

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5566

61st Legislature
2009 Regular Session

Passed by the Senate April 20, 2009
YEAS 42 NAYS 4

President of the Senate

Passed by the House April 8, 2009
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5566** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5566

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Regala and Prentice; by request of Department of Revenue)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to harmonizing excise tax statutes with the
2 streamlined sales and use tax agreement in regards to direct sellers,
3 telecommunications ancillary services, commercial parking taxes, and
4 exemption certificates; amending RCW 82.32.730, 82.08.050, 82.02.230,
5 and 82.32.291; and adding a new section to chapter 82.32 RCW.

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

7 **Sec. 1.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to read
8 as follows:

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

14 (a) When tangible personal property, an extended warranty, or a
15 service defined as a retail sale under RCW 82.04.050 is received by the
16 purchaser at a business location of the seller, the sale is sourced to
17 that business location.

18 (b) When the tangible personal property, extended warranty, or a
19 service defined as a retail sale under RCW 82.04.050 is not received by

1 the purchaser at a business location of the seller, the sale is sourced
2 to the location where receipt by the purchaser or the purchaser's
3 donee, designated as such by the purchaser, occurs, including the
4 location indicated by instructions for delivery to the purchaser or
5 donee, known to the seller.

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

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

16 (e) When (a), (b), (c), or (d) of this subsection do not apply,
17 including the circumstance where the seller is without sufficient
18 information to apply those provisions, then the location shall be
19 determined by the address from which tangible personal property was
20 shipped, from which the digital good or the computer software delivered
21 electronically was first available for transmission by the seller, or
22 from which the extended warranty or service defined as a retail sale
23 under RCW 82.04.050 was provided, disregarding for these purposes any
24 location that merely 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 be
27 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 as indicated by an address for the
34 property provided by the lessee that is available to the lessor from
35 its records maintained in the ordinary course of business, when use of
36 this address does not constitute bad faith. The property location is
37 not altered by intermittent use at different locations, such as use of

1 business property that accompanies employees on business trips and
2 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 be
11 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 sourced the same as a retail sale in accordance with
27 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 provide to the seller
31 in conjunction with the purchase either a direct mail form or
32 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 remain in effect for all future

1 sales of direct mail by the seller to the purchaser until it is revoked
2 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 collect the tax according to the delivery information
6 provided by the purchaser. In the absence of bad faith, the seller is
7 relieved of any further obligation to collect tax on any transaction
8 where the seller has collected tax pursuant to the delivery information
9 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 collect the tax according to subsection (1)(e) of this
14 section. This subsection does not limit a purchaser's obligation for
15 sales or use tax to any state to which the direct mail is delivered.

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

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

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

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

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

1 (a) A retail sale of watercraft;
2 (b) A retail sale of a modular home, manufactured home, or mobile
3 home;
4 (c) A retail sale, excluding the lease and rental, of a motor
5 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
6 transportation equipment; and
7 (d) Florist sales. In the case of a sale in which one florist
8 takes an order from a customer and then communicates that order to
9 another florist who delivers the items purchased to the place
10 designated by the customer, the location at or from which the delivery
11 is made to the consumer is deemed to be the location of the florist
12 originally taking the order.

13 ~~((+7))~~ (8)(a) A retail sale of the providing of telecommunications
14 services ~~((or ancillary services))~~, as ~~((those))~~ that term~~((s are))~~ is
15 defined in RCW 82.04.065, ~~((shall be))~~ is sourced in accordance with
16 RCW 82.32.520.

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

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

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

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

36 (c) "Florist sales" means the retail sale of tangible personal
37 property by a florist. For purposes of this subsection ~~((+8))~~ (9)(c),
38 "florist" means a person whose primary business activity is the retail

1 sale of fresh cut flowers, potted ornamental plants, floral
2 arrangements, floral bouquets, wreaths, or any similar products, used
3 for decorative and not landscaping purposes.

4 (d) "Receive" and "receipt" mean taking possession of tangible
5 personal property, making first use of services, or taking possession
6 or making first use of digital goods, whichever comes first. "Receive"
7 and "receipt" do not include possession by a shipping company on behalf
8 of the purchaser.

9 (e) "Transportation equipment" means:

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

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

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

16 (B) Operated under authority of a carrier authorized and
17 certificated by the United States department of transportation or
18 another federal authority to engage in the carriage of persons or
19 property in interstate commerce;

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

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

27 ((+9)) (10) In those instances where there is no obligation on the
28 part of a seller to collect or remit this state's sales or use tax, the
29 use of tangible personal property or of a service, subject to use tax,
30 is sourced to the place of first use in this state. The definition of
31 use in RCW 82.12.010 applies to this subsection.

32 **Sec. 2.** RCW 82.08.050 and 2007 c 6 s 1202 are each amended to read
33 as follows:

34 (1) The tax hereby imposed shall be paid by the buyer to the
35 seller, and each seller shall collect from the buyer the full amount of
36 the tax payable in respect to each taxable sale in accordance with the

1 schedule of collections adopted by the department pursuant to the
2 provisions of RCW 82.08.060.

3 (2) The tax required by this chapter, to be collected by the
4 seller, shall be deemed to be held in trust by the seller until paid to
5 the department, and any seller who appropriates or converts the tax
6 collected to his or her own use or to any use other than the payment of
7 the tax to the extent that the money required to be collected is not
8 available for payment on the due date as prescribed in this chapter is
9 guilty of a gross misdemeanor.

10 (3) In case any seller fails to collect the tax herein imposed or,
11 having collected the tax, fails to pay it to the department in the
12 manner prescribed by this chapter, whether such failure is the result
13 of his or her own acts or the result of acts or conditions beyond his
14 or her control, he or she shall, nevertheless, be personally liable to
15 the state for the amount of the tax, unless the seller has taken from
16 the buyer a resale certificate under RCW 82.04.470, a copy of a direct
17 pay permit issued under RCW 82.32.087, a direct mail form as provided
18 in RCW 82.32.730(5), an exemption certificate claiming direct mail
19 ((form under)) as provided in RCW 82.32.730((+5+)) (6), or other
20 information required under the streamlined sales and use tax agreement,
21 or information required under rules adopted by the department.

22 (4) Sellers shall not be relieved from personal liability for the
23 amount of the tax unless they maintain proper records of exempt
24 transactions and provide them to the department when requested.

25 (5) Sellers are not relieved from personal liability for the amount
26 of tax if they fraudulently fail to collect the tax or if they solicit
27 purchasers to participate in an unlawful claim of exemption.

28 (6) Sellers are not relieved from personal liability for the amount
29 of tax if they accept an exemption certificate from a purchaser
30 claiming an entity-based exemption if:

31 (a) The subject of the transaction sought to be covered by the
32 exemption certificate is actually received by the purchaser at a
33 location operated by the seller in Washington; and

34 (b) Washington provides an exemption certificate that clearly and
35 affirmatively indicates that the claimed exemption is not available in
36 Washington. Graying out exemption reason types on a uniform form and
37 posting it on the department's web site is a clear and affirmative
38 indication that the grayed out exemptions are not available.

1 (7)(a) Sellers are relieved from personal liability for the amount
2 of tax if they obtain a fully completed exemption certificate or
3 capture the relevant data elements required under the streamlined sales
4 and use tax agreement within ninety days, or a longer period as may be
5 provided by rule by the department, subsequent to the date of sale.

6 (b) If the seller has not obtained an exemption certificate or all
7 relevant data elements required under the streamlined sales and use tax
8 agreement within the period allowed subsequent to the date of sale, the
9 seller may, within one hundred twenty days, or a longer period as may
10 be provided by rule by the department, subsequent to a request for
11 substantiation by the department, either prove that the transaction was
12 not subject to tax by other means or obtain a fully completed exemption
13 certificate from the purchaser, taken in good faith.

14 (c) Sellers are relieved from personal liability for the amount of
15 tax if they obtain a blanket exemption certificate for a purchaser with
16 which the seller has a recurring business relationship. The department
17 may not request from a seller renewal of blanket certificates or
18 updates of exemption certificate information or data elements if there
19 is a recurring business relationship between the buyer and seller. For
20 purposes of this subsection (7)(c), a "recurring business relationship"
21 means at least one sale transaction within a period of twelve
22 consecutive months.

23 (8) The amount of tax, until paid by the buyer to the seller or to
24 the department, shall constitute a debt from the buyer to the seller
25 and any seller who fails or refuses to collect the tax as required with
26 intent to violate the provisions of this chapter or to gain some
27 advantage or benefit, either direct or indirect, and any buyer who
28 refuses to pay any tax due under this chapter is guilty of a
29 misdemeanor.

30 (9) The tax required by this chapter to be collected by the seller
31 shall be stated separately from the selling price in any sales invoice
32 or other instrument of sale. On all retail sales through vending
33 machines, the tax need not be stated separately from the selling price
34 or collected separately from the buyer. For purposes of determining
35 the tax due from the buyer to the seller and from the seller to the
36 department it shall be conclusively presumed that the selling price
37 quoted in any price list, sales document, contract or other agreement
38 between the parties does not include the tax imposed by this chapter,

1 but if the seller advertises the price as including the tax or that the
2 seller is paying the tax, the advertised price shall not be considered
3 the selling price.

4 (10) Where a buyer has failed to pay to the seller the tax imposed
5 by this chapter and the seller has not paid the amount of the tax to
6 the department, the department may, in its discretion, proceed directly
7 against the buyer for collection of the tax, in which case a penalty of
8 ten percent may be added to the amount of the tax for failure of the
9 buyer to pay the same to the seller, regardless of when the tax may be
10 collected by the department; and all of the provisions of chapter 82.32
11 RCW, including those relative to interest and penalties, shall apply in
12 addition; and, for the sole purpose of applying the various provisions
13 of chapter 82.32 RCW, the twenty-fifth day of the month following the
14 tax period in which the purchase was made shall be considered as the
15 due date of the tax.

16 (11) Notwithstanding subsections (1) through (10) of this section,
17 any person making sales is not obligated to collect the tax imposed by
18 this chapter if:

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

- 21 (i) The storage, dissemination, or display of advertising;
- 22 (ii) The taking of orders; or
- 23 (iii) The processing of payments; and

24 (b) The activities are conducted electronically via a web site on
25 a server or other computer equipment located in Washington that is not
26 owned or operated by the person making sales into this state nor owned
27 or operated by an affiliated person. "Affiliated persons" has the same
28 meaning as provided in RCW 82.04.424.

29 (12) Subsection (11) of this section expires when: (a) The United
30 States congress grants individual states the authority to impose sales
31 and use tax collection duties on remote sellers; or (b) it is
32 determined by a court of competent jurisdiction, in a judgment not
33 subject to review, that a state can impose sales and use tax collection
34 duties on remote sellers.

35 (13) For purposes of this section, "seller" includes a certified
36 service provider, as defined in RCW 82.32.020, acting as agent for the
37 seller.

1 **Sec. 3.** RCW 82.02.230 and 2004 c 153 s 405 are each amended to
2 read as follows:

3 (1) There shall be one statewide rate for sales and use taxes
4 imposed at the state level. This subsection does not apply to the
5 taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes
6 imposed on the sale, rental, lease, or use of motor vehicles, aircraft,
7 watercraft, modular homes, manufactured homes, or mobile homes.

8 (2) There shall be one jurisdiction-wide rate for local sales and
9 use taxes imposed at levels below the state level. This subsection
10 does not apply to the taxes imposed by chapter 67.28 RCW, RCW
11 35.21.280, 36.38.010, 36.38.040, 67.40.090, 82.80.030, or 82.14.360, or
12 to taxes imposed on the sale, rental, lease, or use of motor vehicles,
13 aircraft, watercraft, modular homes, manufactured homes, or mobile
14 homes.

15 **Sec. 4.** RCW 82.32.291 and 1993 sp.s. c 25 s 703 are each amended
16 to read as follows:

17 Any person who uses a resale certificate to purchase items or
18 services without payment of sales tax, or who uses a uniform exemption
19 certificate approved by the streamlined sales and use tax agreement
20 governing board to claim a purchase for resale exemption, and who is
21 not entitled to use the resale or exemption certificate for the
22 purchase shall be assessed a penalty of fifty percent of the tax due,
23 in addition to all other taxes, penalties, and interest due, on the
24 improperly purchased item or service. The department may waive the
25 penalty imposed under this section if it finds that the use of the
26 resale or exemption certificate was due to circumstances beyond the
27 taxpayer's control or if the resale or exemption certificate was
28 properly used for purchases for dual purposes. The department shall
29 define by rule what circumstances are considered to be beyond the
30 taxpayer's control.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.32 RCW
32 to read as follows:

33 (1) Notwithstanding any other provision in this chapter, no
34 interest or penalties may be imposed on any taxpayer because of errors
35 in collecting or remitting the correct amount of local sales or use tax
36 arising out of changes in local sales and use tax sourcing rules

1 implemented under RCW 82.14.490 and section 502, chapter 6, Laws of
2 2007 if the taxpayer demonstrates that it made a good faith effort to
3 comply with the sourcing rules.

4 (2) The relief from penalty and interest provided by subsection (1)
5 of this section only applies to taxpayers with a gross income of the
6 business of less than five hundred thousand dollars in the prior
7 calendar year.

8 (3) The relief from penalty and interest provided by subsection (1)
9 of this section does not apply with respect to sales occurring after
10 December 31, 2012.

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