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HOUSE BILL 1329

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State of Washington

63rd Legislature

2013 Regular Session

**By** Representatives Moeller, Alexander, Blake, Springer, Seaquist, Clibborn, Nealey, Orcutt, Vick, Kochmar, Warnick, Angel, Fagan, Buys, Smith, Manweller, Dahlquist, Harris, Magendanz, Hawkins, Haler, Pike, Taylor, Shea, Johnson, MacEwen, Santos, Hudgins, Parker, Overstreet, Schmick, Condotta, O'Ban, Morrell, and Kristiansen

Read first time 01/23/13. Referred to Committee on Finance.

1 AN ACT Relating to creating a sales tax holiday for back-to-school  
2 clothing and supplies; amending RCW 82.12.040; adding a new section to  
3 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating  
4 a new section; providing an effective date; and providing an expiration  
5 date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that Washington  
8 families pay thousands of dollars in sales and use tax on their  
9 purchases of clothing and school supplies in August before the school  
10 year begins. The legislature further finds that a recent study has  
11 shown that temporarily exempting some of these purchases from sales and  
12 use tax would give Washington families a needed tax break and increase  
13 sales, which in turn would generate new jobs and more state and local  
14 tax revenue. Therefore, it is the legislature's intent to create a  
15 "back-to-school" sales tax holiday.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW  
17 to read as follows:

18 (1) Subject to the conditions and limitations provided in this

1 section, the tax levied by RCW 82.08.020 does not apply to the sale of  
2 the following tangible personal property: (a) Clothing items; and (b)  
3 school supply items.

4 (2)(a) A clothing item is exempt under this section if the sales  
5 price of the item is less than one hundred dollars.

6 (b) A school supply item is exempt under this section if the sales  
7 price of the item is less than ten dollars.

8 (3) The exemption authorized in this section only applies to  
9 purchases made on the second adjacent Friday, Saturday, and Sunday of  
10 August of each year.

11 (4) Rules adopted by the department for the administration of this  
12 section must be substantially consistent with the streamlined sales and  
13 use tax agreement, as that term is used in chapter 82.58 RCW.

14 (5) The definitions in this subsection apply throughout this  
15 section.

16 (a) "Clothing item" means human wearing apparel suitable for  
17 general use.

18 (b) "School supply item" means an item commonly used by a student  
19 in a course of study.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW  
21 to read as follows:

22 (1) The provisions of this chapter do not apply to the use of the  
23 following tangible personal property: (a) Clothing items that are not  
24 used primarily for business-related activities; and (b) school supply  
25 items that are not used primarily for business-related activities.

26 (2) The definitions, conditions, and limitations in section 2 of  
27 this act apply to this section.

28 (3) For the purposes of this section, "business" has the meaning  
29 provided in RCW 82.04.140 and also includes activities engaged in by a  
30 common school, school district, or educational service district.

31 **Sec. 4.** RCW 82.12.040 and 2011 1st sp.s. c 20 s 103 are each  
32 amended to read as follows:

33 (1) Every person who maintains in this state a place of business or  
34 a stock of goods, or engages in business activities within this state,  
35 shall obtain from the department a certificate of registration, and  
36 shall, at the time of making sales of tangible personal property,

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

19 (2) Every person who engages in this state in the business of  
20 acting as an independent selling agent for persons who do not hold a  
21 valid certificate of registration, and who receives compensation by  
22 reason of sales of tangible personal property, digital goods, digital  
23 codes, digital automated services, extended warranties, or sales of any  
24 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),  
25 (3)(a), or (6)(b), of his or her principals for use in this state,  
26 must, at the time such sales are made, collect from the purchasers the  
27 tax imposed on the purchase price under this chapter, and for that  
28 purpose is deemed a retailer as defined in this chapter.

29 (3) The tax required to be collected by this chapter is deemed to  
30 be held in trust by the retailer until paid to the department, and any  
31 retailer who appropriates or converts the tax collected to the  
32 retailer's own use or to any use other than the payment of the tax  
33 provided herein to the extent that the money required to be collected  
34 is not available for payment on the due date as prescribed is guilty of  
35 a misdemeanor. In case any seller fails to collect the tax herein  
36 imposed or having collected the tax, fails to pay the same to the  
37 department in the manner prescribed, whether such failure is the result  
38 of the seller's own acts or the result of acts or conditions beyond the

1 seller's control, the seller is nevertheless personally liable to the  
2 state for the amount of such tax, unless the seller has taken from the  
3 buyer a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

14 (ii) The taking of orders; or

15 (iii) The processing of payments; and

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

21 (6) Subsection (5) of this section expires when: (a) The United  
22 States congress grants individual states the authority to impose sales  
23 and use tax collection duties on remote sellers; or (b) it is  
24 determined by a court of competent jurisdiction, in a judgment not  
25 subject to review, that a state can impose sales and use tax collection  
26 duties on remote sellers.

27 (7) Notwithstanding subsections (1) through (4) of this section,  
28 any person making sales is not obligated to collect the tax imposed by  
29 this chapter if the person would have been obligated to collect retail  
30 sales tax on the sale absent a specific exemption provided in chapter  
31 82.08 RCW, and there is no corresponding use tax exemption in this  
32 chapter. Nothing in this subsection (7) may be construed as relieving  
33 purchasers from liability for reporting and remitting the tax due under  
34 this chapter directly to the department.

35 (8) Notwithstanding subsections (1) through (4) of this section,  
36 any person making sales is not obligated to collect the tax imposed by  
37 this chapter if the state is prohibited under the Constitution or laws

1 of the United States from requiring the person to collect the tax  
2 imposed by this chapter.

3 (9) Notwithstanding subsections (1) through (4) of this section, a  
4 seller is not obligated to collect the tax imposed by this chapter if  
5 the product is exempt from retail sales tax under section 2 of this  
6 act, but is not exempt from use tax under section 3 of this act.

7 NEW SECTION. **Sec. 5.** The joint legislative audit and review  
8 committee must conduct an economic impact study of the sales and use  
9 tax exemptions provided in sections 2 and 3 of this act. The committee  
10 must evaluate the direct, indirect, and induced economic impacts of the  
11 exemptions and their impact on state general fund tax revenues. The  
12 committee must provide a report to the fiscal committees of the  
13 legislature by December 1, 2015.

14 NEW SECTION. **Sec. 6.** This act takes effect August 1, 2013.

15 NEW SECTION. **Sec. 7.** This act expires July 1, 2016.

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