

CERTIFICATION OF ENROLLMENT

SENATE BILL 6799

60th Legislature
2008 Regular Session

Passed by the Senate February 18, 2008
YEAS 45 NAYS 3

President of the Senate

Passed by the House March 5, 2008
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6799** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 6799

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senators Regala, Prentice, and Fraser; by request of Department of Revenue

Read first time 01/24/08. Referred to Committee on Ways & Means.

1 AN ACT Relating to the sourcing, for sales and use tax purposes, of
2 sales of tangible personal property by florists; amending RCW
3 82.32.730; and providing an effective date.

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

5 **Sec. 1.** RCW 82.32.730 and 2007 c 6 s 501 are each amended to read
6 as follows:

7 (1) Except as provided in subsections (5) through (7) of this
8 section, for purposes of collecting or paying sales or use taxes to the
9 appropriate jurisdictions, all sales at retail shall be sourced in
10 accordance with this subsection and subsections (2) through (4) of this
11 section.

12 (a) When tangible personal property, an extended warranty, or a
13 service defined as a retail sale under RCW 82.04.050 is received by the
14 purchaser at a business location of the seller, the sale is sourced to
15 that business location.

16 (b) When the tangible personal property, extended warranty, or a
17 service defined as a retail sale under RCW 82.04.050 is not received by
18 the purchaser at a business location of the seller, the sale is sourced
19 to the location where receipt by the purchaser or the purchaser's

1 donee, designated as such by the purchaser, occurs, including the
2 location indicated by instructions for delivery to the purchaser or
3 donee, known to the seller.

4 (c) When (a) and (b) of this subsection do not apply, the sale is
5 sourced to the location indicated by an address for the purchaser that
6 is available from the business records of the seller that are
7 maintained in the ordinary course of the seller's business when use of
8 this address does not constitute bad faith.

9 (d) When (a), (b), and (c) of this subsection do not apply, the
10 sale is sourced to the location indicated by an address for the
11 purchaser obtained during the consummation of the sale, including the
12 address of a purchaser's payment instrument, if no other address is
13 available, when use of this address does not constitute bad faith.

14 (e) When (a), (b), (c), or (d) of this subsection do not apply,
15 including the circumstance where the seller is without sufficient
16 information to apply those provisions, then the location shall be
17 determined by the address from which tangible personal property was
18 shipped, from which the digital good or the computer software delivered
19 electronically was first available for transmission by the seller, or
20 from which the extended warranty or service defined as a retail sale
21 under RCW 82.04.050 was provided, disregarding for these purposes any
22 location that merely provided the digital transfer of the product sold.

23 (2) The lease or rental of tangible personal property, other than
24 property identified in subsection (3) or (4) of this section, shall be
25 sourced as provided in this subsection.

26 (a) For a lease or rental that requires recurring periodic
27 payments, the first periodic payment is sourced the same as a retail
28 sale in accordance with subsection (1) of this section. Periodic
29 payments made subsequent to the first payment are sourced to the
30 primary property location for each period covered by the payment. The
31 primary property location shall be as indicated by an address for the
32 property provided by the lessee that is available to the lessor from
33 its records maintained in the ordinary course of business, when use of
34 this address does not constitute bad faith. The property location is
35 not altered by intermittent use at different locations, such as use of
36 business property that accompanies employees on business trips and
37 service calls.

1 (b) For a lease or rental that does not require recurring periodic
2 payments, the payment is sourced the same as a retail sale in
3 accordance with subsection (1) of this section.

4 (c) This subsection (2) does not affect the imposition or
5 computation of sales or use tax on leases or rentals based on a lump
6 sum or accelerated basis, or on the acquisition of property for lease.

7 (3) The lease or rental of motor vehicles, trailers, semitrailers,
8 or aircraft that do not qualify as transportation equipment shall be
9 sourced as provided in this subsection.

10 (a) For a lease or rental that requires recurring periodic
11 payments, each periodic payment is sourced to the primary property
12 location. The primary property location is as indicated by an address
13 for the property provided by the lessee that is available to the lessor
14 from its records maintained in the ordinary course of business, when
15 use of this address does not constitute bad faith. This location is
16 not altered by intermittent use at different locations.

17 (b) For a lease or rental that does not require recurring periodic
18 payments, the payment is sourced the same as a retail sale in
19 accordance with subsection (1) of this section.

20 (c) This subsection does not affect the imposition or computation
21 of sales or use tax on leases or rentals based on a lump sum or
22 accelerated basis, or on the acquisition of property for lease.

23 (4) The retail sale, including lease or rental, of transportation
24 equipment shall be sourced the same as a retail sale in accordance with
25 subsection (1) of this section.

26 (5)(a) A purchaser of direct mail that is not a holder of a direct
27 pay permit shall provide to the seller in conjunction with the purchase
28 either a direct mail form or information that shows the jurisdictions
29 to which the direct mail is delivered to recipients.

30 (i) Upon receipt of the direct mail form, the seller is relieved of
31 all obligations to collect, pay, or remit the applicable tax and the
32 purchaser is obligated to pay or remit the applicable tax on a direct
33 pay basis. A direct mail form shall remain in effect for all future
34 sales of direct mail by the seller to the purchaser until it is revoked
35 in writing.

36 (ii) Upon receipt of information from the purchaser showing the
37 jurisdictions to which the direct mail is delivered to recipients, the
38 seller shall collect the tax according to the delivery information

1 provided by the purchaser. In the absence of bad faith, the seller is
2 relieved of any further obligation to collect tax on any transaction
3 where the seller has collected tax pursuant to the delivery information
4 provided by the purchaser.

5 (b) If the purchaser of direct mail does not have a direct pay
6 permit and does not provide the seller with either a direct mail form
7 or delivery information as required by (a) of this subsection, the
8 seller shall collect the tax according to subsection (1)(e) of this
9 section. This subsection does not limit a purchaser's obligation for
10 sales or use tax to any state to which the direct mail is delivered.

11 (c) If a purchaser of direct mail provides the seller with
12 documentation of direct pay authority, the purchaser is not required to
13 provide a direct mail form or delivery information to the seller.

14 (6) The following are sourced to the location at or from which
15 delivery is made to the consumer:

16 (a) A retail sale of watercraft;

17 (b) A retail sale of a modular home, manufactured home, or mobile
18 home; (~~and~~)

19 (c) A retail sale, excluding the lease and rental, of a motor
20 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
21 transportation equipment; and

22 (d) Florist sales. In the case of a sale in which one florist
23 takes an order from a customer and then communicates that order to
24 another florist who delivers the items purchased to the place
25 designated by the customer, the location at or from which the delivery
26 is made to the consumer is deemed to be the location of the florist
27 originally taking the order.

28 (7) A retail sale of the providing of telecommunications services
29 or ancillary services, as those terms are defined in RCW 82.04.065,
30 shall be sourced in accordance with RCW 82.32.520.

31 (8) The definitions in this subsection apply throughout this
32 section.

33 (a) "Delivered electronically" means delivered to the purchaser by
34 means other than tangible storage media.

35 (b) "Direct mail" means printed material delivered or distributed
36 by United States mail or other delivery service to a mass audience or
37 to addressees on a mailing list provided by the purchaser or at the
38 direction of the purchaser when the cost of the items are not billed

1 directly to the recipients. "Direct mail" includes tangible personal
2 property supplied directly or indirectly by the purchaser to the direct
3 mail seller for inclusion in the package containing the printed
4 material. "Direct mail" does not include multiple items of printed
5 material delivered to a single address.

6 (c) "Florist sales" means the retail sale of tangible personal
7 property by a florist. For purposes of this subsection (8)(c),
8 "florist" means a person whose primary business activity is the retail
9 sale of fresh cut flowers, potted ornamental plants, floral
10 arrangements, floral bouquets, wreaths, or any similar products, used
11 for decorative and not landscaping purposes.

12 (d) "Receive" and "receipt" mean taking possession of tangible
13 personal property, making first use of services, or taking possession
14 or making first use of digital goods, whichever comes first. "Receive"
15 and "receipt" do not include possession by a shipping company on behalf
16 of the purchaser.

17 ((+d)) (e) "Transportation equipment" means:

18 (i) Locomotives and railcars that are used for the carriage of
19 persons or property in interstate commerce;

20 (ii) Trucks and truck tractors with a gross vehicle weight rating
21 of ten thousand one pounds or greater, trailers, semitrailers, or
22 passenger buses that are:

23 (A) Registered through the international registration plan; and

24 (B) Operated under authority of a carrier authorized and
25 certificated by the United States department of transportation or
26 another federal authority to engage in the carriage of persons or
27 property in interstate commerce;

28 (iii) Aircraft that are operated by air carriers authorized and
29 certificated by the United States department of transportation or
30 another federal or foreign authority to engage in the carriage of
31 persons or property in interstate or foreign commerce; or

32 (iv) Containers designed for use on and component parts attached or
33 secured on the items described in ((+d)) (e)(i) through (iii) of this
34 subsection.

35 (9) In those instances where there is no obligation on the part of
36 a seller to collect or remit this state's sales or use tax, the use of
37 tangible personal property or of a service, subject to use tax, is

1 sourced to the place of first use in this state. The definition of use
2 in RCW 82.12.010 applies to this subsection.

3 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2008.

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