

SENATE BILL REPORT

SB 5622

As of February 20, 2005

Title: An act relating to conforming Washington's tax structure to portions of the streamlined sales and use tax agreement not implemented by chapter 168, Laws of 2003.

Brief Description: Conforming Washington's tax structure to the streamlined sales and use tax agreement.

Sponsors: Senators Doumit, Johnson, Kastama, Keiser, McAuliffe, Finkbeiner, Prentice, Delvin, Roach, Berkey, Pflug, Hewitt, Zarelli, Schmidt, Kline, Rockefeller, Benton and Kohl-Welles.

Brief History:

Committee Activity: Ways & Means: 2/22/05.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: In the 2002 session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue (Department) to be a voting member in the Streamlined Sales Tax Project (SSTP), a multi-state effort to simplify state sales and use tax structures and make them more uniform. Many other states have also authorized such participation, and representatives have met to develop an agreement to govern the implementation of the SSTP. This agreement, called the Streamlined Sales and Use Tax Agreement (SSTA), was adopted by 34 states and Washington D.C. in November 2002.

During the 2003 legislative session, the Legislature enacted legislation at the request of the Department to implement the uniform definitions and administrative provisions of the SSTA. However, the legislation did not implement six additional provisions that are necessary for the state to conform fully to the SSTA. The provisions concern:

- on-line registration of remote sellers;
- monetary allowance for sellers using certified service providers or tax compliance software (Certified service providers are third parties that are authorized to collect and remit sales and use taxes to states that participate under the SSTA);
- conditional amnesty for previously unregistered sellers;
- requirements governing the location to which tax is attributed during a transaction (i.e., "Sourcing");
- confidentiality and privacy protections for sellers using certified services providers;
- the development of a taxability matrix to facilitate the administration of tax for sellers; and
- an amendment to the original SSTA agreement concerning how tax is applied to delivery charges when a delivery includes both taxable and nontaxable items.

Under the sales and use tax in Washington, local sales and use taxes are sourced according to the following rules:

- sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made;
- sales tax from the sale of a service, with or without a sale of goods, is sourced to the place where the service is primarily performed; and
- sales tax from the lease or rental of goods is sourced to the place of first use. In the case of short-term rentals, this is the place of business of the lessor. In the case of rentals or leases involving periodic payments, this is the primary place of use by the renter or lessee for each payment period.

In September 2004, the Department issued an updated study of the sourcing provisions of the SSTA. The study indicated that the sales tax base for most local jurisdictions would be affected by the sourcing provisions, either adversely or positively. The study estimated a shift in sales tax base of approximately \$10.5 billion in sales, resulting in gains to some jurisdictions of about \$28.5 million and losses in other jurisdictions of about \$32 million.

Summary of Bill: Provisions are included that would allow the state to conform fully to the Streamlined Sales and Use Tax Agreement.

Sellers are authorized to designate an agent to register the seller with the state, if not already registered. Sellers who agree to collect and remit sales and use taxes under the SSTA may register through an on-line system authorized under the SSTA.

The Department of Revenue is required to adopt rules providing for monetary allowances for sellers who use certified service providers, tax compliance software, or another means of collecting and remitting tax that is authorized under the SSTA. In addition, the Department may adopt rules to provide vendor compensation for sellers who collect and remit sales and use taxes to the state, but this authority is contingent upon action by Congress or the courts that would allow states to require remote sellers to collect sales or use taxes.

The Department is prohibited from making assessments for past uncollected sales and use taxes against an unregistered seller who, within 12 months of the effective date of the state's participation in the SSTA, registers under the agreement and then collects and remits sales and use taxes to the state for a period of at least 36 months. This amnesty does not apply if the seller has already received an audit notice from the Department, if the seller has in fact collected sales and use taxes but not remitted them to the state, or if the seller is liable for sales and use taxes in the seller's capacity as a buyer.

The SSTA general sourcing rules are adopted to be effective six months after federal action allows Washington to require remote sellers to collect sales tax on sales to Washington residents. The rules provide:

- 1) if a good or service is received by the purchaser at the business location of the seller, the sales tax is sourced to that business location;
- 2) if the good is not received by the purchaser at the business location of the seller, the sales tax is sourced to the location where receipt occurs, if known by the seller;

- 3) if neither of the first two rules apply, the sales tax is sourced to the address indicated for the purchaser in records normally maintained by the seller, if the use of this address by the seller does not constitute bad faith;
- 4) if none of the first three rules apply, the sales tax is sourced to the address for the purchaser obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if the use of this address by the seller does not constitute bad faith; and
- 5) if none of the first four rules apply, the sales tax is sourced to the address from which delivery is made.

The general sourcing rules do not apply to purchases of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. In such purchases, the tax is sourced to the location from which delivery was made.

For the lease or rental of tangible personal property, tax is sourced depending on whether the lease or rental requires periodic payments. If periodic payments are required, tax on the first payment is sourced like sales of tangible personal property, but tax on subsequent payments are sourced to the primary property location of the lessee. If payments are not periodic, then tax is sourced like sales of tangible personal property.

Special sourcing provisions apply to sales of digital goods, electronically delivered software, direct mail, and services, where the property or service sold is delivered to multiple jurisdictions concurrently. In these circumstances, the purchaser is obligated either to provide a form to the seller relieving the seller of the requirement to collect and remit tax or to provide sufficient information to the seller to allow the seller to determine the proper amount of tax to collect. If the seller is relieved of the requirement, the purchaser must remit tax directly.

The streamline sales and use tax mitigation account is created. Full mitigation is provided to those local jurisdictions negatively impacted by the change in sourcing rules. Deposited into the account from the general fund are monies that represent the estimated cumulative losses of negatively impacted local jurisdictions. The treasurer, with the guidance of the Department must distribute the mitigation funds monthly at the same time that other local tax distributions are made. The Department is charged with estimating the losses of the negatively impacted local jurisdictions with the help of an oversight committee. The oversight committee is comprised of one representative from a positively and negatively impacted city, county, and transportation authority. If full mitigation is not provided to negatively impacted jurisdictions, the sourcing rules must revert back to what they are now.

For the purposes of gathering data, the Department may require retailers to report additional information. If the report is received by the due date the taxpayer receives a credit of \$500 for quarterly and annual filers or the greater of \$500 or one percent of the sales tax reported on the taxpayer's return for the month the report is due for monthly filers. If the report is not received by the due date the taxpayer is penalized by the same amounts.

Protections are provided with respect to confidentiality and privacy for businesses that use certified service providers under the SSTA. Certified service providers are required to perform tax calculations, remittance, and reporting functions and may not retain the personally identifiable information of consumers, with very limited exceptions. The Department will provide public notification to consumers of its practices relating to the collection, use, and

retention of personally identifiable information. Personally identifiable information will not be retained any longer than required to ensure the validity of exemptions.

The Department is required to complete a taxability matrix and will provide notice of changes in the taxability of products or services listed in the matrix. Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the Department in the matrix.

The taxability of delivery charges is changed to allow sellers to apportion their delivery charges between taxable and nontaxable property within a shipment and apply tax to only that portion that represents delivery charges for taxable property.

Appropriation: None.

Fiscal Note: Requested on January 28, 2005.

Committee/Commission/Task Force Created: No.

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