

# HOUSE BILL REPORT

## HB 1936

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### As Reported by House Committee On: Ways & Means

**Title:** An act relating to amending the existing nonresident retail sales tax exemption.

**Brief Description:** Amending the existing nonresident retail sales tax exemption.

**Sponsors:** Representatives Lytton, Buys, Morris and Overstreet; by request of Department of Revenue.

**Brief History:**

**Committee Activity:**

Ways & Means: 2/17/11, 2/23/11 [DP].

**Brief Summary of Bill**

- Disallows the nonresident retail sales tax exemption for nonresidents from jurisdictions imposing a value added tax or similar gross receipts tax of 3 percent or more.

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### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass. Signed by 26 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer and Wilcox.

**Staff:** Jeffrey Mitchell (786-7139).

**Background:**

Retail sales and use 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, digital product, or service. If retail sales taxes were not collected when the

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property, digital products, or services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in this state. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3.0 percent, depending on the location. The average local tax rate is 2 percent, for an average combined state and local tax rate of 8.5 percent.

State law provides a retail sales tax exemption to certain nonresidents purchasing goods in Washington. The exemption is unavailable if the purchaser resides in a United States or Canadian jurisdiction that imposes a retail sales or use tax of 3 percent or more, unless the jurisdiction grants Washington residents an exemption from the tax by reason of their residence.

A number of Canadian provinces have replaced their provincial sales taxes with the Harmonized Sales Tax (HST). Most recently, the provinces of British Columbia and Ontario converted to the HST, effective July 1, 2010. The Department of Revenue (Department) has taken the position that the HST is not a sales tax but instead a valued-added tax (VAT), which is a consumption tax that taxes the value added by businesses at each point in the production chain. It can apply to both manufactured goods and services. Therefore, since the Department does not construe a VAT to be a sales tax, the Department has determined that residents of British Columbia and the other provinces that have converted to the HST are eligible for the nonresident sales tax exemption.

The City of Bellingham and Whatcom County brought suit against the Department, arguing that residents of British Columbia and other provinces that have implemented a HST are not entitled to the nonresident exemption. The Skagit County Superior Court entered a preliminary injunction ordering the Department to advise retailers that residents of Canadian provinces with a HST did not qualify for the exemption. The litigation is not expected to be concluded until after the 2011 legislative session.

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**Summary of Bill:**

The nonresident retail sales tax exemption is modified to explicitly disallow nonresidents from claiming the exemption if they reside in a jurisdiction with a value added tax or similar gross receipts tax of 3 percent or more.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2011.

**Staff Summary of Public Testimony:**

(In support) The change would have a significant local impact on revenues for border counties and other communities along the I-5 corridor. Residents of British Columbia use our infrastructure and should pay our taxes. This bill clarifies that any tax at retail is considered a sales tax for purposes of the exemption. The irony is that without this legislation there is a change that residents of British Columbia could be exempt on transactions in Washington while Washington residents would have to pay a 12 percent value added tax in British Columbia. This bill will align with the temporary restraining order and maintain the status quo. The business community of Whatcom County supports this bill. The impact on our communities from the loss of the tax would be substantial. There was a bump in economic activity during the two week period in which tax was not imposed, but it was an anomaly. There was a year of bad publicity and then three weeks before July 1, 2010, everyone was told they could come to Washington and buy things tax free. The tax free period also occurred over the July 4 weekend which is the busiest retail period during the summer.

(Opposed) There was a huge spike from Canadian purchasers. We would like some additional time to demonstrate that the additional economic activity from Canadian purchasers would actually bring in more tax revenues for the state and local jurisdictions.

**Persons Testifying:** (In support) Representative Lytton, prime sponsor; Representative Buys; Alyson Fouts, Department of Revenue; and Ken Oplinger, Bellingham/Whatcom Chamber of Commerce.

(Opposed) Mark Johnson, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying:** None.