

FINAL BILL REPORT

SB 5763

C 7 L 11
Synopsis as Enacted

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

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

Senate Committee on Ways & Means

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 (DOR) 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.

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 DOR 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.

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.

Summary: 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.

Votes on Final Passage:

Senate	46	1
House	95	0

Effective: July 1, 2011.