

HOUSE BILL REPORT

HB 2590

As Reported By House Committee On:

Finance

Title: An act relating to excise tax changes needed as a result of the United States supreme court in Jefferson Lines v. Oklahoma.

Brief Description: Implementing excise tax changes needed as a result of Jefferson Lines v. Oklahoma.

Sponsors: Representatives Van Luven, Dickerson and B. Thomas; by request of Department of Revenue.

Brief History:

Committee Activity:

Finance: 1/31/96, 2/5/96 [DPS].

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives B. Thomas, Chairman; Carrell, Vice Chairman; Boldt, Vice Chairman; Morris, Ranking Minority Member; Dickerson, Assistant Ranking Minority Member; Hymes; Mason; Mulliken; Pennington; Schoesler; Sheldon and Van Luven.

Staff: Bob Longman (786-7139).

Background: *Sales taxation of guided tours and guided charters.* The sales tax is imposed on retail sales of most items of tangible personal property and some services. The state tax rate is 6.5 percent and is applied to the selling price of the article or service. In addition, local sales taxes apply. The total rate is between 7 percent and 8.2 percent, depending on the location.

Wholesales of tangible personal property are exempt from sales tax. Except for telephone services, there is no similar exemption for wholesales of services.

In 1993, the Legislature extended state and local retail sales taxes to sales of certain services, including guided tours and guided charters. Other services subjected to sales taxation in 1993 were massage services; landscape maintenance and horticultural services other than horticultural services provided to farmers; coin-operated laundry

facilities in apartment houses, hotels, trailer camps and tourist camps; service charges associated with tickets to professional sporting events; physical fitness services; tanning salon services; tattoo parlor services; steam bath services; turkish bath services; escort services; and dating services. These services were added to the list of services that were already subject to sales tax, which were construction; repair; automobile parking and storage; telephone services; some amusement and recreation services; and services provided by abstract, title insurance, escrow, and credit bureau businesses. Many types of services remain exempt from sales tax. Major exemption categories include medical, legal, accounting, engineering, motion pictures, veterinary, cable television, and beauty and barber services.

Guided tours and guided charters often involve multi-state transactions. Part of the tour or charter may take place in Washington and part in another state. Tickets for a trip in Washington may be sold in another state. Tickets for trips in other states may be sold in Washington. The Department of Revenue drafted a proposed rule which addressed multi-state issues for guided tours and guided charters. Under this proposed rule

- (a) If the guided tour or guided charter takes place entirely in this state, the total price of the guided tour or charter is subject to Washington's retail sales tax.
- (b) If the guided tour or guided charter takes place both inside and outside of Washington, the percentage of the tour that takes place in this state is subject to Washington's retail sales tax if the percentage is more than 25 percent. Percentage of tour relates to the time spent on the tour.

The treatment of guided tours and guided charters under the Department's proposed rule differs from the usual treatment of sales of goods. Sales of goods are generally treated as occurring solely in the state where the goods are delivered. Sales tax applies to the full price, if the goods are delivered in the state. Sales tax does not apply at all if the goods are delivered outside the state.

On April 3, 1995, the United States Supreme Court delivered its decision in *Oklahoma Tax Commission v. Jefferson Lines*. The court held that sales of bus tickets should be taxed, based on the full price, in the state where agreement, payment, and delivery of some of the services occurs. The Department of Revenue subsequently withdrew its proposed rule.

B&O taxation of travel agents and tour operators. Washington's major business tax is the business and occupation (B&O) tax. This tax is imposed on gross income from business activities conducted within the state. There are several different B&O tax rates.

Travel agents are taxed under a special B&O tax rate of 0.287 percent. Tour operators are taxed under the service or other business rate of 1.829 percent.

Summary of Substitute Bill: Guided tours and guided charters are removed from the definition of retail sale and replaced with day trips for sightseeing purposes. Wholesales of day trips and other amusement and recreation services, such as golf, pool, billiards, skating, bowling, and ski lifts are exempted from sales tax.

The special B&O tax rate of 0.287 percent for travel agents is applied to all sellers of travel whose principal duties include consulting with and advising persons concerning travel arrangements.

Substitute Bill Compared to Original Bill: The substitute bill clarifies that sales to consumers are retail sales, and sales to nonconsumers are wholesales. The substitute bill is consistent with HB 2212, which repeals all the 1993 sales taxes on services. If HB 2212 becomes law, the sales tax on guided tours and guided charters will cease, including day trips. The remainder of the changes made in this bill will still be effective.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on April 1, 1996.

Testimony For: Taxation of the travel industry has become more complicated because of a recent U.S. Supreme Court decision. This bill will restore fair treatment of guided tours and charters in this state. Without this bill, guided tour and charter operators will move out of state so they will not have to collect sales tax. Taxing tour operators and travel agents at different B&O rates under current law is unfair and difficult for the Department of Revenue to administer.

Testimony Against: None.

Testified: Ryan Spiller, Department of Revenue.