

CERTIFICATION OF ENROLLMENT

SENATE BILL 6173

Chapter 563, Laws of 2009

61st Legislature
2009 Regular Session

SALES TAX COMPLIANCE

EFFECTIVE DATE: 01/01/10

Passed by the Senate April 25, 2009
YEAS 30 NAYS 19

BRAD OWEN

President of the Senate

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YEAS 86 NAYS 9

FRANK CHOPP

Speaker of the House of Representatives

Approved May 19, 2009, 11:07 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6173** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 20, 2009

**Secretary of State
State of Washington**

1 wholesalers, manufacturers, and qualified contractors. Businesses that
2 do not make wholesale purchases, such as most service businesses, will
3 not be entitled to a seller's permit.

4 **PART II**

5 **REPLACING RESALE CERTIFICATES WITH SELLER'S PERMITS**
6 **ISSUED BY THE DEPARTMENT OF REVENUE**

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

9 (1) Taxpayers seeking a new seller's permit or to renew or
10 reinstate a seller's permit, other than taxpayers subject to the
11 provisions of section 202 of this act, must apply to the department in
12 a form and manner prescribed by the department. The department must
13 rule on applications within sixty days of receiving a complete
14 application. An application must be denied if the department
15 determines that, based on the nature of the applicant's business, the
16 applicant is not entitled to make purchases at wholesale or is
17 otherwise prohibited from using a seller's permit. The department may
18 also deny an application if it determines that denial would be in the
19 best interest of collecting taxes due under this title. The
20 department's decision whether to approve or deny an application may be
21 based on tax returns previously filed with the department by the
22 applicant, a current or previous examination of the applicant's books
23 and records by the department, information provided by the applicant in
24 the master application and the seller's permit application, and other
25 information available to the department.

26 (2) Notwithstanding subsection (1) of this section, the department
27 may issue a seller's permit to a taxpayer that has not applied for the
28 permit if it appears to the department's satisfaction, based on the
29 nature of the taxpayer's business activities and any other information
30 available to the department, that the taxpayer is entitled to make
31 purchases at wholesale.

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

35 (4)(a) Except as otherwise provided in this section, seller's

1 permits issued, renewed, or reinstated under this section will be valid
2 for a period of forty-eight months from the date of issuance, renewal,
3 or reinstatement.

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

8 (c) A seller's permit is no longer valid if the permit holder's
9 certificate of registration is revoked by the department or the person
10 otherwise ceases to engage in business.

11 (5)(a) The department may revoke a seller's permit of a taxpayer
12 for any of the following reasons:

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

17 (ii) The department issued the seller's permit to the taxpayer in
18 error;

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

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

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

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

35 (d) For purposes of this subsection, "reorganize" or
36 "reorganization" means: (i) The transfer, however effected, of a
37 majority of the assets of one business to another business where any of
38 the persons having an interest in the ownership or management in the

1 former business maintain an ownership or management interest in the new
2 business, either directly or indirectly; (ii) a mere change in identity
3 or form of ownership, however effected; or (iii) the new business is a
4 mere continuation of the former business based on significant shared
5 features such as owners, personnel, assets, or general business
6 activity.

7 (6) The department may provide lists of valid and revoked seller's
8 permit numbers on its web site.

9 (7) The department must provide by rule for the review of the
10 department's decision to deny, revoke, or refuse to reinstate a
11 seller's permit. Such review must be consistent with the requirements
12 of chapter 34.05 RCW.

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

18 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32
19 RCW to read as follows:

20 (1)(a) Contractors seeking a new seller's permit or to renew or
21 reinstate a seller's permit must apply to the department in a form and
22 manner prescribed by the department.

23 (b) As part of the application, the contractor must report the
24 dollar amount of all purchases of materials and labor during the
25 preceding twelve months for retail construction activity, speculative
26 building, public road construction, and government contracting. If the
27 contractor was not engaged in business as a contractor during the
28 preceding twelve months, the contractor may provide an estimate of the
29 dollar amount of purchases of materials and labor for retail
30 construction activity, speculative building, public road construction,
31 and government contracting during the twelve-month period for which the
32 seller's permit will be valid.

33 (c) The department must rule on applications within sixty days of
34 receiving a complete application.

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

36 (A) The department determines that the applicant is not entitled to
37 make purchases at wholesale;

1 (B) The application contains any material misstatement;

2 (C) The application is incomplete; or

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

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

13 (e) Applications to renew a seller's permit may not be made more
14 than ninety days before the expiration of the seller's permit.

15 (2) Sellers' permits issued by the department will be in a form
16 prescribed by the department, which may include an electronic form, and
17 must contain a unique identifying number assigned by the department.

18 (3)(a) Sellers' permits issued, renewed, or reinstated under this
19 section will be valid for a period of twelve months from the date of
20 issuance, renewal, or reinstatement.

21 (b) A seller's permit is no longer valid if the permit holder's
22 certificate of registration is revoked by the department or the person
23 otherwise ceases to engage in business.

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

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

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

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

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

37 (b) The notice of revocation must be in writing and is effective on

1 the date specified in the revocation notice. The notice must also
2 advise the contractor of its right to a review by the department.

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

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

21 (5) The department may provide lists of valid and revoked sellers'
22 permit numbers on its web site.

23 (6) The department must provide by rule for the review of the
24 department's decision to deny, revoke, or refuse to reinstate a
25 seller's permit. Such review must be consistent with the requirements
26 of chapter 34.05 RCW.

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

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

33 (a) "Contractor" means a person who engages in any retail
34 construction activity, or who engages in any activity that brings the
35 person within the definition of consumer in RCW 82.04.190 (3) or (6),
36 or who is a speculative builder as defined by rule of the department.

37 (b) "Government contracting" means the activity described in RCW
38 82.04.190(6).

1 (c) "Public road construction" means the activity described in RCW
2 82.04.190(3).

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

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

8 NEW SECTION. **Sec. 203.** A new section is added to chapter 82.32
9 RCW to read as follows:

10 The department of revenue must, by January 1, 2011, develop a
11 system, as resources permit, allowing sellers to voluntarily verify
12 through electronic means the validity of sellers' permits presented to
13 sellers from their customers.

14 NEW SECTION. **Sec. 204.** A new section is added to chapter 82.32
15 RCW to read as follows:

16 A person must, upon request of the department, provide the
17 department with a copy of all sellers' permits, or uniform exemption
18 certificates as authorized in RCW 82.04.470, accepted by that person
19 during the period specified by the department.

20 **Sec. 205.** RCW 82.04.470 and 2007 c 6 s 1201 are each amended to
21 read as follows:

22 (1) Unless a seller has taken from the buyer a (~~resale~~
23 ~~certificate~~) seller's permit, the burden of proving that a sale of
24 tangible personal property, extended warranty, or of services, was not
25 a sale at retail shall be upon the person who made it.

26 (2) If a seller does not receive a (~~resale-certificate~~) seller's
27 permit at the time of the sale, have a (~~resale-certificate~~) seller's
28 permit on file at the time of the sale, or obtain a (~~resale~~
29 ~~certificate~~) seller's permit from the buyer within a reasonable time
30 after the sale, the seller shall remain liable for the tax as provided
31 in RCW 82.08.050, unless the seller can demonstrate facts and
32 circumstances according to rules adopted by the department (~~of~~
33 ~~revenue~~) that show the sale was properly made without payment of
34 retail sales tax.

1 (3) ~~((The department may provide by rule for suggested forms for~~
2 ~~resale certificates or equivalent documents containing the information~~
3 ~~that will be accepted as resale certificates. The department shall~~
4 ~~provide by rule the categories of items or services that must be~~
5 ~~specified on resale certificates and the business classifications that~~
6 ~~may use a blanket resale certificate.~~

7 (4) ~~As used in this section, "resale certificate" means~~
8 ~~documentation provided by a buyer to a seller stating that the purchase~~
9 ~~is for resale in the regular course of business, or that the buyer is~~
10 ~~exempt from retail sales tax, and containing the following~~
11 ~~information)) A seller's permit must contain such information as~~
12 ~~required by the department, which may include, but is not limited to:~~

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

14 (b) The ~~((uniform business identifier or revenue registration~~
15 ~~number of the buyer, if the buyer is required to be registered))~~
16 ~~seller's permit number issued by the department;~~

17 (c) The type of business engaged in;

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

21 (e) The date on which the ~~((certificate))~~ ~~permit~~ was provided ~~to~~
22 ~~the seller;~~

23 (f) A statement that the items or services purchased either: (i)
24 Are purchased for resale in the regular course of business; or (ii) are
25 ~~((exempt from tax pursuant to statute))~~ ~~otherwise purchased at~~
26 ~~wholesale;~~

27 (g) A statement that the buyer acknowledges that the buyer is
28 solely responsible for purchasing within the categories specified on
29 the ~~((certificate))~~ ~~permit~~ and that misuse of the resale ~~((or~~
30 ~~exemption))~~ privilege claimed on the ~~((certificate))~~ ~~permit~~ subjects
31 the buyer to ~~((a penalty of fifty percent of the tax due))~~ ~~revocation~~
32 ~~of the seller's permit, penalties as provided in RCW 82.32.290 and~~
33 ~~82.32.291,~~ in addition to the tax, interest, and any other penalties
34 imposed by law;

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

37 (i) The signature of the authorized individual; ~~((and))~~

38 (j) The name of the seller;

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

3 (l) The date that the permit expires;

4 (m) Instructions for renewing the permit; and

5 (n) A statement that the department is authorized to obtain
6 information concerning the buyer's purchase of items or services under
7 the permit from the seller to verify whether the buyer was authorized
8 to purchase such items or services without payment of retail sales tax.

9 ~~((+5))~~ (4) Subsection ~~((+4))~~ (3)(h)~~((7))~~ and (i)~~((7 and (j)))~~ of
10 this section does not apply if the ~~((certificate))~~ permit is provided
11 in a format other than paper. If the ~~((certificate))~~ permit is
12 provided in a format other than paper, the name of the individual
13 providing the ~~((certificate))~~ permit must be included in the
14 ~~((certificate))~~ permit.

15 (5)(a) In lieu of a seller's permit issued by the department under
16 section 201 or 202 of this act, a seller may accept from a buyer that
17 is not required to be registered with the department under RCW
18 82.32.030 a properly completed:

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

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

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

26 (6) In lieu of a seller's permit issued by the department under
27 section 201 or 202 of this act, a seller may accept from a buyer that
28 is required to be registered with the department under RCW 82.32.030 a
29 properly completed uniform exemption certificate approved by the
30 streamlined sales and use tax agreement governing board as long as that
31 certificate includes the seller's permit number issued by the
32 department to the buyer.

33 (7) As used in this section, "seller's permit" means documentation
34 issued by the department under section 201 or 202 of this act and
35 provided by a buyer to a seller to substantiate a wholesale sale.

36 **Sec. 206.** RCW 82.08.050 and 2007 c 6 s 1202 are each amended to
37 read as follows:

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

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

13 (3) In case any seller fails to collect the tax herein imposed or,
14 having collected the tax, fails to pay it to the department in the
15 manner prescribed by this chapter, whether such failure is the result
16 of his or her own acts or the result of acts or conditions beyond his
17 or her control, he or she shall, nevertheless, be personally liable to
18 the state for the amount of the tax, unless the seller has taken from
19 the buyer a (~~resale certificate~~) seller's permit or uniform exemption
20 certificate authorized under RCW 82.04.470, a copy of a direct pay
21 permit issued under RCW 82.32.087, a direct mail form under RCW
22 82.32.730(5), or other information required under the streamlined sales
23 and use tax agreement, or information required under rules adopted by
24 the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) The taking of orders; or

26 (iii) The processing of payments; and

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

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

1 (13) For purposes of this section, "seller" includes a certified
2 service provider, as defined in RCW 82.32.020, acting as agent for the
3 seller.

4 **Sec. 207.** RCW 82.08.130 and 1993 sp.s. c 25 s 702 are each amended
5 to read as follows:

6 (1) If a buyer normally is engaged in both consuming and reselling
7 certain types of articles of tangible personal property and is not able
8 to determine at the time of purchase whether the particular property
9 acquired will be consumed or resold, the buyer may use a (~~resale~~
10 ~~certificate~~) seller's permit or, if eligible, a uniform exemption
11 certificate authorized under RCW 82.04.470 for the entire purchase if
12 the buyer principally resells the articles according to the general
13 nature of the buyer's business. The buyer shall account for the value
14 of any articles purchased with a (~~resale certificate~~) seller's permit
15 or uniform exemption certificate authorized under RCW 82.04.470 that
16 are used by the buyer and remit the deferred sales tax on the articles
17 to the department.

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

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

36 (4) Nothing in this section may be construed to authorize a

1 deduction or credit in respect to the purchase of services if the
2 services are not of a type that can be sold at wholesale under the
3 definition of wholesale sale in RCW 82.04.060.

4 **Sec. 208.** RCW 82.14B.042 and 2002 c 341 s 10 are each amended to
5 read as follows:

6 (1) The state enhanced 911 excise taxes imposed by this chapter
7 must be paid by the subscriber to the local exchange company providing
8 the switched access line or the radio communications service company
9 providing the radio access line, and each local exchange company and
10 each radio communications service company shall collect from the
11 subscriber the full amount of the taxes payable. The state enhanced
12 911 excise taxes required by this chapter to be collected by the local
13 exchange company or the radio communications service company are deemed
14 to be held in trust by the local exchange company or the radio
15 communications service company until paid to the department. Any local
16 exchange company or radio communications service company that
17 appropriates or converts the tax collected to its own use or to any use
18 other than the payment of the tax to the extent that the money
19 collected is not available for payment on the due date as prescribed in
20 this chapter is guilty of a gross misdemeanor.

21 (2) If any local exchange company or radio communications service
22 company fails to collect the state enhanced 911 excise tax or, after
23 collecting the tax, fails to pay it to the department in the manner
24 prescribed by this chapter, whether such failure is the result of its
25 own act or the result of acts or conditions beyond its control, the
26 local exchange company or the radio communications service company is
27 personally liable to the state for the amount of the tax, unless the
28 local exchange company or the radio communications service company has
29 taken from the buyer in good faith (~~(a properly executed resale~~
30 ~~certificate under RCW 82.14B.200)) documentation, in a form and manner
31 prescribed by the department, stating that the buyer is not a
32 subscriber or is otherwise not liable for the state enhanced 911 tax.~~

33 (3) The amount of tax, until paid by the subscriber to the local
34 exchange company, the radio communications service company, or to the
35 department, constitutes a debt from the subscriber to the local
36 exchange company or the radio communications service company. Any
37 local exchange company or radio communications service company that

1 fails or refuses to collect the tax as required with intent to violate
2 the provisions of this chapter or to gain some advantage or benefit,
3 either direct or indirect, and any subscriber who refuses to pay any
4 tax due under this chapter is guilty of a misdemeanor. The state
5 enhanced 911 excise taxes required by this chapter to be collected by
6 the local exchange company or the radio communications service company
7 must be stated separately on the billing statement that is sent to the
8 subscriber.

9 (4) If a subscriber has failed to pay to the local exchange company
10 or the radio communications service company the state enhanced 911
11 excise taxes imposed by this chapter and the local exchange company or
12 the radio communications service company has not paid the amount of the
13 tax to the department, the department may, in its discretion, proceed
14 directly against the subscriber for collection of the tax, in which
15 case a penalty of ten percent may be added to the amount of the tax for
16 failure of the subscriber to pay the tax to the local exchange company
17 or the radio communications service company, regardless of when the tax
18 is collected by the department. Tax under this chapter is due as
19 provided under RCW 82.14B.061.

20 **Sec. 209.** RCW 82.14B.200 and 2002 c 341 s 12 are each amended to
21 read as follows:

22 (1) Unless a local exchange company or a radio communications
23 service company has taken from the buyer (~~((a resale certificate or~~
24 ~~equivalent document under RCW 82.04.470))~~ documentation, in a form and
25 manner prescribed by the department, stating that the buyer is not a
26 subscriber or is otherwise not liable for the tax, the burden of
27 proving that a sale of the use of a switched access line or radio
28 access line was not a sale to a subscriber or was not otherwise subject
29 to the tax is upon the person who made the sale.

30 (2) If a local exchange company or a radio communications service
31 company does not receive (~~((a resale certificate))~~ documentation, in a
32 form and manner prescribed by the department, stating that the buyer is
33 not a subscriber or is otherwise not liable for the tax at the time of
34 the sale, have (~~((a resale certificate))~~ such documentation on file at
35 the time of the sale, or obtain (~~((a resale certificate))~~ such
36 documentation from the buyer within a reasonable time after the sale,
37 the local exchange company or the radio communications service company

1 remains liable for the tax as provided in RCW 82.14B.042, unless the
2 local exchange company or the radio communications service company can
3 demonstrate facts and circumstances according to rules adopted by the
4 department of revenue that show the sale was properly made without
5 payment of the state enhanced 911 excise tax.

6 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
7 state enhanced 911 excise taxes due but not paid as a result of the
8 improper use of ((a resale certificate)) documentation stating that the
9 buyer is not a subscriber or is otherwise not liable for the state
10 enhanced 911 tax. This subsection does not prohibit or restrict the
11 application of other penalties authorized by law.

12 **Sec. 210.** RCW 82.32.087 and 2001 c 188 s 2 are each amended to
13 read as follows:

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

28 (2)(a) A taxpayer may apply for a permit under this section if the
29 taxpayer (i) is subject to mandatory use of electronic funds transfer
30 under RCW 82.32.080; or (ii) makes purchases subject to the taxes
31 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
32 dollars per calendar year.

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

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

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

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

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

36 (5) A direct pay permit is subject to revocation by the director at
37 any time the department determines that the taxpayer has violated any
38 provision of this section or that revocation would be in the best

1 interests of collecting the taxes due under this title. The notice of
2 revocation must be in writing and is effective either as of the end of
3 the taxpayer's next normal reporting period or a date deemed
4 appropriate by the director and identified in the revocation notice.
5 The taxpayer may petition the director for reconsideration of a
6 revocation and reinstatement of the permit.

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

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

16 (a) Purchases of meals or beverages;

17 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
18 other property subject to requirements for title transactions by the
19 department of licensing;

20 (c) Purchases for which a (~~resale certificate~~) seller's permit or
21 uniform exemption certificate authorized under RCW 82.04.470 may be
22 used;

23 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
24 and (f), (3) (a) through (d), (f), and (g), and (5); or

25 (e) Other activities subject to tax under chapter 82.08 or 82.12
26 RCW that the department by rule designates, consistent with the
27 purposes of this section, as activities for which a direct pay permit
28 is not appropriate and may not be used.

29 **Sec. 211.** RCW 82.32.290 and 1985 c 414 s 2 are each amended to
30 read as follows:

31 (1)(a) It shall be unlawful:

32 (i) For any person to engage in business without having obtained a
33 certificate of registration as provided in this chapter;

34 (ii) For the president, vice president, secretary, treasurer, or
35 other officer of any company to cause or permit the company to engage
36 in business without having obtained a certificate of registration as
37 provided in this chapter;

1 (iii) For any person to tear down or remove any order or notice
2 posted by the department;

3 (iv) For any person to aid or abet another in any attempt to evade
4 the payment of any tax or any part thereof;

5 (v) For any purchaser to fraudulently sign or furnish to a seller
6 a ~~((resale — certificate))~~ seller's permit or uniform exemption
7 certificate authorized under RCW 82.04.470 without intent to resell the
8 property purchased; or

9 (vi) For any person to fail or refuse to permit the examination of
10 any book, paper, account, record, or other data by the department or
11 its duly authorized agent; or to fail or refuse to permit the
12 inspection or appraisal of any property by the department or its duly
13 authorized agent; or to refuse to offer testimony or produce any record
14 as required.

15 (b) Any person violating any of the provisions of this subsection
16 (1) shall be guilty of a gross misdemeanor in accordance with chapter
17 9A.20 RCW.

18 (2)(a) It shall be unlawful:

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

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

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

27 (b) Any person violating any of the provisions of this subsection
28 (2) shall be guilty of a class C felony in accordance with chapter
29 9A.20 RCW.

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

1 **Sec. 212.** RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each amended
2 to read as follows:

3 Any person who uses a (~~resale certificate~~) seller's permit to
4 purchase items or services without payment of sales tax, or who uses a
5 uniform exemption certificate developed by the multistate tax
6 commission or approved by the streamlined sales and use tax agreement
7 governing board to claim a purchase for resale exemption, and who is
8 not entitled to use the seller's permit or exemption certificate for
9 the purchase shall be assessed a penalty of fifty percent of the tax
10 due, in addition to all other taxes, penalties, and interest due, on
11 the improperly purchased item or service. The department may waive the
12 penalty imposed under this section if it finds that the use of the
13 seller's permit or exemption certificate was due to circumstances
14 beyond the taxpayer's control or if the seller's permit or exemption
15 certificate was properly used for purchases for dual purposes. The
16 department shall define by rule what circumstances are considered to be
17 beyond the taxpayer's control.

18 **Sec. 213.** RCW 82.32.330 and 2008 c 81 s 11 are each amended to
19 read as follows:

20 (1) For purposes of this section:

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

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

29 (c) "Tax information" means (i) a taxpayer's identity, (ii) the
30 nature, source, or amount of the taxpayer's income, payments, receipts,
31 deductions, exemptions, credits, assets, liabilities, net worth, tax
32 liability deficiencies, overassessments, or tax payments, whether taken
33 from the taxpayer's books and records or any other source, (iii)
34 whether the taxpayer's return was, is being, or will be examined or
35 subject to other investigation or processing, (iv) a part of a written
36 determination that is not designated as a precedent and disclosed
37 pursuant to RCW 82.32.410, or a background file document relating to a

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

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

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

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

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

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

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

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

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

34 (b) Disclosing, subject to such requirements and conditions as the
35 director (~~(shall)~~) prescribes by rules adopted pursuant to chapter
36 34.05 RCW, such return or tax information regarding a taxpayer to such
37 taxpayer or to such person or persons as that taxpayer may designate in
38 a request for, or consent to, such disclosure, or to any other person,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (4)(a) The department may disclose return or taxpayer information
26 to a person under investigation or during any court or administrative
27 proceeding against a person under investigation as provided in this
28 subsection (4). The disclosure must be in connection with the
29 department's official duties relating to an audit, collection activity,
30 or a civil or criminal investigation. The disclosure may occur only
31 when the person under investigation and the person in possession of
32 data, materials, or documents are parties to the return or tax
33 information to be disclosed. The department may disclose return or tax
34 information such as invoices, contracts, bills, statements, resale or
35 exemption certificates, or checks. However, the department may not
36 disclose general ledgers, sales or cash receipt journals, check
37 registers, accounts receivable/payable ledgers, general journals,

1 financial statements, expert's workpapers, income tax returns, state
2 tax returns, tax return workpapers, or other similar data, materials,
3 or documents.

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

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

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

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

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

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

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

35 (5) Any person acquiring knowledge of any return or tax information
36 in the course of his or her employment with the department of revenue
37 and any person acquiring knowledge of any return or tax information as
38 provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this

1 section, who discloses any such return or tax information to another
2 person not entitled to knowledge of such return or tax information
3 under the provisions of this section, is guilty of a misdemeanor. If
4 the person guilty of such violation is an officer or employee of the
5 state, such person (~~shall~~) must forfeit such office or employment and
6 (~~shall be~~) is incapable of holding any public office or employment in
7 this state for a period of two years thereafter.

8 **Sec. 214.** RCW 82.72.040 and 2004 c 254 s 6 are each amended to
9 read as follows:

10 (1) Telephone program excise taxes must be paid by the subscriber
11 to the local exchange company providing the switched access line, and
12 each local exchange company shall collect from the subscriber the full
13 amount of the taxes payable. Telephone program excise taxes to be
14 collected by the local exchange company are deemed to be held in trust
15 by the local exchange company until paid to the department. Any local
16 exchange company that appropriates or converts the tax collected to its
17 own use or to any use other than the payment of the tax to the extent
18 that the money collected is not available for payment on the due date
19 as prescribed in this chapter is guilty of a gross misdemeanor.

20 (2) If any local exchange company fails to collect telephone
21 program excise taxes or, after collecting the tax, fails to pay it to
22 the department in the manner prescribed by this chapter, whether such
23 failure is the result of its own act or the result of acts or
24 conditions beyond its control, the local exchange company is personally
25 liable to the state for the amount of the tax, unless the local
26 exchange company has taken from the buyer in good faith (~~a properly
27 executed resale certificate under RCW 82.72.070~~) documentation, in a
28 form and manner prescribed by the department, stating that the buyer is
29 not a subscriber or is otherwise not liable for telephone program
30 excise taxes.

31 (3) The amount of tax, until paid by the subscriber to the local
32 exchange company or to the department, constitutes a debt from the
33 subscriber to the local exchange company. Any local exchange company
34 that fails or refuses to collect telephone program excise taxes as
35 required with intent to violate the provisions of this chapter or to
36 gain some advantage or benefit, either direct or indirect, and any

1 subscriber who refuses to pay any telephone excise tax is guilty of a
2 misdemeanor.

3 (4) If a subscriber has failed to pay to the local exchange company
4 the telephone program excise taxes and the local exchange company has
5 not paid the amount of the tax to the department, the department may,
6 in its discretion, proceed directly against the subscriber for
7 collection of the tax, in which case a penalty of ten percent may be
8 added to the amount of the tax for failure of the subscriber to pay the
9 tax to the local exchange company, regardless of when the tax is
10 collected by the department. Telephone program excise taxes are due as
11 provided under RCW 82.72.050.

12 **Sec. 215.** RCW 82.72.070 and 2004 c 254 s 9 are each amended to
13 read as follows:

14 (1) Unless a local exchange company has taken from the buyer ((a
15 ~~resale certificate or equivalent document under RCW 82.04.470~~))
16 documentation, in a form and manner prescribed by the department,
17 stating that the buyer is not a subscriber or is otherwise not liable
18 for telephone program excise taxes, the burden of proving that a sale
19 of the use of a switched access line was not a sale to a subscriber or
20 was otherwise not subject to telephone program excise taxes is upon the
21 person who made the sale.

22 (2) If a local exchange company does not receive ((a ~~resale~~
23 ~~certificate~~)) documentation, in a form and manner prescribed by the
24 department, stating that the buyer is not a subscriber or is otherwise
25 not liable for telephone program excise taxes at the time of the sale,
26 have ((a ~~resale certificate~~)) such documentation on file at the time of
27 the sale, or obtain ((a ~~resale certificate~~)) such documentation from
28 the buyer within a reasonable time after the sale, the local exchange
29 company remains liable for the telephone program excise taxes as
30 provided in RCW 82.72.040, unless the local exchange company can
31 demonstrate facts and circumstances according to rules adopted by the
32 department that show the sale was properly made without payment of
33 telephone program excise taxes.

34 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
35 telephone program excise taxes that are due but not paid as a result of
36 the improper use of ((a ~~resale certificate~~)) documentation stating that

1 the buyer is not a subscriber or is otherwise not liable for telephone
2 program excise taxes. This subsection does not prohibit or restrict
3 the application of other penalties authorized by law.

4 **PART III**
5 **TECHNICAL CHANGES**

6 **Sec. 301.** RCW 82.04.050 and 2007 c 54 s 4 and 2007 c 6 s 1004 are
7 each reenacted and amended to read as follows:

8 (1) "Sale at retail" or "retail sale" means every sale of tangible
9 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 presents a (~~resale certificate under~~) seller's permit or uniform
15 exemption certificate in conformity with RCW 82.04.470 and who:

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

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

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

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

1 (e) Purchases for the purpose of providing the property to
2 consumers as part of competitive telephone service, as defined in RCW
3 82.04.065. The term shall include every sale of tangible personal
4 property which is used or consumed or to be used or consumed in the
5 performance of any activity classified as a "sale at retail" or "retail
6 sale" even though such property is resold or utilized as provided in
7 (a), (b), (c), (d), or (e) of this subsection following such use. The
8 term also means every sale of tangible personal property to persons
9 engaged in any business which is taxable under RCW 82.04.280 (2) and
10 (7), 82.04.290, and 82.04.2908; or

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

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

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

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

34 (c) The constructing, repairing, or improving of any structure
35 upon, above, or under any real property owned by an owner who conveys
36 the property by title, possession, or any other means to the person
37 performing such construction, repair, or improvement for the purpose of

1 performing such construction, repair, or improvement and the property
2 is then reconveyed by title, possession, or any other means to the
3 original owner;

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

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

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

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

37 (3) The term "sale at retail" or "retail sale" shall include the
38 sale of or charge made for personal, business, or professional services

1 including amounts designated as interest, rents, fees, admission, and
2 other service emoluments however designated, received by persons
3 engaging in the following business activities:

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

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

8 (c) Credit bureau services;

9 (d) Automobile parking and storage garage services;

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

15 (f) Service charges associated with tickets to professional
16 sporting events; and

17 (g) The following personal services: Physical fitness services,
18 tanning salon services, tattoo parlor services, steam bath services,
19 turkish bath services, escort services, and dating services.

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

21 (i) The renting or leasing of tangible personal property to
22 consumers; and

23 (ii) Providing tangible personal property along with an operator
24 for a fixed or indeterminate period of time. A consideration of this
25 is that the operator is necessary for the tangible personal property to
26 perform as designed. For the purpose of this subsection (4)(a)(ii), an
27 operator must do more than maintain, inspect, or set up the tangible
28 personal property.

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

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

35 (6) The term shall also include the sale of prewritten computer
36 software other than a sale to a person who presents a (~~resale~~
37 ~~certificate under~~) seller's permit or uniform exemption certificate in

1 conformity with RCW 82.04.470, regardless of the method of delivery to
2 the end user, but shall not include custom software or the
3 customization of prewritten computer software.

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

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

26 (9) The term shall also not include sales of chemical sprays or
27 washes to persons for the purpose of postharvest treatment of fruit for
28 the prevention of scald, fungus, mold, or decay, nor shall it include
29 sales of feed, seed, seedlings, fertilizer, agents for enhanced
30 pollination including insects such as bees, and spray materials to:
31 (a) Persons who participate in the federal conservation reserve
32 program, the environmental quality incentives program, the wetlands
33 reserve program, and the wildlife habitat incentives program, or their
34 successors administered by the United States department of agriculture;
35 (b) farmers for the purpose of producing for sale any agricultural
36 product; and (c) farmers acting under cooperative habitat development
37 or access contracts with an organization exempt from federal income tax

1 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of
2 fish and wildlife to produce or improve wildlife habitat on land that
3 the farmer owns or leases.

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

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

26 **PART IV**
27 **MISCELLANEOUS**

28 NEW SECTION. **Sec. 401.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 402.** This act must be liberally construed in
33 order to carry out its purposes.

34 NEW SECTION. **Sec. 403.** This act takes effect January 1, 2010.

1 NEW SECTION. **Sec. 404.** The effective date in section 403 of this
2 act may not be construed as preventing the department of revenue from
3 accepting applications for, or issuing, seller's permits before January
4 1, 2010, adopting rules, or taking any other action before January 1,
5 2010, necessary to ensure the effective implementation of this act.

6 NEW SECTION. **Sec. 405.** By December 1, 2009, the finance committee
7 of the house of representatives and the joint legislative task force on
8 the underground economy in the Washington state construction industry,
9 shall each prepare a report that reviews the issues and concerns that
10 need to be addressed by the legislature as a result of the changes made
11 in this act. The reports shall include any recommendations on
12 potential modifications to the provisions of this act. The department
13 of revenue shall provide necessary support and information.

14 NEW SECTION. **Sec. 406.** Part headings used in this act are not any
15 part of the law.

Passed by the Senate April 25, 2009.

Passed by the House April 23, 2009.

Approved by the Governor May 19, 2009.

Filed in Office of Secretary of State May 20, 2009.