

SENATE BILL REPORT

SSB 6342

As Passed Senate, February 16, 2002

Title: An act relating to authorizing the simplified sales and use tax administration act.

Brief Description: Adopting the simplified sales and use tax administration act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Poulsen and Gardner; by request of Department of Revenue).

Brief History:

Committee Activity: Ways & Means: 1/31/02, 2/4/02 [DPS].

Passed Senate: 2/16/02, 47-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6342 be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fraser, Hewitt, Honeyford, Kohl-Welles, Long, Parlette, Poulsen, Rasmussen, Roach, Rossi, Sheahan, Snyder, Spanel, Thibaudeau, Winsley and Zarelli.

Staff: Chelsea Buchanan (786-7446)

Background: Firms located in this state are required to collect the state sales tax on sales made to Washington residents regardless of whether the sale is made at a retail outlet, by mail order, or over the Internet. Currently, out-of-state firms with no physical presence in this state cannot be required to collect taxes for this state. A firm has a physical presence in the state if it has property, inventory, or employees in this state.

In *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), the United States Supreme Court held that the federal commerce clause prohibited a state from asserting jurisdiction over mail-order firms with no physical presence in the state, citing the complexity of sales tax structures as an undue burden on interstate commerce.

Since Congress has complete power to regulate interstate commerce, federal legislation could eliminate this constitutional barrier. While federal legislation has been introduced in Congress since *Quill* to require mail-order firms to collect state sales taxes, none have been enacted.

As an alternative, the Federation of Tax Administrators, the Multi-state Tax Commission, the National Conference of State Legislatures (NCSL), and the National Governors Association created the Streamlined Sales Tax Project (SSTP) to simplify sales tax collection and administration to eliminate the burden on interstate commerce.

On December 22, 2000, state representatives to the SSTP approved a Uniform Sales and Use Tax Administration Act and Streamlined Sales and Use Tax Agreement. Subsequently, NCSL proposed its own act and agreement as an alternative.

The Administration Act authorizes the state to participate in discussions with other states for the purposes of developing a multi-state streamlined sales and use tax collection and administration system and to adopt the interstate agreement when the state is in substantial compliance with the Agreement. The Agreement contains the first set of simplifications a state needs to undertake to streamline its sales and use tax collection systems including:

- State administration of both state and local sales taxes
- Uniform state and local tax bases
- A central, electronic registration system for all member states
- Simplification of state and local tax rates
- Uniform sourcing rules
- Simplified administration of exemptions
- Simplified tax returns
- Simplification of tax remittances
- Protection of consumer privacy

In addition to simplification of the tax administration, the system relies on the use of advanced computer technology. A seller may choose a certified service provider that will perform all of the seller's sales tax functions, a seller could choose to use a certified automated system that performs the tax calculation function, leaving the filing, remittances and other responsibilities to the seller, or a seller could use a certified proprietary system.

Both the SSTP proposal and NCSL proposal are similar. NCSL's Administrative Act does not change any state law. The SSTP Administrative Act requires the Legislature to make changes to state law to simplify its sales and use tax collection systems whenever five states have made the more substantive changes required by the SSTP Agreement. The SSTP Agreement requires uniform definitions that would change the tax base. The NCSL Agreement does not.

As of October 1, 2001, 20 states have adopted one of the proposals. Washington has been observing, but adoption of one of the proposals is required to become a voting member.

Summary of Bill: The Simplified Sales and Use Tax Administration Act proposed by NCSL is adopted. The Department of Revenue is directed to represent the state as a voting member in negotiations on a multi-state sales and use tax agreement, and will regularly consult with an advisory group made up of legislators, representatives of retailers, including those selling via mail, telephone, and the Internet; representatives of large and small businesses; and representatives of counties and cities.

The department is directed to enter into the Streamlined Sales and Use Tax Agreement with one or more states if the agreement:

1. Limits the number of state rates;
2. Establishes uniform standards for the sourcing of transactions, the administration of exempt sales, and sales and use tax returns and remittances;

3. Provides a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states;
4. Provides that registration is not a factor in determining nexus;
5. Provides for reduction of the burdens of complying with local sales and use taxes by restricting variances between the state and local tax bases, requiring states to administer local sales and use taxes, restricting the frequency and timing of changes in the local sales and use tax rates, and outlining any monetary allowances to sellers or certified service providers;
6. Requires each state to certify compliance with the agreement before joining and to maintain compliance while a member;
7. Requires each state to adopt a uniform policy for certified service providers that protects consumer privacy and maintains the confidentiality of tax information; and
8. Provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Upon becoming a member of the Streamlined Sales and Use Tax Agreement, the department is directed to prepare legislation conforming state law as necessary and provide the legislation to the fiscal committees of the Legislature.

Appropriation: None.

Fiscal Note: Available.

Effective Date: July 1, 2002 (except for sections 10 and 11, which become effective upon the state becoming a member of the Streamlined Sales and Use Tax Agreement).

Testimony For: It is necessary for the state to have a "seat at the table" and be a voting member on the Streamlined Sales Tax Agreement. State and local jurisdictions will still have local authority, and the Legislature will still have to vote on any agreement. The digitized products industry, retailers, and on-line retailers are all impacted by the complexity of the sales tax system and need to have a say in any agreement. Washington is highly sales tax dependent. Simplifying sales taxes will also benefit consumers. This bill is a priority for the food and retail industries.

Testimony Against: None.

Testified: PRO: Tremaine Smith, Department of Revenue; Lew McMurrin, Mark Grupp, Rich Prem, Washington Software Alliance; Jan Gee, Washington Retail Association, Washington Food Industry.