

SENATE BILL REPORT

SHB 1722

As Reported By Senate Committee On:
Technology & Communications, March 24, 2003

Title: An act relating to the taxability of persons with limited connections to Washington.

Brief Description: Limiting the taxability of certain internet transactions.

Sponsors: House Committee on Finance (originally sponsored by Representatives Gombosky and Cairnes).

Brief History:

Committee Activity: Technology & Communications: 3/20/03, 3/24/03 [DP].

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Eide, Reardon, Schmidt and Stevens.

Staff: William Bridges (786-7424)

Background: A person doing business in this state is required to pay business and occupation (B&O) tax and must collect retail sales tax or use tax from the customer for retail sales. Questions have arisen about the meaning of "doing business in this state" in the context of electronic commerce, particularly in regard to out-of-state retailers who conduct business via internet computer hardware ("servers") located in this state. Out-of-state retailers who do business via internet or mail order are often referred to as "remote sellers." As a general rule, remote sellers do not have to pay B&O tax or collect sales tax unless they have a physical presence in this state. This physical presence requirement is met if the business has agents, employees, offices, warehouses, or other property in this state. A remote seller who owns internet servers in this state meets the physical presence requirement. If remote seller does business through a third-party internet service provider with equipment in this state, the remote seller could be viewed as having an agent in this state, which would satisfy the physical presence requirement.

The Federal Internet Tax Freedom Act (ITFA) prohibits state and local governments from imposing multiple or discriminatory taxes on electronic commerce. Under the ITFA, a remote seller cannot be required to collect sales tax merely because it conducts business through an online service provider that has equipment located in this state. The ITFA is scheduled to expire November 1, 2003.

Summary of Bill: A person doing business in Washington, whether conducted directly or through another person, is not liable for the B&O tax or required to collect sales or use tax if its activities meet the following conditions: (1) the person's business is conducted via a web site on computer equipment that is located in Washington and is owned by an unaffiliated

third party; and (2) the person's business is limited to: (a) the storage, dissemination, or display of advertising, (b) the taking of orders, or (c) the processing of payments.

These provisions expire when: (1) the United States Congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (2) a final court decision declares a state can impose sales and use tax collection duties on remote sellers.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Amazon.com has expanded its business and now provides transaction processing for third-party sellers. Many of these out-of-state companies would not do business with Amazon if they were subjected to Washington taxes. As long as the federal Internet Tax Freedom Act is in effect, remote third-party sellers are not subject to Washington taxes. If the federal law expires in November 2003, these business opportunities could dry up.

Testimony Against: None.

Testified: Paul Misener, Amazon.com (pro).