
HOUSE BILL 1848

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Tharinger and Van De Wege

1 AN ACT Relating to the sales and use taxation of florists; amending
2 RCW 82.32.730; providing an effective date; and declaring an emergency.

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

4 **Sec. 1.** RCW 82.32.730 and 2010 c 106 s 229 are each amended to
5 read as follows:

6 (1) Except as provided in subsections (5) through (8) of this
7 section, for purposes of collecting or paying sales or use taxes to the
8 appropriate jurisdictions, all sales at retail (~~shall be~~) are sourced
9 in accordance with this subsection and subsections (2) through (4) of
10 this section.

11 (a) When tangible personal property, an extended warranty, a
12 digital good, digital code, digital automated service, or other service
13 defined as a retail sale under RCW 82.04.050 is received by the
14 purchaser at a business location of the seller, the sale is sourced to
15 that business location.

16 (b) When the tangible personal property, extended warranty, digital
17 good, digital code, digital automated service, or other service defined
18 as a retail sale under RCW 82.04.050 is not received by the purchaser
19 at a business location of the seller, the sale is sourced to the

1 location where receipt by the purchaser or the purchaser's donee,
2 designated as such by the purchaser, occurs, including the location
3 indicated by instructions for delivery to the purchaser or donee, known
4 to the seller.

5 (c) When (a) and (b) of this subsection do not apply, the sale is
6 sourced to the location indicated by an address for the purchaser that
7 is available from the business records of the seller that are
8 maintained in the ordinary course of the seller's business when use of
9 this address does not constitute bad faith.

10 (d) When (a), (b), and (c) of this subsection do not apply, the
11 sale is sourced to the location indicated by an address for the
12 purchaser obtained during the consummation of the sale, including the
13 address of a purchaser's payment instrument, if no other address is
14 available, when use of this address does not constitute bad faith.

15 (e) When (a), (b), (c), or (d) of this subsection do not apply,
16 including the circumstance where the seller is without sufficient
17 information to apply those provisions, then the location (~~(shall be)~~)
18 is determined by the address from which tangible personal property was
19 shipped, from which the digital good or digital code or the computer
20 software delivered electronically was first available for transmission
21 by the seller, or from which the extended warranty or digital automated
22 service or other service defined as a retail sale under RCW 82.04.050
23 was provided, disregarding for these purposes any location that merely
24 provided the digital transfer of the product sold.

25 (2) The lease or rental of tangible personal property, other than
26 property identified in subsection (3) or (4) of this section, (~~(shall~~
27 ~~be)~~) is sourced as provided in this subsection.

28 (a) For a lease or rental that requires recurring periodic
29 payments, the first periodic payment is sourced the same as a retail
30 sale in accordance with subsection (1) of this section. Periodic
31 payments made subsequent to the first payment are sourced to the
32 primary property location for each period covered by the payment. The
33 primary property location (~~(shall be)~~) is as indicated by an address
34 for the property provided by the lessee that is available to the lessor
35 from its records maintained in the ordinary course of business, when
36 use of this address does not constitute bad faith. The property
37 location is not altered by intermittent use at different locations,

1 such as use of business property that accompanies employees on business
2 trips and service calls.

3 (b) For a lease or rental that does not require recurring periodic
4 payments, the payment is sourced the same as a retail sale in
5 accordance with subsection (1) of this section.

6 (c) This subsection (2) does not affect the imposition or
7 computation of sales or use tax on leases or rentals based on a lump
8 sum or accelerated basis, or on the acquisition of property for lease.

9 (3) The lease or rental of motor vehicles, trailers, semitrailers,
10 or aircraft that do not qualify as transportation equipment (~~shall~~
11 ~~be~~) is sourced as provided in this subsection.

12 (a) For a lease or rental that requires recurring periodic
13 payments, each periodic payment is sourced to the primary property
14 location. The primary property location is as indicated by an address
15 for the property provided by the lessee that is available to the lessor
16 from its records maintained in the ordinary course of business, when
17 use of this address does not constitute bad faith. This location is
18 not altered by intermittent use at different locations.

19 (b) For a lease or rental that does not require recurring periodic
20 payments, the payment is sourced the same as a retail sale in
21 accordance with subsection (1) of this section.

22 (c) This subsection does not affect the imposition or computation
23 of sales or use tax on leases or rentals based on a lump sum or
24 accelerated basis, or on the acquisition of property for lease.

25 (4) The retail sale, including lease or rental, of transportation
26 equipment (~~shall be~~) is sourced the same as a retail sale in
27 accordance with subsection (1) of this section.

28 (5) This subsection applies to direct mail transactions not
29 governed by subsection (6) of this section.

30 (a) This subsection (5)(a) applies to sales of advertising and
31 promotional direct mail.

32 (i) A purchaser of advertising and promotional direct mail may
33 provide the seller with either:

34 (A) A direct pay permit;

35 (B) A streamlined sales and use tax agreement certificate of
36 exemption claiming direct mail (or other written statement approved,
37 authorized, or accepted by the department); or

1 (C) Information showing the jurisdictions to which the advertising
2 and promotional direct mail is to be delivered to recipients.

3 (ii) If the purchaser provides the permit, certificate, or
4 statement referred to in (a)(i)(A) or (B) of this subsection (5), the
5 seller, in the absence of bad faith, is relieved of all obligations to
6 collect, pay, or remit any tax on any transaction involving advertising
7 and promotional direct mail to which the permit, certificate, or
8 statement applies. The purchaser must source the sale to the
9 jurisdictions to which the advertising and promotional direct mail is
10 to be delivered to the recipients and must report and pay any
11 applicable tax due.

12 (iii) If the purchaser provides the seller information showing the
13 jurisdictions to which the advertising and promotional direct mail is
14 to be delivered to recipients, the seller must source the sale to the
15 jurisdictions to which the advertising and promotional direct mail is
16 to be delivered and must collect and remit the applicable tax. In the
17 absence of bad faith, the seller is relieved of any further obligation
18 to collect any additional tax on the sale of advertising and
19 promotional direct mail where the seller has sourced the sale according
20 to the delivery information provided by the purchaser.

21 (iv) If the purchaser does not provide the seller with any of the
22 items listed in (a)(i)(A), (B), or (C) of this subsection (5), the sale
23 must be sourced according to subsection (1)(e) of this section.

24 (b) This subsection (5)(b) applies to sales of other direct mail.

25 (i) Except as otherwise provided in this subsection (5)(b), sales
26 of other direct mail are sourced in accordance with subsection (1)(c)
27 of this section.

28 (ii) A purchaser of other direct mail may provide the seller with
29 either:

30 (A) A direct pay permit; or

31 (B) A streamlined sales and use tax agreement certificate of
32 exemption claiming direct mail (or other written statement approved,
33 authorized, or accepted by the department).

34 (iii) If the purchaser provides the permit, certificate, or
35 statement referred to in (b)(ii)(A) or (B) of this subsection (5), the
36 seller, in the absence of bad faith, is relieved of all obligations to
37 collect, pay, or remit any tax on any transaction involving other
38 direct mail to which the permit, certificate, or statement applies.

1 Notwithstanding (b)(i) of this subsection (5), the sale must be sourced
2 to the jurisdictions to which the other direct mail is to be delivered
3 to the recipients, and the purchaser must report and pay any applicable
4 tax due.

5 (6)(a) This subsection applies only with respect to transactions in
6 which direct mail is delivered or distributed from a location within
7 this state to a location within this state.

8 (b) If the purchaser of direct mail provides the seller with a
9 direct pay permit or a streamlined sales and use tax agreement
10 certificate of exemption claiming direct mail (or other written
11 statement approved, authorized, or accepted by the department), the
12 seller, in the absence of bad faith, is relieved of all obligations to
13 collect, pay, or remit the applicable tax on any transaction involving
14 direct mail to which the permit, certificate, or statement applies.
15 The purchaser must report and pay any applicable tax due. A
16 streamlined sales and use tax agreement certificate of exemption
17 claiming direct mail will remain in effect for all future sales of
18 direct mail by the seller to the purchaser until it is revoked in
19 writing.

20 (c)(i) Except as provided in (b), (c)(ii), and (c)(iii) of this
21 subsection (6), the seller must collect the tax according to subsection
22 (1)(e) of this section.

23 (ii) To the extent the seller knows that a portion of the sale of
24 direct mail will be delivered or distributed to locations in another
25 state, the seller must collect the tax on that portion according to
26 subsection (5) of this section.

27 (iii) Notwithstanding (c)(i) and (ii) of this subsection (6), a
28 seller may elect to use the provisions of subsection (5) of this
29 section to source all sales of advertising and promotional direct mail.

30 (7) The following are sourced to the location at or from which
31 delivery is made to the consumer:

32 (a) A retail sale of watercraft;

33 (b) A retail sale of a modular home, manufactured home, or mobile
34 home;

35 (c) A retail sale, excluding the lease and rental, of a motor
36 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
37 transportation equipment; and

1 (d) Florist sales. In the case of a sale in which one florist
2 takes an order from a customer and then communicates that order to
3 another florist who delivers the items purchased to the place
4 designated by the customer, the location at or from which the delivery
5 is made to the consumer is deemed to be the location of the florist
6 originally taking the order.

7 (8)(a) A retail sale of the providing of telecommunications
8 services, as that term is defined in RCW 82.04.065, is sourced in
9 accordance with RCW 82.32.520.

10 (b) A retail sale of the providing of ancillary services, as that
11 term is defined in RCW 82.04.065, is sourced to the customer's place of
12 primary use of the telecommunications services in respect to which the
13 ancillary services are associated with or incidental to. The
14 definitions of "customer" and "place of primary use" in RCW 82.32.520
15 apply to this subsection (8)(b).

16 (9) The definitions in this subsection apply throughout this
17 section.

18 (a) "Advertising and promotional direct mail" means printed
19 material that meets the definition of direct mail, the primary purpose
20 of which is to attract public attention to a product, person, business,
21 or organization, or to attempt to sell, popularize, or secure financial
22 support for a product, person, business, or organization. As used in
23 this subsection (9)(a), the word "product" means tangible personal
24 property, a product transferred electronically, or a service.

25 (b) "Delivered electronically" means delivered to the purchaser by
26 means other than tangible storage media.

27 (c) "Direct mail" means printed material delivered or distributed
28 by United States mail or other delivery service to a mass audience or
29 to addressees on a mailing list provided by the purchaser or at the
30 direction of the purchaser when the cost of the items are not billed
31 directly to the recipients. "Direct mail" includes tangible personal
32 property supplied directly or indirectly by the purchaser to the direct
33 mail seller for inclusion in the package containing the printed
34 material. "Direct mail" does not include multiple items of printed
35 material delivered to a single address.

36 (d)(i) "Other direct mail" means any direct mail that is not
37 advertising and promotional direct mail, regardless of whether

1 advertising and promotional direct mail is included in the same
2 mailing. The term includes, but is not limited to:

3 (A) Transactional direct mail that contains personal information
4 specific to the addressee including, but not limited to, invoices,
5 bills, statements of account, and payroll advices;

6 (B) Any legally required mailings including, but not limited to,
7 privacy notices, tax reports, and stockholder reports; and

8 (C) Other nonpromotional direct mail delivered to existing or
9 former shareholders, customers, employees, or agents including, but not
10 limited to, newsletters and informational pieces.

11 (ii) Other direct mail does not include the development of billing
12 information or the provision of any data processing service that is
13 more than incidental.

14 (e) "Florist sales" means the retail sale of tangible personal
15 property by a florist. For purposes of this subsection (9)(e),
16 "florist" means a person (~~(whose primary))~~ with at least twenty-five
17 percent of its business activity (~~(is))~~ related to the retail sale of
18 fresh cut flowers, potted ornamental plants, floral arrangements,
19 floral bouquets, wreaths, or any similar products, used for decorative
20 and not landscaping purposes, and the person derives a portion of its
21 gross income of the business by delivering floral products ordered by
22 a customer through another company.

23 (f) "Receive" and "receipt" mean taking possession of tangible
24 personal property, making first use of digital automated services or
25 other services, or taking possession or making first use of digital
26 goods or digital codes, whichever comes first. "Receive" and "receipt"
27 do not include possession by a shipping company on behalf of the
28 purchaser.

29 (g) "Transportation equipment" means:

30 (i) Locomotives and railcars that are used for the carriage of
31 persons or property in interstate commerce;

32 (ii) Trucks and truck tractors with a gross vehicle weight rating
33 of ten thousand one pounds or greater, trailers, semitrailers, or
34 passenger buses that are:

35 (A) Registered through the international registration plan; and

36 (B) Operated under authority of a carrier authorized and
37 certificated by the United States department of transportation or

1 another federal authority to engage in the carriage of persons or
2 property in interstate commerce;

3 (iii) Aircraft that are operated by air carriers authorized and
4 certificated by the United States department of transportation or
5 another federal or foreign authority to engage in the carriage of
6 persons or property in interstate or foreign commerce; or

7 (iv) Containers designed for use on and component parts attached or
8 secured on the items described in (g)(i) through (iii) of this
9 subsection.

10 (10) In those instances where there is no obligation on the part of
11 a seller to collect or remit this state's sales or use tax, the use of
12 tangible personal property, digital good, digital code, or of a digital
13 automated service or other service, subject to use tax, is sourced to
14 the place of first use in this state. The definition of use in RCW
15 82.12.010 applies to this subsection.

16 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 July 1, 2011.

--- END ---