

SENATE BILL REPORT

SSB 6822

As Passed Senate, March 7, 2002

Title: An act relating to clarifying that use tax is due on direct mail advertising pieces printed out-of-state and mailed directly to Washington residents to promote the sale of goods or services by Washington residents.

Brief Description: Clarifying that use tax is due on certain direct mail advertising pieces.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Poulsen).

Brief History:

Committee Activity: Ways & Means: 2/25/02, 2/26/02 [DPS].

Passed Senate: 3/7/02, 31-17.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6822 be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fairley, Vice Chair; Fraser, Kline, Kohl-Welles, Poulsen, Rasmussen, B. Sheldon, Snyder, Spanel and Thibaudeau.

Staff: Terry Wilson (786-7433)

Background: The sales tax is paid on each retail sale of most articles of tangible personal property and certain services. Taxable services include construction, repair, telephone, lodging of less than 30 days, restaurant meals, physical fitness, and some amusement and recreation services. The use tax is imposed on the use of articles of tangible personal property when the sale or acquisition has not been subject to the sales tax. The use tax commonly applies to purchases made from out-of-state firms.

The total state and local sales tax rate imposed is between 7 percent and 8.9 percent, depending on the location.

Out-of-state printers currently have an advantage over in-state printers on direct mail advertising for in-state retailers because the in-state retailer is subject to the sales and use tax on items printed in this state but not on items printed outside the state. This resulted from a 1981 Thurston County Superior Court decision in which it was held that catalogs shipped directly from an out-of-state printer to customers in this state had not been "used" by the in-state retailer who had contracted for the printing and shipment. The retailer therefore was not subject to use tax in spite of the fact that the statutes had been amended to include any person who causes property to be distributed to promote the sale of products or services. The court may have been influenced by the fact that the use tax did not apply to personal property purchased or manufactured outside the state "until the transportation of the article finally ended in this state." This latter provision was an acknowledgment that the federal commerce clause prevented the state from taxing the activity. However, in 1988, The United States

Supreme Court upheld the imposition of Louisiana's use tax on catalogs shipped directly to Louisiana residents by an out-of-state printer with whom an in-state retailer had contracted, and the Washington Legislature removed the interstate transportation language in 1994. Therefore, there currently are no legal constraints on the taxation of this activity.

Summary of Bill: Statutes are modified to clarify that use tax is due on direct mail advertising printed out-of-state and mailed directly to Washington residents to promote the sale of goods or services by Washington residents.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect June 1, 2002.

Testimony For: Direct mail advertising is almost exclusively being done in Portland. The profit margin is small, and there is no room to adjust for sales taxes. Many small printers have gone bankrupt. This is part of a continuing effort to level the playing field between in-state and out-of-state printers. The fiscal note is low.

Testimony Against: This is punitive to in-state retailers who have to compete with out-of-state web based businesses. This will cost the retailers more money and make them less able to compete. Billboards, radio, and TV ads are not taxed against which printers must compete. The cost will have to be paid by the customers of printers.

Testified: PRO: Representative Jeanne Edwards, state representative; Roland Thompson, Allied Daily Newspapers; Reid Hale; John S. Perry, Journal Newspapers; CON: Jan Gee, WA Retail Assn, WA Food Industry; Concerns: Bill Stauffacher, Pacific Printing & Imaging Assn.