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SENATE BILL 5698

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators Ranker, Rockefeller, Nelson, Kilmer, and Hargrove

Read first time 02/07/11. Referred to Committee on Transportation.

1            AN ACT Relating to providing funds for the Washington state ferry  
2 system and other transportation purposes by narrowing the nonresident  
3 sales and use tax exemption; amending RCW 82.08.0273; adding a new  
4 section to chapter 82.32 RCW; creating a new section; providing an  
5 effective date; providing a contingent expiration date; and declaring  
6 an emergency.

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

8            **Sec. 1.** RCW 82.08.0273 and 2010 c 106 s 215 are each amended to  
9 read as follows:

10            (1) The tax levied by RCW 82.08.020 does not apply to sales to  
11 nonresidents of this state of tangible personal property, digital  
12 goods, and digital codes, when ~~((such))~~:

13            (a) The property is for use outside this state~~((, and))~~;

14            (b) The purchaser ~~((+))~~ is a bona fide resident of a province or  
15 territory of Canada or a state, territory, or possession ~~((or Province~~  
16 ~~of Canada))~~ of the United States, other than the state of Washington;  
17 and

18            (i) Such state, possession, territory, or province ~~((of Canada))~~  
19 does not impose ~~((a))~~, or have imposed on its behalf, a generally

1 applicable retail sales tax ((or)), use tax, value added tax, gross  
2 receipts tax on retailing activities, or similar generally applicable  
3 tax, of three percent or more; or((τ))

4 (ii) If imposing ((such)) a tax described in (b)(i) of this  
5 subsection, ((permits)) provides an exemption for sales to Washington  
6 residents ((exemption from otherwise taxable sales)) by reason of their  
7 residence((τ));

8 (c) With respect to tangible personal property, the purchaser takes  
9 possession of the property at a retail store or similar building of the  
10 buyer and such store or building is located in a county adjacent to  
11 another state; and

12 ((+b)) (d) The purchaser agrees, when requested, to grant the  
13 department of revenue access to such records and other forms of  
14 verification at his or her place of residence to assure that such  
15 purchases are not first used substantially in the state of Washington.

16 (2) Notwithstanding anything to the contrary in this chapter, if  
17 parts or other tangible personal property are installed by the seller  
18 during the course of repairing, cleaning, altering, or improving motor  
19 vehicles, trailers, or campers and the seller makes a separate charge  
20 for the tangible personal property, the tax levied by RCW 82.08.020  
21 does not apply to the separately stated charge to a nonresident  
22 purchaser for the tangible personal property but only if the separately  
23 stated charge does not exceed either the seller's current publicly  
24 stated retail price for the tangible personal property or, if no  
25 publicly stated retail price is available, the seller's cost for the  
26 tangible personal property. However, the exemption provided by this  
27 section does not apply if tangible personal property is installed by  
28 the seller during the course of repairing, cleaning, altering, or  
29 improving motor vehicles, trailers, or campers and the seller makes a  
30 single nonitemized charge for providing the tangible personal property  
31 and service. All of the requirements in subsections (1) and (3)  
32 through (6) of this section apply to this subsection.

33 (3)(a) Any person claiming exemption from retail sales tax under  
34 the provisions of this section must display proof of his or her current  
35 nonresident status as provided in this section.

36 (b) Acceptable proof of a nonresident person's status includes one  
37 piece of identification such as a valid driver's license from the  
38 jurisdiction in which the out-of-state residency is claimed or a valid

1 identification card which has a photograph of the holder and is issued  
2 by the out-of-state jurisdiction. Identification under this subsection  
3 (3)(b) must show the holder's residential address and have as one of  
4 its legal purposes the establishment of residency in that out-of-state  
5 jurisdiction.

6 (c) In lieu of furnishing proof of a person's nonresident status  
7 under (b) of this subsection (3), a person claiming exemption from  
8 retail sales tax under the provisions of this section may provide the  
9 seller with an exemption certificate in compliance with subsection  
10 (4)(b) of this section.

11 (4)(a) Nothing in this section requires the vendor to make tax  
12 exempt retail sales to nonresidents. A vendor may choose to make sales  
13 to nonresidents, collect the sales tax, and remit the amount of sales  
14 tax collected to the state as otherwise provided by law. If the vendor  
15 chooses to make a sale to a nonresident without collecting the sales  
16 tax, the vendor must examine the purchaser's proof of nonresidence,  
17 determine whether the proof is acceptable under subsection (3)(b) of  
18 this section, and maintain records for each nontaxable sale which shall  
19 show the type of proof accepted, including any identification numbers  
20 where appropriate, and the expiration date, if any.

21 (b) In lieu of using the method provided in (a) of this subsection  
22 to document an exempt sale to a nonresident, a seller may accept from  
23 the purchaser a properly completed uniform exemption certificate  
24 approved by the streamlined sales and use tax agreement governing board  
25 or any other exemption certificate as may be authorized by the  
26 department and properly completed by the purchaser. A nonresident  
27 purchaser who uses an exemption certificate authorized in this  
28 subsection (4)(b) must include the purchaser's driver's license number  
29 or other state-issued identification number and the state of issuance.

30 (c) In lieu of using the methods provided in (a) and (b) of this  
31 subsection to document an exempt sale to a nonresident, a seller may  
32 capture the relevant data elements as allowed under the streamlined  
33 sales and use tax agreement.

34 (5)(a) Any person making fraudulent statements, which includes the  
35 offer of fraudulent identification or fraudulently procured  
36 identification to a vendor, in order to purchase goods without paying  
37 retail sales tax is guilty of perjury under chapter 9A.72 RCW.

1 (b) Any person making tax exempt purchases under this section by  
2 displaying proof of identification not his or her own, or counterfeit  
3 identification, with intent to violate the provisions of this section,  
4 is guilty of a misdemeanor and, in addition, is liable for the tax and  
5 subject to a penalty equal to the greater of one hundred dollars or the  
6 tax due on such purchases.

7 (6)(a) Any vendor who makes sales without collecting the tax and  
8 who fails to maintain records of sales to nonresidents as provided in  
9 this section is personally liable for the amount of tax due.

10 (b) Any vendor who makes sales without collecting the retail sales  
11 tax under this section and who has actual knowledge that the  
12 purchaser's proof of identification establishing out-of-state residency  
13 is fraudulent is guilty of a misdemeanor and, in addition, is liable  
14 for the tax and subject to a penalty equal to the greater of one  
15 thousand dollars or the tax due on such sales. In addition, both the  
16 purchaser and the vendor are liable for any penalties and interest  
17 assessable under chapter 82.32 RCW.

18 (7) This section expires if there is a final court decision  
19 invalidating the changes in subsection (1)(c) of this section. The  
20 date of the expiration is on the first day of the second calendar  
21 quarter subsequent to the decision.

22 NEW SECTION. Sec. 2. A new section is added to chapter 82.32 RCW  
23 to read as follows:

24 By May 1, 2012, and by May 1st of every year thereafter, the  
25 department must annually estimate the increase in state revenue for the  
26 prior calendar year resulting from the changes made under section 1 of  
27 this act and certify the estimated amount to the state treasurer. By  
28 July 1, 2012, and by July 1st of every year thereafter, the state  
29 treasurer must transfer eighty percent the amount into the Puget Sound  
30 capital construction account created in RCW 47.60.505 and the remainder  
31 into the multimodal transportation account for transit services.

32 NEW SECTION. Sec. 3. The department of revenue must provide  
33 written notice of the expiration date of RCW 82.08.0273 to affected  
34 parties, the chief clerk of the house of representatives, the secretary  
35 of the senate, the office of the code reviser, and others as deemed  
36 appropriate by the department.

1        NEW SECTION.    **Sec. 4.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    July 1, 2011.

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