

SENATE BILL REPORT

SB 5690

As Reported By Senate Committee On:
Technology & Communications, February 17, 2003
Ways & Means, February 25, 2003

Title: An act relating to the taxability of persons with limited connections to Washington.

Brief Description: Limiting the taxability of certain internet transactions.

Sponsors: Senators Rossi and Fairley.

Brief History:

Committee Activity: Technology & Communications: 2/13/03, 2/17/03 [DP-WM].
Ways & Means: 2/19/03, 2/25/03 [DPS].

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Eide, Reardon, Schmidt and Stevens.

Staff: William Bridges (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5690 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Fairley, Hale, Honeyford, Johnson, Roach, Sheahan, B. Sheldon and Winsley.

Staff: Terry Wilson (786-7433)

Background: A person doing business in this state is required to pay business and occupation (B&O) tax and must collect retail sales tax or use tax from the customer for retail sales. Questions have arisen about the meaning of "doing business in this state" in the context of electronic commerce, particularly in regard to out-of-state retailers who conduct business via internet computer hardware ("servers") located in this state. Out-of-state retailers who do business via internet or mail order are often referred to as "remote sellers." As a general rule, remote sellers do not have to pay B&O tax or collect sales tax unless they have a physical presence in this state. This physical presence requirement is met if the business has agents, employees, offices, warehouses, or other property in this state. A remote seller who owns internet servers in this state meets the physical presence requirement. If remote seller does business through a third-party internet service provider with equipment in this state, the remote seller could be viewed as having an agent in this state, which would satisfy the physical presence requirement.

The Federal Internet Tax Freedom Act (ITFA) prohibits state and local governments from imposing multiple or discriminatory taxes on electronic commerce. Under the ITFA, a remote seller cannot be required to collect sales tax merely because it conducts business through an online service provider that has equipment located in this state. The ITFA is scheduled to expire November 1, 2003.

Summary of Substitute Bill: A person doing business in Washington, whether conducted directly or through another person, is not liable for the B&O tax or required to collect sales or use tax if its activities meet the following conditions: (1) the person's business is conducted via a web site on computer equipment that is located in Washington and is owned by an unaffiliated third party; and (2) the person's business is limited to: (a) the storage, dissemination, or display of advertising, (b) the taking of orders, or (c) the processing of payments.

These provisions expire when: (1) the United States Congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (2) a final court decision declares a state can impose sales and use tax collection duties on remote sellers.

Substitute Bill Compared to Original Bill: A technical correction is made.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Technology & Communications): Seattle-based Amazon.com is the world's largest on-line retailer, employing more than 2,000 employees in Washington. It has expanded its business beyond traditional retailing to include the sale of services, such as transaction processing for third-party sellers. So long as the federal Internet Tax Freedom Act is in effect, remote third-party sellers are not subject to Washington taxes. Should the law expire in November 2003, Amazon.com could lose many of these third-party sellers to the fear of being subject to Washington taxes. The Department of Revenue and Amazon.com have worked together to place the current federal Internet tax prohibitions in state law in case the federal law is not extended.

Testimony Against (Technology & Communications): None.

Testified (Technology & Communications): Paul Misener, Amazon.com (pro); Will Rice, Dept. of Revenue (pro).

Testimony For (Ways & Means): Amazon.com has become a venue for companies who want to display their products on our website. We take their orders and pass them along to the company that actually fills the order. Some companies have concerns that this makes them subject to state tax. Congress has said that this activity should not subject them to tax. We want to level the playing field with other states and ensure they are not subject to tax if the federal bill expires.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Rich Prem, Amazon.com; Will Rice, DOR.