
HOUSE BILL 2619

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Hansen and Hunter; by request of Department of Revenue

Read first time 01/19/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying that sellers are required to
2 separately state retail sales tax on any instrument of sale provided to
3 the buyer when the seller advertises that tax is included in the
4 selling price or that the seller is paying the tax; amending RCW
5 82.08.050 and 82.08.055; and creating new sections.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature intends to clarify that
8 a seller who advertises the price as including the sales tax or that
9 the seller is paying the sales tax must separately state the amount of
10 sales tax due on any sales invoice or other instrument of sale given to
11 the buyer and that this requirement is a precondition for excluding the
12 tax from the selling price for purposes of determining the proper
13 amount of sales tax to be remitted by the seller to the department of
14 revenue.

15 (2) The legislature finds that failing to separately itemize the
16 sales tax on invoices or other instruments of sale lacks transparency,
17 may have adverse consequences for buyers, may lead to disputes between
18 the department and taxpayers, and may make it more difficult for the

1 department to ensure compliance with sales and use tax laws resulting
2 in reduced tax revenues to the state.

3 (3) Therefore, it is the legislature's intent to ensure consistent
4 treatment for all sellers, regardless of their advertising practices,
5 by clarifying that sales tax must be computed on the gross price
6 charged to customers when the seller fails to separately itemize the
7 sales tax on any instrument of sale given to the buyer, regardless of
8 whether the seller advertises the selling price as including the sales
9 tax or that the seller is paying the sales tax. As a clarification of
10 the law, this act applies both retroactively as well as prospectively.

11 **Sec. 2.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to read
12 as follows:

13 (1) The tax imposed in this chapter must be paid by the buyer to
14 the seller. Each seller must collect from the buyer the full amount of
15 the tax payable in respect to each taxable sale in accordance with the
16 schedule of collections adopted by the department under the provisions
17 of RCW 82.08.060.

18 (2) The tax required by this chapter, to be collected by the
19 seller, is deemed to be held in trust by the seller until paid to the
20 department. Any seller who appropriates or converts the tax collected
21 to the seller's own use or to any use other than the payment of the tax
22 to the extent that the money required to be collected is not available
23 for payment on the due date as prescribed in this chapter is guilty of
24 a gross misdemeanor.

25 (3) Except as otherwise provided in this section, if any seller
26 fails to collect the tax imposed in this chapter or, having collected
27 the tax, fails to pay it to the department in the manner prescribed by
28 this chapter, whether such failure is the result of the seller's own
29 acts or the result of acts or conditions beyond the seller's control,
30 the seller is, nevertheless, personally liable to the state for the
31 amount of the tax.

32 (4) Sellers are not relieved from personal liability for the amount
33 of the tax unless they maintain proper records of exempt or nontaxable
34 transactions and provide them to the department when requested.

35 (5) Sellers are not relieved from personal liability for the amount
36 of tax if they fraudulently fail to collect the tax or if they solicit
37 purchasers to participate in an unlawful claim of exemption.

1 (6) Sellers are not relieved from personal liability for the amount
2 of tax if they accept an exemption certificate from a purchaser
3 claiming an entity-based exemption if:

4 (a) The subject of the transaction sought to be covered by the
5 exemption certificate is actually received by the purchaser at a
6 location operated by the seller in Washington; and

7 (b) Washington provides an exemption certificate that clearly and
8 affirmatively indicates that the claimed exemption is not available in
9 Washington. Graying out exemption reason types on a uniform form and
10 posting it on the department's web site is a clear and affirmative
11 indication that the grayed out exemptions are not available.

12 (7)(a) Sellers are relieved from personal liability for the amount
13 of tax if they obtain a fully completed exemption certificate or
14 capture the relevant data elements required under the streamlined sales
15 and use tax agreement within ninety days, or a longer period as may be
16 provided by rule by the department, subsequent to the date of sale.

17 (b) If the seller has not obtained an exemption certificate or all
18 relevant data elements required under the streamlined sales and use tax
19 agreement within the period allowed subsequent to the date of sale, the
20 seller may, within one hundred twenty days, or a longer period as may
21 be provided by rule by the department, subsequent to a request for
22 substantiation by the department, either prove that the transaction was
23 not subject to tax by other means or obtain a fully completed exemption
24 certificate from the purchaser, taken in good faith.

25 (c) Sellers are relieved from personal liability for the amount of
26 tax if they obtain a blanket exemption certificate for a purchaser with
27 which the seller has a recurring business relationship. The department
28 may not request from a seller renewal of blanket exemption certificates
29 or updates of exemption certificate information or data elements if
30 there is a recurring business relationship between the buyer and
31 seller. For purposes of this subsection (7)(c), a "recurring business
32 relationship" means at least one sale transaction within a period of
33 twelve consecutive months.

34 (d) Sellers are relieved from personal liability for the amount of
35 tax if they obtain a copy of a direct pay permit issued under RCW
36 82.32.087.

37 (8) The amount of tax, until paid by the buyer to the seller or to
38 the department, constitutes a debt from the buyer to the seller. Any

1 seller who fails or refuses to collect the tax as required with intent
2 to violate the provisions of this chapter or to gain some advantage or
3 benefit, either direct or indirect, and any buyer who refuses to pay
4 any tax due under this chapter is guilty of a misdemeanor.

5 (9)(a) Except as otherwise provided in (b) of this subsection, the
6 tax required by this chapter to be collected by the seller must be
7 stated separately from the selling price in any sales invoice or other
8 instrument of sale. (~~On all retail sales through vending machines,
9 the tax need not be stated separately from the selling price or
10 collected separately from the buyer.~~) Except as otherwise provided in
11 this subsection, for purposes of determining the tax due from the buyer
12 to the seller and from the seller to the department it must be
13 conclusively presumed that the selling price quoted in any price list,
14 sales document, contract or other agreement between the parties does
15 not include the tax imposed by this chapter. But if the seller
16 advertises the price as including the tax or that the seller is paying
17 the tax, the advertised price may not be considered the selling price,
18 provided that the seller separately states the sales tax from the
19 selling price on any sales invoice or other instrument of sale given to
20 the buyer.

21 (b) On all retail sales through vending machines, the tax need not
22 be stated separately from the selling price or collected separately
23 from the buyer.

24 (10) Where a buyer has failed to pay to the seller the tax imposed
25 by this chapter and the seller has not paid the amount of the tax to
26 the department, the department may, in its discretion, proceed directly
27 against the buyer for collection of the tax. If the department
28 proceeds directly against the buyer for collection of the tax as
29 authorized in this subsection, the department may add a penalty of ten
30 percent of the unpaid tax to the amount of the tax due for failure of
31 the buyer to pay the tax to the seller, regardless of when the tax may
32 be collected by the department. In addition to the penalty authorized
33 in this subsection, all of the provisions of chapter 82.32 RCW,
34 including those relative to interest and penalties, apply. For the
35 sole purpose of applying the various provisions of chapter 82.32 RCW,
36 the twenty-fifth day of the month following the tax period in which the
37 purchase was made will be considered as the due date of the tax.

1 (11) Notwithstanding subsections (1) through (10) of this section,
2 any person making sales is not obligated to collect the tax imposed by
3 this chapter if:

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

6 (i) The storage, dissemination, or display of advertising;

7 (ii) The taking of orders; or

8 (iii) The processing of payments; and

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

14 (12) Subsection (11) of this section expires when: (a) The United
15 States congress grants individual states the authority to impose sales
16 and use tax collection duties on remote sellers; or (b) it is
17 determined by a court of competent jurisdiction, in a judgment not
18 subject to review, that a state can impose sales and use tax collection
19 duties on remote sellers.

20 (13) For purposes of this section:

21 (a) "Exemption certificate" means documentation furnished by a
22 buyer to a seller to claim an exemption from sales tax. An exemption
23 certificate includes a reseller permit or other documentation
24 authorized in RCW 82.04.470 furnished by a buyer to a seller to
25 substantiate a wholesale sale; and

26 (b) "Seller" includes a certified service provider, as defined in
27 RCW 82.32.020, acting as agent for the seller.

28 **Sec. 3.** RCW 82.08.055 and 1985 c 38 s 2 are each amended to read
29 as follows:

30 (1) A seller may advertise the price as including the sales tax or
31 that the seller is paying the sales tax, subject to the following
32 conditions:

33 ~~((1))~~ (a) Unless the advertised price is one in a listed series,
34 the words "tax included" are stated immediately following the
35 advertised price and in print size at least half as large as the
36 advertised price;

1 ((+2)) (b) If the advertised prices are listed in a series, the
2 words "tax included in all prices" are placed conspicuously at the head
3 of the list and in the same print size as the advertised prices;

4 ((+3)) (c) If a price is advertised as "tax included," the price
5 listed on any price tag (~~shall~~) must be shown in the same manner; and

6 ((+4)) (d) All advertised prices and the words "tax included" are
7 stated in the same medium, be it oral or visual, and if oral, in
8 substantially the same inflection and volume.

9 (2) A seller that advertises as provided in subsection (1) of this
10 section must separately state the sales tax from the selling price on
11 any sales invoice or other instrument of sale given to the buyer, as
12 provided by RCW 82.08.050.

13 NEW SECTION. **Sec. 4.** This act applies prospectively as well as
14 retroactively to tax periods open for assessment or refund of taxes
15 under RCW 82.32.050 or 82.32.060, including any refund claims or
16 disputed assessments pending before the department of revenue, board of
17 tax appeals, or any court of law.

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