

HOUSE BILL REPORT

HB 2619

As Reported by House Committee On: Ways & Means

Title: An act relating to clarifying that sellers are required to separately state retail sales tax on any instrument of sale provided to the buyer when the seller advertises that tax is included in the selling price or that the seller is paying the tax.

Brief Description: Clarifying that sellers are required to separately state retail sales tax on any instrument of sale provided to the buyer when the seller advertises that tax is included in the selling price or that the seller is paying the tax.

Sponsors: Representatives Hansen and Hunter; by request of Department of Revenue.

Brief History:

Committee Activity:

Ways & Means: 1/30/12, 2/1/12 [DP].

Brief Summary of Bill

- Clarifies that a seller must separately state retail sales tax on any instrument of sale if the seller is advertising the selling price as including sales tax.

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 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Parker, Ross, Schmick and Wilcox.

Staff: Jeffrey Mitchell (786-7139).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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, digital products, and some services. A retail sale is a sale to the final consumer or end user of the 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, 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 percent, for an average combined state and local tax rate of 8.5 percent.

The amount of sales tax due on a transaction is determined by multiplying the selling price by the tax rate. The "selling price" is defined to mean the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital products, or other services defined as a "retail sale" are sold.

Generally, state law requires a seller to state sales tax separately from the selling price on any sales invoice or other instrument of sale. Furthermore, it is usually assumed that the price quoted in a price list, sales document, contract, or other agreement represents the selling price before sales tax is applied. However, if the seller advertises the price as including the sales tax, or that the seller is paying the sales tax, the advertised price will not be considered the selling price.

Some sellers advertise prices as including tax but fail to adequately separate the sales tax and selling price on the document of sale. In a recent Washington superior court decision, the court ruled that the Department of Revenue could not consider the selling price to be the amount received by the seller if the seller adequately indicated that the advertised price includes sales tax. As an example, if the sales tax rate is assumed to be 10 percent, on a \$100 sale, the business will register a sale of approximately \$91 and tax of \$9. If the full \$100 is considered to be the selling price, then the sales tax would be \$10.

Summary of Bill:

Sellers are required to separately state retail sales tax on any instrument of sale if the seller advertises that the price includes sales tax.

The changes in the bill apply prospectively as well as retroactively to tax periods that are open for assessment or refund.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is Department of Revenue (DOR) request legislation. This bill clarifies existing law. The standard in this bill has been in place since 1985 in the DOR regulations. This bill provides important consumer protection because if sales tax is not separately stated, a business could be liable for use tax on items that it purchased. The court decision essentially held that a seller is required to separately state sales tax but there is no consequence if they do not. There is also a business and occupation tax impact. This bill eliminates confusion when businesses are audited.

(Opposed) None.

Persons Testifying: Representative Hansen, prime sponsor; and Drew Shirk, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.