
SENATE BILL 5529

State of Washington

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2013 Regular Session

By Senators Rivers, Harper, Benton, Cleveland, Hobbs, Padden, Holmquist Newbry, Kohl-Welles, Shin, and McAuliffe

Read first time 02/01/13. Referred to Committee on Trade & Economic Development.

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 and typically worn by elementary, secondary, or
18 postsecondary students in the classroom or for school-related
19 activities.

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

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

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

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

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

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

35 (1) Every person who maintains in this state a place of business or
36 a stock of goods, or engages in business activities within this state,

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

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

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

1 department in the manner prescribed, whether such failure is the result
2 of the seller's own acts or the result of acts or conditions beyond the
3 seller's control, the seller is nevertheless personally liable to the
4 state for the amount of such tax, unless the seller has taken from the
5 buyer a copy of a direct pay permit issued under RCW 82.32.087.

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

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

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

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

16 (ii) The taking of orders; or

17 (iii) The processing of payments; and

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

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

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

37 (8) Notwithstanding subsections (1) through (4) of this section,
38 any person making sales is not obligated to collect the tax imposed by

1 this chapter if the state is prohibited under the Constitution or laws
2 of the United States from requiring the person to collect the tax
3 imposed by this chapter.

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

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

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

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

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