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SENATE BILL 5725

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State of Washington                      57th Legislature                      2001 Regular Session

By Senators Spanel and McDonald; by request of Department of Revenue

Read first time 02/01/2001. Referred to Committee on Ways & Means.

1            AN ACT Relating to granting the department of revenue the  
2 authority to issue direct pay permits; amending RCW 82.12.010,  
3 82.08.050, and 82.12.040; adding a new section to chapter 82.32  
4 RCW; creating new sections; and providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that programs to  
7 allow buyers to remit sales and use tax, rather than traditional  
8 collection and remittance by the seller of sales and use tax, can  
9 assist in tax compliance, ease administrative burdens, and reduce  
10 impacts on buyers and sellers. It is the intent of the legislature  
11 to grant the department of revenue the authority to permit certain  
12 buyers direct payment authority of tax in those instances where it  
13 can be shown, to the satisfaction of the department, that direct  
14 payment does not burden sellers and does not complicate  
15 administration for the department. Buyers authorized for direct  
16 payment will remit tax directly to the department, and will pay  
17 use tax on tangible personal property and sales tax on retail  
18 labor and/or services.

1 This act does not affect the requirements to use a resale  
2 certificate nor does it affect the business and occupation tax  
3 treatment of the seller.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32  
5 RCW to read as follows:

6 (1) The director may grant a direct pay permit to a taxpayer  
7 who demonstrates, to the satisfaction of the director, that the  
8 taxpayer meets the requirements of this section. The direct pay  
9 permit allows the taxpayer to accrue and remit directly to the  
10 department use tax on the acquisition of tangible personal  
11 property or sales tax on the sale of or charges made for labor  
12 and/or services, in accordance with all of the applicable  
13 provisions of this title. Any taxpayer that uses a direct pay  
14 permit shall remit state and local sales or use tax directly to  
15 the department. The agreement by the purchaser to remit tax  
16 directly to the department, rather than pay sales or use tax to  
17 the seller, relieves the seller of the obligation to collect sales  
18 or use tax and requires the buyer to pay use tax on the tangible  
19 personal property and sales tax on the sale of or charges made for  
20 labor and/or services.

21 (2)(a) A taxpayer may apply for a permit under this section if  
22 the taxpayer (i) is subject to mandatory use of electronic funds  
23 transfer under RCW 82.32.080; or (ii) makes purchases subject to  
24 the taxes imposed under chapter 82.08 or 82.12 RCW in excess of  
25 ten million dollars per calendar year.

26 (b) Application for a permit must be made in writing to the  
27 director in a form and manner prescribed by the department. A  
28 taxpayer who transacts business in two or more locations may  
29 submit one application to cover the multiple locations.

30 (c) The director shall review a direct pay permit application  
31 in a timely manner and shall notify the applicant, in writing, of  
32 the approval or denial of the application. The department shall  
33 approve or deny an application based on the applicant's ability to  
34 comply with local government use tax coding capabilities and  
35 responsibilities; requirements for vendor notification;  
36 recordkeeping obligations; electronic data capabilities; and tax  
37 reporting procedures. Additionally, an application may be denied if

1 the director determines that denial would be in the best interest  
2 of collecting taxes due under this title. The department shall  
3 provide a direct pay permit to an approved applicant with the  
4 notice of approval. The direct pay permit shall clearly state that  
5 the holder is solely responsible for the accrual and payment of  
6 the tax imposed under chapters 82.08 and 82.12 RCW and that the  
7 seller is relieved of liability to collect tax imposed under  
8 chapters 82.08 and 82.12 RCW on all sales to the direct pay permit  
9 holder. The taxpayer may petition the director for reconsideration  
10 of a denial.

11 (d) A taxpayer who uses a direct pay permit must continue to  
12 maintain records that are necessary to a determination of the tax  
13 liability in accordance with this title. A direct pay permit is not  
14 transferable and the use of a direct pay permit may not be  
15 assigned to a third party.

16 (3) Taxes for which the direct pay permit is used are due and  
17 payable on the tax return for the reporting period in which the  
18 taxpayer (a) receives the tangible personal property purchased or  
19 in which the labor and/or services are performed or (b) receives  
20 an invoice for such property or such labor and/or services,  
21 whichever period is earlier.

22 (4) The holder of a direct pay permit shall furnish a copy of  
23 the direct pay permit to each vendor with whom the taxpayer has  
24 opted to use a direct pay permit. Sellers who make sales upon which  
25 the sales or use tax is not collected by reason of the provisions  
26 of this section, in addition to existing requirements under this  
27 title, shall maintain a copy of the direct pay permit and any such  
28 records or information as the department may specify.

29 (5) A direct pay permit is subject to revocation by the  
30 director at any time the department determines that the taxpayer  
31 has violated any provision of this section or that revocation  
32 would be in the best interests of collecting the taxes due under  
33 this title. The notice of revocation must be in writing and is  
34 effective either as of the end of the taxpayer's next normal  
35 reporting period or a date deemed appropriate by the director and  
36 identified in the revocation notice. The taxpayer may petition the  
37 director for reconsideration of a revocation and reinstatement of  
38 the permit.

1 (6) Any taxpayer who chooses to no longer use a direct pay  
2 permit or whose permit is revoked by the department, shall return  
3 the permit to the department and immediately make a good faith  
4 effort to notify all vendors to whom the permit was given,  
5 advising them that the permit is no longer valid.

6 (7) Except as provided in this subsection, the direct pay  
7 permit may be used for any purchase of tangible personal property  
8 and any retail sale under RCW 82.04.050. The direct pay permit may  
9 not be used for:

10 (a) Purchases of meals or beverages;

11 (b) Purchases of motor vehicles, trailers, boats, airplanes,  
12 and other property subject to requirements for title transactions  
13 by the department of licensing;

14 (c) Purchases for which a resale certificate may be used;

15 (d) Purchases that meet the definitions of RCW 82.04.050 (2)

16 (e) and (f), (3) (a) through (d), (f), and (g), and (5); or

17 (e) Other activities subject to tax under chapter 82.08 or  
18 82.12 RCW that the department by rule designates, consistent with  
19 the purposes of this section, as activities for which a direct pay  
20 permit is not appropriate and may not be used.

21 **Sec. 3.** RCW 82.12.010 and 1994 c 93 s 1 are each amended to read  
22 as follows:

23 For the purposes of this chapter:

24 (1)(a) "Value of the article used" shall mean the  
25 consideration, whether money, credit, rights, or other property  
26 except trade-in property of like kind, expressed in terms of  
27 money, paid or given or contracted to be paid or given by the  
28 purchaser to the seller for the article of tangible personal  
29 property, the use of which is taxable under this chapter. The term  
30 includes, in addition to the consideration paid or given or  
31 contracted to be paid or given, the amount of any tariff or duty  
32 paid with respect to the importation of the article used. In case  
33 the article used is acquired by lease or by gift or is extracted,  
34 produced, or manufactured by the person using the same or is sold  
35 under conditions wherein the purchase price does not represent the  
36 true value thereof, the value of the article used shall be  
37 determined as nearly as possible according to the retail selling

1 price at place of use of similar products of like quality and  
2 character under such rules as the department of revenue may  
3 prescribe.

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

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

36 (d) In the case of articles manufactured or produced by the  
37 user and used in the manufacture or production of products sold or

1 to be sold to the department of defense of the United States, the  
2 value of the articles used shall be determined according to the  
3 value of the ingredients of such articles.

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

11 (f) In the case of an article purchased with a direct pay  
12 permit under section 2 of this act, the value of the article used  
13 shall be determined by the retail selling price, as defined in RCW  
14 82.08.010, of such article if but for the use of the direct pay  
15 permit the transaction would have been subject to sales tax;

16 (2) "Use," "used," "using," or "put to use" shall have their  
17 ordinary meaning, and shall mean the first act within this state  
18 by which the taxpayer takes or assumes dominion or control over  
19 the article of tangible personal property (as a consumer), and  
20 include installation, storage, withdrawal from storage, or any  
21 other act preparatory to subsequent actual use or consumption  
22 within this state;

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

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

30 (5) The meaning ascribed to words and phrases in chapters 82.04  
31 and 82.08 RCW, insofar as applicable, shall have full force and  
32 effect with respect to taxes imposed under the provisions of this  
33 chapter. "Consumer," in addition to the meaning ascribed to it in  
34 chapters 82.04 and 82.08 RCW insofar as applicable, shall also  
35 mean any person who distributes or displays, or causes to be  
36 distributed or displayed, any article of tangible personal  
37 property, except newspapers, the primary purpose of which is to  
38 promote the sale of products or services.

1       **Sec. 4.** RCW 82.08.050 and 1993 sp.s. c 25 s 704 are each amended  
2 to read as follows:

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

15       In case any seller fails to collect the tax herein imposed or  
16 having collected the tax, fails to pay it to the department in the  
17 manner prescribed by this chapter, whether such failure is the  
18 result of his or her own acts or the result of acts or conditions  
19 beyond his or her control, he or she shall, nevertheless, be  
20 personally liable to the state for the amount of the tax, unless  
21 the seller has taken from the buyer in good faith a properly  
22 executed resale certificate under RCW 82.04.470 or a copy of a  
23 direct pay permit issued under section 2 of this act.

24       The amount of tax, until paid by the buyer to the seller or to  
25 the department, shall constitute a debt from the buyer to the  
26 seller and any seller who fails or refuses to collect the tax as  
27 required with intent to violate the provisions of this chapter or  
28 to gain some advantage or benefit, either direct or indirect, and  
29 any buyer who refuses to pay any tax due under this chapter shall  
30 be guilty of a misdemeanor. The tax required by this chapter to be  
31 collected by the seller shall be stated separately from the  
32 selling price in any sales invoice or other instrument of sale. On  
33 all retail sales through vending machines, the tax need not be  
34 stated separately from the selling price or collected separately  
35 from the buyer. For purposes of determining the tax due from the  
36 buyer to the seller and from the seller to the department it shall  
37 be conclusively presumed that the selling price quoted in any

1 price list, sales document, contract or other agreement between  
2 the parties does not include the tax imposed by this chapter, but  
3 if the seller advertises the price as including the tax or that  
4 the seller is paying the tax, the advertised price shall not be  
5 considered the selling price.

6 Where a buyer has failed to pay to the seller the tax imposed  
7 by this chapter and the seller has not paid the amount of the tax  
8 to the department, the department may, in its discretion, proceed  
9 directly against the buyer for collection of the tax, in which  
10 case a penalty of ten percent may be added to the amount of the  
11 tax for failure of the buyer to pay the same to the seller,  
12 regardless of when the tax may be collected by the department; and  
13 all of the provisions of chapter 82.32 RCW, including those  
14 relative to interest and penalties, shall apply in addition; and,  
15 for the sole purpose of applying the various provisions of chapter  
16 82.32 RCW, the twenty-fifth day of the month following the tax  
17 period in which the purchase was made shall be considered as the  
18 due date of the tax.

19 **Sec. 5.** RCW 82.12.040 and 1986 c 48 s 1 are each amended to read  
20 as follows:

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

1 the rules current with future court interpretations of the  
2 Constitution of the United States.

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

11 (3) The tax required to be collected by this chapter shall be  
12 deemed to be held in trust by the retailer until paid to the  
13 department and any retailer who appropriates or converts the tax  
14 collected to his own use or to any use other than the payment of  
15 the tax provided herein to the extent that the money required to  
16 be collected is not available for payment on the due date as  
17 prescribed shall be guilty of a misdemeanor. In case any seller  
18 fails to collect the tax herein imposed or having collected the  
19 tax, fails to pay the same to the department in the manner  
20 prescribed, whether such failure is the result of his own acts or  
21 the result of acts or conditions beyond his control, he shall  
22 nevertheless, be personally liable to the state for the amount of  
23 such tax, unless the seller has taken from the buyer in good faith  
24 a copy of a direct pay permit issued under section 2 of this act.

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

29 NEW SECTION. **Sec. 6.** The code reviser shall place cross-  
30 reference sections to section 2 of this act in chapters 82.08,  
31 82.12, and 82.14 RCW.

32 NEW SECTION. **Sec. 7.** This act takes effect August 1, 2001.

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