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SENATE BILL 5690

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State of Washington

58th Legislature

2003 Regular Session

By Senators Rossi and Fairley

Read first time 02/06/2003. Referred to Committee on Technology & Communications.

1 AN ACT Relating to the taxability of persons with limited  
2 connections to Washington; amending RCW 82.08.050 and 82.12.040; adding  
3 a new section to chapter 82.04 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 exempt from business and occupation tax and to relieve from the  
7 obligation to collect sales and use tax from certain sellers with very  
8 limited connections to Washington. These sellers are currently  
9 relieved from the obligation to collect sales and use tax because of  
10 the provisions of the federal internet tax freedom act. The  
11 legislature intends to continue to relieve these particular sellers  
12 from that obligation in the event that the federal internet tax freedom  
13 act is not extended. The legislature further intends that any relief  
14 from tax obligations provided by this act expire at such time as the  
15 United States congress grants individual states the authority to impose  
16 sales and use tax collection duties on remote sellers, or a court of  
17 competent jurisdiction, in a judgment not subject to review, determines  
18 that a state can impose sales and use tax collection duties on remote  
19 sellers.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 82.04 RCW  
2 to read as follows:

3        (1) This chapter does not apply to a person making sales in  
4 Washington if:

5        (a) The person's activities in this state, whether conducted  
6 directly or through another person, are limited to:

7            (i) The storage, dissemination, or display of advertising;

8            (ii) The taking of orders; or

9            (iii) The processing of payments; and

10        (b) The activities are conducted electronically via a web site on  
11 a server or other computer equipment located in Washington that is  
12 owned or operated by a person other than an affiliated person. For  
13 purposes of this section, persons are "affiliated persons" with respect  
14 to each other where one of the persons has an ownership interest of  
15 more than five percent, whether direct or indirect, in the other, or  
16 where an ownership interest of more than five percent, whether direct  
17 or indirect, is held in each of the persons by another person or by a  
18 group of other persons which are affiliated with respect to each other.

19        (2) This section expires when:    (a) The United States congress  
20 grants individual states the authority to impose sales and use tax  
21 collection duties on remote sellers; or (b) it is determined by a court  
22 of competent jurisdiction, in a judgment not subject to review, that a  
23 state can impose sales and use tax collection duties on remote sellers.

24        **Sec. 3.**    RCW 82.08.050 and 2001 c 188 s 4 are each amended to read  
25 as follows:

26        (1) The tax hereby imposed shall be paid by the buyer to the  
27 seller, and each seller shall collect from the buyer the full amount of  
28 the tax payable in respect to each taxable sale in accordance with the  
29 schedule of collections adopted by the department pursuant to the  
30 provisions of RCW 82.08.060. The tax required by this chapter, to be  
31 collected by the seller, shall be deemed to be held in trust by the  
32 seller until paid to the department, and any seller who appropriates or  
33 converts the tax collected to his or her own use or to any use other  
34 than the payment of the tax to the extent that the money required to be  
35 collected is not available for payment on the due date as prescribed in  
36 this chapter shall be guilty of a gross misdemeanor.

1       (2) In case any seller fails to collect the tax herein imposed or  
2 having collected the tax, fails to pay it to the department in the  
3 manner prescribed by this chapter, whether such failure is the result  
4 of his or her own acts or the result of acts or conditions beyond his  
5 or her control, he or she shall, nevertheless, be personally liable to  
6 the state for the amount of the tax, unless the seller has taken from  
7 the buyer in good faith a properly executed resale certificate under  
8 RCW 82.04.470 or a copy of a direct pay permit issued under RCW  
9 82.32.087.

10       (3) The amount of tax, until paid by the buyer to the seller or to  
11 the department, shall constitute a debt from the buyer to the seller  
12 and any seller who fails or refuses to collect the tax as required with  
13 intent to violate the provisions of this chapter or to gain some  
14 advantage or benefit, either direct or indirect, and any buyer who  
15 refuses to pay any tax due under this chapter shall be guilty of a  
16 misdemeanor. The tax required by this chapter to be collected by the  
17 seller shall be stated separately from the selling price in any sales  
18 invoice or other instrument of sale. On all retail sales through  
19 vending machines, the tax need not be stated separately from the  
20 selling price or collected separately from the buyer. For purposes of  
21 determining the tax due from the buyer to the seller and from the  
22 seller to the department it shall be conclusively presumed that the  
23 selling price quoted in any price list, sales document, contract or  
24 other agreement between the parties does not include the tax imposed by  
25 this chapter, but if the seller advertises the price as including the  
26 tax or that the seller is paying the tax, the advertised price shall  
27 not be considered the selling price.

28       (4) Where a buyer has failed to pay to the seller the tax imposed  
29 by this chapter and the seller has not paid the amount of the tax to  
30 the department, the department may, in its discretion, proceed directly  
31 against the buyer for collection of the tax, in which case a penalty of  
32 ten percent may be added to the amount of the tax for failure of the  
33 buyer to pay the same to the seller, regardless of when the tax may be  
34 collected by the department; and all of the provisions of chapter 82.32  
35 RCW, including those relative to interest and penalties, shall apply in  
36 addition; and, for the sole purpose of applying the various provisions  
37 of chapter 82.32 RCW, the twenty-fifth day of the month following the

1 tax period in which the purchase was made shall be considered as the  
2 due date of the tax.

3 (5) Notwithstanding subsections (1) through (4) of this section,  
4 any person making sales is not obligated to collect the tax imposed by  
5 this chapter if:

6 (a) The person's activities in this state, whether conducted  
7 directly or through another person, are limited to:

8 (i) The storage, dissemination, or display of advertising;

9 (ii) The taking of orders; or

10 (iii) The processing of payments; and

11 (b) The activities are conducted electronically via a web site on  
12 a server or other computer equipment located in Washington that is  
13 owned or operated by a person other than an affiliated person.  
14 "Affiliated persons" has the same meaning as provided in section 2 of  
15 this act.

16 (6) Subsection (5) of this section expires when: (a) The United  
17 States congress grants individual states the authority to impose sales  
18 and use tax collection duties on remote sellers; or (b) it is  
19 determined by a court of competent jurisdiction, in a judgment not  
20 subject to review, that a state can impose sales and use tax collection  
21 duties on remote sellers.

22 **Sec. 4.** RCW 82.12.040 and 2001 c 188 s 5 are each amended to read  
23 as follows:

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

1 shall in rules specify activities which constitute engaging in business  
2 activity within this state, and shall keep the rules current with  
3 future court interpretations of the Constitution of the United States.

4 (2) Every person who engages in this state in the business of  
5 acting as an independent selling agent for persons who do not hold a  
6 valid certificate of registration, and who receives compensation by  
7 reason of sales of tangible personal property of his principals made  
8 for use in this state, shall, at the time such sales are made, collect  
9 from the purchasers the tax imposed under this chapter, and for that  
10 purpose shall be deemed a retailer as 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 department  
13 and any retailer who appropriates or converts the tax collected to his  
14 own use or to any use other than the payment of the tax provided herein  
15 to the extent that the money required to be collected is not available  
16 for payment on the due date as prescribed shall be guilty of a  
17 misdemeanor. In case any seller fails to collect the tax herein  
18 imposed or having collected the tax, fails to pay the same to the  
19 department in the manner prescribed, whether such failure is the result  
20 of his own acts or the result of acts or conditions beyond his control,  
21 he shall nevertheless, be personally liable to the state for the amount  
22 of such tax, unless the seller has taken from the buyer in good faith  
23 a copy of a direct pay permit issued under RCW 82.32.087.

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

28 (5) Notwithstanding subsections (1) through (4) of this section,  
29 any person making sales is not obligated to collect the tax imposed by  
30 this chapter if:

31 (a) The person's activities in this state, whether conducted  
32 directly or through another person, are limited to:

33 (i) The storage, dissemination, or display of advertising;

34 (ii) The taking of orders; or

35 (iii) The processing of payments; and

36 (b) The activities are conducted electronically via a web site on  
37 a server or other computer equipment located in Washington that is

1 owned or operated by a person other than an affiliated person.  
2 "Affiliated persons" has the same meaning as provided in section 2 of  
3 this act.

4 (6) Subsection (5) of this section expires when: (a) The United  
5 States congress grants individual states the authority to impose sales  
6 and use tax collection duties on remote sellers; or (b) it is  
7 determined by a court of competent jurisdiction, in a judgment not  
8 subject to review, that a state can impose sales and use tax collection  
9 duties on remote sellers.

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