
HOUSE BILL 3154

State of Washington 61st Legislature 2010 Regular Session

By Representatives Kessler, Van De Wege, and Kenney

Read first time 01/29/10. Referred to Committee on Finance.

1 AN ACT Relating to the sales and use taxation of florists;
2 reenacting and amending RCW 82.32.730; and providing an effective date.

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

4 **Sec. 1.** RCW 82.32.730 and 2009 c 535 s 704 and 2009 c 289 s 1 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in subsections (5) through (8) of this
7 section, for purposes of collecting or paying sales or use taxes to the
8 appropriate jurisdictions, all sales at retail (~~shall be~~) are sourced
9 in accordance with this subsection and subsections (2) through (4) of
10 this section.

11 (a) When tangible personal property, an extended warranty, a
12 digital good, digital code, digital automated service, or other service
13 defined as a retail sale under RCW 82.04.050 is received by the
14 purchaser at a business location of the seller, the sale is sourced to
15 that business location.

16 (b) When the tangible personal property, extended warranty, digital
17 good, digital code, digital automated service, or other service defined
18 as a retail sale under RCW 82.04.050 is not received by the purchaser
19 at a business location of the seller, the sale is sourced to the

1 location where receipt by the purchaser or the purchaser's donee,
2 designated as such by the purchaser, occurs, including the location
3 indicated by instructions for delivery to the purchaser or donee, known
4 to the seller.

5 (c) When (a) and (b) of this subsection do not apply, the sale is
6 sourced to the location indicated by an address for the purchaser that
7 is available from the business records of the seller that are
8 maintained in the ordinary course of the seller's business when use of
9 this address does not constitute bad faith.

10 (d) When (a), (b), and (c) of this subsection do not apply, the
11 sale is sourced to the location indicated by an address for the
12 purchaser obtained during the consummation of the sale, including the
13 address of a purchaser's payment instrument, if no other address is
14 available, when use of this address does not constitute bad faith.

15 (e) When (a), (b), (c), or (d) of this subsection do not apply,
16 including the circumstance where the seller is without sufficient
17 information to apply those provisions, then the location (~~(shall be)~~)
18 is determined by the address from which tangible personal property was
19 shipped, from which the digital good or digital code or the computer
20 software delivered electronically was first available for transmission
21 by the seller, or from which the extended warranty or digital automated
22 service or other service defined as a retail sale under RCW 82.04.050
23 was provided, disregarding for these purposes any location that merely
24 provided the digital transfer of the product sold.

25 (2) The lease or rental of tangible personal property, other than
26 property identified in subsection (3) or (4) of this section, (~~(shall~~
27 ~~be)~~) is sourced as provided in this subsection.

28 (a) For a lease or rental that requires recurring periodic
29 payments, the first periodic payment is sourced the same as a retail
30 sale in accordance with subsection (1) of this section. Periodic
31 payments made subsequent to the first payment are sourced to the
32 primary property location for each period covered by the payment. The
33 primary property location (~~(shall be)~~) is as indicated by an address
34 for the property provided by the lessee that is available to the lessor
35 from its records maintained in the ordinary course of business, when
36 use of this address does not constitute bad faith. The property
37 location is not altered by intermittent use at different locations,

1 such as use of business property that accompanies employees on business
2 trips and service calls.

3 (b) For a lease or rental that does not require recurring periodic
4 payments, the payment is sourced the same as a retail sale in
5 accordance with subsection (1) of this section.

6 (c) This subsection (2) does not affect the imposition or
7 computation of sales or use tax on leases or rentals based on a lump
8 sum or accelerated basis, or on the acquisition of property for lease.

9 (3) The lease or rental of motor vehicles, trailers, semitrailers,
10 or aircraft that do not qualify as transportation equipment (~~shall~~
11 ~~be~~) is sourced as provided in this subsection.

12 (a) For a lease or rental that requires recurring periodic
13 payments, each periodic payment is sourced to the primary property
14 location. The primary property location is as indicated by an address
15 for the property provided by the lessee that is available to the lessor
16 from its records maintained in the ordinary course of business, when
17 use of this address does not constitute bad faith. This location is
18 not altered by intermittent use at different locations.

19 (b) For a lease or rental that does not require recurring periodic
20 payments, the payment is sourced the same as a retail sale in
21 accordance with subsection (1) of this section.

22 (c) This subsection does not affect the imposition or computation
23 of sales or use tax on leases or rentals based on a lump sum or
24 accelerated basis, or on the acquisition of property for lease.

25 (4) The retail sale, including lease or rental, of transportation
26 equipment (~~shall be~~) is sourced the same as a retail sale in
27 accordance with subsection (1) of this section.

28 (5)(a) This subsection applies to direct mail transactions not
29 governed by subsection (6) of this section. A purchaser of direct mail
30 that is not a holder of a direct pay permit (~~shall~~) must provide to
31 the seller in conjunction with the purchase either a direct mail form
32 or information that shows the jurisdictions to which the direct mail is
33 delivered to recipients.

34 (i) Upon receipt of the direct mail form, the seller is relieved of
35 all obligations to collect, pay, or remit the applicable tax and the
36 purchaser is obligated to pay or remit the applicable tax on a direct
37 pay basis. A direct mail form (~~shall~~) remains in effect for all

1 future sales of direct mail by the seller to the purchaser until it is
2 revoked in writing.

3 (ii) Upon receipt of information from the purchaser showing the
4 jurisdictions to which the direct mail is delivered to recipients, the
5 seller (~~shall~~) must collect the tax according to the delivery
6 information provided by the purchaser. In the absence of bad faith,
7 the seller is relieved of any further obligation to collect tax on any
8 transaction where the seller has collected tax pursuant to the delivery
9 information provided by the purchaser.

10 (b) If the purchaser of direct mail does not have a direct pay
11 permit and does not provide the seller with either a direct mail form
12 or delivery information as required by (a) of this subsection, the
13 seller (~~shall~~) must collect the tax according to subsection (1)(e) of
14 this section. This subsection does not limit a purchaser's obligation
15 for sales or use tax to any state to which the direct mail is
16 delivered.

17 (c) If a purchaser of direct mail provides the seller with
18 documentation of direct pay authority, the purchaser is not required to
19 provide a direct mail form or delivery information to the seller.

20 (6)(a) This subsection applies only with respect to transactions in
21 which direct mail is delivered or distributed from a location within
22 this state to a location within this state. If the purchaser of direct
23 mail provides the seller with a direct pay permit or an exemption
24 certificate claiming direct mail, the seller is relieved of all
25 obligations to collect, pay, or remit the applicable tax and the
26 purchaser is obligated to pay or remit the applicable tax on a direct
27 pay basis. An exemption certificate claiming direct mail will remain
28 in effect for all future sales of direct mail by the seller to the
29 purchaser until it is revoked in writing.

30 (b)(i) Except as provided in (b)(ii) of this subsection (6), if the
31 purchaser of direct mail does not provide the seller with a direct pay
32 permit or an exemption certificate claiming direct mail, the seller
33 must collect the tax according to subsection (1)(e) of this section.

34 (ii) To the extent the seller knows that a portion of the sale of
35 direct mail will be delivered or distributed to locations in another
36 state, the seller must collect the tax on that portion according to
37 subsection (5) of this section.

1 (7) The following are sourced to the location at or from which
2 delivery is made to the consumer:

3 (a) A retail sale of watercraft;

4 (b) A retail sale of a modular home, manufactured home, or mobile
5 home;

6 (c) A retail sale, excluding the lease and rental, of a motor
7 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
8 transportation equipment; and

9 (d) Florist sales. In the case of a sale in which one florist
10 takes an order from a customer and then communicates that order to
11 another florist who delivers the items purchased to the place
12 designated by the customer, the location at or from which the delivery
13 is made to the consumer is deemed to be the location of the florist
14 originally taking the order.

15 (8)(a) A retail sale of the providing of telecommunications
16 services, as that term is defined in RCW 82.04.065, is sourced in
17 accordance with RCW 82.32.520.

18 (b) A retail sale of the providing of ancillary services, as that
19 term is defined in RCW 82.04.065, is sourced to the customer's place of
20 primary use of the telecommunications services in respect to which the
21 ancillary services are associated with or incidental to. The
22 definitions of "customer" and "place of primary use" in RCW 82.32.520
23 apply to this subsection (8)(b).

24 (9) The definitions in this subsection apply throughout this
25 section.

26 (a) "Delivered electronically" means delivered to the purchaser by
27 means other than tangible storage media.

28 (b) "Direct mail" means printed material delivered or distributed
29 by United States mail or other delivery service to a mass audience or
30 to addressees on a mailing list provided by the purchaser or at the
31 direction of the purchaser when the cost of the items are not billed
32 directly to the recipients. "Direct mail" includes tangible personal
33 property supplied directly or indirectly by the purchaser to the direct
34 mail seller for inclusion in the package containing the printed
35 material. "Direct mail" does not include multiple items of printed
36 material delivered to a single address.

37 (c) "Florist sales" means the retail sale of tangible personal
38 property by a florist. For purposes of this subsection (9)(c),

1 "florist" means a person (~~(whose primary))~~ with at least twenty-five
2 percent of its business activity (~~(is))~~ related to the retail sale of
3 fresh cut flowers, potted ornamental plants, floral arrangements,
4 floral bouquets, wreaths, or any similar products, used for decorative
5 and not landscaping purposes, and the person derives a portion of its
6 gross income of the business by delivering floral products ordered by
7 a customer through another company.

8 (d) "Receive" and "receipt" mean taking possession of tangible
9 personal property, making first use of digital automated services or
10 other services, or taking possession or making first use of digital
11 goods or digital codes, whichever comes first. "Receive" and "receipt"
12 do not include possession by a shipping company on behalf of the
13 purchaser.

14 (e) "Transportation equipment" means:

15 (i) Locomotives and railcars that are used for the carriage of
16 persons or property in interstate commerce;

17 (ii) Trucks and truck tractors with a gross vehicle weight rating
18 of ten thousand one pounds or greater, trailers, semitrailers, or
19 passenger buses that are:

20 (A) Registered through the international registration plan; and

21 (B) Operated under authority of a carrier authorized and
22 certificated by the United States department of transportation or
23 another federal authority to engage in the carriage of persons or
24 property in interstate commerce;

25 (iii) Aircraft that are operated by air carriers authorized and
26 certificated by the United States department of transportation or
27 another federal or foreign authority to engage in the carriage of
28 persons or property in interstate or foreign commerce; or

29 (iv) Containers designed for use on and component parts attached or
30 secured on the items described in (e)(i) through (iii) of this
31 subsection.

32 (10) In those instances where there is no obligation on the part of
33 a seller to collect or remit this state's sales or use tax, the use of
34 tangible personal property, digital good, digital code, or of a digital
35 automated service or other service, subject to use tax, is sourced to
36 the place of first use in this state. The definition of use in RCW

1 82.12.010 applies to this subsection.

2 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2010.

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