

SENATE BILL REPORT

SB 5940

As Reported By Senate Committee On:
Ways & Mean, March 6, 1995

Title: An act relating to clarifying that use tax is due on direct mail advertising pieces printed out-of-state and mailed directly to Washington residents to promote the sale of goods or services by Washington residents.

Brief Description: Clarifying that use tax is due on certain direct mail advertising.

Sponsors: Senators Snyder, McCaslin, Loveland, Palmer, Bauer, Sutherland, Newhouse, Heavey, Moyer, Finkbeiner, Winsley, Gaspard, Drew, Sheldon, Fraser, Wojahn, Long and Spanel.

Brief History:

Committee Activity: Ways & Means: 2/28/95, 3/6/95 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Drew, Finkbeiner, Fraser, Gaspard, Hargrove, McDonald, Pelz, Sheldon, Snyder, Spanel, Sutherland, West and Wojahn.

Staff: Terry Wilson (786-7715)

Background: The sales tax is paid on each retail sale of most articles of tangible personal property and certain services. The use tax is imposed on the use of articles of tangible personal property when the sale or acquisition has not been subject to the sales tax. The use tax commonly applies to purchases made from out-of-state firms.

In 1981, the Thurston County Superior Court ruled that catalogs shipped directly from an out-of-state printer to customers in this state had not been "used" by the in-state retailer who had contracted for the printing and shipment. The retailer therefore was not subject to use tax. While use was defined to include any person who causes to be distributed property to promote the sale of products or services, the use tax did not apply to personal property purchased or manufactured outside the state until the transportation of the article finally ended or became commingled with other property in this state. This latter provision was an acknowledgement that the federal commerce clause prevented the state from taxing the activity. However, there currently are no constraints on the taxation of this activity. In 1988, The United States Supreme Court upheld the imposition of Louisiana's use tax on catalogs shipped directly to Louisiana residents by an out-of-state printer with whom an in-state retailer had contracted, and the Legislature removed the interstate transportation provision in 1994 (1994 c 93).

Failure to tax out-of-state direct mail advertising results in a competitive disadvantage to in-state printers who must collect sales tax on advertising materials they deliver to in-state customers.

Summary of Bill: The use tax is imposed on an in-state retailer for advertising materials printed outside the state and mailed directly to Washington residents at the direction of the retailer to promote the sale of products or services.

Appropriation: None.

Fiscal Note: Available.

Effective date: The bill contains an emergency clause and takes effect July 1, 1995.

Testimony For: In-state printers are at a competitive disadvantage because they have to collect a sales tax. There are no competitive printers or large printers in this state because of this tax. Big retailers have an advantage over small retailers who can't go outside the state for printing. They already have the advantage of economy of scale. Businesses are printing out of state because of the court case. Some tell in-state printers that they will go out of state if the printers don't absorb the sales tax. The size of the local post office is based on items mailed from the post office, not to the post office. This will help with the overload there.

Testimony Against: This doesn't tax out of state retailers who send advertising into this state or retailers who send advertising directly to newspapers. This is a new tax and should be referred to the voters under Initiative 601. Direct mail advertising is the most productive for generating sales. This bill will cause less advertising, fewer sales, and a loss of tax revenues. There are no competitive printers or large printers in this state.

Testified: Senator Snyder, prime sponsor (pro); Kent F. Rowe, J.C. Penney (con); Mike Boze, The Bon Marche (con); Jan Gee, WA Retail Assn. (con); Joe Daniels, Direct Marketing Assn. (con); Rowland Thompson, Allied Daily Newspapers (pro); Judy DeVaul, DeVaul Publishing Inc (pro); Diana Kramer, WA Newspaper Publishers Assn. (pro); Mike Kenna, Printer (pro).