

FINAL BILL REPORT

SB 6835

C 367 L 02
Synopsis as Enacted

Brief Description: Revising use tax provisions.

Sponsors: Senator Poulsen.

Senate Committee on Ways & Means

Background: The sales tax is paid on each retail sale of most articles of tangible personal property and certain services. Taxable services include construction, repair, telephone, lodging of less than 30 days, restaurant meals, physical fitness, and some amusement and recreation services.

Sales tax applies to items purchased from in-state and is collected by the seller. Sales tax is calculated on the "selling price" of an article, which includes delivery charges.

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 of tangible personal property from out-of-state firms. The use tax does not apply to services upon which a sales tax has been imposed. The purchaser is required to report use taxes due. Use tax is calculated on the "value" of an article, which statute does not specify includes delivery charges.

Out-of-state printers currently have an advantage over in-state printers on direct mail advertising for in-state retailers because the in-state retailer is subject to the sales and use tax on items printed in this state but not on items printed outside the state. This resulted from a 1981 Thurston County Superior Court decision in which it was held 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. This was in spite of the fact that the statutes had been amended to include any person who causes property to be distributed to promote the sale of products or services. The court may have been influenced by the fact that the use tax did not apply to personal property purchased or manufactured outside the state "until the transportation of the article finally ended in this state." This latter provision was an acknowledgment that the federal commerce clause prevented the state from taxing the activity. However, 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 Washington Legislature removed the interstate transportation language in 1994. Therefore, there currently are no legal constraints on the taxation of this activity.

The state sales 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 8.9 percent, depending on the location.

Summary: The use tax is imposed on the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property. The effect of the act is to tax services performed outside the state on tangible personal property used in this state.

For the purposes of calculating the use tax, delivery, shipping, freight, or like transportation charges are included in the value of an article.

Statutes are modified to clarify that use tax is due on direct mail advertising printed out of state and mailed directly to Washington residents to promote the sale of goods or services.

Votes on Final Passage:

Senate	28	19
House	56	42

Effective: June 1, 2002