
HOUSE BILL 1961

State of Washington

56th Legislature

1999 Regular Session

By Representatives Reardon, Cairnes, Huff, Linville, Carrell, Mulliken, O'Brien and Koster

Read first time 02/12/1999. Referred to Committee on Finance.

1 AN ACT Relating to retail sales and use tax collection and
2 remittance; amending RCW 82.08.050 and 82.12.040; adding a new section
3 to chapter 82.14 RCW; and providing an effective date.

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

5 **Sec. 1.** RCW 82.08.050 and 1993 sp.s. c 25 s 704 are each amended
6 to read as follows:

7 The tax hereby imposed shall be paid by the buyer to the seller,
8 and each seller shall collect from the buyer the full amount of the tax
9 payable in respect to each taxable sale in accordance with the schedule
10 of collections adopted by the department pursuant to the provisions of
11 RCW 82.08.060. The tax required by this chapter, to be collected by
12 the seller, shall be deemed to be held in trust by the seller until
13 paid to the department, and any seller who appropriates or converts the
14 tax collected to his or her own use or to any use other than the
15 payment of the tax to the extent that the money required to be
16 collected is not available for payment on the due date as prescribed in
17 this chapter shall be guilty of a gross misdemeanor.

18 In case any seller fails to collect the tax herein imposed or
19 having collected the tax, fails to pay it to the department in the

1 manner prescribed by this chapter, whether such failure is the result
2 of his or her own acts or the result of acts or conditions beyond his
3 or her control, he or she shall, nevertheless, be personally liable to
4 the state for the amount of the tax, unless the seller has taken from
5 the buyer in good faith a properly executed resale certificate under
6 RCW 82.04.470.

7 The amount of tax, until paid by the buyer to the seller or to the
8 department, shall constitute a debt from the buyer to the seller and
9 any seller who fails or refuses to collect the tax as required with
10 intent to violate the provisions of this chapter or to gain some
11 advantage or benefit, either direct or indirect, and any buyer who
12 refuses to pay any tax due under this chapter shall be guilty of a
13 misdemeanor. The tax required by this chapter to be collected by the
14 seller shall be stated separately from the selling price in any sales
15 invoice or other instrument of sale. On all retail sales through
16 vending machines, the tax need not be stated separately from the
17 selling price or collected separately from the buyer. For purposes of
18 determining the tax due from the buyer to the seller and from the
19 seller to the department it shall be conclusively presumed that the
20 selling price quoted in any price list, sales document, contract or
21 other agreement between the parties does not include the tax imposed by
22 this chapter, but if the seller advertises the price as including the
23 tax or that the seller is paying the tax, the advertised price shall
24 not be considered the selling price.

25 Where a buyer has failed to pay to the seller the tax imposed by
26 this chapter and the seller has not paid the amount of the tax to the
27 department, the department may, in its discretion, proceed directly
28 against the buyer for collection of the tax, in which case a penalty of
29 ten percent may be added to the amount of the tax for failure of the
30 buyer to pay the same to the seller, regardless of when the tax may be
31 collected by the department; and all of the provisions of chapter 82.32
32 RCW, including those relative to interest and penalties, shall apply in
33 addition; and, for the sole purpose of applying the various provisions
34 of chapter 82.32 RCW, the twenty-fifth day of the month following the
35 tax period in which the purchase was made shall be considered as the
36 due date of the tax.

37 A seller may deduct from the amount of tax to be remitted to the
38 department, an amount attributable to processing fees for those sales
39 in which a buyer has used a lender credit or debit card for which there

1 is a processing fee that is charged to the seller by the lender as a
2 percentage of the total sales price including sales tax. Sellers may
3 not take a deduction for amounts attributable to flat processing fees.
4 The credit and debit card processing fee deduction shall be equal to
5 that portion of the credit or debit card processing fee on the
6 transaction that is attributable to the retail sales tax under this
7 chapter. "Lender credit and debit card" includes cards issued by a
8 financial institution primarily for the purpose of purchasing or
9 leasing goods or services from a seller or to make a direct cash
10 withdrawal from a financial institution to purchase or lease goods or
11 services.

12 **Sec. 2.** RCW 82.12.040 and 1986 c 48 s 1 are each amended to read
13 as follows:

14 (1) Every person who maintains in this state a place of business or
15 a stock of goods, or engages in business activities within this state,
16 shall obtain from the department a certificate of registration, and
17 shall, at the time of making sales, or making transfers of either
18 possession or title or both, of tangible personal property for use in
19 this state, collect from the purchasers or transferees the tax imposed
20 under this chapter. For the purposes of this chapter, the phrase
21 "maintains in this state a place of business" shall include the
22 solicitation of sales and/or taking of orders by sales agents or
23 traveling representatives. For the purposes of this chapter, "engages
24 in business activity within this state" includes every activity which
25 is sufficient under the Constitution of the United States for this
26 state to require collection of tax under this chapter. The department
27 shall in rules specify activities which constitute engaging in business
28 activity within this state, and shall keep the rules current with
29 future court interpretations of the Constitution of the United States.

30 (2) Every person who engages in this state in the business of
31 acting as an independent selling agent for persons who do not hold a
32 valid certificate of registration, and who receives compensation by
33 reason of sales of tangible personal property of his principals made
34 for use in this state, shall, at the time such sales are made, collect
35 from the purchasers the tax imposed under this chapter, and for that
36 purpose shall be deemed a retailer as defined in this chapter.

37 (3) The tax required to be collected by this chapter shall be
38 deemed to be held in trust by the retailer until paid to the department

1 and any retailer who appropriates or converts the tax collected to his
2 own use or to any use other than the payment of the tax provided herein
3 to the extent that the money required to be collected is not available
4 for payment on the due date as prescribed shall be guilty of a
5 misdemeanor. In case any seller fails to collect the tax herein
6 imposed or having collected the tax, fails to pay the same to the
7 department in the manner prescribed, whether such failure is the result
8 of his own acts or the result of acts or conditions beyond his control,
9 he shall nevertheless, be personally liable to the state for the amount
10 of such tax. A seller may deduct from the amount of tax to be remitted
11 to the department, an amount attributable to processing fees for those
12 sales in which a buyer has used a lender credit or debit card for which
13 there is a processing fee that is charged to the seller by the lender
14 as a percentage of the total sales price including sales tax. Sellers
15 may not take a deduction for amounts attributable to flat processing
16 fees. The credit and debit card processing fee deduction shall be
17 equal to that portion of the credit or debit card processing fee on the
18 transaction that is attributable to the use tax under this chapter.
19 "Lender credit and debit card" includes cards issued by a financial
20 institution primarily for the purpose of purchasing or leasing goods or
21 services from a seller or to make a direct cash withdrawal from a
22 financial institution to purchase or lease goods or services.

23 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
24 transferee, either directly or indirectly, and by whatever means, all
25 or any part of the tax levied by this chapter shall be guilty of a
26 misdemeanor.

27 NEW SECTION. Sec. 3. A new section is added to chapter 82.14 RCW
28 to read as follows:

29 A seller may deduct from the amount of tax to be remitted to the
30 department, an amount attributable to processing fees for those sales
31 in which a buyer has used a lender credit or debit card for which there
32 is a processing fee that is charged to the seller by the lender as a
33 percentage of the total sales price including sales or use tax.
34 Sellers may not take a deduction for amounts attributable to flat
35 processing fees. The credit and debit card processing fee deduction
36 shall be equal to that portion of the credit or debit card processing
37 fee on the transaction that is attributable to the retail sales or use
38 tax under this chapter. "Lender credit and debit card" includes cards

1 issued by a financial institution primarily for the purpose of
2 purchasing or leasing goods or services from a seller or to make a
3 direct cash withdrawal from a financial institution to purchase or
4 lease goods or services.

5 NEW SECTION. **Sec. 4.** This act takes effect October 1, 1999.

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