

# HOUSE BILL REPORT

## SHB 2758

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### As Passed Legislature

**Title:** An act relating to documenting wholesale sales for excise tax purposes.

**Brief Description:** Documenting wholesale sales for excise tax purposes.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Hunter, Condotta, Kessler and Orcutt; by request of Department of Revenue).

#### **Brief History:**

##### **Committee Activity:**

Finance: 1/22/10, 1/28/10, 1/29/10 [DPS].

##### **Floor Activity:**

Passed House: 2/12/10, 95-0.

Passed Senate: 3/9/10, 48-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Modifies the seller's permit program for wholesale purchases to improve, clarify, and correct provisions.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta, Conway, Ericks, Santos and Springer.

**Staff:** Jeffrey Mitchell (786-7139).

#### **Background:**

Retail sales taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and digital products and some services. A retail sale is a sale to the final consumer or end user of the property, product, or service. If retail sales taxes were not collected when the property, products, or

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services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in this state.

Wholesale purchases (i.e. sales for resale) are not subject to sales tax since the purchaser is not the final consumer or end user of the property, product, or service. Until January 1, 2010, buyers making wholesale purchases used self-issued resale certificates to purchase goods without incurring sales tax. The purchaser would provide the seller with the resale certificate at the time of purchase. A 2008 Department of Revenue (DOR) compliance study concluded that sales and use tax noncompliance through the misuse of self-issued resale certificates had led to a substantial amount of unpaid state and local sales and use taxes each year.

The Legislature, to address the misuse of resale certificates, adopted legislation in 2009 (SSB 6173) replacing resale certificates with DOR issued seller's permits. Effective January 1, 2010, buyers may no longer use self-issued resale certificates. Every business that sells at wholesale and has blanket resale certificates on file must replace them with seller permits. Generally, a business may use a seller's permit if it engages in wholesale purchases and had no documented misuse of a resale certificate. Contractors must further demonstrate that 25 percent or more of material and labor costs during the preceding 12 months related to retail or wholesale construction activities. Businesses that do not make wholesale purchases as part of their business are not issued a seller's permit. In September 2009, the DOR began mailing permits to qualifying businesses. Businesses that did not automatically receive a permit could apply directly.

For wholesalers, retailers, and manufacturers (collectively referred to as wholesalers) permits issued to taxpayers who register with the DOR after January 1, 2009, are valid for two years and may be renewed for four years. Permits issued to taxpayers who registered with the DOR on or before January 1, 2009, are valid for four years. For contractors, reseller permits are valid for one year and renewed annually. Businesses seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the DOR. The DOR is required to rule on all applications within 60 days. Permits can be verified online at the DOR's website.

#### **Summary of Substitute Bill:**

A "seller's permit" is renamed. It is now referred to as a "reseller permit."

The DOR must use its best efforts to rule on a permit application within 60 days, but the 60 day requirement is no longer mandatory. If the DOR fails to rule on the application within 60 days, the applicant may resubmit the application or request a review with the DOR.

Permit applications for wholesalers, retailers, and manufacturers (collectively referred to as wholesalers) may be denied on the basis of material misstatements in the application or being incomplete. (These requirements already exist for contractor reseller permits.)

Applications to renew wholesaler reseller permits submitted more than 90 days before the expiration of the current permit must be refused. (This requirement already exists for contractor reseller permits.)

The categories for which the DOR may initially issue a wholesaler reseller permit for 24 months instead of 48 months is expanded to include a number of different circumstances where the taxpayer has had limited or inconsistent contact with the DOR.

The DOR is authorized to adopt a uniform expiration date for reseller permits if the DOR determines that a uniform expiration date will improve administrative efficiency. The DOR is also authorized to extend or shorten the effective period of a permit by up to 6 months if a uniform expiration date is adopted.

The DOR's reseller permit website may provide additional information about the permit holder such as: the status of the holder's reseller permit, the expiration date of the holder's permit, and the permit holder's name, entity type, and mailing address.

The DOR is authorized to automatically issue or renew a contractor reseller permit if the DOR determines that the contractor is entitled to make purchases at wholesale and the collection of sales and use taxes will not be jeopardized. (This authorization already exists for wholesaler reseller permits.)

Beginning July 1, 2013, contractor reseller permits will be valid for 24 months instead of 12 months. However, the DOR may issue or renew contractor reseller permits for 24 months beginning July 1, 2011, if the DOR is satisfied that the buyer is entitled to make wholesale purchases.

The 12 month look-back period for contractors to meet the 25 percent threshold is extended to 24 months.

Rules adopted by the DOR related to establishing a uniform expiration date for reseller permits are exempt from the requirements for adopting legislative rules.

A number of non-substantive technical and clarifying changes are made to the reseller permit provisions.

Most of the provisions of the bill operate retroactively as well as prospectively.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 2, 3, 11, 12, and 15, relating to reseller permits, unlawful acts, penalties, and rule adoption, which take effect on July 1, 2010.

**Staff Summary of Public Testimony:**

(In support) This bill addresses concerns brought up from the sellers bill passed last session. This bill improves the overall administration of the law, reduces the burden on vendors, and clarifies who is eligible for a permit. It allows the DOR to issue or reissue permits to contractors, who are in good standing with the DOR, without an application. It brings the

DOR's definition of a "contractor" in line with the Department of Labor and Industries's definition. It also allows the DOR to possibly have varying expiration dates and lays the foundation for developing a system to automatically verify permits.

(In support with concerns) This bill improves upon the bill passed last year. However, the 2013 effect date for issuing a two-year permit to contractors needs to be moved to 2011. Also, the seller should be relieved of the obligation to retain a copy of the permit, if they check the database with the DOR.

**Persons Testifying:** (In support) Drew Shirk, Department of Revenue.

(In support with concerns) Amber Carter, Association of Washington Business; and Eric Lohnes, Building Industry Association of Washington.

**Persons Signed In To Testify But Not Testifying:** (In support with concerns) Van Collins, Association of General Contractors.