
HOUSE BILL 1997

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Hunter, Carlyle, and Alexander

1 AN ACT Relating to the taxation of home service contracts; amending
2 RCW 82.04.050, 82.08.010, 82.08.020, 82.12.020, 82.12.0255, 82.12.035,
3 82.32.020, and 82.32.730; reenacting and amending RCW 82.04.190 and
4 82.12.010; creating a new section; and providing an effective date.

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

6 **Sec. 1.** RCW 82.04.050 and 2011 c 174 s 202 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

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

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

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

1 excluding charges made for the use of self-service laundry facilities,
2 and also excluding sales of laundry service to nonprofit health care
3 facilities, and excluding services rendered in respect to live animals,
4 birds and insects;

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

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

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

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

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

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

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

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

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

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

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

25 (c) Credit bureau services;

26 (d) Automobile parking and storage garage services;

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

32 (f) Service charges associated with tickets to professional
33 sporting events; and

34 (g) The following personal services: Physical fitness services,
35 tanning salon services, tattoo parlor services, steam bath services,
36 turkish bath services, escort services, and dating services.

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

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

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

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

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

18 (i) Custom software; or

19 (ii) The customization of prewritten computer software.

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

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

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

34 (7)(a) The term also includes the sale of or charge made to a
35 consumer for an extended warranty (~~to a consumer. For purposes of~~
36 ~~this subsection,~~) or a home service contract. The term "retail sale"
37 does not include any fee or other charge, whether labeled a trade
38 service call fee or otherwise, that applies under a home service

1 contract when a contractor, technician, repair person, or other service
2 provider comes to a residence to diagnose the problem or provide
3 services covered by the home service contract.

4 (b) The following definitions apply throughout this subsection
5 unless the context clearly requires otherwise.

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

18 (ii) "Home service contract" means a contract or agreement for a
19 separately stated consideration for any duration to perform the
20 service, repair, replacement, or maintenance of property or
21 indemnification for service, repair, replacement, or maintenance, for
22 the operational or structural failure of any residential property due
23 to a defect in materials, workmanship, inherent defect or normal wear
24 and tear, with or without additional provisions for incidental payment
25 or indemnity under limited circumstances. The term "home service
26 contract" does not include a contract or agreement, otherwise meeting
27 the definition of home service contract in this subsection, if:

28 (A) The sale to the customer occurred before the effective date of
29 this section;

30 (B) The sale is to a person that is not subject to the retail sales
31 tax imposed in RCW 82.08.020 or is exempt from that tax on all
32 purchases; or

33 (C) The contract or agreement also meets the definition of
34 "extended warranty" in this subsection and is not associated with any
35 contract or agreement to perform the service, repair, replacement, or
36 maintenance of residential property.

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

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

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

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

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

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

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

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

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

34 (11) The term also does not include sales of chemical sprays or
35 washes to persons for the purpose of postharvest treatment of fruit for
36 the prevention of scald, fungus, mold, or decay, nor does it include
37 sales of feed, seed, seedlings, fertilizer, agents for enhanced
38 pollination including insects such as bees, and spray materials to:

1 (a) Persons who participate in the federal conservation reserve
2 program, the environmental quality incentives program, the wetlands
3 reserve program, and the wildlife habitat incentives program, or their
4 successors administered by the United States department of agriculture;
5 (b) farmers for the purpose of producing for sale any agricultural
6 product; and (c) farmers acting under cooperative habitat development
7 or access contracts with an organization exempt from federal income tax
8 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
9 the Washington state department of fish and wildlife to produce or
10 improve wildlife habitat on land that the farmer owns or leases.

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

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

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

36 **Sec. 2.** RCW 82.04.190 and 2010 c 111 s 202 and 2010 c 106 s 204
37 are each reenacted and amended to read as follows:

1 "Consumer" means the following:

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

8 (a) Resale as tangible personal property in the regular course of
9 business;

10 (b) Incorporating such property as an ingredient or component of
11 real or personal property when installing, repairing, cleaning,
12 altering, imprinting, improving, constructing, or decorating such real
13 or personal property of or for consumers;

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

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

24 (e) Satisfying the person's obligations under an extended warranty
25 or home service contract as defined in RCW 82.04.050(7), if such
26 tangible personal property replaces or becomes an ingredient or
27 component of property covered by the extended warranty or home service
28 contract, without intervening use by such person;

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

1 amusement and recreation service defined in RCW 82.04.050(3)(a), other
2 than for resale in the regular course of business; (e) any person who
3 purchases or acquires an extended warranty or home service contract as
4 defined in RCW 82.04.050(7) other than for resale in the regular course
5 of business; and (f) any person who is an end user of software. For
6 purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who
7 purchases or otherwise acquires prewritten computer software, who
8 provides services described in RCW 82.04.050(6)(b) and who will charge
9 consumers for the right to access and use the prewritten computer
10 software, is not an end user of the prewritten computer software;

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

26 (4) Any person who is an owner, lessee or has the right of
27 possession to or an easement in real property which is being
28 constructed, repaired, decorated, improved, or otherwise altered by a
29 person engaged in business, excluding only (a) municipal corporations
30 or political subdivisions of the state in respect to labor and services
31 rendered to their real property which is used or held for public road
32 purposes, ~~((and))~~ (b) the United States, instrumentalities thereof, and
33 county and city housing authorities created pursuant to chapter 35.82
34 RCW in respect to labor and services rendered to their real property,
35 and (c) a person in respect to labor and services rendered to real
36 property when the labor and services are covered under the terms of a
37 home service contract as defined in RCW 82.04.050(7). Nothing

1 contained in this or any other subsection of this definition (~~shall~~)
2 may be construed to modify any other definition of "consumer";

3 (5) Any person who is an owner, lessee, or has the right of
4 possession to personal property which is being constructed, repaired,
5 improved, cleaned, imprinted, or otherwise altered by a person engaged
6 in business, except that "consumer" does not include such a person when
7 the constructing, repairing, improving, imprinting, or altering is
8 covered under the terms of a home service contract as defined in RCW
9 82.04.050(7);

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

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

37 (8) Any person engaged in the business of cleaning up for the

1 United States, or its instrumentalities, radioactive waste and other
2 by-products of weapons production and nuclear research and development;

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

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

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

12 (b) For purposes of consuming the service described in RCW
13 82.04.050(6)(b) in producing for sale a new product, but only if such
14 service becomes a component of the new product. For purposes of this
15 subsection (10), "product" means a digital product, an article of
16 tangible personal property, or the service described in RCW
17 82.04.050(6)(b);

18 (11)(a) Any end user of a digital product or digital code.
19 "Consumer" does not include any person who is not an end user of a
20 digital product or a digital code and purchases, acquires, owns, holds,
21 or uses any digital product or digital code for purposes of consuming
22 the digital product or digital code in producing for sale a new
23 product, but only if the digital product or digital code becomes a
24 component of the new product. A digital code becomes a component of a
25 new product if the digital good or digital automated service acquired
26 through the use of the digital code becomes incorporated into a new
27 product. For purposes of this subsection, "product" has the same
28 meaning as in subsection (10) of this section.

29 (b)(i) For purposes of this subsection, "end user" means any
30 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives
31 by contract a digital product for further commercial broadcast,
32 rebroadcast, transmission, retransmission, licensing, relicensing,
33 distribution, redistribution or exhibition of the product, in whole or
34 in part, to others. A person that purchases digital products or
35 digital codes for the purpose of giving away such products or codes
36 will not be considered to have engaged in the distribution or
37 redistribution of such products or codes and will be treated as an end
38 user;

1 (ii) If a purchaser of a digital code does not receive the
2 contractual right to further redistribute, after the digital code is
3 redeemed, the underlying digital product to which the digital code
4 relates, then the purchaser of the digital code is an end user. If the
5 purchaser of the digital code receives the contractual right to further
6 redistribute, after the digital code is redeemed, the underlying
7 digital product to which the digital code relates, then the purchaser
8 of the digital code is not an end user. A purchaser of a digital code
9 who has the contractual right to further redistribute the digital code
10 is an end user if that purchaser does not have the right to further
11 redistribute, after the digital code is redeemed, the underlying
12 digital product to which the digital code relates; and

13 (12) Any person who provides services described in RCW
14 82.04.050(9). Any such person is a consumer with respect to the
15 purchase, acquisition, or use of the tangible personal property that
16 the person provides along with an operator in rendering services
17 defined as a retail sale in RCW 82.04.050(9). Any such person may also
18 be a consumer under other provisions of this section.

19 **Sec. 3.** RCW 82.08.010 and 2010 c 106 s 210 are each amended to
20 read as follows:

21 ~~((For the purposes of this chapter*))~~ The definitions in this
22 section apply throughout this chapter unless the context clearly
23 requires otherwise.

24 (1)(a)(i) "Selling price" includes "sales price." "Sales price"
25 means the total amount of consideration, except separately stated
26 trade-in property of like kind, including cash, credit, property, and
27 services, for which tangible personal property, home service contract,
28 extended warranties, digital goods, digital codes, digital automated
29 services, or other services or anything else defined as a "retail sale"
30 under RCW 82.04.050 are sold, leased, or rented, valued in money,
31 whether received in money or otherwise. No deduction from the total
32 amount of consideration is allowed for the following: ~~((+i))~~ (A) The
33 seller's cost of the property sold; ~~((+ii))~~ (B) the cost of materials
34 used, labor or service cost, interest, losses, all costs of
35 transportation to the seller, all taxes imposed on the seller, and any
36 other expense of the seller; ~~((+iii))~~ (C) charges by the seller for

1 any services necessary to complete the sale, other than delivery and
2 installation charges; (~~(iv)~~) (D) delivery charges; and (~~(v)~~) (E)
3 installation charges.

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

11 (b) "Selling price" or "sales price" does not include: Discounts,
12 including cash, term, or coupons that are not reimbursed by a third
13 party that are allowed by a seller and taken by a purchaser on a sale;
14 interest, financing, and carrying charges from credit extended on the
15 sale of tangible personal property, home service contract, extended
16 warranties, digital goods, digital codes, digital automated services,
17 or other services or anything else defined as a retail sale in RCW
18 82.04.050, if the amount is separately stated on the invoice, bill of
19 sale, or similar document given to the purchaser; and any taxes legally
20 imposed directly on the consumer that are separately stated on the
21 invoice, bill of sale, or similar document given to the purchaser;

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

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

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

29 (iii) The amount of the consideration attributable to the sale is
30 fixed and determinable by the seller at the time of the sale of the
31 item to the purchaser; and

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

33 (A) The purchaser presents a coupon, certificate, or other
34 documentation to the seller to claim a price reduction or discount
35 where the coupon, certificate, or documentation is authorized,
36 distributed, or granted by a third party with the understanding that
37 the third party will reimburse any seller to whom the coupon,
38 certificate, or documentation is presented;

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

5 (C) The price reduction or discount is identified as a third party
6 price reduction or discount on the invoice received by the purchaser or
7 on a coupon, certificate, or other documentation presented by the
8 purchaser;

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

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

15 (ii) A professional employer organization when a covered employee
16 coemployed with the client under the terms of a professional employer
17 agreement engages in activities that constitute a sale at retail that
18 is subject to the tax imposed by this chapter. In such cases, the
19 client, and not the professional employer organization, is deemed to be
20 the seller and is responsible for collecting and remitting the tax
21 imposed by this chapter.

22 (b) For the purposes of (a) of this subsection, the terms "client,"
23 "covered employee," "professional employer agreement," and
24 "professional employer organization" have the same meanings as in RCW
25 82.04.540;

26 (3) "Buyer," "purchaser," and "consumer" include, without limiting
27 the scope hereof, every individual, receiver, assignee, trustee in
28 bankruptcy, trust, estate, firm, copartnership, joint venture, club,
29 company, joint stock company, business trust, corporation, association,
30 society, or any group of individuals acting as a unit, whether mutual,
31 cooperative, fraternal, nonprofit, or otherwise, municipal corporation,
32 quasi municipal corporation, and also the state, its departments and
33 institutions and all political subdivisions thereof, irrespective of
34 the nature of the activities engaged in or functions performed, and
35 also the United States or any instrumentality thereof;

36 (4) "Delivery charges" means charges by the seller of personal
37 property or services for preparation and delivery to a location

1 designated by the purchaser of personal property or services including,
2 but not limited to, transportation, shipping, postage, handling,
3 crating, and packing;

4 (5) "Direct mail" means printed material delivered or distributed
5 by United States mail or other delivery service to a mass audience or
6 to addressees on a mailing list provided by the purchaser or at the
7 direction of the purchaser when the cost of the items are not billed
8 directly to the recipients. "Direct mail" includes tangible personal
9 property supplied directly or indirectly by the purchaser to the direct
10 mail seller for inclusion in the package containing the printed
11 material. "Direct mail" does not include multiple items of printed
12 material delivered to a single address;

13 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
14 year," "taxable year," "person," "company," "sale," "sale at
15 wholesale," "wholesale," "business," "engaging in business," "cash
16 discount," "successor," "consumer," "in this state" and "within this
17 state" applies equally to the provisions of this chapter;

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

24 (8) "Extended warranty" (~~has~~) and "home service warrantee" have
25 the same meaning as in RCW 82.04.050(7);

26 (9) The definitions in RCW 82.04.192 apply to this chapter;

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

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

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

36 (c) To construe the term "property" or "personal property" as
37 including digital goods and digital codes would yield unlikely, absurd,
38 or strained consequences; and

1 (11) "Retail sale" or "sale at retail" means any sale, lease, or
2 rental for any purpose other than for resale, sublease, or subrent.

3 **Sec. 4.** RCW 82.08.020 and 2011 c 171 s 120 are each amended to
4 read as follows:

5 (1) There is levied and collected a tax equal to six and five-
6 tenths percent of the selling price on each retail sale in this state
7 of:

8 (a) Tangible personal property, unless the sale is specifically
9 excluded from the RCW 82.04.050 definition of retail sale;

10 (b) Digital goods, digital codes, and digital automated services,
11 if the sale is included within the RCW 82.04.050 definition of retail
12 sale;

13 (c) Services, other than digital automated services, included
14 within the RCW 82.04.050 definition of retail sale;

15 (d) Extended warranties to consumers; (~~and~~)

16 (e) Home service contracts to consumers; and

17 (f) Anything else, the sale of which is included within the RCW
18 82.04.050 definition of retail sale.

19 (2) There is levied and collected an additional tax on each retail
20 car rental, regardless of whether the vehicle is licensed in this
21 state, equal to five and nine-tenths percent of the selling price. The
22 revenue collected under this subsection must be deposited in the
23 multimodal transportation account created in RCW 47.66.070.

24 (3) Beginning July 1, 2003, there is levied and collected an
25 additional tax of three-tenths of one percent of the selling price on
26 each retail sale of a motor vehicle in this state, other than retail
27 car rentals taxed under subsection (2) of this section. The revenue
28 collected under this subsection must be deposited in the multimodal
29 transportation account created in RCW 47.66.070.

30 (4) For purposes of subsection (3) of this section, "motor vehicle"
31 has the meaning provided in RCW 46.04.320, but does not include farm
32 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
33 off-road vehicles as defined in RCW 46.04.365, nonhighway vehicles as
34 defined in RCW 46.09.310, and snowmobiles as defined in RCW 46.04.546.

35 (5) Beginning on December 8, 2005, 0.16 percent of the taxes
36 collected under subsection (1) of this section must be dedicated to

1 funding comprehensive performance audits required under RCW 43.09.470.
2 The revenue identified in this subsection must be deposited in the
3 performance audits of government account created in RCW 43.09.475.

4 (6) The taxes imposed under this chapter apply to successive retail
5 sales of the same property.

6 (7) The rates provided in this section apply to taxes imposed under
7 chapter 82.12 RCW as provided in RCW 82.12.020.

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

10 ~~((For the purposes of this chapter*))~~ The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) The meaning ascribed to words and phrases in chapters 82.04 and
14 82.08 RCW, insofar as applicable, has full force and effect with
15 respect to taxes imposed under the provisions of this chapter.
16 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
17 and 82.08 RCW insofar as applicable, also means any person who
18 distributes or displays, or causes to be distributed or displayed, any
19 article of tangible personal property, except newspapers, the primary
20 purpose of which is to promote the sale of products or services. With
21 respect to property distributed to persons within this state by a
22 consumer as defined in this subsection (1), the use of the property is
23 deemed to be by such consumer.

24 (2) "Extended warranty" ~~((has))~~ and "home service contract" have
25 the same meaning as in RCW 82.04.050(7).

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

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

33 (ii) "Retailer" does not include a professional employer
34 organization when a covered employee coemployed with the client under
35 the terms of a professional employer agreement engages in activities
36 that constitute a sale of tangible personal property, extended
37 warranty, digital good, digital code, or a sale of any digital

1 automated service or service defined as a retail sale in RCW 82.04.050
2 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
3 this chapter. In such cases, the client, and not the professional
4 employer organization, is deemed to be the retailer and is responsible
5 for collecting and remitting the tax imposed by this chapter.

6 (b) For the purposes of (a) of this subsection, the terms "client,"
7 "covered employee," "professional employer agreement," and
8 "professional employer organization" have the same meanings as in RCW
9 82.04.540.

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

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

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

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

28 (c) With respect to an extended warranty or home service contract,
29 the first act within this state after the extended warranty or home
30 service contract has been acquired by which the taxpayer takes or
31 assumes dominion or control over (~~the article of tangible personal~~)
32 any of the property to which the extended warranty or home service
33 contract applies, and includes installation, storage, withdrawal from
34 storage, distribution, or any other act preparatory to subsequent
35 actual use or consumption of the (~~article~~) property within this
36 state;

37 (d) With respect to a digital good or digital code, the first act

1 within this state by which the taxpayer, as a consumer, views,
2 accesses, downloads, possesses, stores, opens, manipulates, or
3 otherwise uses or enjoys the digital good or digital code;

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

7 (f) With respect to a service defined as a retail sale in RCW
8 82.04.050(6)(b), the first act within this state by which the taxpayer,
9 as a consumer, accesses the prewritten computer software;

10 (g) With respect to a service defined as a retail sale in RCW
11 82.04.050(2)(g), the first act within this state after the service has
12 been performed by which the taxpayer, as a consumer, views, accesses,
13 downloads, possesses, stores, opens, manipulates, or otherwise uses or
14 enjoys the digital good upon which the service was performed; and

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

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

32 (b) In case the articles used are acquired by bailment, the value
33 of the use of the articles so used must be in an amount representing a
34 reasonable rental for the use of the articles so bailed, determined as
35 nearly as possible according to the value of such use at the places of
36 use of similar products of like quality and character under such rules
37 as the department of revenue may prescribe. In case any such articles
38 of tangible personal property are used in respect to the construction,

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

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

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

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

37 (f) In the case of an article purchased with a direct pay permit

1 under RCW 82.32.087, the value of the article used is determined by the
2 purchase price of such article if, but for the use of the direct pay
3 permit, the transaction would have been subject to sales tax.

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

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

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

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

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

35 (a) Article of tangible personal property acquired by the user in
36 any manner, including tangible personal property acquired at a casual
37 or isolated sale, and including by-products used by the manufacturer

1 thereof, except as otherwise provided in this chapter, irrespective of
2 whether the article or similar articles are manufactured or are
3 available for purchase within this state;

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

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

11 (d) Extended warranty or home service contract; or

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

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

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

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

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

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

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

32 (2) The provisions of this chapter do not apply in respect to the
33 use of any article of tangible personal property, extended warranty, or
34 home service contract, digital good, digital code, digital automated
35 service, or service taxable under RCW 82.04.050 (2)(a) or (g), (3)(a),
36 or (6)(b), if the sale to, or the use by, the present user or the
37 present user's bailor or donor has already been subjected to the tax

1 under chapter 82.08 RCW or this chapter and the tax has been paid by
2 the present user or by the present user's bailor or donor.

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

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

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

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

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

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

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

37 (b) In the case of a seller required to collect use tax from the

1 purchaser, the tax must be collected in an amount equal to the purchase
2 price multiplied by the applicable rate in effect for the retail sales
3 tax under RCW 82.08.020.

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

7 **Sec. 7.** RCW 82.12.0255 and 2009 c 535 s 610 are each amended to
8 read as follows:

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

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

17 A credit is allowed against the taxes imposed by this chapter upon
18 the use in this state of tangible personal property, extended warranty,
19 or home service contract, digital good, digital code, digital automated
20 service, or services defined as a retail sale in RCW 82.04.050 (2) (a)
21 or (g), (3)(a), or (6)(b), in the amount that the present user thereof
22 or his or her bailor or donor has paid a legally imposed retail sales
23 or use tax with respect to such property, extended warranty, digital
24 good, digital code, digital automated service, or service defined as a
25 retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any
26 other state, possession, territory, or commonwealth of the United
27 States, any political subdivision thereof, the District of Columbia,
28 and any foreign country or political subdivision thereof.

29 **Sec. 9.** RCW 82.32.020 and 2009 c 535 s 1111 are each amended to
30 read as follows:

31 ~~((For the purposes of this chapter*))~~ The definitions in this
32 section apply throughout this chapter unless the context clearly
33 requires otherwise.

34 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
35 the words and phrases "tax year," "taxable year," "person," "company,"

1 "gross proceeds of sales," "gross income of the business," "business,"
2 "engaging in business," "successor," "gross operating revenue," "gross
3 income," "taxpayer," "retail sale," "seller," "buyer," "purchaser,"
4 "extended warranty," "home service contract," and "value of products"
5 (~~shall~~) apply equally to the provisions of this chapter.

6 (2) Whenever "property" or "personal property" is used, those terms
7 must be construed to include digital goods and digital codes unless:
8 (a) It is clear from the context that the term "personal property" is
9 intended only to refer to tangible personal property; (b) it is clear
10 from the context that the term "property" is intended only to refer to
11 tangible personal property, real property, or both; or (c) to construe
12 the term "property" or "personal property" as including digital goods
13 and digital codes would yield unlikely, absurd, or strained
14 consequences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (i) "Source" means the location in which the sale or use of
34 tangible personal property, a digital good or digital code, an extended
35 warranty, or home service contract, or a digital automated service or
36 other service, subject to tax under chapter 82.08, 82.12, 82.14, or
37 82.14B RCW, is deemed to occur.

1 **Sec. 10.** RCW 82.32.730 and 2010 c 106 s 229 are each amended to
2 read as follows:

3 (1) Except as provided in subsections (5) through (8) of this
4 section, for purposes of collecting or paying sales or use taxes to the
5 appropriate jurisdictions, all sales at retail (~~shall~~) must be
6 sourced in accordance with this subsection and subsections (2) through
7 (4) of this section.

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

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

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

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

31 (e) When (a), (b), (c), or (d) of this subsection do not apply,
32 including the circumstance where the seller is without sufficient
33 information to apply those provisions, then the location (~~shall~~) must
34 be determined by the address from which tangible personal property was
35 shipped, from which the digital good or digital code or the computer
36 software delivered electronically was first available for transmission
37 by the seller, or from which the extended warranty, home service
38 contract, or digital automated service or other service defined as a

1 retail sale under RCW 82.04.050 was provided, disregarding for these
2 purposes any location that merely provided the digital transfer of the
3 product sold.

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

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

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

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

25 (3) The lease or rental of motor vehicles, trailers, semitrailers,
26 or aircraft that do not qualify as transportation equipment (~~shall~~)
27 must be sourced as provided in this subsection.

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

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

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

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

7 (5) This subsection applies to direct mail transactions not
8 governed by subsection (6) of this section.

9 (a) This subsection (5)(a) applies to sales of advertising and
10 promotional direct mail.

11 (i) A purchaser of advertising and promotional direct mail may
12 provide the seller with either:

13 (A) A direct pay permit;

14 (B) A streamlined sales and use tax agreement certificate of
15 exemption claiming direct mail (or other written statement approved,
16 authorized, or accepted by the department); or

17 (C) Information showing the jurisdictions to which the advertising
18 and promotional direct mail is to be delivered to recipients.

19 (ii) If the purchaser provides the permit, certificate, or
20 statement referred to in (a)(i)(A) or (B) of this subsection (5), the
21 seller, in the absence of bad faith, is relieved of all obligations to
22 collect, pay, or remit any tax on any transaction involving advertising
23 and promotional direct mail to which the permit, certificate, or
24 statement applies. The purchaser must source the sale to the
25 jurisdictions to which the advertising and promotional direct mail is
26 to be delivered to the recipients and must report and pay any
27 applicable tax due.

28 (iii) If the purchaser provides the seller information showing the
29 jurisdictions to which the advertising and promotional direct mail is
30 to be delivered to recipients, the seller must source the sale to the
31 jurisdictions to which the advertising and promotional direct mail is
32 to be delivered and must collect and remit the applicable tax. In the
33 absence of bad faith, the seller is relieved of any further obligation
34 to collect any additional tax on the sale of advertising and
35 promotional direct mail where the seller has sourced the sale according
36 to the delivery information provided by the purchaser.

37 (iv) If the purchaser does not provide the seller with any of the

1 items listed in (a)(i)(A), (B), or (C) of this subsection (5), the sale
2 must be sourced according to subsection (1)(e) of this section.

3 (b) This subsection (5)(b) applies to sales of other direct mail.

4 (i) Except as otherwise provided in this subsection (5)(b), sales
5 of other direct mail are sourced in accordance with subsection (1)(c)
6 of this section.

7 (ii) A purchaser of other direct mail may provide the seller with
8 either:

9 (A) A direct pay permit; or

10 (B) A streamlined sales and use tax agreement certificate of
11 exemption claiming direct mail (or other written statement approved,
12 authorized, or accepted by the department).

13 (iii) If the purchaser provides the permit, certificate, or
14 statement referred to in (b)(ii)(A) or (B) of this subsection (5), the
15 seller, in the absence of bad faith, is relieved of all obligations to
16 collect, pay, or remit any tax on any transaction involving other
17 direct mail to which the permit, certificate, or statement applies.
18 Notwithstanding (b)(i) of this subsection (5), the sale must be sourced
19 to the jurisdictions to which the other direct mail is to be delivered
20 to the recipients, and the purchaser must report and pay any applicable
21 tax due.

22 (6)(a) This subsection applies only with respect to transactions in
23 which direct mail is delivered or distributed from a location within
24 this state to a location within this state.

25 (b) If the purchaser of direct mail provides the seller with a
26 direct pay permit or a streamlined sales and use tax agreement
27 certificate of exemption claiming direct mail (or other written
28 statement approved, authorized, or accepted by the department), the
29 seller, in the absence of bad faith, is relieved of all obligations to
30 collect, pay, or remit the applicable tax on any transaction involving
31 direct mail to which the permit, certificate, or statement applies.
32 The purchaser must report and pay any applicable tax due. A
33 streamlined sales and use tax agreement certificate of exemption
34 claiming direct mail will remain in effect for all future sales of
35 direct mail by the seller to the purchaser until it is revoked in
36 writing.

37 (c)(i) Except as provided in (b), (c)(ii), and (c)(iii) of this

1 subsection (6), the seller must collect the tax according to subsection
2 (1)(e) of this section.

3 (ii) To the extent the seller knows that a portion of the sale of
4 direct mail will be delivered or distributed to locations in another
5 state, the seller must collect the tax on that portion according to
6 subsection (5) of this section.

7 (iii) Notwithstanding (c)(i) and (ii) of this subsection (6), a
8 seller may elect to use the provisions of subsection (5) of this
9 section to source all sales of advertising and promotional direct mail.

10 (7) The following are sourced to the location at or from which
11 delivery is made to the consumer:

12 (a) A retail sale of watercraft;

13 (b) A retail sale of a modular home, manufactured home, or mobile
14 home;

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

18 (d) Florist sales. In the case of a sale in which one florist
19 takes an order from a customer and then communicates that order to
20 another florist who delivers the items purchased to the place
21 designated by the customer, the location at or from which the delivery
22 is made to the consumer is deemed to be the location of the florist
23 originally taking the order.

24 (8)(a) A retail sale of the providing of telecommunications
25 services, as that term is defined in RCW 82.04.065, is sourced in
26 accordance with RCW 82.32.520.

27 (b) A retail sale of the providing of ancillary services, as that
28 term is defined in RCW 82.04.065, is sourced to the customer's place of
29 primary use of the telecommunications services in respect to which the
30 ancillary services are associated with or incidental to. The
31 definitions of "customer" and "place of primary use" in RCW 82.32.520
32 apply to this subsection (8)(b).

33 (9) The definitions in this subsection apply throughout this
34 section.

35 (a) "Advertising and promotional direct mail" means printed
36 material that meets the definition of direct mail, the primary purpose
37 of which is to attract public attention to a product, person, business,
38 or organization, or to attempt to sell, popularize, or secure financial

1 support for a product, person, business, or organization. As used in
2 this subsection (9)(a), the word "product" means tangible personal
3 property, a product transferred electronically, or a service.

4 (b) "Delivered electronically" means delivered to the purchaser by
5 means other than tangible storage media.

6 (c) "Direct mail" means printed material delivered or distributed
7 by United States mail or other delivery service to a mass audience or
8 to addressees on a mailing list provided by the purchaser or at the
9 direction of the purchaser when the cost of the items are not billed
10 directly to the recipients. "Direct mail" includes tangible personal
11 property supplied directly or indirectly by the purchaser to the direct
12 mail seller for inclusion in the package containing the printed
13 material. "Direct mail" does not include multiple items of printed
14 material delivered to a single address.

15 (d)(i) "Other direct mail" means any direct mail that is not
16 advertising and promotional direct mail, regardless of whether
17 advertising and promotional direct mail is included in the same
18 mailing. The term includes, but is not limited to:

19 (A) Transactional direct mail that contains personal information
20 specific to the addressee including, but not limited to, invoices,
21 bills, statements of account, and payroll advices;

22 (B) Any legally required mailings including, but not limited to,
23 privacy notices, tax reports, and stockholder reports; and

24 (C) Other nonpromotional direct mail delivered to existing or
25 former shareholders, customers, employees, or agents including, but not
26 limited to, newsletters and informational pieces.

27 (ii) Other direct mail does not include the development of billing
28 information or the provision of any data processing service that is
29 more than incidental.

30 (e) "Florist sales" means the retail sale of tangible personal
31 property by a florist. For purposes of this subsection (9)(e),
32 "florist" means a person whose primary business activity is the retail
33 sale of fresh cut flowers, potted ornamental plants, floral
34 arrangements, floral bouquets, wreaths, or any similar products, used
35 for decorative and not landscaping purposes.

36 (f) "Receive" and "receipt" mean taking possession of tangible
37 personal property, making first use of digital automated services or
38 other services, or taking possession or making first use of digital

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

4 (g) "Transportation equipment" means:

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

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

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

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

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

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

22 (10) In those instances where there is no obligation on the part of
23 a seller to collect or remit this state's sales or use tax, the use of
24 tangible personal property, digital good, digital code, or of a digital
25 automated service or other service, subject to use tax, is sourced to
26 the place of first use in this state. The definition of use in RCW
27 82.12.010 applies to this subsection.

28 NEW SECTION. **Sec. 11.** The tax changes in this act apply
29 prospectively only to home service contracts sold on or after the
30 effective date of this section.

31 NEW SECTION. **Sec. 12.** This act takes effect August 1, 2013.

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