

1 **DIGITAL PRODUCTS DEFINITIONS**

2 NEW SECTION. **Sec. 101.** A new section is added to chapter 82.04
3 RCW to be codified between RCW 82.04.010 and 82.04.220 to read as
4 follows:

5 (1) "Digital code" means a code that provides a purchaser with the
6 right to obtain one or more digital products, if all of the digital
7 products to be obtained through the use of the code have the same sales
8 and use tax treatment. "Digital code" does not include a code that
9 represents a stored monetary value that is deducted from a total as it
10 is used by the purchaser. "Digital code" also does not include a code
11 that represents a redeemable card, gift card, or gift certificate that
12 entitles the holder to select digital products of an indicated cash
13 value. A digital code may be obtained by any means, including e-mail
14 or by tangible means regardless of its designation as song code, video
15 code, book code, or some other term.

16 (2) (a) "Digital automated service," except as provided in (b) of
17 this subsection (2), means any service transferred electronically that
18 uses one or more software applications.

19 (b) "Digital automated service" does not include:

20 (i) Any service that primarily involves the application of human
21 effort, and the human effort originated after the customer requested
22 the service;

23 (ii) The loaning or transferring of money or the purchase, sale, or
24 transfer of financial instruments. For purposes of this subsection
25 (2) (b) (ii), "financial instruments" include cash, accounts receivable
26 and payable, loans and notes receivable and payable, debt securities,
27 equity securities, as well as derivative contracts such as forward
28 contracts, swap contracts, and options;

29 (iii) Dispensing cash or other physical items from a machine;

30 (iv) Payment processing services;

31 (v) Parimutuel wagering and handicapping contests as authorized by
32 chapter 67.16 RCW;

33 (vi) Telecommunications services and ancillary services as those
34 terms are defined in RCW 82.04.065;

35 (vii) The internet and internet access as those terms are defined
36 in RCW 82.04.297;

37 (viii) The service described in RCW 82.04.050(6) (b); and

1 (ix) Online educational programs provided by a public or private
2 elementary or secondary school, or an institution of higher education
3 as defined in Title 20 U.S.C. Sec. 1001, as existing on July 1, 2009.

4 (3)(a) "Digital goods," except as provided in (b) of this
5 subsection (3), means sounds, images, data, facts, or information, or
6 any combination thereof, transferred electronically.

7 (b) The term "digital goods" does not include:

8 (i) Telecommunications services and ancillary services as those
9 terms are defined in RCW 82.04.065;

10 (ii) Computer software as defined in RCW 82.04.215;

11 (iii) Internet access as defined in RCW 82.04.297;

12 (iv) The representation of a personal service in electronic form,
13 such as an electronic copy of an engineering report prepared by an
14 engineer, that primarily involves the application of human effort, and
15 the human effort originated after the customer requested the service;
16 and

17 (v) Digital automated services and services and activities excluded
18 from the definition of digital automated services in subsection (2)(b)
19 of this section.

20 (4) "Digital products" means digital goods and digital automated
21 services.

22 (5) "Electronically transferred" or "transferred electronically"
23 means obtained by the purchaser by means other than tangible storage
24 media. It is not necessary that a copy of the product be physically
25 transferred to the purchaser. So long as the purchaser may access the
26 product, it will be considered to have been electronically transferred
27 to the purchaser.

28 **PART 2**

29 **IMPOSITION OF SALES AND USE TAXES ON DIGITAL PRODUCTS**

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

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

1 who install, repair, clean, alter, improve, construct, or decorate real
2 or personal property of or for consumers other than a sale to a person
3 who presents a resale certificate under RCW 82.04.470 and who:

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

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

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

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

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

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

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

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

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

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

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

37 (e) Automobile towing and similar automotive transportation

1 services, but not in respect to those required to report and pay taxes
2 under chapter 82.16 RCW;

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

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

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

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

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

32 (c) Credit bureau services;

33 (d) Automobile parking and storage garage services;

34 (e) Landscape maintenance and horticultural services but excluding
35 (i) horticultural services provided to farmers and (ii) pruning,
36 trimming, repairing, removing, and clearing of trees and brush near
37 electric transmission or distribution lines or equipment, if performed
38 by or at the direction of an electric utility;

1 (f) Service charges associated with tickets to professional
2 sporting events; and

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

6 (4) (a) The term ~~((shall))~~ also includes:

7 (i) The renting or leasing of tangible personal property to
8 consumers; and

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

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

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

21 (6) (a) The term ~~((shall))~~ also includes the sale of prewritten
22 computer software other than a sale to a person who presents a resale
23 certificate under RCW 82.04.470, regardless of the method of delivery
24 to the end user ~~((, but shall))~~. For purposes of this subsection
25 (6) (a), the sale of prewritten computer software includes the sale of
26 or charge made for a key or an enabling or activation code, where the
27 key or code is required to activate prewritten computer software and
28 put the software into use. There is no separate sale of the key or
29 code from the prewritten computer software, regardless of how the sale
30 may be characterized by the vendor or by the purchaser.

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

- 33 (i) Custom software ~~((or))~~;
- 34 (ii) The customization of prewritten computer software; or
- 35 (iii) Prewritten computer software sold to a buyer who provides
36 services described in (b) of this subsection and who will charge
37 consumers for the right to access and use the software.

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

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

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

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

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

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

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

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

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

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

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

12 (~~(9)~~) (10) The term (~~shall~~) also does not include sales of
13 chemical sprays or washes to persons for the purpose of postharvest
14 treatment of fruit for the prevention of scald, fungus, mold, or decay,
15 nor (~~shall~~) does it include sales of feed, seed, seedlings,
16 fertilizer, agents for enhanced pollination including insects such as
17 bees, and spray materials to: (a) Persons who participate in the
18 federal conservation reserve program, the environmental quality
19 incentives program, the wetlands reserve program, and the wildlife
20 habitat incentives program, or their successors administered by the
21 United States department of agriculture; (b) farmers for the purpose of
22 producing for sale any agricultural product; and (c) farmers acting
23 under cooperative habitat development or access contracts with an
24 organization exempt from federal income tax under Title 26 U.S.C. Sec.
25 501(c)(3) or the Washington state department of fish and wildlife to
26 produce or improve wildlife habitat on land that the farmer owns or
27 leases.

28 (~~(10)~~) (11) The term (~~shall~~) does not include the sale of or
29 charge made for labor and services rendered in respect to the
30 constructing, repairing, decorating, or improving of new or existing
31 buildings or other structures under, upon, or above real property of or
32 for the United States, any instrumentality thereof, or a county or city
33 housing authority created pursuant to chapter 35.82 RCW, including the
34 installing, or attaching of any article of tangible personal property
35 therein or thereto, whether or not such personal property becomes a
36 part of the realty by virtue of installation. Nor (~~shall~~) does the
37 term include the sale of services or charges made for the clearing of
38 land and the moving of earth of or for the United States, any

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

6 (~~(11)~~) (12) The term (~~shall~~) does not include the sale of or
7 charge made for labor, services, or tangible personal property pursuant
8 to agreements providing maintenance services for bus, rail, or rail
9 fixed guideway equipment when a regional transit authority is the
10 recipient of the labor, services, or tangible personal property, and a
11 transit agency, as defined in RCW 81.104.015, performs the labor or
12 services.

13 **Sec. 202.** RCW 82.04.190 and 2007 c 6 s 1008 are each amended to
14 read as follows:

15 "Consumer" means the following:

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

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

4 (2) (a) Any person engaged in any business activity taxable under
5 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
6 uses any competitive telephone service, ancillary services, or
7 telecommunications service as those terms are defined in RCW 82.04.065,
8 other than for resale in the regular course of business; (c) any person
9 who purchases, acquires, or uses any service defined in RCW
10 82.04.050(2) (a), other than for resale in the regular course of
11 business or for the purpose of satisfying the person's obligations
12 under an extended warranty as defined in RCW 82.04.050(7); (d) any
13 person who purchases, acquires, or uses any amusement and recreation
14 service defined in RCW 82.04.050(3) (a), other than for resale in the
15 regular course of business; (e) any person who is an end user of
16 software; and (f) any person who purchases or acquires an extended
17 warranty as defined in RCW 82.04.050(7) other than for resale in the
18 regular course of business;

19 (3) Any person engaged in the business of contracting for the
20 building, repairing or improving of any street, place, road, highway,
21 easement, right-of-way, mass public transportation terminal or parking
22 facility, bridge, tunnel, or trestle which is owned by a municipal
23 corporation or political subdivision of the state of Washington or by
24 the United States and which is used or to be used primarily for foot or
25 vehicular traffic including mass transportation vehicles of any kind as
26 defined in RCW 82.04.280, in respect to tangible personal property when
27 such person incorporates such property as an ingredient or component of
28 such publicly owned street, place, road, highway, easement,
29 right-of-way, mass public transportation terminal or parking facility,
30 bridge, tunnel, or trestle by installing, placing or spreading the
31 property in or upon the right-of-way of such street, place, road,
32 highway, easement, bridge, tunnel, or trestle or in or upon the site of
33 such mass public transportation terminal or parking facility;

34 (4) Any person who is an owner, lessee or has the right of
35 possession to or an easement in real property which is being
36 constructed, repaired, decorated, improved, or otherwise altered by a
37 person engaged in business, excluding only (a) municipal corporations
38 or political subdivisions of the state in respect to labor and services

1 rendered to their real property which is used or held for public road
2 purposes, and (b) the United States, instrumentalities thereof, and
3 county and city housing authorities created pursuant to chapter 35.82
4 RCW in respect to labor and services rendered to their real property.
5 Nothing contained in this or any other subsection of this definition
6 shall be construed to modify any other definition of "consumer";

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

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

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

1 (8) Any person engaged in the business of cleaning up for the
2 United States, or its instrumentalities, radioactive waste and other
3 byproducts of weapons production and nuclear research and development;
4 ((and))

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

11 (10) Any person who purchases, acquires, or uses services described
12 in RCW 82.04.050(6)(b) other than for resale in the regular course of
13 business; and

14 (11)(a) Any end user of a digital product or digital code.

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

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

1 **Sec. 203.** RCW 82.08.010 and 2007 c 6 s 1302 are each amended to
2 read as follows:

3 For the purposes of this chapter:

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

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

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

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

37 (i) The seller actually receives consideration from a party other

1 than the purchaser, and the consideration is directly related to a
2 price reduction or discount on the sale;

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

5 (iii) The amount of the consideration attributable to the sale is
6 fixed and determinable by the seller at the time of the sale of the
7 item to the purchaser; and

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

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

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

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

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

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

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

36 (b) For the purposes of (a) of this subsection, the terms "client,"
37 "covered employee," "professional employer agreement," and

1 "professional employer organization" have the same meanings as in RCW
2 82.04.540;

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

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

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

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

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

1 (8) "Extended warranty" has the same meaning as in RCW
2 82.04.050(7);

3 (9) The definitions in section 101 of this act apply to this
4 chapter; and

5 (10) For the purposes of the taxes imposed under this chapter and
6 chapter 82.12 RCW, whenever the terms "property" or "personal property"
7 are used, those terms must be construed to include digital goods and
8 digital codes unless:

9 (a) It is clear from the context that the term "personal property"
10 is intended only to refer to tangible personal property;

11 (b) It is clear from the context that the term "property" is
12 intended only to refer to tangible personal property, real property, or
13 both; or

14 (c) To construe the term "property" or "personal property" as
15 including digital goods and digital codes would yield unlikely, absurd,
16 or strained consequences.

17 **Sec. 204.** RCW 82.12.010 and 2006 c 301 s 3 are each amended to
18 read as follows:

19 For the purposes of this chapter:

20 (1) "Purchase price" means the same as sales price as defined in
21 RCW 82.08.010((-));

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

33 (b) In case the articles used are acquired by bailment, the value
34 of the use of the articles so used shall be in an amount representing
35 a reasonable rental for the use of the articles so bailed, determined
36 as nearly as possible according to the value of such use at the places
37 of use of similar products of like quality and character under such

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

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

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

32 (e) In the case of an article manufactured or produced for purposes
33 of serving as a prototype for the development of a new or improved
34 product, the value of the article used shall be determined by: (i) The
35 retail selling price of such new or improved product when first offered
36 for sale; or (ii) the value of materials incorporated into the
37 prototype in cases in which the new or improved product is not offered
38 for sale.

1 (f) In the case of an article purchased with a direct pay permit
2 under RCW 82.32.087, the value of the article used shall be determined
3 by the purchase price of such article if, but for the use of the direct
4 pay permit, the transaction would have been subject to sales tax;

5 (3) "Value of the service used" means the purchase price for the
6 digital automated service or other service, the use of which is taxable
7 under this chapter. If the service is received by gift or under
8 conditions wherein the purchase price does not represent the true value
9 thereof, the value of the service used shall be determined as nearly as
10 possible according to the retail selling price at place of use of
11 similar services of like quality and character under rules the
12 department may prescribe;

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

21 (5) "Value of the digital good or digital code used" means the
22 purchase price for the digital good or digital code, the use of which
23 is taxable under this chapter. If the digital good or digital code is
24 acquired other than by purchase, the value of the digital good or
25 digital code must be determined as nearly as possible according to the
26 retail selling price at place of use of similar digital goods or
27 digital codes of like quality and character under rules the department
28 may prescribe;

29 (6) "Use," "used," "using," or "put to use" (~~shall~~) have their
30 ordinary meaning, and (~~shall~~) mean:

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

37 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
38 first act within this state after the service has been performed by

1 which the taxpayer takes or assumes dominion or control over the
2 article of tangible personal property upon which the service was
3 performed (as a consumer), and includes installation, storage,
4 withdrawal from storage, distribution, or any other act preparatory to
5 subsequent actual use or consumption of the article within this state;
6 (~~and~~)

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

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

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

21 (f) With respect to a service defined as a retail sale in RCW
22 82.04.050(6)(b), the first act within this state by which the taxpayer,
23 as a consumer, accesses the prewritten computer software;

24 (~~(6)~~) (7) "Taxpayer" and "purchaser" include all persons included
25 within the meaning of the word "buyer" and the word "consumer" as
26 defined in chapters 82.04 and 82.08 RCW;

27 (~~(7)~~) (8)(a)(i) Except as provided in (a)(ii) of this subsection
28 (~~(7)~~) (8), "retailer" means every seller as defined in RCW 82.08.010
29 and every person engaged in the business of selling tangible personal
30 property at retail and every person required to collect from purchasers
31 the tax imposed under this chapter.

32 (ii) "Retailer" does not include a professional employer
33 organization when a covered employee coemployed with the client under
34 the terms of a professional employer agreement engages in activities
35 that constitute a sale of tangible personal property, extended
36 warranty, digital good, digital code, or a sale of any digital
37 automated service or service defined as a retail sale in RCW 82.04.050
38 (2)(a) (~~(e)~~), (3)(a), or (6)(b) that is subject to the tax imposed by

1 this chapter. In such cases, the client, and not the professional
2 employer organization, is deemed to be the retailer and is responsible
3 for collecting and remitting the tax imposed by this chapter.

4 (b) For the purposes of (a) of this subsection, the terms "client,"
5 "covered employee," "professional employer agreement," and
6 "professional employer organization" have the same meanings as in RCW
7 82.04.540;

8 ~~((8))~~ (9) "Extended warranty" has the same meaning as in RCW
9 82.04.050(7);

10 ~~((9))~~ (10) The meaning ascribed to words and phrases in chapters
11 82.04 and 82.08 RCW, insofar as applicable, shall have full force and
12 effect with respect to taxes imposed under the provisions of this
13 chapter. "Consumer," in addition to the meaning ascribed to it in
14 chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any
15 person who distributes or displays, or causes to be distributed or
16 displayed, any article of tangible personal property, except
17 newspapers, the primary purpose of which is to promote the sale of
18 products or services. With respect to property distributed to persons
19 within this state by a consumer as defined in this subsection ~~((9))~~
20 (10), the use of the property shall be deemed to be by such consumer.

21 **Sec. 205.** RCW 82.12.020 and 2005 c 514 s 105 are each amended to
22 read as follows:

23 (1) There is hereby levied and there shall be collected from every
24 person in this state a tax or excise for the privilege of using within
25 this state as a consumer any:

26 (a) ~~((Any))~~ Article of tangible personal property purchased at
27 retail, or acquired by lease, gift, repossession, or bailment, or
28 extracted or produced or manufactured by the person so using the same,
29 or otherwise furnished to a person engaged in any business taxable
30 under RCW 82.04.280 (2) or (7), including tangible personal property
31 acquired at a casual or isolated sale, and including byproducts used by
32 the manufacturer thereof, except as otherwise provided in this chapter,
33 irrespective of whether the article or similar articles are
34 manufactured or are available for purchase within this state;

35 (b) ~~((any))~~ Prewritten computer software, regardless of the method
36 of delivery, but excluding prewritten computer software that is either

1 provided free of charge or is provided for temporary use in viewing
2 information, or both; (~~or~~)

3 (c) (~~any~~) Services defined as a retail sale in RCW
4 82.04.050(2)(a), (3)(a), or (6)(b), excluding services defined as a
5 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

6 (d) Extended warranty; or

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

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

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

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

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

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

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

27 (2) (~~This tax shall apply to the use of every extended warranty,~~
28 ~~service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), and~~
29 ~~the use of every article of tangible personal property, including~~
30 ~~property acquired at a casual or isolated sale, and including~~
31 ~~byproducts used by the manufacturer thereof, except as hereinafter~~
32 ~~provided, irrespective of whether the article or similar articles are~~
33 ~~manufactured or are available for purchase within this state.~~

34 (~~3~~) The provisions of this chapter do not apply in respect to the
35 use of any article of tangible personal property, extended warranty,
36 digital good, digital code, digital automated service, or service
37 taxable under RCW 82.04.050 (2)(a) (~~or~~), (3)(a), (~~purchased at~~
38 retail or acquired by lease, gift, or bailment) or (6)(b), if the sale

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

5 ~~((4))~~ (3)(a) Except as provided in this section, payment of the
6 tax imposed by this chapter or chapter 82.08 RCW by one purchaser or
7 user of tangible personal property, extended warranty, digital good,
8 digital code, digital automated service, or other service ~~((of the tax~~
9 ~~imposed by chapter 82.08 or 82.12 RCW shall))~~ does not have the effect
10 of exempting any other purchaser or user of the same property, extended
11 warranty, digital good, digital code, digital automated service, or
12 other service from the taxes imposed by such chapters.

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

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

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

24 (iii) In respect to the use of any article of tangible personal
25 property acquired by bailment, if the property was acquired by a
26 previous bailee from the same bailor for use in the same general
27 activity and the original bailment was prior to June 9, 1961 ~~((, the tax~~
28 ~~imposed by this chapter does not apply))~~; or

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

35 ~~((5))~~ (4)(a) Except as provided in (b) of this subsection (4),
36 the tax ~~((shall be))~~ is levied and must be collected in an amount equal
37 to the value of the article used, value of the digital good or digital

1 code used, value of the extended warranty used, or value of the service
2 used by the taxpayer, multiplied by the applicable rates in effect for
3 the retail sales tax under RCW 82.08.020(~~(7-except)~~).

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

8 **PART III**
9 **BUSINESS AND OCCUPATION TAX CHANGES**

10 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.04
11 RCW to be codified between RCW 82.04.250 and 82.04.310 to read as
12 follows:

13 (1) Upon every person engaging within this state in the business of
14 making sales at retail or wholesale of digital goods, digital codes,
15 digital automated services, or services described in RCW
16 82.04.050(6)(b), as to such persons, the amount of tax with respect to
17 such business is equal to the gross proceeds of sales of the business,
18 multiplied by the rate of 0.471 percent in the case of retail sales and
19 by the rate of 0.484 percent in the case of wholesale sales.

20 (2) For purposes of this section, a person is considered to be
21 engaging within this state in the business of making sales of digital
22 goods, digital codes, digital automated services, or services described
23 in RCW 82.04.050(6)(b), if the person makes sales of digital goods,
24 digital codes, digital automated services, or services described in RCW
25 82.04.050(6)(b) and the sales are sourced to this state under RCW
26 82.32.730 for sales tax purposes or would have been sourced to this
27 state under RCW 82.32.730 if the sale had been taxable under chapter
28 82.08 RCW.

29 (3) A person subject to tax under this section must report the tax
30 imposed in this chapter in an electronic format provided by the
31 department.

32 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.04
33 RCW to read as follows:

34 (1)(a) Any person subject to tax under section 301 of this act
35 engaging within this state in the business of making sales at retail or

1 wholesale of digital goods, digital codes, digital automated services,
2 or services described in RCW 82.04.050(6)(b), and also engaging in
3 business activities outside this state that contribute more than
4 incidentally to such in-state activity, must apportion to this state
5 that portion of apportionable income derived from activity performed
6 within this state as provided in subsection (2) of this section.

7 (b) Activities performed outside the state contribute more than
8 incidentally to in-state activities only to the extent that such
9 activities would subject the taxpayer to the tax under this chapter if
10 performed in this state.

11 (2) Apportionable income must be apportioned to Washington by
12 multiplying the apportionable income by the sales factor.

13 (3)(a) The sales factor is a fraction, the numerator of which is
14 the total receipts of the taxpayer from making sales of digital goods,
15 digital codes, digital automated services, and services described in
16 RCW 82.04.050(6)(b) in this state during the tax period, and the
17 denominator of which is the total receipts of the taxpayer derived from
18 such activity everywhere during the tax period.

19 (b) For purposes of computing the sales factor, sales are
20 considered in this state if the sale was sourced to this state under
21 RCW 82.32.730 for sales tax purposes or would have been sourced to this
22 state under RCW 82.32.730 if the sale had been taxable under chapter
23 82.08 RCW.

24 (4) For purposes of this section, "apportionable income" means the
25 gross income of the business taxable under section 301 of this act,
26 including income received from activities outside this state if the
27 income would be taxable under section 301 of this act if received from
28 activities in this state, less any deductions and exemptions allowable
29 under this chapter.

30 **Sec. 303.** RCW 82.04.060 and 2007 c 6 s 1007 are each amended to
31 read as follows:

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

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

34 (a) Tangible personal property (~~(, any sale of)~~);

35 (b) Services defined as a retail sale in RCW 82.04.050(2)(a) (~~(, any~~
36 ~~sale of)~~);

1 (c) Amusement or recreation services as defined in RCW
2 82.04.050(3)(a) (~~, any sale of canned software, any sale of an~~);

3 (d) Prewritten computer software;

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

5 (f) Extended (~~warranty~~) warranties as defined in RCW
6 82.04.050(7) (~~, or any sale of~~);

7 (g) Competitive telephone service, ancillary services, or
8 telecommunications service as those terms are defined in RCW
9 82.04.065 (~~, which is not a sale at retail~~); or

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

11 and

12 (2) Any charge made for labor and services rendered for persons who
13 are not consumers, in respect to real or personal property, if such
14 charge is expressly defined as a retail sale by RCW 82.04.050 when
15 rendered to or for consumers (~~: PROVIDED, That the term~~). For the
16 purposes of this subsection (2), "real or personal property" (~~as used~~
17 in this subsection shall)) does not include any natural products named
18 in RCW 82.04.100.

19 **Sec. 304.** RCW 82.04.070 and 1961 c 15 s 82.04.070 are each amended
20 to read as follows:

21 "Gross proceeds of sales" means the value proceeding or accruing
22 from the sale of tangible personal property, digital goods, digital
23 codes, digital automated services, and/or for other services rendered,
24 without any deduction on account of the cost of property sold, the cost
25 of materials used, labor costs, interest, discount paid, delivery
26 costs, taxes, or any other expense whatsoever paid or accrued and
27 without any deduction on account of losses.

28 **Sec. 305.** RCW 82.04.110 and 1997 c 453 s 1 are each amended to
29 read as follows:

30 (1) Except as otherwise provided in this section, "manufacturer"
31 means every person who, either directly or by contracting with others
32 for the necessary labor or mechanical services, manufactures for sale
33 or for commercial or industrial use from his or her own materials or
34 ingredients any articles, substances, or commodities.

35 (2)(a) When the owner of equipment or facilities furnishes, or
36 sells to the customer prior to manufacture, all or a portion of the

1 materials that become a part or whole of the manufactured article, the
2 department shall prescribe equitable rules for determining tax
3 liability(~~(: PROVIDED, That)~~).

4 (b) A person who produces aluminum master alloys is a processor for
5 hire rather than a manufacturer, regardless of the portion of the
6 aluminum provided by that person's customer(~~(: PROVIDED FURTHER,~~
7 That)). For the purposes of this subsection (2)(b), "aluminum master
8 alloy" means an alloy registered with the aluminum association as a
9 grain refiner or a hardener alloy using the American national standards
10 institute designating system H35.3.

11 (3) A nonresident of this state who is the owner of materials
12 processed for it in this state by a processor for hire shall not be
13 deemed to be engaged in business in this state as a manufacturer
14 because of the performance of such processing work for it in this
15 state(~~(: PROVIDED FURTHER, That)~~).

16 (4) The owner of materials from which a nuclear fuel assembly is
17 made for it by a processor for hire shall not be subject to tax under
18 this chapter as a manufacturer of the fuel assembly.

19 ~~((For the purposes of this section, "aluminum master alloy" means~~
20 ~~an alloy registered with the Aluminum Association as a grain refiner or~~
21 ~~a hardener alloy using the American National Standards Institute~~
22 ~~designating system H35.3.))~~

23 (5) For purposes of this section, the terms "articles,"
24 "substances," "materials," "ingredients," and "commodities" do not
25 include digital goods.

26 **Sec. 306.** RCW 82.04.120 and 2003 c 168 s 604 are each amended to
27 read as follows:

28 "To manufacture" embraces all activities of a commercial or
29 industrial nature wherein labor or skill is applied, by hand or
30 machinery, to materials so that as a result thereof a new, different or
31 useful substance or article of tangible personal property is produced
32 for sale or commercial or industrial use, and shall include: (1) The
33 production or fabrication of special made or custom made articles; (2)
34 the production or fabrication of dental appliances, devices,
35 restorations, substitutes, or other dental laboratory products by a
36 dental laboratory or dental technician; (3) cutting, delimiting, and

1 measuring of felled, cut, or taken trees; and (4) crushing and/or
2 blending of rock, sand, stone, gravel, or ore.

3 "To manufacture" shall not include: Conditioning of seed for use
4 in planting; cubing hay or alfalfa; activities which consist of
5 cutting, grading, or ice glazing seafood which has been cooked, frozen,
6 or canned outside this state; the growing, harvesting, or producing of
7 agricultural products; packing of agricultural products, including
8 sorting, washing, rinsing, grading, waxing, treating with fungicide,
9 packaging, chilling, or placing in controlled atmospheric storage; the
10 production of digital goods; or the production of computer software if
11 the computer software is delivered from the seller to the purchaser by
12 means other than tangible storage media, including the delivery by use
13 of a tangible storage media where the tangible storage media is not
14 physically transferred to the purchaser.

15 **Sec. 307.** RCW 82.04.2907 and 2001 c 320 s 3 are each amended to
16 read as follows:

17 (1) Upon every person engaging within this state in the business of
18 receiving income from royalties or charges in the nature of royalties
19 for the granting of intangible rights, such as copyrights, licenses,
20 patents, or franchise fees, the amount of tax with respect to such
21 business shall be equal to the gross income from royalties or charges
22 in the nature of royalties from the business multiplied by the rate of
23 0.484 percent.

24 (2) For the purposes of this section, "royalties" means
25 compensation for the use of intangible property, such as copyrights,
26 patents, licenses, franchises, trademarks, trade names, and similar
27 items. It does not include compensation for any natural resource
28 ((~~or~~)), the licensing of ((~~canned~~)) prewritten computer software to the
29 end user, or the licensing or use of digital goods, digital codes, or
30 digital automated services.

31 **Sec. 308.** RCW 82.04.297 and 2000 c 103 s 5 are each amended to
32 read as follows:

33 (1) The provision of internet ((~~services~~)) access is subject to tax
34 under RCW 82.04.290(2).

35 (2) "Internet" ((~~means the international computer network of both~~
36 ~~federal and nonfederal interoperable packet switched data networks,~~

1 ~~including the graphical subnetwork called the world wide web)) and~~
2 "internet access" have the same meaning as those terms are defined in
3 the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as
4 existing on July 1, 2009.

5 (3) (~~"Internet service" means a service that includes computer~~
6 ~~processing applications, provides the user with additional or~~
7 ~~restructured information, or permits the user to interact with stored~~
8 ~~information through the internet or a proprietary subscriber network.~~
9 ~~"Internet service" includes provision of internet electronic mail,~~
10 ~~access to the internet for information retrieval, and hosting of~~
11 ~~information for retrieval over the internet or the graphical subnetwork~~
12 ~~called the world wide web)) Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.~~

15 **Sec. 309.** RCW 82.04.363 and 1997 c 388 s 1 are each amended to
16 read as follows:

17 This chapter does not apply to amounts received by a nonprofit
18 organization from the sale or furnishing of the following items at a
19 camp or conference center conducted on property exempt from property
20 tax under RCW 84.36.030 (1), (2), or (3):

21 (1) Lodging, conference and meeting rooms, camping facilities,
22 parking, and similar licenses to use real property;

23 (2) Food and meals;

24 (3) Books, tapes, and other products, including books and other
25 products that are transferred electronically, that are available
26 exclusively to the participants at the camp, conference, or meeting and
27 are not available to the public at large.

28 **Sec. 310.** RCW 82.04.4282 and 1994 c 124 s 3 are each amended to
29 read as follows:

30 In computing tax there may be deducted from the measure of tax
31 amounts derived from bona fide (1) initiation fees, (2) dues, (3)
32 contributions, (4) donations, (5) tuition fees, (6) charges made by a
33 nonprofit trade or professional organization for attending or occupying
34 space at a trade show, convention, or educational seminar sponsored by
35 the nonprofit trade or professional organization, which trade show,
36 convention, or educational seminar is not open to the general public,

1 (7) charges made for operation of privately operated kindergartens, and
2 (8) endowment funds. This section (~~shall~~) may not be construed to
3 exempt any person, association, or society from tax liability upon
4 selling tangible personal property, digital goods, digital codes, or
5 digital automated services, or upon providing facilities or other
6 services for which a special charge is made to members or others. If
7 dues are in exchange for any significant amount of goods or services
8 rendered by the recipient thereof to members without any additional
9 charge to the member, or if the dues are graduated upon the amount of
10 goods or services rendered, the value of such goods or services shall
11 not be considered as a deduction under this section.

12 **Sec. 311.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
13 read as follows:

14 (1) Unless a seller has taken from the buyer a resale certificate,
15 the burden of proving that a sale (~~of tangible personal property, or~~
16 ~~of services, was not a sale at retail shall be~~) is a wholesale sale
17 rather than a retail sale is upon the person who made it.

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

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

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

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

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

- 1 (c) The type of business engaged in;
- 2 (d) The categories of items or services to be purchased for resale
3 or that are exempt, unless the buyer presents a blanket resale
4 certificate;
- 5 (e) The date on which the certificate was provided;
- 6 (f) A statement that the items or services purchased either: (i)
7 Are purchased for resale in the regular course of business; or (ii) are
8 exempt from tax pursuant to statute;
- 9 (g) A statement that the buyer acknowledges that the buyer is
10 solely responsible for purchasing within the categories specified on
11 the certificate and that misuse of the resale or exemption privilege
12 claimed on the certificate subjects the buyer to a penalty of fifty
13 percent of the tax due, in addition to the tax, interest, and any other
14 penalties imposed by law;
- 15 (h) The name of the individual authorized to sign the certificate,
16 printed in a legible fashion;
- 17 (i) The signature of the authorized individual; and
- 18 (j) The name of the seller.
- 19 (5) Subsection (4)(h), (i), and (j) of this section does not apply
20 if the certificate is provided in a format other than paper. If the
21 certificate is provided in a format other than paper, the name of the
22 individual providing the certificate must be included in the
23 certificate.

24 **Sec. 312.** RCW 82.04.480 and 1975 1st ex.s. c 278 s 44 are each
25 amended to read as follows:

26 (1) Every consignee, bailee, factor, or auctioneer having either
27 actual or constructive possession of (~~tangible~~) personal property, or
28 having possession of the documents of title thereto, with power to sell
29 such (~~tangible~~) personal property in (~~his or its~~) that person's own
30 name and actually so selling, (~~shall be~~) is deemed the seller of such
31 (~~tangible~~) personal property within the meaning of this chapter(~~+~~
32 ~~and further,~~). Furthermore, the consignor, bailor, principal, or
33 owner (~~shall be~~) is deemed a seller of such property to the
34 consignee, bailee, factor, or auctioneer.

35 (2) The burden (~~shall be upon~~) is on the taxpayer in every case
36 to establish the fact that (~~he~~) the taxpayer is not engaged in the
37 business of (~~selling tangible personal property~~) making retail sales

1 or wholesale sales but is acting merely as broker or agent in promoting
2 sales for a principal. Such claim will be allowed only when the
3 taxpayer's accounting records are kept in such manner as required by
4 rule by the department (~~of revenue shall by general regulation~~
5 ~~provide~~)).

6 (3) For purposes of this section, "personal property" means
7 tangible personal property, digital goods, digital codes, and extended
8 warranties.

9 **Sec. 313.** RCW 82.04.065 and 2007 c 6 s 1003 are each amended to
10 read as follows:

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

17 (2) "Ancillary services" means services that are associated with or
18 incidental to the provision of "telecommunications services," including
19 but not limited to "detailed telecommunications billing," "directory
20 assistance," "vertical service," and "voice mail services."

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

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

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

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

36 (7) "Voice mail service" means an ancillary service that enables

1 the customer to store, send, or receive recorded messages. "Voice mail
2 service" does not include any vertical services that the customer may
3 be required to have in order to use the voice mail service.

4 (8) "Telecommunications service" means the electronic transmission,
5 conveyance, or routing of voice, data, audio, video, or any other
6 information or signals to a point, or between or among points.
7 "Telecommunications service" includes such transmission, conveyance, or
8 routing in which computer processing applications are used to act on
9 the form, code, or protocol of the content for purposes of
10 transmission, conveyance, or routing without regard to whether such
11 service is referred to as voice over internet protocol services or is
12 classified by the federal communications commission as enhanced or
13 value added. "Telecommunications service" does not include:

14 (a) Data processing and information services that allow data to be
15 generated, acquired, stored, processed, or retrieved and delivered by
16 an electronic transmission to a purchaser where such purchaser's
17 primary purpose for the underlying transaction is the processed data or
18 information;

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

21 (c) Tangible personal property;

22 (d) Advertising, including but not limited to directory
23 advertising;

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

25 (f) Internet access service;

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

34 (h) Ancillary services; (~~(e)~~)

35 (i) Digital products delivered electronically, including but not
36 limited to (~~(software)~~) music, video, reading materials, or ring
37 tones; or

38 (j) Software delivered electronically.

1 (9) "800 service" means a telecommunications service that allows a
2 caller to dial a toll-free number without incurring a charge for the
3 call. The service is typically marketed under the name "800," "855,"
4 "866," "877," and "888" toll-free calling, and any subsequent numbers
5 designated by the federal communications commission.

6 (10) "900 service" means an inbound toll "telecommunications
7 service" purchased by a subscriber that allows the subscriber's
8 customers to call in to the subscriber's prerecorded announcement or
9 live service. "900 service" does not include the charge for:
10 Collection services provided by the seller of the telecommunications
11 services to the subscriber, or services or products sold by the
12 subscriber to the subscriber's customer. The service is typically
13 marketed under the name "900" service, and any subsequent numbers
14 designated by the federal communications commission.

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

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

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

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

33 (15) "Prepaid wireless calling service" means a telecommunications
34 service that provides the right to use mobile wireless service as well
35 as other nontelecommunications services including the download of
36 digital products delivered electronically, content, and ancillary
37 services, which must be paid for in advance and that is sold in

1 predetermined units or dollars of which the number declines with use in
2 a known amount.

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

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

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

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

32 (20) "Designated database provider" means a person representing all
33 the political subdivisions of the state that is:

34 (a) Responsible for providing an electronic database prescribed in
35 4 U.S.C. Sec. 119(a) if the state has not provided an electronic
36 database; and

37 (b) Approved by municipal and county associations or leagues of the

1 state whose responsibility it would otherwise be to provide a database
2 prescribed by 4 U.S.C. Secs. 116 through 126.

3 (21) "Enhanced zip code" means a United States postal zip code of
4 nine or more digits.

5 (22) "Home service provider" means the facilities-based carrier or
6 reseller with whom the customer contracts for the provision of mobile
7 telecommunications services.

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

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

14 (25) "Mobile telecommunications service provider" means a home
15 service provider or a serving carrier.

16 (26) "Place of primary use" means the street address representative
17 of where the customer's use of the mobile telecommunications service
18 primarily occurs, which must be:

19 (a) The residential street address or the primary business street
20 address of the customer; and

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

22 (27) "Prepaid telephone calling service" means the right to
23 purchase exclusively telecommunications services that must be paid for
24 in advance, that enables the origination of calls using an access
25 number, authorization code, or both, whether manually or electronically
26 dialed, if the remaining amount of units of service that have been
27 prepaid is known by the provider of the prepaid service on a continuous
28 basis.

29 (28) "Reseller" means a provider who purchases telecommunications
30 services from another telecommunications service provider and then
31 resells, uses as a component part of, or integrates the purchased
32 services into a mobile telecommunications service. "Reseller" does not
33 include a serving carrier with whom a home service provider arranges
34 for the services to its customers outside the home service provider's
35 licensed service area.

36 (29) "Serving carrier" means a facilities-based carrier providing
37 mobile telecommunications service to a customer outside a home service
38 provider's or reseller's licensed service area.

1 (30) "Taxing jurisdiction" means any of the several states, the
2 District of Columbia, or any territory or possession of the United
3 States, any municipality, city, county, township, parish,
4 transportation district, or assessment jurisdiction, or other political
5 subdivision within the territorial limits of the United States with the
6 authority to impose a tax, charge, or fee.

7 **PART IV**
8 **SALES TAX EXEMPTIONS**

9 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.08
10 RCW to read as follows:

11 The tax imposed by RCW 82.08.020 does not apply to the sale of a
12 digital code for one or more digital products if the sale of the
13 digital products to which the digital code relates is exempt from the
14 tax levied by RCW 82.08.020.

15 NEW SECTION. **Sec. 402.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 (1) Except as provided in subsection (2) of this section, the tax
18 imposed by RCW 82.08.020 does not apply to sales of audio or video
19 programming by a radio or television broadcaster.

20 (2) The exemption provided in subsection (1) of this section does
21 not apply in respect to programming that is sold on a pay-per-program
22 basis or that allows the buyer to access a library of programs at any
23 time for a specific charge for that service.

24 (3) For purposes of this section, "radio or television broadcaster"
25 includes satellite radio providers, satellite television providers,
26 cable television providers, and providers of subscription internet
27 television.

28 NEW SECTION. **Sec. 403.** A new section is added to chapter 82.08
29 RCW to read as follows:

30 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
31 digital goods, digital codes, digital automated services, or services
32 defined as a retail sale in RCW 82.04.050(6) (b) for purposes of:

33 (a) Consuming the digital good, digital code, digital automated
34 service, or service defined as a retail sale in RCW 82.04.050(6) (b) in

1 producing for sale a new product, where the digital good, digital code,
2 digital automated service, or service defined as a retail sale in RCW
3 82.04.050(6)(b) becomes an ingredient or component of the new product.
4 A digital code becomes an ingredient or component of a new product if
5 the digital good or digital automated service acquired through the use
6 of the digital code becomes an ingredient or component of a new
7 product; or

8 (b) Making the digital good or digital automated service, including
9 a digital good or digital automated service acquired through the use of
10 a digital code, or service defined as a retail sale in RCW
11 82.04.050(6)(b) available free of charge on the buyer's web site for
12 the use or enjoyment of others.

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

17 NEW SECTION. **Sec. 404.** A new section is added to chapter 82.08
18 RCW to read as follows:

19 (1) The tax imposed by RCW 82.08.020 does not apply to the sale to
20 a business of standard digital information purchased solely for
21 business purposes.

22 (2) The exemption is available only when the buyer provides the
23 seller with an exemption certificate in a form and manner prescribed by
24 the department. The seller must retain a copy of the certificate for
25 the seller's files.

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

27 (a) "Business purposes" means any purpose relevant to the business
28 needs of the taxpayer claiming an exemption under this section.
29 Business purposes do not include any personal, family, or household
30 purpose. The term also does not include any activity conducted by a
31 government entity as that term is defined in RCW 7.25.005; and

32 (b) "Standard digital information" means a digital good consisting
33 primarily of data, facts, or information, or any combination thereof,
34 not generated or compiled for a specific client or customer.

35 **Sec. 405.** RCW 82.08.02525 and 1996 c 63 s 1 are each amended to
36 read as follows:

1 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to the
2 sale of public records by state and local agencies, as the terms are
3 defined in RCW 42.17.020, that are copied or transferred electronically
4 under a request for the record for which no fee is charged other than
5 a statutorily set fee or a fee to reimburse the agency for its actual
6 costs directly incident to the copying. A request for a record
7 includes a request for a document not available to the public but
8 available to those persons who by law are allowed access to the
9 document, such as requests for fire reports, law enforcement reports,
10 taxpayer information, and academic transcripts.

11 **Sec. 406.** RCW 82.08.0253 and 1980 c 37 s 21 are each amended to
12 read as follows:

13 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to:

14 (a) The distribution and newsstand sale of printed newspapers; and

15 (b) The sale of newspapers transferred electronically, provided
16 that the electronic version of a printed newspaper:

17 (i) Shares content with the printed newspaper; and

18 (ii) Is prominently identified by the same name as the printed
19 newspaper or otherwise conspicuously indicates that it is a complement
20 to the printed newspaper.

21 (2) For purposes of this section, "printed newspaper" means a
22 publication issued regularly at stated intervals at least twice a month
23 and printed on newsprint in tabloid or broadsheet format folded loosely
24 together without stapling, glue, or any other binding of any kind,
25 including any supplement of a printed newspaper.

26 **Sec. 407.** RCW 82.08.02535 and 1995 2nd sp.s. c 8 s 1 are each
27 amended to read as follows:

28 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to (~~the~~)
29 subscription sales (~~and distribution~~) of magazines or periodicals
30 (~~by subscription~~), including magazines and periodicals transferred
31 electronically to the buyer, for the purposes of fund-raising by (1)
32 educational institutions as defined in RCW 82.04.170, or (2) nonprofit
33 organizations engaged in activities primarily for the benefit of boys
34 and girls nineteen years and younger.

1 **Sec. 408.** RCW 82.08.02537 and 1996 c 272 s 2 are each amended to
2 read as follows:

3 The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales
4 of academic transcripts by educational institutions, including academic
5 transcripts transferred electronically.

6 **Sec. 409.** RCW 82.08.0256 and 1980 c 37 s 24 are each amended to
7 read as follows:

8 The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to sales
9 (including transfers of title through decree of appropriation)
10 heretofore or hereafter made of the entire operating property of a
11 publicly or privately owned public utility, or of a complete operating
12 integral section thereof, to the state or a political subdivision
13 thereof for use in conducting any business defined in RCW 82.16.010
14 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For
15 purposes of this section, "operating property" includes digital goods
16 and digital codes.

17 **Sec. 410.** RCW 82.08.02565 and 1999 c 211 s 5 are each amended to
18 read as follows:

19 (1) The tax levied by RCW 82.08.020 (~~(shall)~~) does not apply to
20 sales to a manufacturer or processor for hire of machinery and
21 equipment used directly in a manufacturing operation or research and
22 development operation, to sales to a person engaged in testing for a
23 manufacturer or processor for hire of machinery and equipment used
24 directly in a testing operation, or to sales of or charges made for
25 labor and services rendered in respect to installing, repairing,
26 cleaning, altering, or improving the machinery and equipment, but only
27 when the purchaser provides the seller with an exemption certificate in
28 a form and manner prescribed by the department by rule. The seller
29 (~~(shall)~~) must retain a copy of the certificate for the seller's files.

30 (2) For purposes of this section and RCW 82.12.02565:

31 (a) "Machinery and equipment" means industrial fixtures, devices,
32 and support facilities, and tangible personal property that becomes an
33 ingredient or component thereof, including repair parts and replacement
34 parts. "Machinery and equipment" includes pollution control equipment
35 installed and used in a manufacturing operation, testing operation, or
36 research and development operation to prevent air pollution, water

1 pollution, or contamination that might otherwise result from the
2 manufacturing operation, testing operation, or research and development
3 operation. "Machinery and equipment" also includes digital goods.

4 (b) "Machinery and equipment" does not include:

5 (i) Hand-powered tools;

6 (ii) Property with a useful life of less than one year;

7 (iii) Buildings, other than machinery and equipment that is
8 permanently affixed to or becomes a physical part of a building; and

9 (iv) Building fixtures that are not integral to the manufacturing
10 operation, testing operation, or research and development operation
11 that are permanently affixed to and become a physical part of a
12 building, such as utility systems for heating, ventilation, air
13 conditioning, communications, plumbing, or electrical.

14 (c) Machinery and equipment is "used directly" in a manufacturing
15 operation, testing operation, or research and development operation if
16 the machinery and equipment:

17 (i) Acts upon or interacts with an item of tangible personal
18 property;

19 (ii) Conveys, transports, handles, or temporarily stores an item of
20 tangible personal property at the manufacturing site or testing site;

21 (iii) Controls, guides, measures, verifies, aligns, regulates, or
22 tests tangible personal property at the site or away from the site;

23 (iv) Provides physical support for or access to tangible personal
24 property;

25 (v) Produces power for, or lubricates machinery and equipment;

26 (vi) Produces another item of tangible personal property for use in
27 the manufacturing operation, testing operation, or research and
28 development operation;

29 (vii) Places tangible personal property in the container, package,
30 or wrapping in which the tangible personal property is normally sold or
31 transported; or

32 (viii) Is integral to research and development as defined in RCW
33 82.63.010.

34 (d) "Manufacturing operation" means the manufacturing of articles,
35 substances, or commodities for sale as tangible personal property. A
36 manufacturing operation begins at the point where the raw materials
37 enter the manufacturing site and ends at the point where the processed
38 material leaves the manufacturing site. The term also includes that

1 portion of a cogeneration project that is used to generate power for
2 consumption within the manufacturing site of which the cogeneration
3 project is an integral part. The term does not include the production
4 of electricity by a light and power business as defined in RCW
5 82.16.010 or the preparation of food products on the premises of a
6 person selling food products at retail.

7 (e) "Cogeneration" means the simultaneous generation of electrical
8 energy and low-grade heat from the same fuel.

9 (f) "Research and development operation" means engaging in research
10 and development as defined in RCW 82.63.010 by a manufacturer or
11 processor for hire.

12 (g) "Testing" means activities performed to establish or determine
13 the properties, qualities, and limitations of tangible personal
14 property.

15 (h) "Testing operation" means the testing of tangible personal
16 property for a manufacturer or processor for hire. A testing operation
17 begins at the point where the tangible personal property enters the
18 testing site and ends at the point where the tangible personal property
19 leaves the testing site. The term also includes that portion of a
20 cogeneration project that is used to generate power for consumption
21 within the site of which the cogeneration project is an integral part.
22 The term does not include the production of electricity by a light and
23 power business as defined in RCW 82.16.010 or the preparation of food
24 products on the premises of a person selling food products at retail.

25 **Sec. 411.** RCW 82.08.0257 and 1980 c 37 s 25 are each amended to
26 read as follows:

27 The tax levied by RCW 82.08.020 (~~shall~~) does not apply to auction
28 sales made by or through auctioneers of (~~tangible~~) personal property
29 (including household goods) (~~which have~~) that has been used in
30 conducting a farm activity, when the seller thereof is a farmer and the
31 sale is held or conducted upon a farm and not otherwise.

32 **Sec. 412.** RCW 82.08.0273 and 2007 c 135 s 2 are each amended to
33 read as follows:

34 (1) The tax levied by RCW 82.08.020 (~~shall~~) does not apply to
35 sales to nonresidents of this state of tangible personal property,
36 digital goods, and digital codes, when such property is for use outside

1 this state (~~when~~), and the purchaser (a) is a bona fide resident of
2 a state or possession or Province of Canada other than the state of
3 Washington and such state, possession, or Province of Canada does not
4 impose a retail sales tax or use tax of three percent or more or, if
5 imposing such a tax, permits Washington residents exemption from
6 otherwise taxable sales by reason of their residence, and (b) agrees,
7 when requested, to grant the department of revenue access to such
8 records and other forms of verification at his or her place of
9 residence to assure that such purchases are not first used
10 substantially in the state of Washington.

11 (2) Notwithstanding anything to the contrary in this chapter, if
12 parts or other tangible personal property are installed by the seller
13 during the course of repairing, cleaning, altering, or improving motor
14 vehicles, trailers, or campers and the seller makes a separate charge
15 for the tangible personal property, the tax levied by RCW 82.08.020
16 does not apply to the separately stated charge to a nonresident
17 purchaser for the tangible personal property but only if the separately
18 stated charge does not exceed either the seller's current publicly
19 stated retail price for the tangible personal property or, if no
20 (~~separately~~) publicly stated retail price is available, the seller's
21 cost for the tangible personal property. However, the exemption
22 provided by this section does not apply if tangible personal property
23 is installed by the seller during the course of repairing, cleaning,
24 altering, or improving motor vehicles, trailers, or campers and the
25 seller makes a single nonitemized charge for providing the tangible
26 personal property and service. All of the requirements in subsections
27 (1) and (3) through (6) of this section apply to this subsection.

28 (3) (a) Any person claiming exemption from retail sales tax under
29 the provisions of this section must display proof of his or her current
30 nonresident status as provided in this section.

31 (b) Acceptable proof of a nonresident person's status (~~shall~~)
32 includes one piece of identification such as a valid driver's license
33 from the jurisdiction in which the out-of-state residency is claimed or
34 a valid identification card which has a photograph of the holder and is
35 issued by the out-of-state jurisdiction. Identification under this
36 subsection (3) (b) must show the holder's residential address and have
37 as one of its legal purposes the establishment of residency in that
38 out-of-state jurisdiction.

1 (4) Nothing in this section requires the vendor to make tax exempt
2 retail sales to nonresidents. A vendor may choose to make sales to
3 nonresidents, collect the sales tax, and remit the amount of sales tax
4 collected to the state as otherwise provided by law. If the vendor
5 chooses to make a sale to a nonresident without collecting the sales
6 tax, the vendor shall, in good faith, examine the proof of
7 nonresidence, determine whether the proof is acceptable under
8 subsection (3)(b) of this section, and maintain records for each
9 nontaxable sale which shall show the type of proof accepted, including
10 any identification numbers where appropriate, and the expiration date,
11 if any.

12 (5)(a) Any person making fraudulent statements, which includes the
13 offer of fraudulent identification or fraudulently procured
14 identification to a vendor, in order to purchase goods without paying
15 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

16 (b) Any person making tax exempt purchases under this section by
17 displaying proof of identification not his or her own, or counterfeit
18 identification, with intent to violate the provisions of this section,
19 is guilty of a misdemeanor and, in addition, (~~shall be~~) is liable for
20 the tax and subject to a penalty equal to the greater of one hundred
21 dollars or the tax due on such purchases.

22 (6)(a) Any vendor who makes sales without collecting the tax to a
23 person who does not hold valid identification establishing out-of-state
24 residency, and any vendor who fails to maintain records of sales to
25 nonresidents as provided in this section, (~~shall be~~) is personally
26 liable for the amount of tax due.

27 (b) Any vendor who makes sales without collecting the retail sales
28 tax under this section and who has actual knowledge that the
29 purchaser's proof of identification establishing out-of-state residency
30 is fraudulent is guilty of a misdemeanor and, in addition, (~~shall be~~)
31 is liable for the tax and subject to a penalty equal to the greater of
32 one thousand dollars or the tax due on such sales. In addition, both
33 the purchaser and the vendor (~~shall be~~) are liable for any penalties
34 and interest assessable under chapter 82.32 RCW.

35 **Sec. 413.** RCW 82.08.805 and 2006 c 182 s 3 are each amended to
36 read as follows:

37 (1) A person who has paid tax under RCW 82.08.020 for (~~tangible~~)

1 personal property used at an aluminum smelter, tangible personal
2 property that will be incorporated as an ingredient or component of
3 buildings or other structures at an aluminum smelter, or for labor and
4 services rendered with respect to such buildings, structures, or
5 (~~tangible~~) personal property, is eligible for an exemption from the
6 state share of the tax in the form of a credit, as provided in this
7 section. A person claiming an exemption must pay the tax and may then
8 take a credit equal to the state share of retail sales tax paid under
9 RCW 82.08.020. The person shall submit information, in a form and
10 manner prescribed by the department, specifying the amount of
11 qualifying purchases or acquisitions for which the exemption is claimed
12 and the amount of exempted tax.

13 (2) For the purposes of this section, "aluminum smelter" has the
14 same meaning as provided in RCW 82.04.217.

15 (3) Credits may not be claimed under this section for taxable
16 events occurring on or after January 1, 2012.

17 **Sec. 414.** RCW 82.08.995 and 2007 c 381 s 2 are each amended to
18 read as follows:

19 (1) The tax imposed by RCW 82.08.020 does not apply to sales of
20 (~~tangible~~) personal property and services provided by a public
21 corporation, commission, or authority created under RCW 35.21.660 or
22 35.21.730 to an eligible entity.

23 (2) For purposes of this section, "eligible entity" means a limited
24 liability company, a limited partnership, or a single asset entity,
25 described in RCW 82.04.615.

26 NEW SECTION. **Sec. 415.** RCW 82.08.705 (Exemptions--Financial
27 information delivered electronically) and 2007 c 182 s 1 are each
28 repealed.

29 **PART V**
30 **USE TAX EXEMPTIONS**

31 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.12
32 RCW to read as follows:

33 The provisions of this chapter do not apply in respect to the use

1 of a digital code for one or more digital products, if the use of the
2 digital products to which the digital code relates is exempt from the
3 tax levied by RCW 82.12.020.

4 NEW SECTION. **Sec. 502.** A new section is added to chapter 82.12
5 RCW to read as follows:

6 (1) Except as provided in subsection (2) of this section, the
7 provisions of this chapter do not apply to the use of audio or video
8 programming provided by a radio or television broadcaster.

9 (2) The exemption provided in subsection (1) of this section does
10 not apply in respect to programming that is sold on a pay-per-program
11 basis or that allows the buyer to access a library of programs at any
12 time for a specific charge for that service.

13 (3) For purposes of this section, "radio or television broadcaster"
14 includes satellite radio providers, satellite television providers,
15 cable television providers, providers of subscription internet
16 television, and persons who provide radio or television broadcasting to
17 listeners or viewers for no charge.

18 NEW SECTION. **Sec. 503.** A new section is added to chapter 82.12
19 RCW to read as follows:

20 The provisions of this chapter do not apply to the use of digital
21 goods, digital codes, digital automated services, or services defined
22 as a retail sale in RCW 82.04.050(6)(b) for purposes of:

23 (1) Consuming the digital good, digital code, digital automated
24 service, or service defined as a retail sale in RCW 82.04.050(6)(b) in
25 producing for sale a new product, where the digital good, digital code,
26 digital automated service, or service defined as a retail sale in RCW
27 82.04.050(6)(b) becomes an ingredient or component of the new product.
28 A digital code becomes an ingredient or component of a new product if
29 the digital good or digital automated service acquired through the use
30 of the digital code becomes an ingredient or component of a new
31 product; or

32 (2) Making the digital good or digital automated service, including
33 a digital good or digital automated service acquired through the use of
34 a digital code, or service defined as a retail sale in RCW
35 82.04.050(6)(b) available free of charge on the web site of the person

1 claiming exemption under this section for the use or enjoyment of
2 others.

3 NEW SECTION. **Sec. 504.** A new section is added to chapter 82.12
4 RCW to read as follows:

5 The provisions of this chapter do not apply to the use by students
6 of digital goods furnished by a public or private elementary or
7 secondary school, or an institution of higher education as defined in
8 Title 20 U.S.C. Sec. 1001, as existing on July 1, 2009.

9 NEW SECTION. **Sec. 505.** A new section is added to chapter 82.12
10 RCW to read as follows:

11 (1) The provisions of this chapter do not apply in respect to the
12 use of digital goods that are:

13 (a) Of a noncommercial nature, such as personal e-mail
14 communications;

15 (b) Created solely for an internal audience; or

16 (c) Created solely for the business needs of the person who created
17 the digital good and is not the type of digital good that is offered
18 for sale, including business e-mail communications.

19 (2) This section does not apply to the use of any digital goods
20 purchased by the user, the user's donor, or anybody on the user's
21 behalf.

22 NEW SECTION. **Sec. 506.** A new section is added to chapter 82.12
23 RCW to read as follows:

24 The provisions of this chapter do not apply in respect to the use
25 of digital automated services provided free of charge.

26 NEW SECTION. **Sec. 507.** A new section is added to chapter 82.12
27 RCW to read as follows:

28 (1) The provisions of this chapter do not apply to the use by a
29 business of standard digital information solely for business purposes.

30 (2) For purposes of this section, the definitions in section 404 of
31 this act apply.

32 **Sec. 508.** RCW 82.12.0251 and 2005 c 514 s 106 are each amended to
33 read as follows:

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

3 (1) Of any article of tangible personal property, (~~and~~) any
4 services that were rendered in respect to such property, digital goods,
5 and digital codes, brought into the state of Washington by a
6 nonresident thereof for his or her use or enjoyment while temporarily
7 within the state of Washington unless such property is used in
8 conducting a nontransitory business activity within the state of
9 Washington;

10 (2) By a nonresident of Washington of a motor vehicle or trailer
11 which is registered or licensed under the laws of the state of his or
12 her residence, and which is not required to be registered or licensed
13 under the laws of Washington, including motor vehicles or trailers
14 exempt pursuant to a declaration issued by the department of licensing
15 under RCW 46.85.060, and services rendered outside the state of
16 Washington in respect to such property;

17 (3) Of household goods, including digital goods, and digital codes,
18 personal effects, (~~and~~) private motor vehicles, and services rendered
19 in respect to such property, by a bona fide resident of Washington, or
20 nonresident members of the armed forces who are stationed in Washington
21 pursuant to military orders, if such articles and services were
22 acquired and used by such person in another state while a bona fide
23 resident thereof and such acquisition and use occurred more than ninety
24 days prior to the time he or she entered Washington. For purposes of
25 this subsection, private motor vehicles do not include motor homes;

26 (4) Of an extended warranty, to the extent that the property
27 covered by the extended warranty is exempt under this section from the
28 tax imposed under this chapter.

29 For purposes of this section, "state" means a state of the United
30 States, any political subdivision thereof, the District of Columbia,
31 and any foreign country or political subdivision thereof, and
32 "services" means services defined as retail sales in RCW
33 82.04.050(2) (a).

34 **Sec. 509.** RCW 82.12.02525 and 1996 c 63 s 2 are each amended to
35 read as follows:

36 The provisions of this chapter (~~shall~~) do not apply with respect
37 to the use of public records sold by state and local agencies, as the

1 terms are defined in RCW 42.17.020, including public records in
2 electronic form that are obtained under a request for the record for
3 which no fee is charged other than a statutorily set fee or a fee to
4 reimburse the agency for its actual costs directly incident to the
5 copying. A request for a record includes a request for a document not
6 available to the public but available to those persons who by law are
7 allowed access to the document, such as requests for fire reports, law
8 enforcement reports, taxpayer information, and academic transcripts.

9 **Sec. 510.** RCW 82.12.0255 and 2005 c 514 s 107 are each amended to
10 read as follows:

11 The provisions of this chapter (~~shall~~) do not apply in respect to
12 the use of any article of tangible personal property, extended
13 warranty, digital good, digital code, digital automated service, or
14 other service which the state is prohibited from taxing under the
15 Constitution of the state or under the Constitution or laws of the
16 United States.

17 **Sec. 511.** RCW 82.12.0257 and 1980 c 37 s 57 are each amended to
18 read as follows:

19 The provisions of this chapter (~~shall~~) do not apply in respect to
20 the use of any article of (~~tangible~~) personal property included
21 within the transfer of the title to the entire operating property of a
22 publicly or privately owned public utility, or of a complete operating
23 integral section thereof, by the state or a political subdivision
24 thereof in conducting any business defined in RCW 82.16.010 (1), (2),
25 (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of
26 this section, "operating property" includes digital goods and digital
27 codes.

28 **Sec. 512.** RCW 82.12.0258 and 1980 c 37 s 58 are each amended to
29 read as follows:

30 The provisions of this chapter (~~shall~~) do not apply in respect to
31 the use of (~~tangible~~) personal property (including household goods)
32 (~~which have~~) that has been used in conducting a farm activity, if
33 such property was purchased from a farmer at an auction sale held or
34 conducted by an auctioneer upon a farm and not otherwise.

1 **Sec. 513.** RCW 82.12.0259 and 2003 c 5 s 7 are each amended to read
2 as follows:

3 The provisions of this chapter (~~(shall)~~) do not apply in respect to
4 the use of (~~(tangible)~~) personal property or the use of digital
5 automated services or services defined in RCW 82.04.050(2) (a) or (6) (b)
6 by corporations (~~(which)~~) that have been incorporated under any act of
7 the congress of the United States and whose principal purposes are to
8 furnish volunteer aid to members of the armed forces of the United
9 States and also to carry on a system of national and international
10 relief and to apply the same in mitigating the sufferings caused by
11 pestilence, famine, fire, flood, and other national calamities and to
12 devise and carry on measures for preventing the same.

13 **Sec. 514.** RCW 82.12.02595 and 2004 c 155 s 1 are each amended to
14 read as follows:

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

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

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

34 (4) This chapter does not apply to the donation of amusement and
35 recreation services without intervening use to a nonprofit organization
36 or state or local governmental entity, to the use by a nonprofit
37 organization or state or local governmental entity of amusement and

1 recreation services, or to the subsequent use of the services by a
2 person to whom the services are donated or bailed in furtherance of the
3 purpose for which the services were originally donated. As used in
4 this subsection, "amusement and recreation services" has the meaning in
5 RCW 82.04.050(3) (a).

6 **Sec. 515.** RCW 82.12.0272 and 1980 c 37 s 70 are each amended to
7 read as follows:

8 The provisions of this chapter (~~(shall)~~) do not apply in respect to
9 the use of (~~(tangible)~~) personal property held for sale and displayed
10 in single trade shows for a period not in excess of thirty days, the
11 primary purpose of which is to promote the sale of products or
12 services.

13 **Sec. 516.** RCW 82.12.0284 and 2007 c 54 s 15 are each amended to
14 read as follows:

15 The provisions of this chapter (~~(shall)~~) do not apply in respect to
16 the use of computers, computer components, computer accessories, (~~(or)~~)
17 computer software, digital goods, or digital codes, irrevocably donated
18 to any public or private nonprofit school or college, as defined under
19 chapter 84.36 RCW, in this state. For purposes of this section,
20 "computer" and "computer software" have the same meaning as in RCW
21 82.04.215.

22 **Sec. 517.** RCW 82.12.0345 and 1994 c 124 s 11 are each amended to
23 read as follows:

24 The tax imposed by RCW 82.12.020 (~~(shall)~~) does not apply in
25 respect to the use of:

- 26 (1) Printed newspapers as defined in RCW 82.08.0253; and
27 (2) Newspapers transferred electronically, provided that the
28 electronic version of a printed newspaper:
29 (a) Shares content with the printed newspaper; and
30 (b) Is prominently identified by the same name as the printed
31 newspaper or otherwise conspicuously indicates that it is a complement
32 to the printed newspaper.

33 **Sec. 518.** RCW 82.12.0347 and 1996 c 272 s 3 are each amended to
34 read as follows:

1 The provisions of this chapter (~~shall~~) do not apply in respect to
2 the use of academic transcripts, including academic transcripts
3 transferred electronically.

4 **Sec. 519.** RCW 82.12.805 and 2006 c 182 s 4 are each amended to
5 read as follows:

6 (1) A person who is subject to tax under RCW 82.12.020 for
7 (~~tangible~~) personal property used at an aluminum smelter, or for
8 tangible personal property that will be incorporated as an ingredient
9 or component of buildings or other structures at an aluminum smelter,
10 or for labor and services rendered with respect to such buildings,
11 structures, or (~~tangible~~) personal property, is eligible for an
12 exemption from the state share of the tax in the form of a credit, as
13 provided in this section. The amount of the credit shall be equal to
14 the state share of use tax computed to be due under RCW 82.12.020. The
15 person shall submit information, in a form and manner prescribed by the
16 department, specifying the amount of qualifying purchases or
17 acquisitions for which the exemption is claimed and the amount of
18 exempted tax.

19 (2) For the purposes of this section, "aluminum smelter" has the
20 same meaning as provided in RCW 82.04.217.

21 (3) Credits may not be claimed under this section for taxable
22 events occurring on or after January 1, 2012.

23 **Sec. 520.** RCW 82.12.860 and 2006 c 11 s 1 are each amended to read
24 as follows:

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

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

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

34 (b) "Foreign credit union" means a credit union organized and
35 operating under the laws of another country or other foreign
36 jurisdiction.

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

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

6 **Sec. 521.** RCW 82.12.995 and 2007 c 381 s 3 are each amended to
7 read as follows:

8 (1) The provisions of this chapter do not apply with respect to the
9 use of (~~tangible~~) personal property and services provided by a public
10 corporation, commission, or authority created under RCW 35.21.660 or
11 35.21.730 to an eligible entity.

12 (2) For purposes of this section, "eligible entity" means a limited
13 liability company, a limited partnership, or a single asset entity,
14 described in RCW 82.04.615.

15 NEW SECTION. **Sec. 522.** RCW 82.12.705 (Exemptions--Financial
16 information delivered electronically) and 2007 c 182 s 2 are each
17 repealed.

18 **PART VI**
19 **SOURCING AND SALES/USE TAX APPORTIONMENT**

20 NEW SECTION. **Sec. 601.** A new section is added to chapter 82.08
21 RCW to read as follows:

22 (1) The tax imposed by RCW 82.08.020 does not apply to the sale of
23 digital goods, digital codes, digital automated services, prewritten
24 computer software, or services defined as a retail sale in RCW
25 82.04.050(6)(b) to a buyer that provides the seller with an exemption
26 certificate claiming multiple points of use. An exemption certificate
27 claiming multiple points of use must be in a form and contain such
28 information as required by the department.

29 (2) A buyer is entitled to use an exemption certificate claiming
30 multiple points of use only if the buyer is a business or other
31 organization and the digital goods or digital automated services
32 purchased, or the digital goods or digital automated services to be
33 obtained by the digital code purchased, or the prewritten computer
34 software or services defined as a retail sale in RCW 82.04.050(6)(b)

1 purchased will be concurrently available for use within and outside
2 this state. A buyer is not entitled to use an exemption certificate
3 claiming multiple points of use for digital goods, digital codes,
4 digital automated services, prewritten computer software, or services
5 defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal
6 use.

7 (3) A buyer claiming an exemption under this section must report
8 and pay the tax imposed in RCW 82.12.020 and any local use taxes
9 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170
10 directly to the department in accordance with sections 602 and 603 of
11 this act.

12 (4) For purposes of this section, "concurrently available for use
13 within and outside this state" means that employees or other agents of
14 the buyer may use the digital goods, digital automated services,
15 prewritten computer software, or services defined as a retail sale in
16 RCW 82.04.050(6)(b) simultaneously from one or more locations within
17 this state and one or more locations outside this state. A digital
18 code is concurrently available for use within and outside this state if
19 employees or other agents of the buyer may use the digital goods or
20 digital automated services to be obtained by the code simultaneously at
21 one or more locations within this state and one or more locations
22 outside this state.

23 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.12
24 RCW to read as follows:

25 (1) A business or other organization subject to the tax imposed in
26 RCW 82.12.020 on the use of digital goods, digital codes, digital
27 automated services, prewritten computer software, or services defined
28 as a retail sale in RCW 82.04.050(6)(b) that are concurrently available
29 for use within and outside this state is entitled to apportion the
30 amount of tax due this state based on users in this state compared to
31 users everywhere. The department may authorize or require an
32 alternative method of apportionment supported by the taxpayer's records
33 that fairly reflects the proportion of in-state to out-of-state use by
34 the taxpayer of the digital goods, digital automated services,
35 prewritten computer software, or services defined as a retail sale in
36 RCW 82.04.050(6)(b).

1 (2) No apportionment under this section is allowed unless the
2 apportionment method is supported by the taxpayer's records kept in the
3 ordinary course of business.

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

5 (a) "Concurrently available for use within and outside this state"
6 means that employees or other agents of the taxpayer may use the
7 digital goods, digital automated services, prewritten computer
8 software, or services defined as a retail sale in RCW 82.04.050(6)(b)
9 simultaneously at one or more locations within this state and one or
10 more locations outside this state. A digital code is concurrently
11 available for use within and outside this state if employees or other
12 agents of the taxpayer may use the digital goods or digital automated
13 services to be obtained by the code simultaneously at one or more
14 locations within this state and one or more locations outside this
15 state.

16 (b) "User" means an employee or agent of the taxpayer who is
17 authorized by the taxpayer to use the digital goods, digital automated
18 services, prewritten computer software, or services defined as a retail
19 sale in RCW 82.04.050(6)(b) in the performance of his or her duties as
20 an employee or other agent of the taxpayer.

21 NEW SECTION. **Sec. 603.** A new section is added to chapter 82.14
22 RCW to read as follows:

23 (1) A business or other organization that is entitled under section
24 602 of this act to apportion the amount of state use tax on the use of
25 digital goods, digital codes, digital automated services, prewritten
26 computer software, or services defined as a retail sale in RCW
27 82.04.050(6)(b) is also entitled to apportion the amount of local use
28 taxes imposed under the authority of this chapter and RCW 81.104.170 on
29 the use of such products or services.

30 (2) To ensure that the tax base for state and local use taxes is
31 identical, the measure of local use taxes apportioned under this
32 section must be the same as the measure of state use tax apportioned
33 under section 602 of this act.

34 (3) This section does not affect the sourcing of local use taxes.

35 **Sec. 604.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to
36 read as follows:

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

6 (a) When tangible personal property, an extended warranty, a
7 digital good, digital code, digital automated service, or ((a)) other
8 service defined as a retail sale under RCW 82.04.050 is received by the
9 purchaser at a business location of the seller, the sale is sourced to
10 that business location.

11 (b) When the tangible personal property, extended warranty, digital
12 good, digital code, digital automated service, or ((a)) other service
13 defined as a retail sale under RCW 82.04.050 is not received by the
14 purchaser at a business location of the seller, the sale is sourced to
15 the location where receipt by the purchaser or the purchaser's donee,
16 designated as such by the purchaser, occurs, including the location
17 indicated by instructions for delivery to the purchaser or donee, known
18 to the seller.

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

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

29 (e) When (a), (b), (c), or (d) of this subsection do not apply,
30 including the circumstance where the seller is without sufficient
31 information to apply those provisions, then the location shall be
32 determined by the address from which tangible personal property was
33 shipped, from which the digital good or digital code or the computer
34 software delivered electronically was first available for transmission
35 by the seller, or from which the extended warranty or digital automated
36 service or other service defined as a retail sale under RCW 82.04.050
37 was provided, disregarding for these purposes any location that merely
38 provided the digital transfer of the product sold.

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

4 (a) For a lease or rental that requires recurring periodic
5 payments, the first periodic payment is sourced the same as a retail
6 sale in accordance with subsection (1) of this section. Periodic
7 payments made subsequent to the first payment are sourced to the
8 primary property location for each period covered by the payment. The
9 primary property location shall be as indicated by an address for the
10 property provided by the lessee that is available to the lessor from
11 its records maintained in the ordinary course of business, when use of
12 this address does not constitute bad faith. The property location is
13 not altered by intermittent use at different locations, such as use of
14 business property that accompanies employees on business trips and
15 service calls.

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

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

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

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

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

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

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

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

8 (i) Upon receipt of the direct mail form, the seller is relieved of
9 all obligations to collect, pay, or remit the applicable tax and the
10 purchaser is obligated to pay or remit the applicable tax on a direct
11 pay basis. A direct mail form shall remain in effect for all future
12 sales of direct mail by the seller to the purchaser until it is revoked
13 in writing.

14 (ii) Upon receipt of information from the purchaser showing the
15 jurisdictions to which the direct mail is delivered to recipients, the
16 seller shall collect the tax according to the delivery information
17 provided by the purchaser. In the absence of bad faith, the seller is
18 relieved of any further obligation to collect tax on any transaction
19 where the seller has collected tax pursuant to the delivery information
20 provided by the purchaser.

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

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

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

32 (a) A retail sale of watercraft;

33 (b) A retail sale of a modular home, manufactured home, or mobile
34 home;

35 (c) A retail sale, excluding the lease and rental, of a motor
36 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
37 transportation equipment; and

1 (d) Florist sales. In the case of a sale in which one florist
2 takes an order from a customer and then communicates that order to
3 another florist who delivers the items purchased to the place
4 designated by the customer, the location at or from which the delivery
5 is made to the consumer is deemed to be the location of the florist
6 originally taking the order.

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

10 (8) The definitions in this subsection apply throughout this
11 section.

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

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

23 (c) "Florist sales" means the retail sale of tangible personal
24 property by a florist. For purposes of this subsection (8)(c),
25 "florist" means a person whose primary business activity is the retail
26 sale of fresh cut flowers, potted ornamental plants, floral
27 arrangements, floral bouquets, wreaths, or any similar products, used
28 for decorative and not landscaping purposes.

29 (d) "Receive" and "receipt" mean taking possession of tangible
30 personal property, making first use of digital automated services or
31 other services, or taking possession or making first use of digital
32 goods or digital codes, whichever comes first. "Receive" and "receipt"
33 do not include possession by a shipping company on behalf of the
34 purchaser.

35 (e) "Transportation equipment" means:

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

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

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

5 (B) Operated under authority of a carrier authorized and
6 certificated by the United States department of transportation or
7 another federal authority to engage in the carriage of persons or
8 property in interstate commerce;

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

13 (iv) Containers designed for use on and component parts attached or
14 secured on the items described in (e)(i) through (iii) of this
15 subsection.

16 (9) In those instances where there is no obligation on the part of
17 a seller to collect or remit this state's sales or use tax, the use of
18 tangible personal property, digital good, digital code, or of a digital
19 automated service or other service, subject to use tax, is sourced to
20 the place of first use in this state. The definition of use in RCW
21 82.12.010 applies to this subsection.

22 PART VII

23 BUNDLING OF DIGITAL PRODUCTS TO BE OBTAINED THROUGH THE 24 USE OF A CODE THAT DOES NOT MEET THE DEFINITION OF DIGITAL CODE

25 **Sec. 701.** RCW 82.08.195 and 2007 c 6 s 1402 are each amended to
26 read as follows:

27 (1) A bundled transaction is subject to the tax imposed by RCW
28 82.08.020 if the retail sale of any of its component products would be
29 subject to the tax imposed by RCW 82.08.020.

30 (2) The transactions described in RCW 82.08.190(4) (a) and (b) are
31 subject to the tax imposed by RCW 82.08.020 if the service that is the
32 true object of the transaction is subject to the tax imposed by RCW
33 82.08.020. If the service that is the true object of the transaction
34 is not subject to the tax imposed by RCW 82.08.020, the transaction is
35 not subject to the tax imposed by RCW 82.08.020.

1 (3) The transaction described in RCW 82.08.190(4) (c) is not subject
2 to the tax imposed by RCW 82.08.020.

3 (4) The transaction described in RCW 82.08.190(4) (d) is not subject
4 to the tax imposed by RCW 82.08.020.

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

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

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

23 (6) In the case of the sale of a code that provides a purchaser
24 with the right to obtain more than one digital product, and which may
25 also include the right to obtain other products or services, and all of
26 the products and services, digital or otherwise, to be obtained through
27 the use of the code do not have the same sales and use tax treatment,
28 for purposes of the tax imposed by RCW 82.08.020:

29 (a) The transaction is deemed to be the sale of the products and
30 services to be obtained through the use of the code; and

31 (b)(i) The tax imposed by RCW 82.08.020 applies to the entire
32 selling price of the code, except as provided in (b)(ii) of this
33 subsection (6).

34 (ii) If the seller can identify by reasonable and verifiable
35 standards the portion of the selling price attributable to the products
36 and services that are not subject to the tax imposed by RCW 82.08.020
37 from its books and records that are kept in the regular course of
38 business for other purposes including, but not limited to, nontax

1 purposes, the tax imposed by RCW 82.08.020 does not apply to that
2 portion of the selling price of the code attributable to the products
3 and services that are not subject to the tax imposed by RCW 82.08.020.

4 **PART VIII**
5 **NEXUS**

6 NEW SECTION. **Sec. 801.** A new section is added to chapter 82.32
7 RCW to read as follows:

8 For purposes of the taxes imposed in this title, the department of
9 revenue may not consider a person's ownership of, or rights in, digital
10 goods or digital codes residing on servers located in this state in
11 determining whether the person has substantial nexus with this state.
12 For purposes of this section, "substantial nexus" means the requisite
13 connection that a person has with a state to allow the state to subject
14 the person to the state's taxing authority, consistent with the
15 commerce clause of the United States Constitution.

16 **PART IX**
17 **MISCELLANEOUS AMENDMENTS**

18 NEW SECTION. **Sec. 901.** RCW 35.21.717 (Taxation of internet
19 services--Moratorium) and 2004 c 154 s 1, 2002 c 181 s 1, 1999 c 307 s
20 1, & 1997 c 304 s 2 are each repealed.

21 **Sec. 902.** RCW 48.14.080 and 2006 c 278 s 2 are each amended to
22 read as follows:

23 (1) As to insurers, other than title insurers and taxpayers under
24 RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all
25 other taxes, except as otherwise provided in this section.

26 (2) Subsection (1) of this section does not apply with respect to:

27 (a) Taxes on real and tangible personal property;

28 (b) Excise taxes on the sale, purchase, use, or possession of (i)
29 real property; (ii) tangible personal property; (iii) extended
30 warranties; ~~((and))~~ (iv) services, including digital automated services
31 as defined in section 101 of this act; and (v) digital goods and
32 digital codes as those terms are defined in section 101 of this act;
33 and

1 (c) The tax imposed in RCW 82.04.260(10), regarding public and
2 nonprofit hospitals.

3 (3) For the purposes of this section, the term "taxes" includes
4 taxes imposed by the state or any county, city, town, municipal
5 corporation, quasi-municipal corporation, or other political
6 subdivision.

7 **Sec. 903.** RCW 82.02.020 and 2008 c 113 s 2 are each amended to
8 read as follows:

9 Except only as expressly provided in chapters 67.28, 81.104, and
10 82.14 RCW, the state preempts the field of imposing retail sales and
11 use taxes and taxes upon (~~retail sales of tangible personal property,~~
12 ~~the use of tangible personal property,~~) parimutuel wagering authorized
13 pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,
14 town, or other municipal subdivision shall have the right to impose
15 taxes of that nature. Except as provided in RCW 64.34.440 and
16 82.02.050 through 82.02.090, no county, city, town, or other municipal
17 corporation shall impose any tax, fee, or charge, either direct or
18 indirect, on the construction or reconstruction of residential
19 buildings, commercial buildings, industrial buildings, or on any other
20 building or building space or appurtenance thereto, or on the
21 development, subdivision, classification, or reclassification of land.
22 However, this section does not preclude dedications of land or
23 easements within the proposed development or plat which the county,
24 city, town, or other municipal corporation can demonstrate are
25 reasonably necessary as a direct result of the proposed development or
26 plat to which the dedication of land or easement is to apply.

27 This section does not prohibit voluntary agreements with counties,
28 cities, towns, or other municipal corporations that allow a payment in
29 lieu of a dedication of land or to mitigate a direct impact that has
30 been identified as a consequence of a proposed development,
31 subdivision, or plat. A local government shall not use such voluntary
32 agreements for local off-site transportation improvements within the
33 geographic boundaries of the area or areas covered by an adopted
34 transportation program authorized by chapter 39.92 RCW. Any such
35 voluntary agreement is subject to the following provisions:

36 (1) The payment shall be held in a reserve account and may only be

1 expended to fund a capital improvement agreed upon by the parties to
2 mitigate the identified, direct impact;

3 (2) The payment shall be expended in all cases within five years of
4 collection; and

5 (3) Any payment not so expended shall be refunded with interest to
6 be calculated from the original date the deposit was received by the
7 county and at the same rate applied to tax refunds pursuant to RCW
8 84.69.100; however, if the payment is not expended within five years
9 due to delay attributable to the developer, the payment shall be
10 refunded without interest.

11 No county, city, town, or other municipal corporation shall require
12 any payment as part of such a voluntary agreement which the county,
13 city, town, or other municipal corporation cannot establish is
14 reasonably necessary as a direct result of the proposed development or
15 plat.

16 Nothing in this section prohibits cities, towns, counties, or other
17 municipal corporations from collecting reasonable fees from an
18 applicant for a permit or other governmental approval to cover the cost
19 to the city, town, county, or other municipal corporation of processing
20 applications, inspecting and reviewing plans, or preparing detailed
21 statements required by chapter 43.21C RCW.

22 This section does not limit the existing authority of any county,
23 city, town, or other municipal corporation to impose special
24 assessments on property specifically benefitted thereby in the manner
25 prescribed by law.

26 Nothing in this section prohibits counties, cities, or towns from
27 imposing or permits counties, cities, or towns to impose water, sewer,
28 natural gas, drainage utility, and drainage system charges(~~(+
29 PROVIDED, That))~~). However, no such charge shall exceed the
30 proportionate share of such utility or system's capital costs which the
31 county, city, or town can demonstrate are attributable to the property
32 being charged(~~(:—PROVIDED FURTHER, That))~~). Furthermore, these
33 provisions (~~(shall)~~) may not be interpreted to expand or contract any
34 existing authority of counties, cities, or towns to impose such
35 charges.

36 Nothing in this section prohibits a transportation benefit district
37 from imposing fees or charges authorized in RCW 36.73.120 nor prohibits

1 the legislative authority of a county, city, or town from approving the
2 imposition of such fees within a transportation benefit district.

3 Nothing in this section prohibits counties, cities, or towns from
4 imposing transportation impact fees authorized pursuant to chapter
5 39.92 RCW.

6 Nothing in this section prohibits counties, cities, or towns from
7 requiring property owners to provide relocation assistance to tenants
8 under RCW 59.18.440 and 59.18.450.

9 Nothing in this section limits the authority of counties, cities,
10 or towns to implement programs consistent with RCW 36.70A.540, nor to
11 enforce agreements made pursuant to such programs.

12 This section does not apply to special purpose districts formed and
13 acting pursuant to Title((s)) 54, 57, or 87 RCW, nor is the authority
14 conferred by these titles affected.

15 **Sec. 904.** RCW 82.04.44525 and 2008 c 81 s 9 are each amended to
16 read as follows:

17 (1) Subject to the limits in this section, an eligible person is
18 allowed a credit against the tax due under this chapter. The credit is
19 based on qualified employment positions in eligible areas. The credit
20 is available to persons who are engaged in international services as
21 defined in this section. In order to receive the credit, the
22 international service activities must take place at a business within
23 the eligible area.

24 (2)(a) The credit shall equal three thousand dollars for each
25 qualified employment position created after July 1, 1998, in an
26 eligible area. A credit is earned for the calendar year the person is
27 hired to fill the position, plus the four subsequent consecutive years,
28 if the position is maintained for those four years.

29 (b) Credit may not be taken for hiring of persons into positions
30 that exist on July 1, 1998. Credit is authorized for new employees
31 hired for new positions created after July 1, 1998. New positions
32 filled by existing employees are eligible for the credit under this
33 section only if the position vacated by the existing employee is filled
34 by a new hire.

35 (c) When a position is newly created, if it is filled before July
36 1st, this position is eligible for the full yearly credit. If it is

1 filled after June 30th, this position is eligible for half of the
2 credit.

3 (d) Credit may be accrued and carried over until it is used. No
4 refunds may be granted for credits under this section.

5 (3) For the purposes of this section:

6 (a) "Eligible area" means: (i) A community empowerment zone under
7 RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets
8 the unemployment and poverty criteria of RCW 43.31C.030 and is
9 designated under subsection (4) of this section;

10 (b) "Eligible person" means a person, as defined in RCW 82.04.030,
11 who in an eligible area at a specific location is engaged in the
12 business of providing international services;

13 (c) (i) "International services" means the provision of a service,
14 as defined under (c) (iii) of this subsection, that is subject to tax
15 under RCW 82.04.290 (2) or (3), and either:

16 (A) Is for a person domiciled outside the United States; or

17 (B) The service itself is for use primarily outside of the United
18 States.

19 (ii) "International services" excludes any service taxable under
20 RCW 82.04.290 (1).

21 (iii) Eligible services are: Computer; data processing;
22 information; legal; accounting and tax preparation; engineering;
23 architectural; business consulting; business management; public
24 relations and advertising; surveying; geological consulting; real
25 estate appraisal; or financial services. For the purposes of this
26 section these services mean the following:

27 (A) "Computer services" are services such as computer programming,
28 custom software modification, customization of canned software, custom
29 software installation, custom software maintenance, custom software
30 repair, training in the use of software, computer systems design, and
31 custom software update services;

32 (B) "Data processing services" are services such as word
33 processing, data entry, data retrieval, data search, information
34 compilation, payroll processing, business accounts processing, data
35 production, and other computerized data and information storage or
36 manipulation. "Data processing services" also includes the use of a
37 computer or computer time for data processing whether the processing is

1 performed by the provider of the computer or by the purchaser or other
2 beneficiary of the service;

3 (C) "Information services" are services such as electronic data
4 retrieval or research that entails furnishing financial or legal
5 information, data or research, internet (~~(service)~~) access as defined
6 in RCW 82.04.297, general or specialized news, or current information;

7 (D) "Legal services" are services such as representation by an
8 attorney, or other person when permitted, in an administrative or legal
9 proceeding, legal drafting, paralegal services, legal research
10 services, and court reporting services, arbitration, and mediation
11 services;

12 (E) "Accounting and tax preparation services" are services such as
13 accounting, auditing, actuarial, bookkeeping, or tax preparation
14 services;

15 (F) "Engineering services" are services such as civil, electrical,
16 mechanical, petroleum, marine, nuclear, and design engineering, machine
17 designing, machine tool designing, and sewage disposal system designing
18 services;

19 (G) "Architectural services" are services such as structural or
20 landscape design or architecture, interior design, building design,
21 building program management, and space planning services;

22 (H) "Business consulting services" are services such as primarily
23 providing operating counsel, advice, or assistance to the management or
24 owner of any business, private, nonprofit, or public organization,
25 including but not limited to those in the following areas:
26 Administrative management consulting; general management consulting;
27 human resource consulting or training; management engineering
28 consulting; management information systems consulting; manufacturing
29 management consulting; marketing consulting; operations research
30 consulting; personnel management consulting; physical distribution
31 consulting; site location consulting; economic consulting; motel,
32 hotel, and resort consulting; restaurant consulting; government affairs
33 consulting; and lobbying;

34 (I) "Business management services" are services such as
35 administrative management, business management, and office management.
36 "Business management services" does not include property management or
37 property leasing, motel, hotel, and resort management, or automobile
38 parking management;

1 (J) "Public relations and advertising services" are services such
2 as layout, art direction, graphic design, copy writing, mechanical
3 preparation, opinion research, marketing research, marketing, or
4 production supervision;

5 (K) "Surveying services" are services such as land surveying;

6 (L) "Geological consulting services" are services rendered for the
7 oil, gas, and mining industry and other earth resource industries, and
8 other services such as soil testing;

9 (M) "Real estate appraisal services" are services such as market
10 appraisal and other real estate valuation; and

11 (N) "Financial services" are services such as banking, loan,
12 security, investment management, investment advisory, mortgage
13 servicing, contract collection, and finance leasing services, engaged
14 in by financial businesses, or businesses similar to or in competition
15 with financial businesses; and

16 (d) "Qualified employment position" means a permanent full-time
17 position to provide international services. If an employee is either
18 voluntarily or involuntarily separated from employment, the employment
19 position is considered filled on a full-time basis if the employer is
20 either training or actively recruiting a replacement employee.

21 (4) By ordinance, the legislative authority of a city, or
22 legislative authorities of contiguous cities by ordinance of each
23 city's legislative authority, with population greater than eighty
24 thousand, located in a county containing no community empowerment zones
25 as designated under RCW 43.31C.020, may designate a contiguous group of
26 census tracts within the city or cities as an eligible area under this
27 section. Each of the census tracts must meet the unemployment and
28 poverty criteria of RCW 43.31C.030. Upon making the designation, the
29 city or cities shall transmit to the department of revenue a
30 certification letter and a map, each explicitly describing the
31 boundaries of the census tract. This designation must be made by
32 December 31, 1998.

33 (5) No application is necessary for the tax credit. The person
34 must keep records necessary for the department to verify eligibility
35 under this section. This information includes:

36 (a) Employment records for the previous six years;

37 (b) Information relating to description of international service
38 activity engaged in at the eligible location by the person; and

1 (c) Information relating to customers of international service
2 activity engaged in at that location by the person.

3 (6) If at any time the department finds that a person is not
4 eligible for tax credit under this section, the amount of taxes for
5 which a credit has been used shall be immediately due. The department
6 shall assess interest, but not penalties, on the credited taxes for
7 which the person is not eligible. The interest shall be assessed at
8 the rate provided for delinquent excise taxes under chapter 82.32 RCW,
9 shall be assessed retroactively to the date the tax credit was taken,
10 and shall accrue until the taxes for which a credit has been used are
11 repaid.

12 (7) The employment security department shall provide to the
13 department of revenue such information needed by the department of
14 revenue to verify eligibility under this section.

15 **Sec. 905.** RCW 82.08.040 and 1975 1st ex.s. c 278 s 46 are each
16 amended to read as follows:

17 (1) Every consignee, bailee, factor, or auctioneer (~~authorized,~~
18 ~~engaged, or employed to sell or call~~) selling or calling for bids on
19 (~~tangible~~) personal property belonging to another, (~~and so selling~~
20 ~~or calling, shall be~~) is deemed the seller of such (~~tangible~~)
21 personal property within the meaning of this chapter (~~and~~). All
22 sales made by such persons are subject to (~~its~~) the provisions of
23 this chapter even though the sale would have been exempt from the tax
24 (~~hereunder~~) imposed in this chapter had it been made directly by the
25 owner of the property sold.

26 (2) (a) Except as provided in (b) of this subsection (2), every
27 consignee, bailee, factor, or auctioneer (~~shall~~) must collect and
28 remit the amount of tax due under this chapter with respect to sales
29 made or called by (~~him: PROVIDED,~~) that seller.

30 (b) If the owner of the property sold is engaged in the business of
31 (~~selling tangible personal property~~) making sales at retail in this
32 state, the tax imposed under this chapter may be remitted by such owner
33 under such rules (~~and regulations~~) as the department (~~of revenue~~
34 ~~shall prescribe~~) may adopt.

35 **Sec. 906.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended
36 to read as follows:

1 (1) If a buyer normally is engaged in both consuming and reselling
2 certain types of (~~(articles of tangible)~~) personal property, the retail
3 sale of which is taxable under this chapter, and the buyer is not able
4 to determine at the time of purchase whether the particular property
5 acquired will be consumed or resold, the buyer may use a resale
6 certificate for the entire purchase if the buyer principally resells
7 the articles according to the general nature of the buyer's business.
8 The buyer shall account for the value of any articles purchased with a
9 resale certificate that are used by the buyer and remit the sales tax
10 on the articles to the department.

11 (2) A buyer who pays a tax on all purchases and subsequently
12 resells an article at retail, without intervening use by the buyer,
13 shall collect the tax from the purchaser as otherwise provided by law
14 and is entitled to a deduction on the buyer's tax return equal to the
15 cost to the buyer of the property resold upon which retail sales tax
16 has been paid. The deduction is allowed only if the taxpayer keeps and
17 preserves records that show the names of the persons from whom the
18 articles were purchased, the date of the purchase, the type of
19 articles, the amount of the purchase, and the tax that was paid. The
20 department shall provide by rule for the refund or credit of retail
21 sales tax paid by a buyer for purchases that are later sold at
22 wholesale without intervening use by the buyer.

23 **Sec. 907.** RCW 82.12.035 and 2007 c 6 s 1203 are each amended to
24 read as follows:

25 A credit (~~(shall be)~~) is allowed against the taxes imposed by this
26 chapter upon the use in this state of tangible personal property,
27 extended warranty, digital good, digital code, digital automated
28 service, or services (~~(taxable under)~~) defined as a retail sale in RCW
29 82.04.050 (2) (a) (~~(or)~~), (3) (a), or (6) (b), in the (~~(state of~~
30 ~~Washington in the)~~) amount that the present user thereof or his or her
31 bailor or donor has paid a legally imposed retail sales or use tax with
32 respect to such property, extended warranty, digital good, digital
33 code, digital automated service, or service defined as a retail sale in
34 RCW 82.04.050 (2) (a), (3) (a), or (6) (b) to any other state, possession,
35 territory, or commonwealth of the United States, any political
36 subdivision thereof, the District of Columbia, and any foreign country

1 or political subdivision thereof (~~, prior to the use of such property,~~
2 ~~extended warranty, or service in Washington~~)).

3 **Sec. 908.** RCW 82.12.040 and 2005 c 514 s 109 are each amended to
4 read as follows:

5 (1) Every person who maintains in this state a place of business or
6 a stock of goods, or engages in business activities within this state,
7 shall obtain from the department a certificate of registration, and
8 shall, at the time of making sales of tangible personal property,
9 digital goods, digital codes, digital automated services, extended
10 warranties, or sales of any service defined as a retail sale in RCW
11 82.04.050 (2)(a) (~~(or)~~), (3)(a), or (6)(b), or making transfers of
12 either possession or title, or both, of tangible personal property for
13 use in this state, collect from the purchasers or transferees the tax
14 imposed under this chapter. The tax to be collected under this section
15 (~~shall~~) must be in an amount equal to the purchase price multiplied
16 by the rate in effect for the retail sales tax under RCW 82.08.020.
17 For the purposes of this chapter, the phrase "maintains in this state
18 a place of business" shall include the solicitation of sales and/or
19 taking of orders by sales agents or traveling representatives. For the
20 purposes of this chapter, "engages in business activity within this
21 state" includes every activity which is sufficient under the
22 Constitution of the United States for this state to require collection
23 of tax under this chapter. The department (~~shall~~) must in rules
24 specify activities which constitute engaging in business activity
25 within this state, and (~~shall~~) must keep the rules current with
26 future court interpretations of the Constitution of the United States.

27 (2) Every person who engages in this state in the business of
28 acting as an independent selling agent for persons who do not hold a
29 valid certificate of registration, and who receives compensation by
30 reason of sales of tangible personal property, digital goods, digital
31 codes, digital automated services, extended warranties, or sales of any
32 service defined as a retail sale in RCW 82.04.050 (2)(a) (~~(or)~~),
33 (3)(a), or (6)(b), of his or her principals for use in this state,
34 (~~shall~~) must, at the time such sales are made, collect from the
35 purchasers the tax imposed on the purchase price under this chapter,
36 and for that purpose shall be deemed a retailer as defined in this
37 chapter.

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

15 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
16 transferee, either directly or indirectly, and by whatever means, all
17 or any part of the tax levied by this chapter (~~shall be~~) is guilty of
18 a misdemeanor.

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

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

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

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

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

1 **Sec. 909.** RCW 82.14.465 and 2007 c 266 s 7 are each amended to
2 read as follows:

3 (1) A city, town, or county that creates a benefit zone and
4 finances public improvements pursuant to chapter 39.100 RCW may impose
5 a sales and use tax in accordance with the terms of this chapter and
6 subject to the criteria set forth in this section. Except as provided
7 in this section, the tax is in addition to other taxes authorized by
8 law and shall be collected from those persons who are taxable by the
9 state under chapters 82.08 and 82.12 RCW upon the occurrence of any
10 taxable event within the taxing jurisdiction of the city, town, or
11 county. The rate of tax shall not exceed the rate provided in RCW
12 82.08.020(1) in the case of a sales tax or (~~the rate provided in RCW~~
13 ~~82.12.020(5) in the case of~~) a use tax, less the aggregate rates of
14 any other taxes imposed on the same events that are credited against
15 the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax
16 rate shall be no higher than what is reasonably necessary for the local
17 government to receive its entire annual state contribution in a ten-
18 month period of time.

19 (2) The tax imposed under subsection (1) of this section shall be
20 deducted from the amount of tax otherwise required to be collected or
21 paid over to the department under chapter 82.08 or 82.12 RCW. The
22 department shall perform the collection of such taxes on behalf of the
23 city, town, or county at no cost to the city, town, or county.

24 (3) No tax may be imposed under this section before July 1, 2007.
25 Before imposing a tax under this section, the city, town, or county
26 shall first have received tax allocation revenues during the preceding
27 calendar year. The tax imposed under this section shall expire on the
28 earlier of the date: (a) The tax allocation revenues are no longer
29 used for public improvements and public improvement costs; (b) the
30 bonds issued under the authority of chapter 39.100 RCW are retired, if
31 the bonds are issued; or (c) that is thirty years after the tax is
32 first imposed.

33 (4) An ordinance adopted by the legislative authority of a city,
34 town, or county imposing a tax under this section shall provide that:

35 (a) The tax shall first be imposed on the first day of a fiscal
36 year;

37 (b) The amount of tax received by the local government in any
38 fiscal year shall not exceed the amount of the state contribution;

1 (c) The tax shall cease to be distributed for the remainder of any
2 fiscal year in which either:

3 (i) The amount of tax distributions totals the amount of the state
4 contribution;

5 (ii) The amount of tax distributions totals the amount of local
6 public sources, dedicated in the previous calendar year to finance
7 public improvements authorized under chapter 39.100 RCW, expended in
8 the previous year for public improvement costs or used to pay for other
9 bonds issued to pay for public improvements; or

10 (iii) The amount of revenue from taxes imposed under this section
11 by all cities, towns, and counties totals the annual state credit limit
12 as provided in RCW 82.32.700(3);

13 (d) The tax shall be distributed again, should it cease to be
14 distributed for any of the reasons provided in (c) of this subsection,
15 at the beginning of the next fiscal year, subject to the restrictions
16 in this section; and

17 (e) Any revenue generated by the tax in excess of the amounts
18 specified in (b) and (c) of this subsection shall belong to the state
19 of Washington.

20 (5) If both a county and a city or town impose a tax under this
21 section, the tax imposed by the city, town, or county shall be credited
22 as follows:

23 (a) If the county has created a benefit zone before the city or
24 town, the tax imposed by the county shall be credited against the tax
25 imposed by the city or town, the purpose of such credit is to give
26 priority to the county tax; and

27 (b) If the city or town has created a benefit zone before the
28 county, the tax imposed by the city or town shall be credited against
29 the tax imposed by the county, the purpose of such credit is to give
30 priority to the city or town tax.

31 (6) The department shall determine the amount of tax distributions
32 attributable to each city, town, and county imposing a sales and use
33 tax under this section and shall advise a city, town, or county when
34 the tax will cease to be distributed for the remainder of the fiscal
35 year as provided in subsection (4)(c) of this section. Determinations
36 by the department of the amount of taxes attributable to a city, town,
37 or county are final and shall not be used to challenge the validity of
38 any tax imposed under this section. The department shall remit any tax

1 revenues in excess of the amounts specified in subsection (4)(b) and
2 (c) of this section to the state treasurer who shall deposit the moneys
3 in the general fund.

4 (7) The definitions in this subsection apply throughout this
5 section and RCW 82.14.470 unless the context clearly requires
6 otherwise.

7 (a) "Base year" means the calendar year immediately following the
8 creation of a benefit zone.

9 (b) "Benefit zone" has the same meaning as provided in RCW
10 39.100.010.

11 (c) "Excess local excise taxes" has the same meaning as provided in
12 RCW 39.100.050.

13 (d) "Excess state excise taxes" means the amount of excise taxes
14 received by the state during the measurement year from taxable activity
15 within the benefit zone over and above the amount of excise taxes
16 received by the state during the base year from taxable activity within
17 the benefit zone. However, if a local government creates the benefit
18 zone and reasonably determines that no activity subject to tax under
19 chapters 82.08 and 82.12 RCW occurred in the twelve months immediately
20 preceding the creation of the benefit zone within the boundaries of the
21 area that became the benefit zone, "excess state excise taxes" means
22 the entire amount of state excise taxes the state receives during a
23 calendar year period beginning with the calendar year immediately
24 following the creation of the benefit zone and continuing with each
25 measurement year thereafter.

26 (e) "State excise taxes" means revenues derived from state retail
27 sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount
28 of tax distributions from all local retail sales and use taxes imposed
29 on the same taxable events that are credited against the state retail
30 sales and use taxes under chapters 82.08 and 82.12 RCW except for the
31 local tax authorized in this section.

32 (f) "Fiscal year" has the same meaning as provided in RCW
33 39.100.030.

34 (g) "Measurement year" means a calendar year, beginning with the
35 calendar year following the base year and each calendar year
36 thereafter, that is used annually to measure the amount of excess state
37 excise taxes and excess local excise taxes.

1 (h) "State contribution" means the lesser of two million dollars or
2 an amount equal to excess state excise taxes received by the state
3 during the preceding calendar year.

4 (i) "Tax allocation revenues" has the same meaning as provided in
5 RCW 39.100.010.

6 (j) "Public improvements" and "public improvement costs" have the
7 same meanings as provided in RCW 39.100.010.

8 (k) "Local public sources" includes, but is not limited to, private
9 monetary contributions, assessments, dedicated local government funds,
10 and tax allocation revenues. "Local public sources" does not include
11 local government funds derived from any state loan or state grant, any
12 local tax that is credited against the state sales and use taxes, or
13 any other state funds.

14 **Sec. 910.** RCW 82.16.010 and 2007 c 6 s 1023 are each amended to
15 read as follows:

16 For the purposes of this chapter, unless otherwise required by the
17 context:

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

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

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

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

34 (5) "Light and power business" means the business of operating a
35 plant or system for the generation, production or distribution of
36 electrical energy for hire or sale and/or for the wheeling of
37 electricity for others.

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

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

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

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

30 (10)(a) "Public service business" means any of the businesses
31 defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9)
32 of this section or any business subject to control by the state, or
33 having the powers of eminent domain and the duties incident thereto, or
34 any business hereafter declared by the legislature to be of a public
35 service nature, except telephone business and low-level radioactive
36 waste site operating companies as redefined in RCW 81.04.010. It
37 includes, among others, without limiting the scope hereof: Airplane

1 transportation, boom, dock, ferry, pipe line, toll bridge, toll logging
2 road, water transportation and wharf businesses.

3 (b) The definitions in this subsection (10)(b) apply throughout
4 this subsection (10).

5 (i) "Competitive telephone service" has the same meaning as in RCW
6 82.04.065.

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

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

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

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

31 (12) "Gross income" means the value proceeding or accruing from the
32 performance of the particular public service or transportation business
33 involved, including operations incidental thereto, but without any
34 deduction on account of the cost of the commodity furnished or sold,
35 the cost of materials used, labor costs, interest, discount, delivery
36 costs, taxes, or any other expense whatsoever paid or accrued and
37 without any deduction on account of losses.

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

5 **Sec. 911.** RCW 82.32.020 and 2007 c 6 s 101 are each amended to
6 read as follows:

7 For the purposes of this chapter:

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

15 (2) Whenever "property" or "personal property" is used, those terms
16 must be construed to include digital goods and digital codes unless:
17 (a) It is clear from the context that the term "personal property" is
18 intended only to refer to tangible personal property; (b) it is clear
19 from the context that the term "property" is intended only to refer to
20 tangible personal property, real property, or both; or (c) to construe
21 the term "property" or "personal property" as including digital goods
22 and digital codes would yield unlikely, absurd, or strained
23 consequences.

24 (3) The definitions in this subsection apply throughout this
25 chapter, unless the context clearly requires otherwise.

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

27 (b) "Associate member" means a petitioning state that is found to
28 be in compliance with the agreement and changes to its laws, rules, or
29 other authorities necessary to bring it into compliance are not in
30 effect, but are scheduled to take effect on or before January 1, 2008.
31 The petitioning states, by majority vote, may also grant associate
32 member status to a petitioning state that does not receive an
33 affirmative vote of three-fourths of the petitioning states upon a
34 finding that the state has achieved substantial compliance with the
35 terms of the agreement as a whole, but not necessarily each required
36 provision, measured qualitatively, and there is a reasonable
37 expectation that the state will achieve compliance by January 1, 2008.

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

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

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

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

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

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

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

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

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

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

36 (h) "Model 3 seller" means a seller that has sales in at least five
37 member states, has total annual sales revenue of at least five hundred
38 million dollars, has a proprietary system that calculates the amount of

1 tax due each jurisdiction, and has entered into a performance agreement
2 with the member states that establishes a tax performance standard for
3 the seller. As used in this subsection ~~((+2))~~ (3)(h), a seller
4 includes an affiliated group of sellers using the same proprietary
5 system.

6 (i) "Source" means the location in which the sale or use of
7 tangible personal property, a digital good or digital code, an extended
8 warranty, or a digital automated service or other service, subject to
9 tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to
10 occur.

11 **Sec. 912.** RCW 82.32.023 and 2007 c 6 s 104 are each amended to
12 read as follows:

13 For purposes of ~~((compliance with the requirements of the agreement
14 only))~~ construing those provisions of the streamlined sales and use tax
15 agreement that have been incorporated into this title, and unless the
16 context requires otherwise, the terms "product" and "products" refer to
17 tangible personal property, digital goods, digital codes, digital
18 automated services, other services, extended warranties, and anything
19 else that can be sold or used.

20 **PART X**
21 **MISCELLANEOUS**

22 NEW SECTION. **Sec. 1001.** This act does not have any impact
23 whatsoever on the characterization of digital goods and digital codes
24 as tangible or intangible personal property for purposes of property
25 taxation and may not be used in any way in construing any provision of
26 Title 84 RCW.

27 NEW SECTION. **Sec. 1002.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 1003.** The repeals in sections 415 and 522 of
32 this act do not affect any existing right acquired or liability or

1 obligation incurred under the statutes repealed or under any rule or
2 order adopted under those statutes nor do they affect any proceedings
3 instituted under them.

4 NEW SECTION. **Sec. 1004.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 July 1, 2009.

8 NEW SECTION. **Sec. 1005.** Part headings used in this act are not
9 any part of the law.

--- END ---