

# HOUSE BILL REPORT

## SSB 5566

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### As Passed House - Amended:

April 8, 2009

**Title:** An act relating to harmonizing excise tax statutes with the streamlined sales and use tax agreement in regards to direct sellers, telecommunications ancillary services, commercial parking taxes, and exemption certificates.

**Brief Description:** Harmonizing excise tax statutes with the streamlined sales and use tax agreement in regards to direct sellers, telecommunications ancillary services, commercial parking taxes, and exemption certificates.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Regala and Prentice; by request of Department of Revenue).

### Brief History:

#### Committee Activity:

Finance: 3/20/09, 3/26/09 [DPA].

#### Floor Activity

Passed House - Amended: 4/8/09, 98-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Allows origin-based sourcing for printers engaged in direct mailing activities.
- Imposes a penalty on persons misusing the uniform exemption certificate under the streamlined agreement.
- Specifies that a local option parking tax is not subject to the uniform rate requirement under the streamlined agreement.
- Specifies that ancillary telecommunication services are sourced to a customer's residential or business street address.
- Prohibits interest and penalties, until January 1, 2013, on inadvertent errors made in a good faith effort to comply with the sourcing rules for taxpayers with gross incomes below \$500,000 in the prior year.

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## HOUSE COMMITTEE ON FINANCE

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*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.*

**Majority Report:** Do pass as amended. 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:**

In 2007 Washington enacted legislation to conform with the national streamlined sales and use tax agreement (SSUTA). The legislation took effect on July 1, 2008. The SSUTA is a voluntary multi-state effort to simplify and modernize sales and use tax administration for member states in order to substantially reduce the burden of tax compliance. Currently, 22 states are members of the SSUTA. The agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following: state level administration of sales and use tax collections, uniformity in the state and local tax bases, uniformity of major tax base definitions, central electronic registration system for all member states, simplification of state and local tax rates, uniform sourcing rules for all taxable transactions, simplified administration of exemptions, simplified tax returns, simplification of tax remittances, and protection of consumer privacy.

One of the biggest changes for Washington regarding SSUTA implementation was the change to destination sourcing. Sourcing refers to the determination of where a sale occurs for the purposes of assigning state and local sales and use taxes. Prior to July 1, 2008, the date when Washington's SSUTA's conforming legislation took effect, sales were sourced based on the location from which merchandise was shipped. Beginning on July 1, 2008, retailers delivering goods in Washington began collecting sales tax based on where the customer receives the merchandise.

Direct-mail businesses are businesses that print, label, bind, fold, enclose, and mail advertising material, publications, form letters, and other mail pieces as directed by the customer. Under current law, if a retailer contracted with a direct-mail business for the printing and mailing of catalogs, advertising, or other mail to a large number of individuals, the direct-mail business would have to determine the taxing jurisdiction for every person on the mailing list, unless the retailer paid tax directly or claimed an exemption. On September 5, 2008, the governing board of the streamlined agreement modified the agreement to allow direct-mail businesses to source sales tax to the location from which the mail was shipped if the shipping location and delivery location are within the same state. Washington law still conforms to the pre-September 5, 2008, sourcing requirements for direct mail.

Under the SSUTA, ancillary services, which are services provided along with a telephone related service and include services such as voice mail or caller identification are sourced to the customer's place of primary use, which is the residential or business street address of the customer. However, Washington law does not currently provide an identical sourcing requirement for ancillary services.

Goods and services purchased for resale are exempt from tax because the sales tax only applies (usually) to purchases made by final consumers. The Department of Revenue (DOR) has specified the information contained in a traditional resale certificate used by buyers when

purchasing goods and services that will be resold. However, the SSUTA requires the use of a special, uniform certificate for claiming a resale exemption electronically that is in a form provided by the governing board of the streamlined agreement. The misuse of a traditional resale certificate subjects a taxpayer to an additional 50 percent penalty; however, this penalty does not apply to the misuse of a similar uniform certificate for resale exemptions.

The SSUTA requires one jurisdiction-wide tax rate for state and local sales and use taxes. However, many charges that resemble sales and use taxes were not intended to be covered under the SSUTA. Examples of these charges include car rental taxes, the use tax on natural or manufactured gas, admission fees, and room and hotel taxes. State law authorizes counties and cities to impose a tax on commercial parking businesses. Cities and counties may structure the tax so that it is based upon the amount paid for renting or leasing of the space. Cities and counties may also use differing tax rates depending upon the zoning or location of the facility.

**Summary of Amended Bill:**

A seller of direct mail is allowed to source sales for sales tax purposes to the location from which delivery is made if the shipping and delivery locations are located within the state. For sales of direct mail to locations outside of the state, the seller is still required to source sales tax based upon the out-of-state delivery locations.

All telecommunication ancillary services are sourced to the business or residential street address of the customer.

The 50 percent penalty for the misuse of traditional resale certificates is applied to the uniform exemption certificate under the SSUTA with respect to people unlawfully claiming a resale exemption on the uniform certificate.

The commercial parking tax for cities and counties is exempted from the uniform tax rate requirement.

The DOR may not assess interest and penalties, until January 1, 2013, on inadvertent errors made in a good faith effort to comply with the sourcing rules for taxpayers with gross incomes below \$500,000 in the prior calendar year.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is the DOR request legislation and similar to House Bill 1089 that passed out of the Finance Committee. This bills resolves an issue between the printers and the Streamlined Sales and Use Tax Board. The Legislature needs to make sure that during the

implementation period that the DOR does not go after employers making a good-faith effort to comply, as well as ensure harmonization between state and local business tax. These components should be added to the bill.

(Opposed) None.

**Persons Testifying:** Drew Shirk, Department of Revenue; and Amber Carter, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** (In support) Troy Nichols, National Federation of Independent Business; and Mark Johnson, Washington Retail Association.