
ENGROSSED SUBSTITUTE SENATE BILL 6472

State of Washington

63rd Legislature

2014 Regular Session

By Senate Ways & Means (originally sponsored by Senators Hill, Keiser, and Fraser; by request of Department of Revenue)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to simplifying the taxation of amusement,
2 recreation, and physical fitness services; amending RCW 82.04.050,
3 82.04.060, 82.08.0291, 82.12.020, 82.12.02595, 82.12.035, 82.12.040,
4 82.12.860, and 82.32.087; reenacting and amending RCW 82.04.190 and
5 82.12.010; creating a new section; repealing RCW 82.12.02917; and
6 providing an effective date.

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

8 **Sec. 1.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
9 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (i) Custom software; or

30 (ii) The customization of prewritten computer software.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (i)(A) Golf, including any variant in which either golf balls or
28 golf clubs are used, such as miniature golf, hitting golf balls at a
29 driving range, and golf simulators, and including fees charged by a
30 golf course to a player for using his or her own cart. However,
31 charges for golf instruction are not a retail sale, provided that if
32 the instruction involves the use of a golfing facility that would
33 otherwise require the payment of a fee, such as green fees or driving
34 range fees, such fees, including the applicable retail sales tax, must
35 be separately identified and charged by the golfing facility operator
36 to the instructor or the person receiving the instruction.

37 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except as
38 otherwise provided in this subsection (15)(a)(i)(B), the term "sale at

1 retail" or "retail sale" does not include amounts charged to
2 participate in, or conduct, a golf tournament or other competitive
3 event. However, amounts paid by event participants to the golf
4 facility operator are retail sales under this subsection (15)(a)(i).
5 Likewise, amounts paid by the event organizer to the golf facility are
6 retail sales under this subsection (15)(a)(i), if such amounts vary
7 based on the number of event participants;

8 (ii) Hang gliding, indoor sky diving, paraagliding, parasailing, and
9 similar activities;

10 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,
11 ping pong, and similar games;

12 (iv) Access to amusement park, theme park, and water park
13 facilities, including but not limited to charges for admission and
14 locker or cabana rentals. Discrete charges for rides or other
15 attractions or entertainment that are in addition to the charge for
16 admission are not a retail sale under this subsection (15)(a)(iv). For
17 the purposes of this subsection, an amusement park or theme park is a
18 location that provides permanently affixed amusement rides, games, and
19 other entertainment, but does not include parks or zoos for which the
20 primary purpose is the exhibition of wildlife, or fairs, carnivals, and
21 festivals as defined in (b)(i) of this subsection;

22 (v) Batting cage activities;

23 (vi) Bowling, but not including competitive events, except that
24 amounts paid by the event participants to the bowling alley operator
25 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
26 paid by the event organizer to the operator of the bowling alley are
27 retail sales under this subsection (15)(a)(vi), if such amounts vary
28 based on the number of event participants;

29 (vii) Climbing on artificial climbing structures, whether indoors
30 or outdoors;

31 (viii) Day trips for sightseeing purposes;

32 (ix) Bungee jumping, zip lining, and riding inside a ball, whether
33 inflatable or otherwise;

34 (x) Horseback riding offered to the public, where the seller
35 furnishes the horse to the buyer and providing instruction is not the
36 primary focus of the activity, including guided rides, but not
37 including therapeutic horseback riding provided by an instructor

1 certified by a nonprofit organization that offers national or
2 international certification for therapeutic riding instructors;

3 (xi) Fishing, including providing access to private fishing areas
4 and charter or guided fishing, except that fishing contests and license
5 fees imposed by a government entity are not a retail sale under this
6 subsection;

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

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

18 (xiv) Go-karting, bumper cars, and other motorized activities where
19 the seller provides the vehicle and the premises where the buyer will
20 operate the vehicle;

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

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

34 (xvii) Paintball and airsoft activities;

35 (xviii) Skating, including ice skating, roller skating, and inline
36 skating, but only in respect to discrete charges to members of the
37 public to engage in skating activities, but not including skating

1 lessons, competitive events, team activities, or fees to join or renew
2 a membership at a skating facility, club, or other organization;

3 (xix) Nonmotorized snow sports and activities, such as downhill and
4 cross-country skiing, snowboarding, ski jumping, sledding, snow tubing,
5 snowshoeing, and similar snow sports and activities, whether engaged in
6 outdoors or in an indoor facility with or without snow, but only in
7 respect to discrete charges to the public for the use of land or
8 facilities to engage in nonmotorized snow sports and activities, such
9 as fees, however labeled, for the use of ski lifts and tows and daily
10 or season passes for access to trails or other areas where nonmotorized
11 snow sports and activities are conducted. However, fees for permits
12 issued by a governmental entity to park a vehicle on or access public
13 lands, or permits or leases granted by an owner of private timberland
14 for recreational access to areas used primarily for growing and
15 harvesting timber, are not retail sales under this subsection
16 (15)(a)(xix); and

17 (xx) Scuba diving; snorkeling; river rafting; surfing;
18 kiteboarding; flyboarding; water slides; inflatables, such as water
19 pillows, water trampolines, and water rollers; and similar water sports
20 and activities.

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

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

29 (ii) Made by an educational institution to its students and staff
30 for activities defined as retail sales by (a)(i) through (xx) of this
31 subsection. However, charges made by an educational institution to its
32 alumni or other members of the general public for these activities are
33 a retail sale under this subsection (15). For purposes of this
34 subsection (15)(b)(ii), "educational institution" has the same meaning
35 as in RCW 82.04.170;

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

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

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

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

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

10 (a) Tangible personal property;

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

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

15 (d) Prewritten computer software;

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

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

18 (g) Competitive telephone service, ancillary services, or
19 telecommunications service as those terms are defined in RCW 82.04.065;
20 or

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

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

28 (3) The sale of any service for resale, if the sale is excluded
29 from the definition of "sale at retail" and "retail sale" in RCW
30 82.04.050(14).

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

33 "Consumer" means the following:

34 (1) Any person who purchases, acquires, owns, holds, or uses any
35 article of tangible personal property irrespective of the nature of the
36 person's business and including, among others, without limiting the

1 scope hereof, persons who install, repair, clean, alter, improve,
2 construct, or decorate real or personal property of or for consumers
3 other than for the purpose of:

4 (a) Resale as tangible personal property in the regular course of
5 business;

6 (b) Incorporating such property as an ingredient or component of
7 real or personal property when installing, repairing, cleaning,
8 altering, imprinting, improving, constructing, or decorating such real
9 or personal property of or for consumers;

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

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

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

24 (2)(a) Any person engaged in any business activity taxable under
25 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or
26 uses any competitive telephone service, ancillary services, or
27 telecommunications service as those terms are defined in RCW 82.04.065,
28 other than for resale in the regular course of business; (c) any person
29 who purchases, acquires, or uses any service defined in RCW
30 82.04.050(2) (a) or (g), other than for resale in the regular course of
31 business or for the purpose of satisfying the person's obligations
32 under an extended warranty as defined in RCW 82.04.050(7); (d) any
33 person who (~~purchases, acquires, or uses any amusement and recreation~~
34 ~~service defined in RCW 82.04.050(3)(a))~~ makes a purchase meeting the
35 definition of "sale at retail" and "retail sale" under RCW
36 82.04.050(15), other than for resale in the regular course of business;
37 (e) any person who purchases or acquires an extended warranty as
38 defined in RCW 82.04.050(7) other than for resale in the regular course

1 of business; and (f) any person who is an end user of software. For
2 purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who
3 purchases or otherwise acquires prewritten computer software, who
4 provides services described in RCW 82.04.050(6)(b) and who will charge
5 consumers for the right to access and use the prewritten computer
6 software, is not an end user of the prewritten computer software;

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

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

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

37 (6) Any person engaged in the business of constructing, repairing,
38 decorating, or improving new or existing buildings or other structures

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

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

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

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

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

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

1 (b) For purposes of consuming the service described in RCW
2 82.04.050(6)(b) in producing for sale a new product, but only if such
3 service becomes a component of the new product. For purposes of this
4 subsection (10), "product" means a digital product, an article of
5 tangible personal property, or the service described in RCW
6 82.04.050(6)(b);

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

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

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

1 redistribute, after the digital code is redeemed, the underlying
2 digital product to which the digital code relates; and

3 (12) Any person who provides services described in RCW
4 82.04.050(9). Any such person is a consumer with respect to the
5 purchase, acquisition, or use of the tangible personal property that
6 the person provides along with an operator in rendering services
7 defined as a retail sale in RCW 82.04.050(9). Any such person may also
8 be a consumer under other provisions of this section.

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

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

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

20 For the purposes of this chapter:

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

32 (2) "Extended warranty" has the same meaning as in RCW
33 82.04.050(7).

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

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

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

17 (b) For the purposes of (a) of this subsection, the terms "client,"
18 "covered employee," "professional employer agreement," and
19 "professional employer organization" have the same meanings as in RCW
20 82.04.540.

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

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

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

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

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

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

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

15 (f) With respect to a service defined as a retail sale in RCW
16 82.04.050(6)(b), the first act within this state by which the taxpayer,
17 as a consumer, accesses the prewritten computer software;

18 (g) With respect to a service defined as a retail sale in RCW
19 82.04.050(2)(g), the first act within this state after the service has
20 been performed by which the taxpayer, as a consumer, views, accesses,
21 downloads, possesses, stores, opens, manipulates, or otherwise uses or
22 enjoys the digital good upon which the service was performed; and

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

29 (7)(a) "Value of the article used" is the purchase price for the
30 article of tangible personal property, the use of which is taxable
31 under this chapter. The term also includes, in addition to the
32 purchase price, the amount of any tariff or duty paid with respect to
33 the importation of the article used. In case the article used is
34 acquired by lease or by gift or is extracted, produced, or manufactured
35 by the person using the same or is sold under conditions wherein the
36 purchase price does not represent the true value thereof, the value of
37 the article used is determined as nearly as possible according to the

1 retail selling price at place of use of similar products of like
2 quality and character under such rules as the department may prescribe.

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

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

34 (d) In the case of articles manufactured or produced by the user
35 and used in the manufacture or production of products sold or to be
36 sold to the department of defense of the United States, the value of
37 the articles used is determined according to the value of the
38 ingredients of such articles.

1 (e) In the case of an article manufactured or produced for purposes
2 of serving as a prototype for the development of a new or improved
3 product, the value of the article used is determined by: (i) The
4 retail selling price of such new or improved product when first offered
5 for sale; or (ii) the value of materials incorporated into the
6 prototype in cases in which the new or improved product is not offered
7 for sale.

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

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

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

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

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

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

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

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

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

17 (d) Extended warranty; or

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

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

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

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

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

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

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

1 (2) The provisions of this chapter do not apply in respect to the
2 use of any article of tangible personal property, extended warranty,
3 digital good, digital code, digital automated service, or service
4 taxable under RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~) or (6)(b), if
5 the sale to, or the use by, the present user or the present user's
6 bailor or donor has already been subjected to the tax under chapter
7 82.08 RCW or this chapter and the tax has been paid by the present user
8 or by the present user's bailor or donor.

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

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

17 (i) If the sale to, or the use by, the present user or his or her
18 bailor or donor has already been subjected to the tax under chapter
19 82.08 RCW or this chapter and the tax has been paid by the present user
20 or by his or her bailor or donor;

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

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

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

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

1 the extended warranty used, or value of the service used by the
2 taxpayer, multiplied by the applicable rates in effect for the retail
3 sales tax under RCW 82.08.020.

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

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

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

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

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

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

32 ~~((4) This chapter does not apply to the donation of amusement and
33 recreation services without intervening use to a nonprofit organization
34 or state or local governmental entity, to the use by a nonprofit
35 organization or state or local governmental entity of amusement and
36 recreation services, or to the subsequent use of the services by a
37 person to whom the services are donated or bailed in furtherance of the~~

1 ~~purpose for which the services were originally donated. As used in~~
2 ~~this subsection, "amusement and recreation services" has the meaning in~~
3 ~~RCW 82.04.050(3)(a).)~~

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

6 A credit is allowed against the taxes imposed by this chapter upon
7 the use in this state of tangible personal property, extended warranty,
8 digital good, digital code, digital automated service, or services
9 defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~)
10 or (6)(b), in the amount that the present user thereof or his or her
11 bailor or donor has paid a legally imposed retail sales or use tax with
12 respect to such property, extended warranty, digital good, digital
13 code, digital automated service, or service defined as a retail sale in
14 RCW 82.04.050 (2) (a) or (g)(~~(3)(a)~~) or (6)(b) to any other state,
15 possession, territory, or commonwealth of the United States, any
16 political subdivision thereof, the District of Columbia, and any
17 foreign country or political subdivision thereof.

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

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

1 Constitution of the United States for this state to require collection
2 of tax under this chapter. The department must in rules specify
3 activities which constitute engaging in business activity within this
4 state, and must keep the rules current with future court
5 interpretations of the Constitution of the United States.

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

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

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

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

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

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

- 1 (ii) The taking of orders; or
2 (iii) The processing of payments; and

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

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

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

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

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

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

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

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

3 (b) "Foreign credit union" means a credit union organized and
4 operating under the laws of another country or other foreign
5 jurisdiction.

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

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

11 **Sec. 11.** RCW 82.32.087 and 2010 c 112 s 10 are each amended to
12 read as follows:

13 (1) The director may grant a direct pay permit to a taxpayer who
14 demonstrates, to the satisfaction of the director, that the taxpayer
15 meets the requirements of this section. The direct pay permit allows
16 the taxpayer to accrue and remit directly to the department use tax on
17 the acquisition of tangible personal property or sales tax on the sale
18 of or charges made for labor and/or services, in accordance with all of
19 the applicable provisions of this title. Any taxpayer that uses a
20 direct pay permit shall remit state and local sales or use tax directly
21 to the department. The agreement by the purchaser to remit tax
22 directly to the department, rather than pay sales or use tax to the
23 seller, relieves the seller of the obligation to collect sales or use
24 tax and requires the buyer to pay use tax on the tangible personal
25 property and sales tax on the sale of or charges made for labor and/or
26 services.

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

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

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

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

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

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

1 maintain a copy of the direct pay permit and any such records or
2 information as the department may specify.

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

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

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

- 21 (a) Purchases of meals or beverages;
- 22 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
23 other property subject to requirements for title transactions by the
24 department of licensing;
- 25 (c) Purchases for which a reseller permit or other documentation
26 authorized under RCW 82.04.470 may be used;
- 27 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
28 and (f), (3) (a) through ~~((d))~~ (c), (e), (f), and (g), ~~((and))~~ (5),
29 and (15); or
- 30 (e) Other activities subject to tax under chapter 82.08 or 82.12
31 RCW that the department by rule designates, consistent with the
32 purposes of this section, as activities for which a direct pay permit
33 is not appropriate and may not be used.

34 NEW SECTION. Sec. 12. RCW 82.12.02917 (Exemptions--Use of
35 amusement and recreation services by nonprofit youth organization) and
36 1999 c 358 s 7 are each repealed.

1 NEW SECTION. **Sec. 13.** The repeal in section 12 of this act does
2 not affect any existing right acquired or liability or obligation
3 incurred under the statute repealed or under any rule or order adopted
4 under that statute nor does it affect any proceedings instituted under
5 the statute repealed.

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

--- END ---