

SENATE BILL REPORT

SB 5763

As of February 22, 2011

Title: An act relating to amending the existing nonresident retail sales tax exemption.

Brief Description: Amending the existing nonresident retail sales tax exemption.

Sponsors: Senators Ranker, Ericksen, Morton, Fraser and Shin; by request of Department of Revenue.

Brief History:

Committee Activity: Ways & Means: 2/15/11.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: Retail sales and use taxes are imposed by the state, cities, and 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.

A sales tax exemption is allowed to residents of a state, possession, or Canadian province that does not impose a retail sales tax or use tax of 3 percent or more on purchases of goods for use outside the state. The exemption does not apply to items or services consumed in the state such as hotel stays or meals at restaurants. Retailers are not required to make tax-exempt sales to qualifying nonresidents. A vendor may choose to collect sales tax on purchases made by qualifying nonresidents or to sell merchandise tax free.

Beginning July 1, 2010, the provinces of British Columbia and Ontario implemented a Harmonized Sales Tax (HST), which replaced their provincial sales taxes. The Department of Revenue has determined that, despite its name, the HST is not a retail sales tax but rather a value added tax. Consequently, the department took the position that residents of British Columbia and Ontario would become eligible for the nonresident sales tax exemption effective July 1, 2010.

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.

The City of Bellingham and Whatcom County brought suit against the department, arguing that residents of British Columbia and other provinces that have implemented an HST are not entitled to the nonresident exemption. On July 16, 2010, a Skagit County Superior Court judge issued a preliminary injunction requiring the department to advise retailers not to grant the nonresident retail sales tax exemption to residents of British Columbia, Nova Scotia, New Brunswick, Newfoundland and Labrador, Ontario, and Quebec.

Summary of Bill: Residents of any state, possession, territory or province of Canada may not take the nonresident sales tax exemption if their place of residence imposes sales tax, use tax, value added tax, gross receipts tax or similar generally applicable tax of 3 percent or more. This is an expansion of the requirement to qualify for the exemption as currently it is limited to only sales and use taxes of less than 3 percent in order to take the exemption.

Appropriation: None.

Fiscal Note: Requested on February 10, 2011.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.

Staff Summary of Public Testimony: PRO: This clarifies that any tax at retail that exceeds 3 percent is the equivalent of our retail sales tax. This was originally intended to exempt states and provinces that don't have a sales tax so that Washington business could compete. This is not a new tax, but would keep the status quo. British Columbia had a 12 percent tax and still has a 12 percent tax. It is just structured differently. We don't think the increased sales following the judges ruling was sustainable. From the business communities perspective this should stay intact. This really is just a matter of fairness.

CON: When the tax policy changed it was a benefit to many local businesses, and we would like it to remain. There was a tremendous growth in sales, not just up north, but all over the state. We ask that we do not move the bill forward until we know what the impact is to Washington. In the two weeks that Canadians could buy goods sales tax exempt, our businesses benefitted a great deal. Macy's didn't have too long to promote the exemption, and we feel if we did it would have had an even greater effect.

Persons Testifying: PRO: Ken Oplinger, Bellingham/Whatcom Chamber of Commerce; Drew Shirk, Department of Revenue.

CON: Mark Johnson, Washington Retail Association; Charles Miller, Macy's.