
ENGROSSED SUBSTITUTE HOUSE BILL 1346

State of Washington

62nd Legislature

2011 Regular Session

By House Ways & Means (originally sponsored by Representative Hunter;
by request of Department of Revenue)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to making changes to laws administered by the
2 department of revenue that do not create any new or broaden any
3 existing tax preference as defined in RCW 43.136.021 or increase any
4 person's tax burden; amending RCW 82.04.220, 82.12.040, and 43.06.400;
5 and repealing RCW 82.16.140 and 82.32.570.

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

7 PART I

8 TECHNICAL CORRECTIONS AND CLARIFICATION

9 Sec. 101. RCW 82.04.220 and 2010 1st sp.s. c 23 s 102 are each
10 amended to read as follows:

11 (1) There is levied and collected from every person that has a
12 substantial nexus with this state a tax for the act or privilege of
13 engaging in business activities. The tax is measured by the
14 application of rates against value of products, gross proceeds of
15 sales, or gross income of the business, as the case may be.

16 (2) A person who has a substantial nexus with this state in any tax
17 year under the provisions of RCW 82.04.067 will be deemed to have a
18 substantial nexus with this state for the following tax year.

1 NEW SECTION. **Sec. 102.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 82.16.140 (Renewable energy system cost recovery--Report to
4 legislature) and 2010 c 202 s 4 & 2005 c 300 s 5; and

5 (2) RCW 82.32.570 (Smelter tax incentives--Goals--Annual report)
6 and 2010 1st sp.s. c 2 s 6, 2006 c 182 s 6, & 2004 c 24 s 14.

7 **Sec. 103.** RCW 82.12.040 and 2010 c 106 s 221 are each amended to
8 read as follows:

9 (1) Every person who maintains in this state a place of business or
10 a stock of goods, or engages in business activities within this state,
11 shall obtain from the department a certificate of registration, and
12 shall, at the time of making sales of tangible personal property,
13 digital goods, digital codes, digital automated services, extended
14 warranties, or sales of any service defined as a retail sale in RCW
15 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
16 either possession or title, or both, of tangible personal property for
17 use in this state, collect from the purchasers or transferees the tax
18 imposed under this chapter. The tax to be collected under this section
19 must be in an amount equal to the purchase price multiplied by the rate
20 in effect for the retail sales tax under RCW 82.08.020. For the
21 purposes of this chapter, the phrase "maintains in this state a place
22 of business" shall include the solicitation of sales and/or taking of
23 orders by sales agents or traveling representatives. For the purposes
24 of this chapter, "engages in business activity within this state"
25 includes every activity which is sufficient under the Constitution of
26 the United States for this state to require collection of tax under
27 this chapter. The department must in rules specify activities which
28 constitute engaging in business activity within this state, and must
29 keep the rules current with future court interpretations of the
30 Constitution of the United States.

31 (2) Every person who engages in this state in the business of
32 acting as an independent selling agent for persons who do not hold a
33 valid certificate of registration, and who receives compensation by
34 reason of sales of tangible personal property, digital goods, digital
35 codes, digital automated services, extended warranties, or sales of any
36 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),
37 (3)(a), or (6)(b), of his or her principals for use in this state,

1 must, at the time such sales are made, collect from the purchasers the
2 tax imposed on the purchase price under this chapter, and for that
3 purpose is deemed a retailer as defined in this chapter.

4 (3) The tax required to be collected by this chapter is deemed to
5 be held in trust by the retailer until paid to the department, and any
6 retailer who appropriates or converts the tax collected to the
7 retailer's own use or to any use other than the payment of the tax
8 provided herein to the extent that the money required to be collected
9 is not available for payment on the due date as prescribed is guilty of
10 a misdemeanor. In case any seller fails to collect the tax herein
11 imposed or having collected the tax, fails to pay the same to the
12 department in the manner prescribed, whether such failure is the result
13 of the seller's own acts or the result of acts or conditions beyond the
14 seller's control, the seller is nevertheless personally liable to the
15 state for the amount of such tax, unless the seller has taken from the
16 buyer a copy of a direct pay permit issued under RCW 82.32.087.

17 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
18 transferee, either directly or indirectly, and by whatever means, all
19 or any part of the tax levied by this chapter is guilty of a
20 misdemeanor.

21 (5) Notwithstanding subsections (1) through (4) of this section,
22 any person making sales is not obligated to collect the tax imposed by
23 this chapter if:

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

- 26 (i) The storage, dissemination, or display of advertising;
- 27 (ii) The taking of orders; or
- 28 (iii) The processing of payments; and

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

34 (6) Subsection (5) of this section expires when: (a) The United
35 States congress grants individual states the authority to impose sales
36 and use tax collection duties on remote sellers; or (b) it is
37 determined by a court of competent jurisdiction, in a judgment not

1 subject to review, that a state can impose sales and use tax collection
2 duties on remote sellers.

3 (7) Notwithstanding subsections (1) through (4) of this section,
4 any person making sales is not obligated to collect the tax imposed by
5 this chapter if the person would have been obligated to collect retail
6 sales tax on the sale absent a specific exemption provided in chapter
7 82.08 RCW, and there is no corresponding use tax exemption in this
8 chapter. Nothing in this subsection (7) may be construed as relieving
9 purchasers from liability for reporting and remitting the tax due under
10 this chapter directly to the department.

11 (8) Notwithstanding subsections (1) through (4) of this section,
12 any person making sales is not obligated to collect the tax imposed by
13 this chapter if the state is prohibited under the Constitution or laws
14 of the United States from requiring the person to collect the tax
15 imposed by this chapter.

16 PART II

17 TEMPORARILY NARROWING THE SCOPE OF THE EXEMPTION STUDY

18 **Sec. 201.** RCW 43.06.400 and 1999 c 372 s 5 are each amended to
19 read as follows:

20 (1) Beginning in January 1984, and in January of every fourth year
21 thereafter, the department of revenue (~~shall~~) must submit to the
22 legislature prior to the regular session a listing of the amount of
23 reduction for the current and next biennium in the revenues of the
24 state or the revenues of local government collected by the state as a
25 result of tax exemptions. The listing (~~shall~~) must include an
26 estimate of the revenue lost from the tax exemption, the purpose of the
27 tax exemption, the persons, organizations, or parts of the population
28 which benefit from the tax exemption, and whether or not the tax
29 exemption conflicts with another state program. The listing (~~shall~~)
30 must include but not be limited to the following revenue sources:

31 (~~1~~) (a) Real and personal property tax exemptions under Title
32 84 RCW;

33 (~~2~~) (b) Business and occupation tax exemptions, deductions, and
34 credits under chapter 82.04 RCW;

35 (~~3~~) (c) Retail sales and use tax exemptions under chapters
36 82.08, 82.12, and 82.14 RCW;

1 (~~(4)~~) (d) Public utility tax exemptions and deductions under
2 chapter 82.16 RCW;
3 (~~(5)~~) (e) Food fish and shellfish tax exemptions under chapter
4 82.27 RCW;
5 (~~(6)~~) (f) Leasehold excise tax exemptions under chapter 82.29A
6 RCW;
7 (~~(7)~~) (g) Motor vehicle and special fuel tax exemptions and
8 refunds under chapters 82.36 and 82.38 RCW;
9 (~~(8)~~) (h) Aircraft fuel tax exemptions under chapter 82.42 RCW;
10 (~~(9)~~) (i) Motor vehicle excise tax exclusions under chapter 82.44
11 RCW; and
12 (~~(10)~~) (j) Insurance premiums tax exemptions under chapter 48.14
13 RCW.
14 (2) The department of revenue (~~shall~~) must prepare the listing
15 required by this section with the assistance of any other agencies or
16 departments as may be required.
17 (3) The department of revenue (~~shall~~) must present the listing to
18 the ways and means committees of each house in public hearings.
19 (4) Beginning in January 1984, and every four years thereafter the
20 governor is requested to review the report from the department of
21 revenue and may submit recommendations to the legislature with respect
22 to the repeal or modification of any tax exemption. The ways and means
23 committees of each house and the appropriate standing committee of each
24 house (~~shall~~) must hold public hearings and take appropriate action
25 on the recommendations submitted by the governor.
26 (5) As used in this section, "tax exemption" means an exemption,
27 exclusion, or deduction from the base of a tax; a credit against a tax;
28 a deferral of a tax; or a preferential tax rate.
29 (6) For purposes of the listing due in January 2012, the department
30 of revenue does not have to prepare or update the listing with respect
31 to any tax exemption that would not be likely to increase state revenue
32 if the exemption was repealed or otherwise eliminated.

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