SENATE BILL REPORT
SB 6835

As Passed Senate, March 13, 2002

Title: An act relating to use taxation.

Brief Description: Revising use tax provisions.

Sponsors: Senator Poulsen.

Brief History:
Committee Activity: Ways & Means: 3/5/02, 3/6/02 [DP, DNP].
Passed Senate: 3/13/03, 28-19.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: 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.

Minority Report: Do not pass.
Signed by Senators Hewitt, Honeyford, Long, Rossi, Sheahan and Zarelli.

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.

Sales tax applies to items purchased from in-state and is collected by the seller. Sales tax is calculated on the "selling price" of an article, which includes delivery charges.

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 of tangible personal property from out-of-state firms. The use tax does not apply to services upon which a sales tax has been imposed. The purchaser is required to report use taxes due. Use tax is calculated on the "value" of an article, which statute does not specify includes delivery charges.

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. This was 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.

The state sales tax rate is 6.5 percent and is applied to the selling price of the article or service. In addition, local sales taxes apply. The total rate is between 7 percent and 8.9 percent, depending on the location.

Summary of Bill: The use tax is imposed on the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property. The effect of the bill is to tax services performed outside the state on tangible personal property used in this state.

For the purposes of calculating the use tax, delivery, shipping, freight, or like transportation charges are included in the value of an article.

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.

Appropriation: None.

Fiscal Note: Requested on March 4, 2002.

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

Testimony For: The direct mail tax closes a loophole. Printing has gone out-of-state. The profit margins are too small to absorb the tax. Printers have gone bankrupt. Twenty-seven states tax this. Twelve more are considering it. Only two exempt it.

Testimony Against: The direct mail tax will not generate more revenue. Retailers will not increase their budgets for advertising, and the lower advertising will result in lower sales and lower tax collections. It is not fair to tax this advertising because no other forms of advertising are taxed. Many financial institutions with no physical presence or nexus in this state advertise heavily and will not have to pay the tax. Only in-state banks will and this is inequitable.

Testified: PRO: Roland Thompson, Allied Daily Newspaper; CON: Steve Gano, Wells Fargo Bank, Key Bank, Cingular Wireless; Jan Gee, WA Retail Assoc., WA Food Industry; Denny Eliason, WA Bankers Assoc.; CONCERNS: Bill Stauffaucher, Pacific Printing & Imaging.