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SENATE BILL 5284

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Hill, Hargrove, and Shin; by request of Department of Revenue

Read first time 01/24/13. Referred to Committee on Ways & Means.

1            AN ACT Relating to imposing fees for reseller permits; amending RCW  
2 82.32.780 and 82.32.783; providing an effective date; and declaring an  
3 emergency.

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

5            **Sec. 1.** RCW 82.32.780 and 2010 c 112 s 2 are each amended to read  
6 as follows:

7            (1)(a) Taxpayers seeking to obtain a new reseller permit or to  
8 renew or reinstate a reseller permit, other than taxpayers subject to  
9 the provisions of RCW 82.32.783, must apply to the department in a form  
10 and manner prescribed by the department and pay to the department a fee  
11 in the amount of twenty-five dollars. The department must use its best  
12 efforts to rule on applications within sixty days of receiving a  
13 complete application. If the department fails to rule on an  
14 application within sixty days of receiving a complete application, the  
15 taxpayer may either request a review as provided in subsection (6) of  
16 this section or resubmit the application. The fee imposed in this  
17 subsection does not apply to applications resubmitted to the department  
18 when the fee was paid with the original application, and the department  
19 failed to rule on the original application within sixty days of

1 receiving it. Nothing in this subsection may be construed as  
2 preventing the department from ruling on an application more than sixty  
3 days after the department received the application.

4 (b) An application must be denied if:

5 (i) The department determines that, based on the nature of the  
6 applicant's business, the applicant is not entitled to make purchases  
7 at wholesale or is otherwise prohibited from using a reseller permit;

8 (ii) The application contains any material misstatement; ~~((or))~~

9 (iii) The application is incomplete; or

10 (iv) The application is not accompanied by the twenty-five dollar  
11 fee required by this subsection. However, if the department denies an  
12 application under this subsection (1)(b)(iv), the department must  
13 reconsider and rule on the taxpayer's original application upon receipt  
14 of the twenty-five dollar fee required by this subsection.

15 (c) The department may also deny an application if it determines  
16 that denial would be in the best interest of collecting taxes due under  
17 this title.

18 (d) The department's decision to approve or deny an application may  
19 be based on tax returns previously filed with the department by the  
20 applicant, a current or previous examination of the applicant's books  
21 and records by the department, information provided by the applicant in  
22 the master application and the reseller permit application, and other  
23 information available to the department.

24 (e) The department must refuse to accept an application to renew a  
25 reseller permit that is received more than ninety days before the  
26 expiration of the reseller permit.

27 (f) The department may waive or cancel the fee required by this  
28 subsection for good cause as determined by the department. For  
29 purposes of this subsection, "good cause" does not include the  
30 department's denial of an application under this section or financial  
31 hardship.

32 (2) Notwithstanding subsection (1) of this section, the department  
33 may issue or renew a reseller permit ~~((for a taxpayer that has not~~  
34 ~~applied for the permit or renewal of the permit)) to a taxpayer without~~  
35 requiring the taxpayer to submit an application if: (a) It appears to  
36 the department's satisfaction, based on the nature of the taxpayer's  
37 business activities and any other information available to the

1 department, that the taxpayer is entitled to make purchases at  
2 wholesale; and

3 (b) The taxpayer has paid the twenty-five dollar fee imposed in  
4 subsection (1) of this section.

5 (3)(a) Except as otherwise provided in this section, reseller  
6 permits issued, renewed, or reinstated under this section will be valid  
7 for a period of forty-eight months from the date of issuance, renewal,  
8 or reinstatement.

9 (b)(i) A reseller permit is valid for a period of twenty-four  
10 months and may be renewed for the period prescribed in (a) of this  
11 subsection (3) if the permit is issued to a taxpayer who:

12 (A) Is not registered with the department under RCW 82.32.030;

13 (B) Has been registered with the department under RCW 82.32.030 for  
14 a continuous period of less than one year as of the date that the  
15 department received the taxpayer's application for a reseller permit;

16 (C) Was on nonreporting status as authorized under RCW 82.32.045(4)  
17 at the time that the department received the taxpayer's application for  
18 a reseller permit or to renew or reinstate a reseller permit;

19 (D) Has filed tax returns reporting no business activity for  
20 purposes of sales and business and occupation taxes for the twelve-  
21 month period immediately preceding the date that the department  
22 received the taxpayer's application for a reseller permit or to renew  
23 or reinstate a reseller permit; or

24 (E) Has failed to file tax returns covering any part of the twelve-  
25 month period immediately preceding the department's receipt of the  
26 taxpayer's application for a reseller permit or to renew or reinstate  
27 a reseller permit.

28 (ii) The provisions of this subsection (3)(b) do not apply to  
29 reseller permits issued to any business owned by a federally recognized  
30 Indian tribe or by an enrolled member of a federally recognized Indian  
31 tribe, if the business does not engage in any business activity that  
32 subjects the business to any tax imposed by the state under chapter  
33 82.04 RCW. Permits issued to such businesses are valid for the period  
34 provided in (a) of this subsection (3).

35 (iii) Nothing in this subsection (3)(b) may be construed as  
36 affecting the department's right to deny a taxpayer's application for  
37 a reseller permit or to renew or reinstate a reseller permit as  
38 provided in subsection (1)(b) and (c) of this section.

1 (c) A reseller permit is no longer valid if the permit holder's  
2 certificate of registration is revoked, the permit holder's tax  
3 reporting account is closed by the department, or the permit holder  
4 otherwise ceases to engage in business.

5 (d) The department may provide by rule for a uniform expiration  
6 date for reseller permits issued, renewed, or reinstated under this  
7 section, if the department determines that a uniform expiration date  
8 for reseller permits will improve administrative efficiency for the  
9 department. If the department adopts a uniform expiration date by  
10 rule, the department may extend or shorten the twenty-four or forty-  
11 eight month period provided in (a) and (b) of this subsection for a  
12 period not to exceed six months as necessary to conform the reseller  
13 permit to the uniform expiration date.

14 (4)(a) The department may revoke a taxpayer's reseller permit for  
15 any of the following reasons:

16 (i) The taxpayer used or allowed or caused its reseller permit to  
17 be used to purchase any item or service without payment of sales tax,  
18 but the taxpayer or other purchaser was not entitled to use the  
19 reseller permit for the purchase;

20 (ii) The department issued the reseller permit to the taxpayer in  
21 error;

22 (iii) The department determines that the taxpayer is no longer  
23 entitled to make purchases at wholesale; (~~(or)~~)

24 (iv) The department determines that revocation of the reseller  
25 permit would be in the best interest of collecting taxes due under this  
26 title; or

27 (v) The taxpayer's payment of the twenty-five dollar fee for the  
28 reseller permit was dishonored and remains unpaid. If the taxpayer has  
29 an available credit on its tax reporting account, the department may  
30 apply all or a portion of the credit to the unpaid reseller permit fee  
31 without regard to any direction from the taxpayer.

32 (b) The notice of revocation must be in writing and is effective on  
33 the date specified in the revocation notice. The notice must also  
34 advise the taxpayer of its right to a review by the department.

35 (c) The department may refuse to reinstate a reseller permit  
36 revoked under (a)(i) of this subsection until all taxes, penalties, and  
37 interest due on any improperly purchased item or service have been paid  
38 in full. In the event a taxpayer whose reseller permit has been

1 revoked under this subsection reorganizes, the new business resulting  
2 from the reorganization is not entitled to a reseller permit until all  
3 taxes, penalties, and interest due on any improperly purchased item or  
4 service have been paid in full.

5 (d) For purposes of this subsection, "reorganize" or  
6 "reorganization" means: (i) The transfer, however effected, of a  
7 majority of the assets of one business to another business where any of  
8 the persons having an interest in the ownership or management in the  
9 former business maintain an ownership or management interest in the new  
10 business, either directly or indirectly; (ii) a mere change in identity  
11 or form of ownership, however effected; or (iii) the new business is a  
12 mere continuation of the former business based on significant shared  
13 features such as owners, personnel, assets, or general business  
14 activity.

15 (5) The department may provide the public with access to reseller  
16 permit numbers on its web site, including the name of the permit  
17 holder, the status of the reseller permit, the expiration date of the  
18 permit, and any other information that is disclosable under RCW  
19 82.32.330(3)((+1+)) (k).

20 (6) The department must provide by rule for the review of the  
21 department's decision to deny, revoke, or refuse to reinstate a  
22 reseller permit or the department's failure to rule on an application  
23 within the time prescribed in subsection (1)(a) of this section. Such  
24 review must be consistent with the requirements of chapter 34.05 RCW.

25 (7) As part of its continuing efforts to educate taxpayers on their  
26 sales and use tax responsibilities, the department will educate  
27 taxpayers on the appropriate use of a reseller permit or other  
28 documentation authorized under RCW 82.04.470 and the consequences of  
29 misusing such permits or other documentation.

30 **Sec. 2.** RCW 82.32.783 and 2010 c 112 s 3 are each amended to read  
31 as follows:

32 (1)(a) Contractors seeking a new reseller permit or to renew or  
33 reinstate a reseller permit must apply to the department in a form and  
34 manner prescribed by the department and pay to the department a fee in  
35 the amount of twenty-five dollars.

36 (b) As part of the application, the contractor must report the  
37 total combined dollar amount of all purchases of materials and labor

1 during the preceding twenty-four months for retail construction  
2 activity, wholesale construction activity, speculative building, public  
3 road construction, and government contracting. If the contractor was  
4 not engaged in business as a contractor during the preceding twenty-  
5 four months, the contractor may provide an estimate of the dollar  
6 amount of purchases of materials and labor for retail construction  
7 activity, wholesale construction activity, speculative building, public  
8 road construction, and government contracting during the twelve-month  
9 or twenty-four month period for which the reseller permit will be  
10 valid. The contractor must also report the percentage of its total  
11 dollar amount of actual or, if applicable, estimated material and labor  
12 purchases that was for retail and wholesale construction activity  
13 performed by the applicant.

14 (c) The department must use its best efforts to rule on  
15 applications within sixty days of receiving a complete application. If  
16 the department fails to rule on an application within sixty days of  
17 receiving a complete application, the taxpayer may either request a  
18 review as provided in subsection (6) of this section or resubmit the  
19 application. The fee imposed in this subsection does not apply to  
20 applications resubmitted to the department when the fee was paid with  
21 the original application, and the department failed to rule on the  
22 original application within sixty days of receiving it. Nothing in  
23 this subsection may be construed as preventing the department from  
24 ruling on an application more than sixty days after the department  
25 received the application.

26 (d)(i) An application must be denied if:

27 (A) The department determines that the applicant is not entitled to  
28 make purchases at wholesale or is otherwise prohibited from using a  
29 reseller permit;

30 (B) The application contains any material misstatement;

31 (C) The application is incomplete; (~~(E)~~)

32 (D) The application is not accompanied by the twenty-five dollar  
33 fee required by this subsection. However, if the department denies an  
34 application under this subsection (1)(d)(i)(D), the department must  
35 reconsider and rule on the taxpayer's original application upon receipt  
36 of the twenty-five dollar fee required by this subsection; or

37 (E) Less than twenty-five percent of the taxpayer's total dollar  
38 amount of actual or, if applicable, estimated material and labor

1 purchases as reported on the application is for retail and wholesale  
2 construction activity performed by the applicant. However, the  
3 department may approve an application not meeting the criteria in this  
4 subsection (1)(d)(i)((+D+)) (E) if the department is satisfied that  
5 approval is unlikely to jeopardize collection of the taxes due under  
6 this title.

7 (ii) The department may also deny an application if the department  
8 determines that denial would be in the best interest of collecting  
9 taxes due under this title.

10 (iii) The department's decision to approve or deny an application  
11 may be based on tax returns previously filed with the department by the  
12 applicant, a current or previous examination of the applicant's books  
13 and records by the department, information provided by the applicant in  
14 the master application and the reseller permit application, and other  
15 information available to the department.

16 (e) The department must refuse to accept an application to renew a  
17 reseller permit that is received more than ninety days before the  
18 expiration of the reseller permit.

19 (f) The department may waive or cancel the fee required by this  
20 subsection for good cause as determined by the department. For  
21 purposes of this subsection, "good cause" does not include the  
22 department's denial of an application under this section or financial  
23 hardship.

24 (2) Notwithstanding subsection (1) of this section, the department  
25 may issue or renew a reseller permit (~~(for a contractor that has not~~  
26 ~~applied for the permit or renewal of the permit)) to a contractor~~  
27 without requiring the contractor to submit an application if:

28 (a) The department is satisfied that the contractor is entitled to  
29 make purchases at wholesale and that issuing or renewing the reseller  
30 permit is unlikely to jeopardize collection of sales taxes due under  
31 this title based on criteria established by the department by rule.  
32 Such criteria may include but is not limited to whether the taxpayer  
33 has a previous history of misusing resale certificates or reseller  
34 permits or there is any other indication that issuing or renewing the  
35 reseller permit would jeopardize collection of sales taxes due from the  
36 contractor; and

37 (b) The contractor has paid the twenty-five dollar fee imposed in  
38 subsection (1) of this section.

1 (3)(a) Except as otherwise provided in (b) of this subsection:

2 (i) Except as provided in (a)(ii) of this subsection, until June  
3 30, 2013, reseller permits issued, renewed, or reinstated under this  
4 section will be valid for a period of twelve months from the date of  
5 issuance, renewal, or reinstatement; and

6 (ii) Beginning July 1, 2013, reseller permits issued, renewed, or  
7 reinstated under this section will be valid for a period of twenty-four  
8 months from the date of issuance, renewal, or reinstatement. However,  
9 the department may issue, renew, or reinstate permits for a period of  
10 twenty-four months beginning July 1, 2011, if the department is  
11 satisfied in the same manner as set forth in subsection (2) of this  
12 section.

13 (b)(i) A reseller permit is no longer valid if the permit holder's  
14 certificate of registration is revoked, the permit holder's tax  
15 reporting account is closed by the department, or the permit holder  
16 otherwise ceases to engage in business.

17 (ii) The department may provide by rule for a uniform expiration  
18 date for reseller permits issued, renewed, or reinstated under this  
19 section, if the department determines that a uniform expiration date  
20 for reseller permits will improve administrative efficiency for the  
21 department. If the department adopts a uniform expiration date by  
22 rule, the department may extend or shorten the twelve or twenty-four  
23 month period provided in (a)(i) and (ii) of this subsection for a  
24 period not to exceed six months as necessary to conform the reseller  
25 permit to the uniform expiration date.

26 (4)(a) The department may revoke a contractor's reseller permit for  
27 any of the following reasons:

28 (i) The contractor used or allowed or caused its reseller permit to  
29 be used to purchase any item or service without payment of sales tax,  
30 but the contractor or other purchaser was not entitled to use the  
31 reseller permit for the purchase;

32 (ii) The department issued the reseller permit to the contractor in  
33 error;

34 (iii) The department determines that the contractor is no longer  
35 entitled to make purchases at wholesale; (~~(or)~~)

36 (iv) The department determines that revocation of the reseller  
37 permit would be in the best interest of collecting taxes due under this  
38 title; or



1        (v) The contractor's payment of the twenty-five dollar fee for the  
2 reseller permit was dishonored and remains unpaid. If the contractor  
3 has an available credit on its tax reporting account, the department  
4 may apply all or a portion of the credit to the unpaid reseller permit  
5 fee without regard to any direction from the contractor.

6        (b) The notice of revocation must be in writing and is effective on  
7 the date specified in the revocation notice. The notice must also  
8 advise the contractor of its right to a review by the department.

9        (c) The department may refuse to reinstate a reseller permit  
10 revoked under (a)(i) of this subsection until all taxes, penalties, and  
11 interest due on any improperly purchased item or service have been paid  
12 in full. In the event a contractor whose reseller permit has been  
13 revoked under this subsection reorganizes, the new business resulting  
14 from the reorganization is not entitled to a reseller permit until all  
15 taxes, penalties, and interest due on any improperly purchased item or  
16 service have been paid in full.

17        (d) For purposes of this subsection, "reorganize" or  
18 "reorganization" means: (i) The transfer, however effected, of a  
19 majority of the assets of one business to another business where any of  
20 the persons having an interest in the ownership or management in the  
21 former business maintain an ownership or management interest in the new  
22 business, either directly or indirectly; (ii) a mere change in identity  
23 or form of ownership, however effected; or (iii) the new business is a  
24 mere continuation of the former business based on significant shared  
25 features such as owners, personnel, assets, or general business  
26 activity.

27        (5) The department may provide the public with access to reseller  
28 permit numbers on its web site, including the name of the permit  
29 holder, the status of the reseller permit, the expiration date of the  
30 permit, and any other information that is disclosable under RCW  
31 82.32.330(3)((+1+)) (k).

32        (6) The department must provide by rule for the review of the  
33 department's decision to deny, revoke, or refuse to reinstate a  
34 reseller permit or the department's failure to rule on an application  
35 within the time prescribed in subsection (1)(a) of this section. Such  
36 review must be consistent with the requirements of chapter 34.05 RCW.

37        (7) As part of its continuing efforts to educate taxpayers on their  
38 sales and use tax responsibilities, the department will educate

1 taxpayers on the appropriate use of a reseller permit or other  
2 documentation authorized under RCW 82.04.470 and the consequences of  
3 misusing such permits or other documentation.

4 (8) As used in this section, the following definitions apply:

5 (a) "Contractor" means a person whose primary business activity is  
6 as a contractor as defined in RCW 18.27.010 or an electrical contractor  
7 as defined in RCW 19.28.006.

8 (b) "Government contracting" means the activity described in RCW  
9 82.04.190(6).

10 (c) "Public road construction" means the activity described in RCW  
11 82.04.190(3).

12 (d) "Retail construction activity" means any activity defined as a  
13 retail sale in RCW 82.04.050(2) (b) or (c).

14 (e) "Speculative building" means the activities of a speculative  
15 builder as the term "speculative builder" is defined by rule of the  
16 department.

17 (f) "Wholesale construction activity" means labor and services  
18 rendered for persons who are not consumers in respect to real property,  
19 if such labor and services are expressly defined as a retail sale by  
20 RCW 82.04.050 when rendered to or for consumers. For purposes of this  
21 subsection (8)(f), "consumer" has the same meaning as in RCW 82.04.190.

22 NEW SECTION. **Sec. 3.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 July 1, 2013.

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