

HOUSE BILL REPORT

SB 6173

As Reported by House Committee On:
Finance

Title: An act relating to improving sales tax compliance.

Brief Description: Improving sales tax compliance.

Sponsors: Senator Prentice.

Brief History:

Committee Activity:

Finance: 4/22/09 [DP].

Brief Summary of Bill

- Eliminates resale sales tax exemption for custom contractors.
- Requires wholesale buyers (other than custom contractors) to obtain a seller's permit to purchase goods at wholesale without incurring sales tax.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

Staff: Jeffrey Mitchell (786-7139)

Background:

Under current law, persons purchasing goods or services for resale are exempt from the retail sales tax if they provide the seller with a resale certificate. The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. Resale certificates are not issued by the Department of Revenue (Department), but can be obtained from the Department's website. When a buyer fills out a resale certificate, among the information they need to supply is their name and unified business identifier or

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business registration number. The seller retains the resale certificate as evidence of the tax exempt sale.

Purchases of materials by contractors performing construction for consumers (custom construction) where the materials will become part of the completed project, are purchases for resale (wholesale purchases). Such purchases are not subject to retail sales tax. Such contractors may also purchase subcontractor services for resale. To verify that material purchases and subcontractor services are for resale, a contractor must give a valid resale certificate to the materials supplier or subcontractor. This tax treatment also applies to subcontractors working on custom construction projects.

Speculative contractors (spec construction) may not purchase materials that will become part of the project for resale and must pay sales tax. This is the same for the subcontractors that work for them. They are the end consumer of the materials or services and thus have to pay sales tax on these purchases.

Summary of Bill:

Beginning January 1, 2010, the requirement for a resale certificate to make purchases for resale exempt of the sales tax is eliminated and replaced with a seller's permit. The seller's permit will be issued by the Department to businesses registered with the Department if the business makes wholesale purchases. This will be determined based generally on industry type and reporting history. Businesses that do not make wholesale purchases as part of their business will not be issued a seller's permit.

The provision for wholesale purchases for custom contractors is eliminated. Custom contractors (prime and subcontractors) will be required to pay sales tax on their purchases of materials and services. To avoid the pyramiding of sales tax, such contractors would claim a credit against sales and use taxes reported in the amount of sales and use taxes paid on materials and subcontractor services. Exemptions for materials and subcontractor services are provided for custom construction projects in which the end consumer is exempt from sales tax.

Sales and use tax exemptions are provided or modified so as not to affect the sales and use taxation of construction projects within the scope of a sales and use tax deferral certificate issued by the Department or a specific sales and use tax exemption. To receive the sales tax exemption, the contractor must provide the seller with a copy of the sales and use tax deferral certificate issued by the Department for the project in which the exempt purchase relates. Additionally contractors are exempt from sales tax on purchases of construction materials and services for the following types of projects in which the consumer is exempt from tax:

- construction for American Indians in Indian Country;
- hay sheds for farmers;
- livestock nutrient facilities;
- anaerobic digesters; and
- aerospace manufacturing facilities located on port property.

Businesses seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the Department. The Department must rule on applications within 60 days.

Permits issued to taxpayers who register with the Department after January 1, 2009, are valid for two years and may be renewed for four years.

Permits issued to taxpayers who registered with the Department on or before January 1, 2009, are valid for four years.

The misuse of a seller's permit penalty (currently applicable to resale certificates) is changed from 50 percent to 100 percent.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect on January 1, 2010. However, sections 213 and 217 are null and void if Substitute House Bill 2278 or a similar bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a tool to help the state collect money that is due to them. It will reduce fraud and tax evasion. Currently, there are about one million uniform business identification numbers and only 450,000 registered taxpayers, of these 150,000 have been identified as having resale activity. This permit process will narrow the field of people claiming to resale, making it more enforceable and enhancing collection of the tax. There is substantial misuse of resale certificates in the construction industry, and businesses that do misuse have an unfair competitive advantage since they did not pay sales tax. This bill will help eliminate that advantage.

This bill includes recommendations from the Underground Economy Task Force. There will be some administrative burdens with this bill; however, the Office of Financial Management and the Department will work together to make it as efficient as possible.

(With concerns) This would be an appropriate issue for the Underground Economy Task Force. There is currently a bill before the Legislature to continue the Task Force, which expires in July 2009. This way they will be able to bring the stakeholders together at the table and get a more thought out bill.

(Opposed) This bill has been fast-tracked through the legislative process and it needs a lot of work. Instead of using education, audits, and a simplified tax code to help solve this problem, they are implementing an entirely new system. This bill does not solve the problem. It only creates more confusion, adds more complexity to construction taxes, and punishes those who do comply, while those who do not will find another way to not pay the sales tax.

Several construction business do not have the accounting software or training to handle this, which will cost companies money. This bill has construction companies paying the sales tax up front, which will force them to have to borrow more money from banks, which is difficult in this economic climate. A good cash flow is extremely important, especially for small businesses, to do construction jobs and this bill only makes it more difficult for these companies to do more projects. The immediate forecast of the construction industry is low and this bill only hinders any economic progress that could be made.

Persons Testifying: (In support) Julie Murrary, Office of Financial Management;

(With concerns) David Johnson, Washington State Building Trades.

(Opposed) Amber Carter, Association of Washington Business; Sydney Perrizo, Acme Concrete; Rick Hadley, Quigg Brothers, Inc.; Dave Rutherford, WPC, Inc.; Darcy Kooiker, Berntson Porter and Company; Rick Slunaker, Association General Contractors; Mike Frickberg, Mechanical Subcontractors; Aran Buchan, Association Builders and Contractors; Brian Minnich, Building Industry Association of Washington; Carolyn Vares, Roofing Contractors of Washington; Michael Curley, Washington State Electrical Contractors Association; Mark Johnson, Washington Retail Association; Cliff Webster, Architects and Engineers Legislative Council; Gary Smith, Industrial Business Association; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association; and Stan Bowman, American Institute of Architects Washington Council.

Persons Signed In To Testify But Not Testifying: None.