

SENATE BILL REPORT

SHB 2758

As Reported by Senate Committee On:
Ways & Means, February 17, 2010

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

Committee Activity: Ways & Means: 2/17/10 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Carrell, Fairley, Hobbs, Honeyford, Keiser, Kohl-Welles, McDermott, Parlette, Pflug, Pridemore, Regala, Rockefeller and Schoesler.

Staff: Dean Carlson (786-7305)

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, and the tax is imposed on the consumer. The business making the retail sale collects the tax from the consumer and remits the tax to the Department of Revenue (DOR).

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 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.

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.

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 has 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 DOR began mailing permits to qualifying businesses. Businesses that did not automatically receive a permit could apply directly.

Permits issued to taxpayers who register with 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 DOR. DOR is required to rule on all applications within 60 days. Permits can be verified online at DOR's website.

Summary of Bill: A seller's permit is renamed. It is now referred to as a reseller permit.

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.)

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

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.

A seller may electronically verify a reseller permit which relieves the seller the responsibility to maintain a copy of the reseller permit.

DOR is authorized to automatically issue or renew a contractor reseller permit if 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 two years instead of one year.

The categories for which 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 DOR.

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 DOR fails to rule on the application within 60 days, the applicant may resubmit the application or request a review with DOR.

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.)

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

The look-back period for contractor reseller permits is extended from 12 months to 24 months in determining whether the 25 percent threshold has been met.

DOR may issue 24-month contractor reseller permits beginning July 1, 2011, if DOR is satisfied that the buyer is entitled to make wholesale purchases.

Most of the provisions operate retroactively as well as prospectively.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Companion SB 6551: PRO: The bill from last year was a major change to sellers and buyers. We worked with stakeholders throughout the interim to address issues with the bill. This bill will allow us to reduce paperwork burden. It would allow two-year permits for contractors instead of one. This will allow us to modernize our system, have a resellers permit that is effective and useful, and will reduce the burden on industry. This did have extensive stakeholder input. We would like the 2013 start of the two-year contractor permit to have permissive language allowing DOR to issue the two-year permits earlier based on a criteria they develop. We would like to have the safe harbor record keeping data elements regardless if they look it up on revenues system. The Building Industry Association of Washington's (BIAW) concerns are that we would like the one-year contractors permit moved to a two-year permit in 2011.

Persons Testifying: PRO: Drew Shirk, DOR; Eric Lohnes, BIAW; Amber Carter, Association of Washington Business.