

SENATE BILL REPORT

SB 6427

As of February 8, 2016

Title: An act relating to specifying the documentation that must be provided to determine when sales tax applies to the sale of a motor vehicle to an enrolled tribal member.

Brief Description: Specifying the documentation that must be provided to determine when sales tax applies to the sale of a motor vehicle to an enrolled tribal member.

Sponsors: Senators Fain, Hargrove, Keiser, Honeyford, Rolfes and Roach.

Brief History:

Committee Activity: Ways & Means: 2/08/16.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Juliana Roe (786-7438)

Background: Retail Sales Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Retail Sales Tax on Sales Made to Indians or Indian Tribes. Under federal law, sales tax is not imposed on sales to enrolled tribal members if the tangible personal property is delivered to a member or tribe in Indian country, or if the sale takes place in Indian country. There is no explicit exemption in state law. This includes the sale of motor vehicles, trailers, off-road vehicles, etc.

To make exempt sales to tribal members, auto dealers must obtain a retail sales tax certificate from the Department of Revenue (DOR) and obtain the required information included on the certificate. This includes a declaration of the buyer that requires the buyer's: (1) name; (2) signature; (3) address; (4) delivery address; and (5) proof of tribal membership, using one of four authorized tribal documents.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In addition to the declaration of buyer requirements, the dealer must provide information on the retail sales exemption certificate. This includes: (1) the seller's name; (2) the seller's address; (3) vehicle information; (4) the name of the tribe to which that delivery was made; and (5) the signature of the seller. DOR may require additional information to verify delivery from the seller, such as gas receipts, trip tickets, or a photograph of the vehicle next to a landmark location in Tribal country.

The auto dealer is not required to submit the exemption certificate to DOR; however, the dealer must maintain the certificate as proof the exemption was valid, as required under RCW 82.32. If DOR finds that proper documentation was not obtained, DOR may assess the auto dealer the retail sales tax that would have otherwise been due.

Summary of Bill: A retail sales tax exemption is created, for sales of vehicles to enrolled tribal members provided the following information is obtained by the seller: (1) a currently valid tribal membership or citizenship card; (2) a currently valid certificate of tribal enrollment; or (3) a letter signed by a tribal official confirming the buyer's current tribal membership status. The vehicle must be delivered to Indian country. The seller must document the delivery by doing the following: (1) entering the delivery location into an online system maintained by DOR; and (2) completing a declaration signed by the seller attesting that delivery was made to the location entered into the system.

A person who makes fraudulent statements, including offering fraudulent identification, in order to purchase a vehicle without paying the retail sales tax is guilty of perjury, which is a felony.

A person who displays proof of identification that is not their own, or counterfeit identification, in order to purchase a vehicle without paying the retail sales tax is guilty of a misdemeanor and is liable for: (1) the retail sales tax that would have been due; (2) a penalty of 100 percent of the retail sales tax due; and (3) any penalties and interest under chapter 82.32 RCW.

A person who makes a tax-exempt sale with the knowledge that the buyer's required documentation is fraudulent is guilty of a misdemeanor and is liable for: (1) the retail sales tax that would have been due; (2) a penalty of 100 percent of the retail sales tax due or \$1,000, whichever is greater; and (3) both the buyer and the seller are liable for any penalties and interest imposed under chapter 82.32 RCW.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill clarifies which documents are required to be collected and secured by the dealer when making a sale to a tribal buyer. This

is already an exemption under federal law. There is amendatory language that has been worked out with DOR and tribes.

Persons Testifying: PRO: Scott Hazlegrove, WA State Auto Dealers Association.

Persons Signed In To Testify But Not Testifying: No one.