

**SHB 2376** - H AMD 845

By Representative Taylor

SCOPED 02/25/2016

1 On page 297, after line 13, insert the following:

2  
3 "NEW SECTION. Sec. 920. A new section is added to chapter 82.12  
4 RCW to read as follows:

5 The provisions of this chapter shall not apply in respect to the  
6 use of a firearm sold or transferred between two unlicensed persons,  
7 as that term is defined in chapter 9.41.RCW.

8  
9 **Sec. 921.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to  
10 read as follows:

11 (1) Every person who maintains in this state a place of business  
12 or a stock of goods, or engages in business activities within this  
13 state, must obtain from the department a certificate of  
14 registration, and must, at the time of making sales of tangible  
15 personal property, digital goods, digital codes, digital automated  
16 services, extended warranties, or sales of any service defined as a  
17 retail sale in \*RCW 82.04.050 (2) (a) or (g) or (6)(b), or making  
18 transfers of either possession or title, or both, of tangible  
19 personal property for use in this state, collect from the purchasers  
20 or transferees the tax imposed under this chapter. The tax to be  
21 collected under this section must be in an amount equal to the  
22 purchase price multiplied by the rate in effect for the retail sales  
23 tax under RCW 82.08.020. For the purposes of this chapter, the  
24 phrase "maintains in this state a place of business" includes the  
25 solicitation of sales and/or taking of orders by sales agents or  
26 traveling representatives. For the purposes of this chapter,  
27 "engages in business activity within this state" includes every

1 activity which is sufficient under the Constitution of the United  
2 States for this state to require collection of tax under this  
3 chapter. The department must in rules specify activities which  
4 constitute engaging in business activity within this state, and must  
5 keep the rules current with future court interpretations of the  
6 Constitution of the United States.

7 (2) Every person who engages in this state in the business of  
8 acting as an independent selling agent for persons who do not hold a  
9 valid certificate of registration, and who receives compensation by  
10 reason of sales of tangible personal property, digital goods,  
11 digital codes, digital automated services, extended warranties, or  
12 sales of any service defined as a retail sale in \*RCW 82.04.050 (2)  
13 (a) or (g) or (6)(b), of his or her principals for use in this  
14 state, must, at the time such sales are made, collect from the  
15 purchasers the tax imposed on the purchase price under this chapter,  
16 and for that purpose is deemed a retailer as defined in this  
17 chapter.

18 (3) The tax required to be collected by this chapter is deemed  
19 to be held in trust by the retailer until paid to the department,  
20 and any retailer who appropriates or converts the tax collected to  
21 the retailer's own use or to any use other than the payment of the  
22 tax provided herein to the extent that the money required to be  
23 collected is not available for payment on the due date as prescribed  
24 is guilty of a misdemeanor. In case any seller fails to collect the  
25 tax herein imposed or having collected the tax, fails to pay the  
26 same to the department in the manner prescribed, whether such  
27 failure is the result of the seller's own acts or the result of acts  
28 or conditions beyond the seller's control, the seller is  
29 nevertheless personally liable to the state for the amount of such  
30 tax, unless the seller has taken from the buyer a copy of a direct  
31 pay permit issued under RCW 82.32.087.

32 (4) Any retailer who refunds, remits, or rebates to a purchaser,  
33 or transferee, either directly or indirectly, and by whatever means,  
34

1 all or any part of the tax levied by this chapter is guilty of a  
2 misdemeanor.

3 (5) Notwithstanding subsections (1) through (4) of this section,  
4 any person making sales is not obligated to collect the tax imposed  
5 by this chapter if:

6 (a) The person's activities in this state, whether conducted  
7 directly or through another person, are limited to:

8 (i) The storage, dissemination, or display of advertising;

9 (ii) The taking of orders; or

10 (iii) The processing of payments; and

11 (b) The activities are conducted electronically via a web site  
12 on a server or other computer equipment located in Washington that  
13 is not owned or operated by the person making sales into this state  
14 nor owned or operated by an affiliated person. "Affiliated persons"  
15 has the same meaning as provided in RCW 82.04.424.

16 (6) Subsection (5) of this section expires when: (a) The United  
17 States congress grants individual states the authority to impose  
18 sales and use tax collection duties on remote sellers; or (b) it is  
19 determined by a court of competent jurisdiction, in a judgment not  
20 subject to review, that a state can impose sales and use tax  
21 collection duties on remote sellers.

22 (7) Notwithstanding subsections (1) through (4) of this section,  
23 any person making sales is not obligated to collect the tax imposed  
24 by this chapter if the person would have been obligated to collect  
25 retail sales tax on the sale absent a specific exemption provided in  
26 chapter 82.08 RCW, and there is no corresponding use tax exemption  
27 in this chapter. Nothing in this subsection (7) may be construed as  
28 relieving purchasers from liability for reporting and remitting the  
29 tax due under this chapter directly to the department.

30 (8) Notwithstanding subsections (1) through (4) of this section,  
31 any person making sales is not obligated to collect the tax imposed  
32 by this chapter if the state is prohibited under the Constitution or  
33 laws of the United States from requiring the person to collect the  
34 tax imposed by this chapter.

1       (~~(9) Notwithstanding subsections (1) through (4) of this~~  
2 ~~section, any licensed dealer facilitating a firearm sale or transfer~~  
3 ~~between two unlicensed persons by conducting background checks under~~  
4 ~~chapter 9.41 RCW is not obligated to collect the tax imposed by this~~  
5 ~~chapter.~~)"

6  
7       Renumber the remaining sections consecutively and correct any  
8 internal references accordingly.

9       Correct the title.

10

EFFECT: Provides a use tax exemption for firearms that are sold or transferred between persons who are not federally licensed firearms dealers. Removes the current law provision that a dealer who facilitates a firearm sale or transfer between unlicensed persons is not required to collect the use tax.

FISCAL IMPACT: No net change to appropriated levels. May result in some decrease in state general fund revenues.

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