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**SUBSTITUTE SENATE BILL 5871**

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**State of Washington                      63rd Legislature                      2013 1st Special Session**

**By Senate Ways & Means (originally sponsored by Senator Hill)**

READ FIRST TIME 06/11/13.

1            AN ACT Relating to converting the nonresident sales tax exemption  
2 to a refund program; amending RCW 82.08.0273, 82.14.050, and 82.14.060;  
3 providing an effective date; and declaring an emergency.

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

5            **Sec. 1.** RCW 82.08.0273 and 2011 c 7 s 1 are each amended to read  
6 as follows:

7            (1) (~~The tax levied by RCW 82.08.020 does not apply to~~) Subject  
8 to the conditions and limitations in this section, an exemption from  
9 the tax levied by RCW 82.08.020 in the form of a remittance from the  
10 department is provided for sales to nonresidents of this state of  
11 tangible personal property, digital goods, and digital codes(~~(, when)~~).  
12 The exemption only applies if:

- 13            (a) The property is for use outside this state;  
14            (b) The purchaser is a bona fide resident of a province or  
15 territory of Canada or a state, territory, or possession of the United  
16 States, other than the state of Washington; and  
17            (i) Such state, possession, territory, or province does not impose,  
18 or have imposed on its behalf, a generally applicable retail sales tax,

1 use tax, value added tax, gross receipts tax on retailing activities,  
2 or similar generally applicable tax, of three percent or more; or

3 (ii) If imposing a tax described in (b)(i) of this subsection,  
4 provides an exemption for sales to Washington residents by reason of  
5 their residence; and

6 (c) The purchaser agrees, when requested, to grant the department  
7 of revenue access to such records and other forms of verification at  
8 ~~((his or her))~~ the purchaser's place of residence to assure that such  
9 purchases are not first used substantially in the state of Washington.

10 (2) Notwithstanding anything to the contrary in this chapter, if  
11 parts or other tangible personal property are installed by the seller  
12 during the course of repairing, cleaning, altering, or improving motor  
13 vehicles, trailers, or campers and the seller makes a separate charge  
14 for the tangible personal property, the tax levied by RCW 82.08.020  
15 does not apply to the separately stated charge to a nonresident  
16 purchaser for the tangible personal property but only if the separately  
17 stated charge does not exceed either the seller's current publicly  
18 stated retail price for the tangible personal property or, if no  
19 publicly stated retail price is available, the seller's cost for the  
20 tangible personal property. However, the exemption provided by this  
21 section does not apply if tangible personal property is installed by  
22 the seller during the course of repairing, cleaning, altering, or  
23 improving motor vehicles, trailers, or campers and the seller makes a  
24 single nonitemized charge for providing the tangible personal property  
25 and service. All of the ~~((requirements))~~ provisions in subsections (1)  
26 and (3) through ~~((+6))~~ (7) of this section apply to this subsection.

27 (3)(a) Any person claiming exemption from retail sales tax under  
28 the provisions of this section must ~~((display proof of his or her  
29 current nonresident status as provided in this section))~~ pay the state  
30 and local sales tax to the seller at the time of purchase and then  
31 request a remittance from the department in accordance with this  
32 subsection and subsection (4) of this section. A request for  
33 remittance must include proof of the person's status as a nonresident  
34 at the time of the purchase for which a remittance is requested. The  
35 request for a remittance must also include any additional information  
36 and documentation as required by the department, which may include a  
37 description of the item purchased for which a remittance is requested,  
38 the sales price of the item, the amount of state and local sales tax

1 paid on the item, the date of the purchase, the name of the seller and  
2 the physical address where the sale took place, and copies of sales  
3 receipts showing the qualified purchases.

4 (b) Acceptable proof of a nonresident person's status includes one  
5 piece of identification such as a valid driver's license from the  
6 jurisdiction in which the out-of-state residency is claimed or a valid  
7 identification card which has a photograph of the holder and is issued  
8 by the out-of-state jurisdiction. Identification under this subsection  
9 (3)(b) must show the holder's residential address and have as one of  
10 its legal purposes the establishment of residency in that out-of-state  
11 jurisdiction.

12 ~~((c) In lieu of furnishing proof of a person's nonresident status~~  
13 ~~under (b) of this subsection (3), a person claiming exemption from~~  
14 ~~retail sales tax under the provisions of this section may provide the~~  
15 ~~seller with an exemption certificate in compliance with subsection~~  
16 ~~(4)(b) of this section.~~

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

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

36 ~~(c) In lieu of using the methods provided in (a) and (b) of this~~  
37 ~~subsection to document an exempt sale to a nonresident, a seller may~~

1 capture the relevant data elements as allowed under the streamlined  
2 sales and use tax agreement.

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

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

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

16 (b) Any vendor who makes sales without collecting the retail sales  
17 tax under this section and who has actual knowledge that the  
18 purchaser's proof of identification establishing out-of-state residency  
19 is fraudulent is guilty of a misdemeanor and, in addition, is liable  
20 for the tax and subject to a penalty equal to the greater of one  
21 thousand dollars or the tax due on such sales. In addition, both the  
22 purchaser and the vendor are liable for any penalties and interest  
23 assessable under chapter 82.32 RCW.)) (4)(a)(i) Beginning January 1,  
24 2014, through December 31, 2014, a person may request a remittance from  
25 the department for state and local sales taxes paid by the person on  
26 qualified retail purchases made in Washington between August 1, 2013,  
27 and December 31, 2013.

28 (ii) Beginning January 1, 2015, a person may request a remittance  
29 from the department during any calendar year for state and local sales  
30 taxes paid by the person on qualified retail purchases made in  
31 Washington during the immediately preceding calendar year only. No  
32 application may be made with respect to purchases made before the  
33 immediately preceding calendar year only. No application may be made  
34 with respect to purchases made before the immediately preceding  
35 calendar year.

36 (b) The remittance request, including proof of nonresident status  
37 and any other documentation and information required by the department,

1 must be made provided in a form and manner as prescribed by the  
2 department. Remittance requests may only be made by a person once each  
3 calendar quarter.

4 (c) The total amount of a remittance request must be at least  
5 twenty-five dollars. The department must deny any request for a  
6 remittance that is less than twenty-five dollars.

7 (d) The department will examine the applicant's proof of  
8 nonresident status and any other documentation and information as  
9 required in the application to determine whether the applicant is  
10 entitled to a remittance under this section.

11 (5)(a) Any person making fraudulent statements to the department,  
12 which includes the offer of fraudulent or fraudulently procured  
13 identification or fraudulent sales receipts, in order to receive a  
14 remittance of retail sales tax is guilty of perjury under chapter 9A.72  
15 RCW.

16 (b) Any person requesting a remittance of sales tax from the  
17 department by providing proof of identification or sales receipts not  
18 the person's own, or counterfeit identification or sales receipts, with  
19 intent to violate the provisions of this section, is guilty of a  
20 misdemeanor and, in addition, is liable for the tax and subject to a  
21 penalty equal to the greater of one hundred dollars or the tax due on  
22 such purchases.

23 (6) The exemption provided by this section is for both state and  
24 local sales taxes. For purposes of this section, "local sales tax"  
25 means a sales tax imposed by a local government under the authority of  
26 chapter 82.14 RCW, RCW 81.104.170, or other provision of law, and which  
27 is imposed on the same taxable event as the state sales tax imposed in  
28 this chapter.

29 (7) A nonresident who receives a refund of sales tax from the  
30 seller for any reason with respect to a purchase made in this state is  
31 not entitled to a remittance for the tax paid on the purchase. A  
32 person who receives both a remittance under this section and a refund  
33 from the seller with respect to the same purchase must immediately  
34 repay the remittance to the department. Interest as provided in  
35 chapter 82.32 RCW applies to amounts due under this section from the  
36 date that the department made the remittance until the amount due under  
37 this subsection is paid to the department. A person who receives a  
38 remittance with respect to a purchase for which the person had, at the

1 time the person submitted the application for a remittance, already  
2 received a refund of sales tax from the seller is also liable for the  
3 evasion penalty in RCW 82.32.090(7) and is ineligible to receive any  
4 further remittance from the department under this section.

5 **Sec. 2.** RCW 82.14.050 and 2012 1st sp.s. c 9 s 1 are each amended  
6 to read as follows:

7 (1) The counties, cities, and transportation authorities under RCW  
8 82.14.045, public facilities districts under chapters 36.100 and 35.57  
9 RCW, public transportation benefit areas under RCW 82.14.440, regional  
10 transportation investment districts, and transportation benefit  
11 districts under chapter 36.73 RCW must contract, prior to the effective  
12 date of a resolution or ordinance imposing a sales and use tax, the  
13 administration and collection to the state department of revenue, which  
14 must deduct a percentage amount, as provided by contract, not to exceed  
15 two percent of the taxes collected for administration and collection  
16 expenses incurred by the department. The remainder of any portion of  
17 any tax authorized by this chapter that is collected by the department  
18 of revenue must be deposited by the state department of revenue in the  
19 local sales and use tax account hereby created in the state treasury.  
20 Beginning January 1, 2013, the department of revenue must make deposits  
21 in the local sales and use tax account on a monthly basis on the last  
22 business day of the month in which distributions required in (a) of  
23 this subsection are due. Moneys in the local sales and use tax account  
24 may be withdrawn only for:

25 (a) Distribution to counties, cities, transportation authorities,  
26 public facilities districts, public transportation benefit areas,  
27 regional transportation investment districts, and transportation  
28 benefit districts imposing a sales and use tax; and

29 (b) Making refunds of taxes imposed under the authority of this  
30 chapter and RCW 81.104.170 and exempted under RCW 82.08.0273, 82.08.962  
31 (~~and~~), or 82.12.962.

32 (2) All administrative provisions in chapters 82.03, 82.08, 82.12,  
33 and 82.32 RCW, as they now exist or may hereafter be amended, insofar  
34 as they are applicable to state sales and use taxes, are applicable to  
35 taxes imposed pursuant to this chapter.

36 (3) Counties, cities, transportation authorities, public facilities

1 districts, and regional transportation investment districts may not  
2 conduct independent sales or use tax audits of sellers registered under  
3 the streamlined sales tax agreement.

4 (4) Except as provided in RCW 43.08.190 and subsection (5) of this  
5 section, all earnings of investments of balances in the local sales and  
6 use tax account must be credited to the local sales and use tax account  
7 and distributed to the counties, cities, transportation authorities,  
8 public facilities districts, public transportation benefit areas,  
9 regional transportation investment districts, and transportation  
10 benefit districts monthly.

11 (5) Beginning January 1, 2013, the state treasurer must determine  
12 the amount of earnings on investments that would have been credited to  
13 the local sales and use tax account if the collections had been  
14 deposited in the account over the prior month. When distributions are  
15 made under subsection (1)(a) of this section, the state treasurer must  
16 transfer this amount from the state general fund to the local sales and  
17 use tax account and must distribute such sums to the counties, cities,  
18 transportation authorities, public facilities districts, public  
19 transportation benefit areas, regional transportation investment  
20 districts, and transportation benefit districts.

21 **Sec. 3.** RCW 82.14.060 and 2009 c 469 s 108 are each amended to  
22 read as follows:

23 (1)(a) Monthly, the state treasurer must distribute from the local  
24 sales and use tax account to the counties, cities, transportation  
25 authorities, public facilities districts, and transportation benefit  
26 districts the amount of tax collected on behalf of each taxing  
27 authority, less:

28 (i) The deduction provided for in RCW 82.14.050; and

29 (ii) The amount of any refunds of local sales and use taxes  
30 exempted under RCW 82.08.0273, 82.08.962 (~~(and)~~), or 82.12.962, which  
31 must be made without appropriation.

32 (b) The state treasurer (~~(shall)~~) must make the distribution under  
33 this section without appropriation.

34 (2) In the event that any ordinance or resolution imposes a sales  
35 and use tax at a rate in excess of the applicable limits contained  
36 herein, such ordinance or resolution (~~(shall)~~) may not be considered

1 void in toto, but only with respect to that portion of the rate which  
2 is in excess of the applicable limits contained herein.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of the  
9 state government and its existing public institutions, and takes effect  
10 August 1, 2013.

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