
Finance Committee

HB 2235

Brief Description: Conforming Washington's tax structure to the streamlined sales and use tax agreement.

Sponsors: Representatives McIntire, Sommers, Fromhold, Moeller and Kagi.

Brief Summary of Bill

- Provisions are adopted that allow Washington State to conform to the Streamlined Sales and Use Tax Agreement (SSTA), including language that authorizes:
 - the on-line registration of remote sellers;
 - monetary allowances or vendor compensation for sellers that participate in the SSTA;
 - conditional amnesty for previously unregistered sellers;
 - new requirements for sourcing tax to the transaction location;
 - confidentiality and privacy protections for participating sellers;
 - the development of a taxability matrix under the SSTA; and
 - a change in the manner delivery charges are taxed.
- Establishes a temporary mitigation mechanism to provide relief to local governments for which sales tax collections are reduced as a result of the implementation of the sourcing requirements.

Hearing Date: 3/3/05

Staff: Mark Matteson (786-7145).

Background:

In the 2002 session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue (Department) to be a voting member in the Streamlined Sales Tax Project (SSTP), a multi-state effort to simplify state sales and use tax structures and make them more uniform. Many other states have also authorized such participation, and representatives have met to develop an agreement to govern the implementation of the SSTP. This agreement, called the Streamlined Sales and Use Tax Agreement (SSTA), was adopted by thirty-four states and Washington D.C. in November 2002.

During the 2003 legislative session, the Legislature enacted legislation at the request of the Department to implement the uniform definitions and administrative provisions of the SSTA.

However, the legislation did not implement six additional provisions that are necessary for the state to conform fully to the SSTA. The provisions concern:

- on-line registration of remote sellers;
- monetary allowance for sellers using certified service providers or tax compliance software. (Certified service providers are third parties that are authorized to collect and remit sales and use taxes to states that participate under the SSTA);
- conditional amnesty for previously unregistered sellers;
- requirements governing the location to which tax is attributed during a transaction (i.e., "Sourcing");
- confidentiality and privacy protections for sellers using certified services providers;
- the development of a taxability matrix to facilitate the administration of tax for sellers; and
- an amendment to the original SSTA agreement concerning how tax is applied to delivery charges when a delivery includes both taxable and nontaxable items.

Under the sales and use tax in Washington State, local sales and use taxes are sourced according to the following rules:

- Sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made.
- Sales tax from the sale of a service, with or without a sale of goods, is sourced to the place where the service is primarily performed.
- Sales tax from the lease or rental of goods is sourced to the place of first use. In the case of short-term rentals, this is the place of business of the lessor. In the case of rentals or leases involving periodic payments, this is the primary place of use by the renter or lessee for each payment period.

In the 2004 session, legislation was introduced at the request of the Department to fully conform to the SSTA. In subsequent substitute versions of the legislation, mitigation proposals were incorporated for the purpose of providing relief to jurisdictions that would have been affected by changes in sales tax sourcing requirements. However, the legislation did not pass.

Summary of Bill:

Provisions are included that would allow the state to fully conform to the Streamlined Sales and Use Tax Agreement.

Sellers are authorized to designate an agent to register the seller with the state, if not already registered. Sellers who agree to collect and remit sales and use taxes under the SSTA may register through an on-line system authorized under the SSTA.

The Department is required to adopt rules providing for monetary allowances for sellers who use certified service providers, tax compliance software, or another means of collecting and remitting tax that is authorized under the SSTA. In addition, the Department may adopt rules to provide vendor compensation for sellers who collect and remit sales and use taxes to the state, but this authority is contingent upon action by Congress or the courts that would allow states to require remote sellers to collect sales or use taxes.

The Department is prohibited from making assessments for past uncollected sales and use taxes against an unregistered seller who, within twelve months of the effective date of the state's

participation in the SSTA, registers under the agreement and then collects and remits sales and use taxes to the state for a period of at least 36 months. This amnesty does not apply if the seller has already received an audit notice from the Department, if the seller has in fact collected sales and use taxes but not remitted them to the state, or if the seller is liable for sales and use taxes in the seller's capacity as a buyer.

The SSTA general sourcing rules are adopted. The rules provide:

1. If a good or service is received by the purchaser at the business location of the seller, the sales tax is sourced to that business location.
2. If the good is not received by the purchaser at the business location of the seller, the sales tax is sourced to the location where receipt occurs, if known by the seller.
3. If neither of the first two rules apply, the sales tax is sourced to the address indicated for the purchaser in records normally maintained by the seller, if the use of this address by the seller does not constitute bad faith.
4. If none of the first three rules apply, the sales tax is sourced to the address for the purchaser obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if the use of this address by the seller does not constitute bad faith.
5. If none of the first four rules apply, the sales tax is sourced to the address from which delivery is made.

The general sourcing rules do not apply to purchases of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. In such purchases, the tax is sourced to the location from which delivery was made.

For the lease or rental of tangible personal property, tax is sourced depending on whether the lease or rental requires periodic payments. If periodic payments are required, tax on the first payment is sourced like sales of tangible personal property, but tax on subsequent payments are sourced to the primary property location of the lessee. If payments are not periodic, then tax is sourced like sales of tangible personal property.

Special sourcing provisions apply to sales of digital goods, electronically delivered software, direct mail, or services, where the property or service sold is delivered to multiple jurisdictions concurrently. In these circumstances, the purchaser is obligated either to provide a form to the seller relieving the seller of the requirement to collect and remit tax or to provide sufficient information to the seller to allow the seller to determine the proper amount of tax to collect. If the seller is relieved of the requirement, the purchaser must remit tax directly.

Protections are provided with respect to confidentiality and privacy for businesses that use certified service providers under the SSTA. Certified service providers are required to perform tax calculations, remittance, and reporting functions and may not retain the personally identifiable information of consumers, with very limited exceptions. The Department will provide public notification to consumers of its practices relating to the collection, use, and retention of personally identifiable information. Personally identifiable information will not be retained any longer than required to ensure the validity of exemptions. This provision may be enforced by petitioning the superior court of Thurston County for injunctive relief.

The Department is required to complete a taxability matrix and will provide notice of changes in the taxability of products or services listed in the matrix. Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the

incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the Department in the matrix.

The taxability of delivery charges is changed to allow sellers to apportion their delivery charges between taxable and nontaxable property within a shipment and apply tax to only that portion that represents delivery charges for taxable property.

A mechanism is provided for a temporary mitigation of sales tax displacements to jurisdictions affected by the sourcing changes in the bill. A new account is created for the purposes of providing distributions to affected jurisdictions. The account is funded by diverting an amount of state sales and use taxes equal to a portion of the forecasted amount of additional sales and use tax receipts for FY 2006 that are realized when remote retailers register under terms of the streamlined agreement. For the first three years, the entire forecasted amount is distributed. After the third year of distributions, the amounts for distribution are decreased in 10 percent increments over a period of 10 years.

The mitigation distributions are based on an analysis by the Department. In the analysis, the Department must evaluate which jurisdictions actually have reduced tax revenue as compared to the year before the effective date, and may account for economic growth, annexations, incorporations, and other unique circumstances. Distributions are to be made quarterly in general. If a distribution is made to a local government and the department then determines that the amount distributed exceeds the actual losses, then the excess amount must be deducted from future distributions. If the amounts in the account are less than the amount calculated as necessary for distribution, the distributions must be reduced proportionately on a pro rata basis. The Department's determinations are final.

An exception from the mitigation process is provided to public facility districts that receive retail sales and use tax credited against the state tax. These districts may raise their tax rates if the Department determines that, as a result of the sourcing changes, the district's retail sales and use tax collections are 0.5 percent less than in the year before the sourcing changes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The sourcing provisions (sections 501 through 503) and the mitigation provisions (sections 901 through 905) of the bill are effective the later of July 1, 2006, or the first day of the calendar quarter at least six months after the SSTA takes effect. The amnesty provisions of the bill are effective on the date that Washington becomes a member state of the SSTA. The provisions concerning vendor compensation are effective when Congress or the court determine that the state may impose sales and use tax collection and remittance duties upon remote sellers. All other provisions are effective July 1, 2005.