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HOUSE BILL 2999

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State of Washington                      57th Legislature                      2002 Regular Session

By Representatives Edwards, Clements, Gombosky and O'Brien

Read first time 03/01/2002. Referred to Committee on Finance.

1            AN ACT Relating to clarifying that use tax is due on direct mail  
2 advertising pieces printed out-of-state and mailed directly to  
3 Washington residents to promote the sale of goods or services by  
4 Washington residents; amending RCW 82.12.010; providing an effective  
5 date; and declaring an emergency.

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

7            **Sec. 1.** RCW 82.12.010 and 2001 c 188 s 3 are each amended to read  
8 as follows:

9            For the purposes of this chapter:

10           (1)(a) "Value of the article used" shall mean the consideration,  
11 whether money, credit, rights, or other property except trade-in  
12 property of like kind, expressed in terms of money, paid or given or  
13 contracted to be paid or given by the purchaser to the seller for the  
14 article of tangible personal property, the use of which is taxable  
15 under this chapter. The term includes, in addition to the  
16 consideration paid or given or contracted to be paid or given, the  
17 amount of any tariff or duty paid with respect to the importation of  
18 the article used. In case the article used is acquired by lease or by  
19 gift or is extracted, produced, or manufactured by the person using the

1 same or is sold under conditions wherein the purchase price does not  
2 represent the true value thereof, the value of the article used shall  
3 be determined as nearly as possible according to the retail selling  
4 price at place of use of similar products of like quality and character  
5 under such rules as the department of revenue may prescribe.

6 (b) In case the articles used are acquired by bailment, the value  
7 of the use of the articles so used shall be in an amount representing  
8 a reasonable rental for the use of the articles so bailed, determined  
9 as nearly as possible according to the value of such use at the places  
10 of use of similar products of like quality and character under such  
11 rules as the department of revenue may prescribe. In case any such  
12 articles of tangible personal property are used in respect to the  
13 construction, repairing, decorating, or improving of, and which become  
14 or are to become an ingredient or component of, new or existing  
15 buildings or other structures under, upon, or above real property of or  
16 for the United States, any instrumentality thereof, or a county or city  
17 housing authority created pursuant to chapter 35.82 RCW, including the  
18 installing or attaching of any such articles therein or thereto,  
19 whether or not such personal property becomes a part of the realty by  
20 virtue of installation, then the value of the use of such articles so  
21 used shall be determined according to the retail selling price of such  
22 articles, or in the absence of such a selling price, as nearly as  
23 possible according to the retail selling price at place of use of  
24 similar products of like quality and character or, in the absence of  
25 either of these selling price measures, such value may be determined  
26 upon a cost basis, in any event under such rules as the department of  
27 revenue may prescribe.

28 (c) In the case of articles owned by a user engaged in business  
29 outside the state which are brought into the state for no more than one  
30 hundred eighty days in any period of three hundred sixty-five  
31 consecutive days and which are temporarily used for business purposes  
32 by the person in this state, the value of the article used shall be an  
33 amount representing a reasonable rental for the use of the articles,  
34 unless the person has paid tax under this chapter or chapter 82.08 RCW  
35 upon the full value of the article used, as defined in (a) of this  
36 subsection.

37 (d) In the case of articles manufactured or produced by the user  
38 and used in the manufacture or production of products sold or to be  
39 sold to the department of defense of the United States, the value of

1 the articles used shall be determined according to the value of the  
2 ingredients of such articles.

3 (e) In the case of an article manufactured or produced for purposes  
4 of serving as a prototype for the development of a new or improved  
5 product, the value of the article used shall be determined by: (i) The  
6 retail selling price of such new or improved product when first offered  
7 for sale; or (ii) the value of materials incorporated into the  
8 prototype in cases in which the new or improved product is not offered  
9 for sale.

10 (f) In the case of an article purchased with a direct pay permit  
11 under RCW 82.32.087, the value of the article used shall be determined  
12 by the retail selling price, as defined in RCW 82.08.010, of such  
13 article if but for the use of the direct pay permit the transaction  
14 would have been subject to sales tax;

15 (2) "Use," "used," "using," or "put to use" shall have their  
16 ordinary meaning, and shall mean the ~~((first act within this state by  
17 which the taxpayer takes or assumes dominion or control over the  
18 article of))~~ exercise of any right or power over tangible personal  
19 property incident to the ownership of the tangible personal property  
20 (as a consumer), and include installation, storage, distribution or  
21 display, withdrawal from storage, or any other act preparatory to  
22 subsequent actual use or consumption within this state. With respect  
23 to property distributed to persons within this state by a consumer as  
24 defined in subsection (5) of this section, the use of the property  
25 shall be deemed to be by the consumer;

26 (3) "Taxpayer" and "purchaser" include all persons included within  
27 the meaning of the word "buyer" and the word "consumer" as defined in  
28 chapters 82.04 and 82.08 RCW;

29 (4) "Retailer" means every seller as defined in RCW 82.08.010 and  
30 every person engaged in the business of selling tangible personal  
31 property at retail and every person required to collect from purchasers  
32 the tax imposed under this chapter;

33 (5) The meaning ascribed to words and phrases in chapters 82.04 and  
34 82.08 RCW, insofar as applicable, shall have full force and effect with  
35 respect to taxes imposed under the provisions of this chapter.  
36 "Consumer," in addition to the meaning ascribed to it in chapters 82.04  
37 and 82.08 RCW insofar as applicable, shall also mean any person who  
38 distributes or displays, or causes to be distributed or displayed, any

1 article of tangible personal property, except newspapers, the primary  
2 purpose of which is to promote the sale of products or services.

3 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 June 1, 2002.

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