

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1706

Chapter 188, Laws of 2001

57th Legislature
2001 Regular Session

DIRECT PAY PERMITS

EFFECTIVE DATE: 8/1/01

Passed by the House March 9, 2001
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

CLYDE BALLARD

Speaker of the House of Representatives

Passed by the Senate April 10, 2001
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2001

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1706** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 7, 2001 - 1:30 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1706

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Representatives Morris and Cairnes; by request of Department of Revenue

Read first time 02/01/2001. Referred to Committee on Finance.

1 AN ACT Relating to granting the department of revenue the authority
2 to issue direct pay permits; amending RCW 82.12.010, 82.08.050, and
3 82.12.040; adding a new section to chapter 82.32 RCW; creating new
4 sections; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that programs to allow
7 buyers to remit sales and use tax, rather than traditional collection
8 and remittance by the seller of sales and use tax, can assist in tax
9 compliance, ease administrative burdens, and reduce impacts on buyers
10 and sellers. It is the intent of the legislature to grant the
11 department of revenue the authority to permit certain buyers direct
12 payment authority of tax in those instances where it can be shown, to
13 the satisfaction of the department, that direct payment does not burden
14 sellers and does not complicate administration for the department.
15 Buyers authorized for direct payment will remit tax directly to the
16 department, and will pay use tax on tangible personal property and
17 sales tax on retail labor and/or services.

1 This act does not affect the requirements to use a resale
2 certificate nor does it affect the business and occupation tax
3 treatment of the seller.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW
5 to read as follows:

6 (1) The director may grant a direct pay permit to a taxpayer who
7 demonstrates, to the satisfaction of the director, that the taxpayer
8 meets the requirements of this section. The direct pay permit allows
9 the taxpayer to accrue and remit directly to the department use tax on
10 the acquisition of tangible personal property or sales tax on the sale
11 of or charges made for labor and/or services, in accordance with all of
12 the applicable provisions of this title. Any taxpayer that uses a
13 direct pay permit shall remit state and local sales or use tax directly
14 to the department. The agreement by the purchaser to remit tax
15 directly to the department, rather than pay sales or use tax to the
16 seller, relieves the seller of the obligation to collect sales or use
17 tax and requires the buyer to pay use tax on the tangible personal
18 property and sales tax on the sale of or charges made for labor and/or
19 services.

20 (2)(a) A taxpayer may apply for a permit under this section if the
21 taxpayer (i) is subject to mandatory use of electronic funds transfer
22 under RCW 82.32.080; or (ii) makes purchases subject to the taxes
23 imposed under chapter 82.08 or 82.12 RCW in excess of ten million
24 dollars per calendar year.

25 (b) Application for a permit must be made in writing to the
26 director in a form and manner prescribed by the department. A taxpayer
27 who transacts business in two or more locations may submit one
28 application to cover the multiple locations.

29 (c) The director shall review a direct pay permit application in a
30 timely manner and shall notify the applicant, in writing, of the
31 approval or denial of the application. The department shall approve or
32 deny an application based on the applicant's ability to comply with
33 local government use tax coding capabilities and responsibilities;
34 requirements for vendor notification; recordkeeping obligations;
35 electronic data capabilities; and tax reporting procedures.
36 Additionally, an application may be denied if the director determines
37 that denial would be in the best interest of collecting taxes due under
38 this title. The department shall provide a direct pay permit to an

1 approved applicant with the notice of approval. The direct pay permit
2 shall clearly state that the holder is solely responsible for the
3 accrual and payment of the tax imposed under chapters 82.08 and 82.12
4 RCW and that the seller is relieved of liability to collect tax imposed
5 under chapters 82.08 and 82.12 RCW on all sales to the direct pay
6 permit holder. The taxpayer may petition the director for
7 reconsideration of a denial.

8 (d) A taxpayer who uses a direct pay permit must continue to
9 maintain records that are necessary to a determination of the tax
10 liability in accordance with this title. A direct pay permit is not
11 transferable and the use of a direct pay permit may not be assigned to
12 a third party.

13 (3) Taxes for which the direct pay permit is used are due and
14 payable on the tax return for the reporting period in which the
15 taxpayer (a) receives the tangible personal property purchased or in
16 which the labor and/or services are performed or (b) receives an
17 invoice for such property or such labor and/or services, whichever
18 period is earlier.

19 (4) The holder of a direct pay permit shall furnish a copy of the
20 direct pay permit to each vendor with whom the taxpayer has opted to
21 use a direct pay permit. Sellers who make sales upon which the sales
22 or use tax is not collected by reason of the provisions of this
23 section, in addition to existing requirements under this title, shall
24 maintain a copy of the direct pay permit and any such records or
25 information as the department may specify.

26 (5) A direct pay permit is subject to revocation by the director at
27 any time the department determines that the taxpayer has violated any
28 provision of this section or that revocation would be in the best
29 interests of collecting the taxes due under this title. The notice of
30 revocation must be in writing and is effective either as of the end of
31 the taxpayer's next normal reporting period or a date deemed
32 appropriate by the director and identified in the revocation notice.
33 The taxpayer may petition the director for reconsideration of a
34 revocation and reinstatement of the permit.

35 (6) Any taxpayer who chooses to no longer use a direct pay permit
36 or whose permit is revoked by the department, shall return the permit
37 to the department and immediately make a good faith effort to notify
38 all vendors to whom the permit was given, advising them that the permit
39 is no longer valid.

1 (7) Except as provided in this subsection, the direct pay permit
2 may be used for any purchase of tangible personal property and any
3 retail sale under RCW 82.04.050. The direct pay permit may not be used
4 for:

5 (a) Purchases of meals or beverages;

6 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
7 other property subject to requirements for title transactions by the
8 department of licensing;

9 (c) Purchases for which a resale certificate may be used;

10 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)
11 and (f), (3) (a) through (d), (f), and (g), and (5); or

12 (e) Other activities subject to tax under chapter 82.08 or 82.12
13 RCW that the department by rule designates, consistent with the
14 purposes of this section, as activities for which a direct pay permit
15 is not appropriate and may not be used.

16 **Sec. 3.** RCW 82.12.010 and 1994 c 93 s 1 are each amended to read
17 as follows:

18 For the purposes of this chapter:

19 (1)(a) "Value of the article used" shall mean the consideration,
20 whether money, credit, rights, or other property except trade-in
21 property of like kind, expressed in terms of money, paid or given or
22 contracted to be paid or given by the purchaser to the seller for the
23 article of tangible personal property, the use of which is taxable
24 under this chapter. The term includes, in addition to the
25 consideration paid or given or contracted to be paid or given, the
26 amount of any tariff or duty paid with respect to the importation of
27 the article used. In case the article used is acquired by lease or by
28 gift or is extracted, produced, or manufactured by the person using the
29 same or is sold under conditions wherein the purchase price does not
30 represent the true value thereof, the value of the article used shall
31 be determined as nearly as possible according to the retail selling
32 price at place of use of similar products of like quality and character
33 under such rules as the department of revenue may prescribe.

34 (b) In case the articles used are acquired by bailment, the value
35 of the use of the articles so used shall be in an amount representing
36 a reasonable rental for the use of the articles so bailed, determined
37 as nearly as possible according to the value of such use at the places
38 of use of similar products of like quality and character under such

1 rules as the department of revenue may prescribe. In case any such
2 articles of tangible personal property are used in respect to the
3 construction, repairing, decorating, or improving of, and which become
4 or are to become an ingredient or component of, new or existing
5 buildings or other structures under, upon, or above real property of or
6 for the United States, any instrumentality thereof, or a county or city
7 housing authority created pursuant to chapter 35.82 RCW, including the
8 installing or attaching of any such articles therein or thereto,
9 whether or not such personal property becomes a part of the realty by
10 virtue of installation, then the value of the use of such articles so
11 used shall be determined according to the retail selling price of such
12 articles, or in the absence of such a selling price, as nearly as
13 possible according to the retail selling price at place of use of
14 similar products of like quality and character or, in the absence of
15 either of these selling price measures, such value may be determined
16 upon a cost basis, in any event under such rules as the department of
17 revenue may prescribe.

18 (c) In the case of articles owned by a user engaged in business
19 outside the state which are brought into the state for no more than one
20 hundred eighty days in any period of three hundred sixty-five
21 consecutive days and which are temporarily used for business purposes
22 by the person in this state, the value of the article used shall be an
23 amount representing a reasonable rental for the use of the articles,
24 unless the person has paid tax under this chapter or chapter 82.08 RCW
25 upon the full value of the article used, as defined in (a) of this
26 subsection.

27 (d) In the case of articles manufactured or produced by the user
28 and used in the manufacture or production of products sold or to be
29 sold to the department of defense of the United States, the value of
30 the articles used shall be determined according to the value of the
31 ingredients of such articles.

32 (e) In the case of an article manufactured or produced for purposes
33 of serving as a prototype for the development of a new or improved
34 product, the value of the article used shall be determined by: (i) The
35 retail selling price of such new or improved product when first offered
36 for sale; or (ii) the value of materials incorporated into the
37 prototype in cases in which the new or improved product is not offered
38 for sale.

1 (f) In the case of an article purchased with a direct pay permit
2 under section 2 of this act, the value of the article used shall be
3 determined by the retail selling price, as defined in RCW 82.08.010, of
4 such article if but for the use of the direct pay permit the
5 transaction would have been subject to sales tax;

6 (2) "Use," "used," "using," or "put to use" shall have their
7 ordinary meaning, and shall mean the first act within this state by
8 which the taxpayer takes or assumes dominion or control over the
9 article of tangible personal property (as a consumer), and include
10 installation, storage, withdrawal from storage, or any other act
11 preparatory to subsequent actual use or consumption within this state;

12 (3) "Taxpayer" and "purchaser" include all persons included within
13 the meaning of the word "buyer" and the word "consumer" as defined in
14 chapters 82.04 and 82.08 RCW;

15 (4) "Retailer" means every seller as defined in RCW 82.08.010 and
16 every person engaged in the business of selling tangible personal
17 property at retail and every person required to collect from purchasers
18 the tax imposed under this chapter;

19 (5) The meaning ascribed to words and phrases in chapters 82.04 and
20 82.08 RCW, insofar as applicable, shall have full force and effect with
21 respect to taxes imposed under the provisions of this chapter.
22 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
23 and 82.08 RCW insofar as applicable, shall also mean any person who
24 distributes or displays, or causes to be distributed or displayed, any
25 article of tangible personal property, except newspapers, the primary
26 purpose of which is to promote the sale of products or services.

27 **Sec. 4.** RCW 82.08.050 and 1993 sp.s. c 25 s 704 are each amended
28 to read as follows:

29 The tax hereby imposed shall be paid by the buyer to the seller,
30 and each seller shall collect from the buyer the full amount of the tax
31 payable in respect to each taxable sale in accordance with the schedule
32 of collections adopted by the department pursuant to the provisions of
33 RCW 82.08.060. The tax required by this chapter, to be collected by
34 the seller, shall be deemed to be held in trust by the seller until
35 paid to the department, and any seller who appropriates or converts the
36 tax collected to his or her own use or to any use other than the
37 payment of the tax to the extent that the money required to be

1 collected is not available for payment on the due date as prescribed in
2 this chapter shall be guilty of a gross misdemeanor.

3 In case any seller fails to collect the tax herein imposed or
4 having collected the tax, fails to pay it to the department in the
5 manner prescribed by this chapter, whether such failure is the result
6 of his or her own acts or the result of acts or conditions beyond his
7 or her control, he or she shall, nevertheless, be personally liable to
8 the state for the amount of the tax, unless the seller has taken from
9 the buyer in good faith a properly executed resale certificate under
10 RCW 82.04.470 or a copy of a direct pay permit issued under section 2
11 of this act.

12 The amount of tax, until paid by the buyer to the seller or to the
13 department, shall constitute a debt from the buyer to the seller and
14 any seller who fails or refuses to collect the tax as required with
15 intent to violate the provisions of this chapter or to gain some
16 advantage or benefit, either direct or indirect, and any buyer who
17 refuses to pay any tax due under this chapter shall be guilty of a
18 misdemeanor. The tax required by this chapter to be collected by the
19 seller shall be stated separately from the selling price in any sales
20 invoice or other instrument of sale. On all retail sales through
21 vending machines, the tax need not be stated separately from the
22 selling price or collected separately from the buyer. For purposes of
23 determining the tax due from the buyer to the seller and from the
24 seller to the department it shall be conclusively presumed that the
25 selling price quoted in any price list, sales document, contract or
26 other agreement between the parties does not include the tax imposed by
27 this chapter, but if the seller advertises the price as including the
28 tax or that the seller is paying the tax, the advertised price shall
29 not be considered the selling price.

30 Where a buyer has failed to pay to the seller the tax imposed by
31 this chapter and the seller has not paid the amount of the tax to the
32 department, the department may, in its discretion, proceed directly
33 against the buyer for collection of the tax, in which case a penalty of
34 ten percent may be added to the amount of the tax for failure of the
35 buyer to pay the same to the seller, regardless of when the tax may be
36 collected by the department; and all of the provisions of chapter 82.32
37 RCW, including those relative to interest and penalties, shall apply in
38 addition; and, for the sole purpose of applying the various provisions
39 of chapter 82.32 RCW, the twenty-fifth day of the month following the

1 tax period in which the purchase was made shall be considered as the
2 due date of the tax.

3 **Sec. 5.** RCW 82.12.040 and 1986 c 48 s 1 are each amended to read
4 as follows:

5 (1) Every person who maintains in this state a place of business or
6 a stock of goods, or engages in business activities within this state,
7 shall obtain from the department a certificate of registration, and
8 shall, at the time of making sales, or making transfers of either
9 possession or title or both, of tangible personal property for use in
10 this state, collect from the purchasers or transferees the tax imposed
11 under this chapter. For the purposes of this chapter, the phrase
12 "maintains in this state a place of business" shall include the
13 solicitation of sales and/or taking of orders by sales agents or
14 traveling representatives. For the purposes of this chapter, "engages
15 in business activity within this state" includes every activity which
16 is sufficient under the Constitution of the United States for this
17 state to require collection of tax under this chapter. The department
18 shall in rules specify activities which constitute engaging in business
19 activity within this state, and shall keep the rules current with
20 future court interpretations of the Constitution of the United States.

21 (2) Every person who engages in this state in the business of
22 acting as an independent selling agent for persons who do not hold a
23 valid certificate of registration, and who receives compensation by
24 reason of sales of tangible personal property of his principals made
25 for use in this state, shall, at the time such sales are made, collect
26 from the purchasers the tax imposed under this chapter, and for that
27 purpose shall be deemed a retailer as defined in this chapter.

28 (3) The tax required to be collected by this chapter shall be
29 deemed to be held in trust by the retailer until paid to the department
30 and any retailer who appropriates or converts the tax collected to his
31 own use or to any use other than the payment of the tax provided herein
32 to the extent that the money required to be collected is not available
33 for payment on the due date as prescribed shall be guilty of a
34 misdemeanor. In case any seller fails to collect the tax herein
35 imposed or having collected the tax, fails to pay the same to the
36 department in the manner prescribed, whether such failure is the result
37 of his own acts or the result of acts or conditions beyond his control,
38 he shall nevertheless, be personally liable to the state for the amount

1 of such tax, unless the seller has taken from the buyer in good faith
2 a copy of a direct pay permit issued under section 2 of this act.

3 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
4 transferee, either directly or indirectly, and by whatever means, all
5 or any part of the tax levied by this chapter shall be guilty of a
6 misdemeanor.

7 NEW SECTION. Sec. 6. The code reviser shall place cross-reference
8 sections to section 2 of this act in chapters 82.08, 82.12, and 82.14
9 RCW.

10 NEW SECTION. Sec. 7. This act takes effect August 1, 2001.

Passed the House March 9, 2001.

Passed the Senate April 10, 2001.

Approved by the Governor May 7, 2001.

Filed in Office of Secretary of State May 7, 2001.