

HOUSE BILL REPORT

HB 2128

As Reported by House Committee On: Ways & Means

Title: An act relating to clarifying the sales tax exemption for local telephone service.

Brief Description: Clarifying the sales tax exemption for local telephone service.

Sponsors: Representative Hunter; by request of Department of Revenue.

Brief History:

Committee Activity:

Ways & Means: 11/28/11 [DP].

Brief Summary of Bill

- Clarifies that the state and local retail sales tax exemption for residential telephone services is limited to telephone services regulated by the Washington Utilities and Transportation Commission.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 16 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hudgins, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Schmick and Wilcox.

Staff: Jeffrey Mitchell (786-7139).

Background:

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and digital products and some services. A retail sale is a sale to the final consumer or end user of the

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property, digital product, or service. If retail sales taxes were not collected when the property, digital products, or services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in this state. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3 percent, depending on the location. The average local tax rate is 2.4 percent, for an average combined state and local tax rate of 8.9 percent.

In 1983 state and local retail sales tax was extended to telephone services; however, an exemption was provided for individuals "subscribing to a residential class of telephone service." The Department of Revenue (DOR) has interpreted this exemption to apply only to residential telephone service that is regulated by the Washington Utilities and Transportation Commission (UTC). The UTC regulates the rates and services of telephone companies providing landline telephone services in Washington; however, the UTC does not regulate cable services, cellular phone services, voice over internet protocol services, or internet service provider services.

In 2007 the DOR assessed Sprint Spectrum LP (Sprint) with retail sales tax on wireless telephone services sold to non-business customers for the audit period July 1, 1999, through December 31, 2002. (Several other taxes were also in dispute.) The Board of Tax Appeals (BTA) upheld the assessment. However, on April 8, 2011, a Washington superior court reversed the decision by the BTA by ruling that Sprint's sales of cellular telephone services to non-business customers qualifies for the residential telephone service exemption.

Summary of Bill:

The state and local retail sales tax exemption for certain residential telephone services is clarified to only apply to telephone services regulated by the Washington Utilities and Transportation Commission. The change applies retroactively to any prior tax period open for assessment or refund, as well as prospectively.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The court decision brings into question a long-standing interpretation of the residential telephone service exemption. If the court's ruling is upheld, cell phone services and voice over internet protocol services will be exempt from sales tax. This will result in a substantial fiscal impact for the state as well as local governments. The Department of Revenue has always interpreted the exemption as applying only to landline residential service subject to regulatory tariff. Back in 1983, when the exemption was originally enacted, there

were a limited number of options for local phone service. The intent was to maintain affordable local residential phone service. This bill does not change any prior tax treatment or change the tax code in any other way.

(Opposed) The bill removes the sales tax exemption for residential telephone service provided by interconnected wireline service providers that do not file a tariff with the Washington Utilities and Transportation Commission. This includes cable companies providing this service. This will result in a new tax on residential telephone service. This will increase the cost for approximately 800,000 customers served by cable companies. The bill creates an artificial competitive disparity of providers of the same service. An amendment has been prepared to correct this disparity. Competitive neutrality should be the goal. Like experiences should be taxed the same. We have been careful not to cause a revenue loss to state or local governments while the regulatory treatment of voice over internet protocol services provided by cable companies is determined. We have been paying the same taxes and regulatory fees as incumbents and should have the same tax exemptions.

Persons Testifying: (In support) Drew Shirk, Washington State Department of Revenue; and Victoria Lincoln, Association of Washington Cities.

(Opposed) Ron Main, Executive Director, Broadband Communications Association; and Rhonda Weaver, Comcast.

Persons Signed In To Testify But Not Testifying: None.