the department's receipt of the taxpayer's application for a reseller permit or to renew or reinstate a reseller permit.

(ii) The provisions of this subsection (3)(b) do not apply to reseller permits issued to any business owned by a federally recognized Indian tribe or by an enrolled member of a federally recognized Indian
tribe, if the business does not engage in any business activity that
subjects the business to any tax imposed by the state under chapter
82.04 RCW. Permits issued to such businesses are valid for the period
provided in (a) of this subsection (3).

(iii) Nothing in this subsection (3)(b) may be construed as
affecting the department's right to deny a taxpayer's application for
a reseller permit or to renew or reinstate a reseller permit as
provided in subsection (1)(b) and (c) of this section.

(c) A ((seller's)) reseller permit is no longer valid if the permit
holder's certificate of registration is revoked, the permit holder's
tax reporting account is closed by the department, or the ((person))
permit holder otherwise ceases to engage in business.

(d) The department may provide by rule for a uniform expiration
date for reseller permits issued, renewed, or reinstated under this
section, if the department determines that a uniform expiration date
for reseller permits will improve administrative efficiency for the
department. If the department adopts a uniform expiration date by
rule, the department may extend or shorten the twenty-four or forty-
eight month period provided in (a) and (b) of this subsection for a
period not to exceed six months as necessary to conform the reseller
permit to the uniform expiration date.

((4)) (a) The department may revoke a ((seller's)) taxpayer's
reseller permit ((of a taxpayer)) for any of the following reasons:
(i) The taxpayer used or allowed or caused its ((seller's))
reseller permit to be used to purchase any item or service without
payment of sales tax, but the taxpayer or other purchaser was not
entitled to use the ((seller's)) reseller permit for the purchase;
(ii) The department issued the ((seller's)) reseller permit to the
taxpayer in error;
(iii) The department determines that the taxpayer is no longer
entitled to make purchases at wholesale; or
(iv) The department determines that revocation of the ((seller's))
reseller permit would be in the best interest of collecting taxes due
under this title.

(b) The notice of revocation must be in writing and is effective on
the date specified in the revocation notice. The notice must also
advise the taxpayer of its right to a review by the department.
(c) The department may refuse to reinstate a (seller's) reseller permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose (seller's) reseller permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a (seller's) reseller permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

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

(5) The department may provide (lists of valid and revoked seller's) the public with access to reseller permit numbers on its website, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under RCW 82.32.330(3)(l).

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a (seller's) reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a (seller's) reseller permit or (uniform exemption certificate) other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or (exemption certificates) other documentation.

Sec. 3. RCW 82.32.783 and 2009 c 563 s 202 are each amended to read as follows:
(1)(a) Contractors seeking a new ((seller's)) reseller permit or to renew or reinstate a ((seller's)) reseller permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the total combined dollar amount of all purchases of materials and labor during the preceding ((twelve)) twenty-four months for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding ((twelve)) twenty-four months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, wholesale construction activity, speculative building, public road construction, and government contracting during the twelve-month or twenty-four month period for which the ((seller's)) reseller permit will be valid. The contractor must also report the percentage of its total dollar amount of actual or, if applicable, estimated material and labor purchases that was for retail and wholesale construction activity performed by the applicant.

(c) The department must use its best efforts to rule on applications within sixty days of receiving a complete application. If the department fails to rule on an application within sixty days of receiving a complete application, the taxpayer may either request a review as provided in subsection (6) of this section or resubmit the application. Nothing in this subsection may be construed as preventing the department from ruling on an application more than sixty days after the department received the application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit;

(B) The application contains any material misstatement;

(C) The application is incomplete; or

(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material and labor purchases as reported on the application is for retail and wholesale construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this
subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.

(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.

(iii) The department's decision to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(e) The department must refuse to accept an application to renew a reseller permit that is received more than ninety days before the expiration of the reseller permit.

(2) (Sellers' permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.) Notwithstanding subsection (1) of this section, the department may issue or renew a reseller permit for a contractor that has not applied for the permit or renewal of the permit if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing or renewing the reseller permit is unlikely to jeopardize collection of sales taxes due under this title based on criteria established by the department by rule. Such criteria may include but is not limited to whether the taxpayer has a previous history of misusing resale certificates or reseller permits or there is any other indication that issuing or renewing the reseller permit would jeopardize collection of sales taxes due from the contractor.

(3)(a) (Sellers') Except as otherwise provided in (b) of this subsection:

(i) Except as provided in (a)(ii) of this subsection, until June 30, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement; and

(ii) Beginning July 1, 2013, reseller permits issued, renewed, or reinstated under this section will be valid for a period of twenty-four
months from the date of issuance, renewal, or reinstatement. However, the department may issue, renew, or reinstate permits for a period of twenty-four months beginning July 1, 2011, if the department is satisfied in the same manner as set forth in subsection (2) of this section.

(b)(i) A ((seller's)) reseller permit is no longer valid if the permit holder's certificate of registration is revoked, the permit holder's tax reporting account is closed by the department, or the ((person)) permit holder otherwise ceases to engage in business.

(ii) The department may provide by rule for a uniform expiration date for reseller permits issued, renewed, or reinstated under this section, if the department determines that a uniform expiration date for reseller permits will improve administrative efficiency for the department. If the department adopts a uniform expiration date by rule, the department may extend or shorten the twelve or twenty-four month period provided in (a)(i) and (ii) of this subsection for a period not to exceed six months as necessary to conform the reseller permit to the uniform expiration date.

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

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

(ii) The department issued the ((seller's)) reseller permit to the contractor in error;

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

(iv) The department determines that revocation of the ((seller's)) reseller permit would be in the best interest of collecting taxes due under this title.

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

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

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

(5) The department may provide ((lists of valid and revoked sellers')) the public with access to reseller permit numbers on its web site, including the name of the permit holder, the status of the reseller permit, the expiration date of the permit, and any other information that is disclosable under RCW 82.32.330(3)(1).

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a ((seller's)) reseller permit or the department's failure to rule on an application within the time prescribed in subsection (1)(a) of this section. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a ((seller's)) reseller permit or ((uniform exemption certificate)) other documentation authorized under RCW 82.04.470 and the consequences of misusing such permits or ((exemption certificates)) other documentation.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person ((who engages in any retail construction activity, or who engages in any activity that brings the person within the definition of consumer in RCW 82.04.190 (3) or (6), or who is a speculative builder as defined by rule of the department)) whose primary business activity is as a contractor as defined in RCW 18.27.010 or an electrical contractor as defined in RCW 19.28.006.
(b) "Government contracting" means the activity described in RCW 82.04.190(6).

(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department.

(f) "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For purposes of this subsection (8)(f), "consumer" has the same meaning as in RCW 82.04.190.

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

(1) Reseller permits issued by the department, as provided under RCW 82.32.780 and 82.32.783, will be in a form prescribed by the department, which may include an electronic form. Reseller permits must contain the following information:

(a) A unique identifying number assigned by the department;

(b) The name and address of the permit holder;

(c) The type of business engaged in;

(d) The date the permit was issued, renewed, or reinstated by the department; and

(e) The expiration date of the permit.

(2) Reseller permits may also contain such other information as required by the department, including, but not limited to:

(a) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale;

(b) The date that the permit was provided to the seller;

(c) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;

(d) A statement that the permit holder acknowledges that misuse of reseller permit or reseller permit number subjects the permit holder to
revocation of the reseller permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;

(e) Instructions for renewing the permit;

(f) A statement that the department is authorized to obtain information concerning the permit holder's purchase of items or services under the permit from the seller to verify whether the permit holder was authorized to purchase such items or services without payment of retail sales tax; and

(g) The signature of the permit holder, unless a copy of the permit is provided to the seller in a format other than paper.

Sec. 5. RCW 82.32.785 and 2009 c 563 s 203 are each amended to read as follows:

The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means (the validity of sellers' permits presented to sellers from) whether their customers' reseller permits are valid.

Sec. 6. RCW 82.32.787 and 2009 c 563 s 204 are each amended to read as follows:

A person must, upon request of the department, provide the department with ((a copy)) paper or electronic copies of all ((sellers')) reseller permits, or ((uniform exemption certificates)) other documentation as authorized in RCW 82.04.470, accepted by that person during the period specified by the department to substantiate wholesale sales. If, instead of the documentation specified in this subsection, the seller has retained the relevant data elements from such permits or other documentation authorized in RCW 82.04.470, as allowed under the streamlined sales and use tax agreement, the seller must provide such data elements to the department.

Sec. 7. RCW 82.04.470 and 2009 c 563 s 205 and 2009 c 535 s 411 are each reenacted and amended to read as follows:

(1) ((Unless a seller has taken from the buyer a seller's permit, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.))
(2) If a seller does not receive a seller's permit at the time of the sale, have a seller's permit on file at the time of the sale, or obtain a seller's permit from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of retail sales tax.

(3) A seller's permit must contain such information as required by the department, which may include, but is not limited to:

(a) The name and address of the buyer;

(b) The seller's permit number issued by the department;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are otherwise to be purchased at wholesale, unless the buyer presents a blanket seller's permit;

(e) The date on which the permit was provided to the seller;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are otherwise purchased at wholesale;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the permit and that misuse of the resale privilege claimed on the permit subjects the buyer to revocation of the seller's permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;

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

(i) The signature of the authorized individual;

(j) The name of the seller;

(k) The date the permit was issued, renewed, or reinstated by the department;

(l) The date that the permit expires;

(m) Instructions for renewing the permit; and

(n) A statement that the department is authorized to obtain information concerning the buyer's purchase of items or services under the permit from the seller to verify whether the buyer was authorized to purchase such items or services without payment of retail sales tax.
(4) Subsection (3)(h) and (i) of this section does not apply if the permit is provided in a format other than paper. If the permit is provided in a format other than paper, the name of the individual providing the permit must be included in the permit.

(5)(a) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030 a properly completed:

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

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

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

(6) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030 a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board as long as that certificate includes the seller's permit number issued by the department to the buyer.

(7) As used in this section, "seller's permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783 and provided by a buyer to a seller to substantiate a wholesale sale.)) The burden of proving that a sale is a wholesale sale rather than a retail sale is on the seller. A seller may meet its burden of proving a sale is a wholesale sale rather than a retail sale by taking from the buyer, at the time of sale or within a reasonable time after the sale as provided by rule of the department, a copy of a reseller permit issued to the buyer by the department under RCW 82.32.780 or 82.32.783.

(2)(a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030:

(i) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

(ii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.
(b) Certificates authorized under (a)(i) and (ii) of this subsection (2) must include the reseller permit number issued by the department to the buyer.

(c) A seller who accepts exemption certificates authorized in (a) of this subsection (2) is not required to verify with the department whether the buyer is required to be registered with the department under RCW 82.32.030. Nothing in this subsection (2)(c) may be construed to modify any of the provisions of RCW 82.08.050.

3) (a) In lieu of a copy of a reseller permit issued by the department, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030:

   (i) A properly completed uniform sales and use tax exemption certificate developed by the multistate tax commission;

   (ii) A properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board; or

   (iii) Any other exemption certificate as may be authorized by the department and properly completed by the buyer.

(b) A seller who accepts exemption certificates authorized in (a) of this subsection (3) is not required to verify with the department whether the buyer is not required to be registered with the department under RCW 82.32.030. Nothing in this subsection (3)(b) may be construed to modify any of the provisions of RCW 82.08.050.

4) In lieu of obtaining the documentation in subsection (1), (2), or (3) of this section, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

5) A seller that does not comply with subsection (1), (2), (3), or (4) of this section may meet its burden of proving that a sale is a wholesale sale rather than a retail sale by demonstrating facts and circumstances, according to rules adopted by the department, that show the sale was properly made without payment of retail sales tax.

6) Notwithstanding anything in this section to the contrary, a seller who maintains records establishing that it uses electronic means to verify, at least once per calendar year, the validity of its customers' reseller permits need not take a copy of a reseller permit or other documentation or the data elements as authorized in subsection (1), (2), (3), or (4) of this section for wholesale sales to those customers with valid reseller permits as confirmed by the department for all sales occurring within twelve months following the date that
the seller last electronically verified the validity of its customers' reseller permits. A seller that meets the requirements of this subsection will be deemed to have met its burden of proving a sale is a wholesale sale rather than a retail sale.

(7) As used in this section "reseller permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783, which is used to substantiate a wholesale sale.

Sec. 8. RCW 82.08.050 and 2009 c 563 s 206 and 2009 c 289 s 2 are each reenacted and amended to read as follows:

(1) The tax hereby imposed shall in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) Except as otherwise provided in this section, if any seller fails to collect the tax herein imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an exemption certificate claiming direct mail as provided in RCW 82.32.730(6), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department).
(4) Sellers (shall) are not (be) relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

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

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

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

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

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

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

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

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, \((\text{shall})\) constitutes a debt from the buyer to the seller \((\text{and})\). Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller \((\text{shall})\) must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it \((\text{shall})\) must be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter\((7)\). But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price \((\text{shall})\) may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax\((\text{in which case})\). If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent \((\text{may be added})\) of the unpaid tax to the amount of the tax due for failure of the buyer to pay the \((\text{same})\) tax to the seller, regardless of when the tax may be collected by the department\((\text{and})\). In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest
and penalties, (shall) apply (in addition, and). For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made (shall) will be considered as the due date of the tax.

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

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

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

(ii) The taking of orders; or

(iii) The processing of payments; and

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

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

(13) For purposes of this section((7)):

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale; and

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller.

Sec. 9. RCW 82.08.130 and 2009 c 563 s 207 and 2009 c 535 s 1106 are each reenacted and amended to read as follows:

(1) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time
of purchase whether the particular property acquired will be consumed or resold, the buyer may use a ((seller's)) reseller permit or((, if eligible, a uniform exemption certificate)) other documentation authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the ((articles)) property according to the general nature of the buyer's business. The buyer ((shall)) must account for the value of any articles purchased with a ((seller's)) reseller permit or ((uniform exemption certificate)) other documentation authorized under RCW 82.04.470 that ((are)) is used by the buyer and remit the deferred sales tax on the ((articles)) property to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells ((an article)) property or services at retail, without intervening use by the buyer, ((shall)) must collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction ((or credit)) on the buyer's tax return equal to((, in the case of a deduction)) the cost to the buyer of the property or service resold upon which retail sales tax has been paid((, and in the case of a credit, the amount of state and local sales taxes paid with respect to the property or service resold)). The deduction ((or credit)) is allowed only if the taxpayer keeps and preserves records that ((show)) include the names of the persons from whom the ((articles)) property or services were purchased, the date of the purchase, the type of ((articles)) property or services, the amount of the purchase, and the tax that was paid.

(3) The department must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a ((seller's)) reseller permit or ((uniform exemption certificate)) other documentation as authorized in RCW 82.04.470.

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

Sec. 10. RCW 82.32.087 and 2009 c 563 s 210 and 2009 c 176 s 5 are each reenacted and amended to read as follows:
The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

A taxpayer may apply for a permit under this section if:

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

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

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

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

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

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

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

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

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

(a) Purchases of meals or beverages;
(b) Purchases of motor vehicles, trailers, boats, airplanes, and
other property subject to requirements for title transactions by the
department of licensing;
(c) Purchases for which a (seller's) reseller permit or (uniform
exemption certificate) other documentation authorized under RCW
82.04.470 may be used;
(d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
and (f), (3) (a) through (d), (f), and (g), and (5); or
(e) Other activities subject to tax under chapter 82.08 or 82.12
RCW that the department by rule designates, consistent with the
purposes of this section, as activities for which a direct pay permit
is not appropriate and may not be used.

Sec. 11. RCW 82.32.290 and 2009 c 563 s 211 are each amended to
read as follows:

(1)(a) It shall be unlawful:
(i) For any person to engage in business without having obtained a
certificate of registration as provided in this chapter;
(ii) For the president, vice president, secretary, treasurer, or
other officer of any company to cause or permit the company to engage
in business without having obtained a certificate of registration as
provided in this chapter;
(iii) For any person to tear down or remove any order or notice
posted by the department;
(iv) For any person to aid or abet another in any attempt to evade
the payment of any tax or any part thereof;
(v) For any purchaser to fraudulently sign or furnish to a seller
(a seller's permit or uniform exemption certificate) documentation
authorized under RCW 82.04.470 without intent to resell the property
purchased or with intent to otherwise use the property in a manner
inconsistent with the claimed wholesale purchase; or
(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

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

(2)(a) It shall be unlawful:

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

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

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

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

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

Sec. 12. RCW 82.32.291 and 2009 c 563 s 212 and 2009 c 289 s 4 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in this section, if any ((person who)) buyer improperly uses a ((seller's)) reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase items or services at retail without payment of sales tax((r or who uses a uniform exemption certificate developed by the multistate...))
tax commission or approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the seller's permit or exemption certificate for the purchase shall be assessed)) that was legally due on the purchase, the department must assess against that buyer a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service.

(2) The department ((may)) must waive the penalty imposed under subsection (1) of this section if it finds that the use of the ((seller's)) reseller permit ((or exemption certificate)) number, reseller permit, or other documentation authorized under RCW 82.04.470 was due to circumstances beyond the taxpayer's control or if the ((seller's)) reseller permit ((or exemption certificate)) number, reseller permit, or other documentation authorized under RCW 82.04.470 was properly used for purchases for dual purposes. The department ((shall)) must define by rule what circumstances are considered to be beyond the taxpayer's control.

(3) A buyer that purchases items or services at retail without payment of sales tax legally due on the purchase is deemed to have improperly used a reseller permit number, reseller permit, or other documentation authorized under RCW 82.04.470 to purchase the items or services without payment of sales tax and is subject to the penalty in subsection (1) of this section if the buyer:

(a) Furnished to the seller a reseller permit number, a reseller permit or copy of a reseller permit, or other documentation authorized under RCW 82.04.470 to avoid payment of sales tax legally due on the purchase; or

(b) Made the purchase from a seller that had previously used electronic means to verify the validity of the buyer's reseller permit with the department and, as a result, did not require the buyer to provide a copy of its reseller permit or furnish other documentation authorized under RCW 82.04.470 to document the wholesale nature of the purchase. In such cases, the buyer bears the burden of proving that it did not improperly use its reseller permit to make the purchase without payment of sales tax.
Sec. 13. RCW 82.32.330 and 2009 c 563 s 213 and 2009 c 309 s 2 are each reenacted and amended to read as follows:

(1) For purposes of this section:

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

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

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

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

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and
(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

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

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

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

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

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

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

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

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

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

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

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

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

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

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;
(j) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies, for official purposes;

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

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

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

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

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

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;
(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax;

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

(s) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115.

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

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

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

(i) The data, materials, or documents sought for disclosure are
cumulative or duplicative, or are obtainable from some other source
that is more convenient, less burdensome, or less expensive;
(ii) The production of the data, materials, or documents sought
would be unduly burdensome or expensive, taking into account the needs
of the department, the amount in controversy, limitations on the
petitioner's resources, and the importance of the issues at stake; or
(iii) The data, materials, or documents sought for disclosure
contain trade secret information that, if disclosed, could harm the
petitioner.

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

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

(5) Service of a subpoena issued under RCW 82.32.115 does not
constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this
section, a person served with a subpoena under RCW 82.32.115 may
disclose the existence or content of the subpoena to that person's
legal counsel.

(6) Any person acquiring knowledge of any return or tax information
in the course of his or her employment with the department of revenue
and any person acquiring knowledge of any return or tax information as
provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this
section, who discloses any such return or tax information to another
person not entitled to knowledge of such return or tax information
under the provisions of this section, is guilty of a misdemeanor. If
the person guilty of such violation is an officer or employee of the
state, such person must forfeit such office or employment and is
incapable of holding any public office or employment in this state for
a period of two years thereafter.
Sec. 14. RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;
(b) Abstract, title insurance, and escrow services;
(c) Credit bureau services;
(d) Automobile parking and storage garage services;
(e) Landscape maintenance and horticultural services but excluding
   (i) horticultural services provided to farmers and (ii) pruning,
   trimming, repairing, removing, and clearing of trees and brush near
   electric transmission or distribution lines or equipment, if performed
   by or at the direction of an electric utility;
(f) Service charges associated with tickets to professional
   sporting events; and
(g) The following personal services: Physical fitness services,
   tanning salon services, tattoo parlor services, steam bath services,
   turkish bath services, escort services, and dating services.

(4)(a) The term also includes:
   (i) The renting or leasing of tangible personal property to
       consumers; and
   (ii) Providing tangible personal property along with an operator
       for a fixed or indeterminate period of time. A consideration of this
       is that the operator is necessary for the tangible personal property to
       perform as designed. For the purpose of this subsection (4)(a)(ii), an
       operator must do more than maintain, inspect, or set up the tangible
       personal property.
   (b) The term does not include the renting or leasing of tangible
       personal property where the lease or rental is for the purpose of
       sublease or subrent.

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

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

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

(i) Custom software; or

(ii) The customization of prewritten computer software.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are each reenacted and amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater
than its probable costs, taking into account both the qualitative and
quantitative benefits and costs and the specific directives of the
statute being implemented;

(e) Determine, after considering alternative versions of the rule
and the analysis required under (b), (c), and (d) of this subsection,
that the rule being adopted is the least burdensome alternative for
those required to comply with it that will achieve the general goals
and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it
applies to take an action that violates requirements of another federal
or state law;

(g) Determine that the rule does not impose more stringent
performance requirements on private entities than on public entities
unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or
statute applicable to the same activity or subject matter and, if so,
determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ
from federal standards; or

(ii) Substantial evidence that the difference is necessary to
achieve the general goals and specific objectives stated under (a) of
this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with
other federal, state, and local laws applicable to the same activity or
subject matter.

(2) In making its determinations pursuant to subsection (1)(b)
through (h) of this section, the agency shall place in the rule-making
file documentation of sufficient quantity and quality so as to persuade
a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this
section, an agency shall place in the rule-making file a rule
implementation plan for rules filed under each adopting order. The
plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the
resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and
(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency shall report to the legislature pursuant to (e)(b) of this subsection;

(e) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the
legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; ((or))

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy
statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.
NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 17. (1) Except as provided in subsection (2) of this section, this act applies retroactively to January 1, 2010, as well as prospectively.

(2) Sections 2, 3, 11, 12, and 15 of this act apply prospectively only.

NEW SECTION. Sec. 18. Sections 2, 3, 11, 12, and 15 of this act take effect July 1, 2010.

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