

SENATE BILL REPORT

HB 2501

As Reported By Senate Committee On:
Ways & Means, February 26, 2004

Title: An act relating to correcting errors, omissions, and inconsistencies within Title 82 RCW from chapter 168, Laws of 2003, which implemented portions of the streamlined sales and use tax agreement.

Brief Description: Correcting errors in and omissions from chapter 168, Laws of 2003, which implemented portions of the streamlined sales and use tax agreement.

Sponsors: Representatives Hunter, Cairnes and McIntire; by request of Department of Revenue.

Brief History:

Committee Activity: Ways & Means: 2/26/04 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Carlson, Fairley, Fraser, Hale, Honeyford, Johnson, Pflug, Prentice, Rasmussen, Regala, Roach, Sheahan and B. Sheldon.

Staff: Catherine Suter (786-7442)

Background: In the 2002 session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue 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 session, the Legislature enacted legislation at the request of the Department of Revenue (Department) that implements the uniform definition and administrative provisions of the SSTA. Most of the provisions of the legislation were made to be effective July 1, 2004; provisions associated with changes to food-related definitions were effective January 1, 2004. The delayed effective dates were intended to allow the Department and stakeholders sufficient time to correct errors or omissions prior to full implementation of the law.

After the 2003 session, the Department found that the taxable nature of some items changes under the new legislation. A number of medical devices that are exempt from sales and use tax before July 1, 2004, are taxable after that date. Food sold by manufacturers at retail, formerly exempt, are now taxable. Bakery items that are heated and then sold are taxable. All beverages with less than 50 percent fruit juice are considered soda and are therefore taxable.

State law provides a credit for sales taxes previously paid on debts which are considered deductible as worthless for federal income tax purposes. The SSTA includes similar language, allowing a deduction for bad debts using the standards of the 2003 Internal Revenue Code (IRC) with adjustments. The 2003 legislation included the SSTA uniform provisions for the treatment of bad debts for sales tax, but did not include a complimentary provision for the use tax.

Bad debt deductibility provisions also exist under the state business and occupation (B&O) tax, the public utility tax (PUT), and the E-911 tax. The SSTA does not require conformance of these provisions.

The Department is prohibited from attributing nexus to any business solely because the business registers under the SSTA. Nexus is a legal principle under tax law that provides rationale for taxation based on a minimum presence or level of activity within a jurisdiction.

When a business collects more than legally required from a person for sales or use tax, the person may bring an action against the business in court, but only after the person has notified the business in writing and the business has been allowed 60 days to respond.

In situations in which it is not practicable for a seller to collect tax as a separate item from the customer at the time of a transaction, the Department is authorized to allow sellers to pay retail sales tax in a different manner. One such circumstance is where coins are inserted into a receptacle (such as a gum ball machine) and single purchases are of smaller value than would allow for the legitimate collection of one cent tax. In such circumstances, the selling price to which tax applies is deemed to be 60 percent of gross receipts.

Regarding the taxability of telephone service under the B&O tax, a sale is deemed to take place in Washington when a call originates from or is received on any telephone or other telecommunications equipment in Washington and the cost for the telephone service is charged to that equipment, regardless of where the actual billing invoice is sent. Under the provisions of the SSTA that were adopted into state law in 2003, the sourcing of tax related to telephone service depends on whether the service is wireline, mobile, prepaid, or postpaid, and whether the service is sold on a call-by-call basis or not. Depending on these factors, the tax is sourced either to the jurisdiction where the call originates; where the call terminates; the business location of the seller; the customer's place of primary use; the location of the purchaser; the origination point of the telecommunications signal; or from where the service was provided or property shipped.

Summary of Bill: The 2003 legislation that implements the uniform definition and administrative provisions of the SSTA is amended to restore the exempt status under the retail sales and use tax of a number of medical items, including:

- Prosthetics prescribed by dentists, audiologists, ocularists, opticians, and optometrists;
- Food and food ingredients prescribed by naturopaths;
- Insulin and osmotic items sold over-the-counter;
- Nebulizers; and
- Parts and services to repair, clean, alter, or improve kidney dialysis machines.

A prescription for items or drugs that are exempt must be prescribed by a person whose license authorizes him or her to prescribe the item or drugs.

Sales and use tax exemptions are restored for certain foods. Bakery items sold in a heated state are exempt. Food sold by manufacturers at retail is exempt. The exemptions are made retroactive to January 1, 2004.

The SSTA deduction for bad debts using 2003 IRC standards is adopted under the use tax. The bad debt deduction provisions in the B&O tax, the PUT, and the E-911 tax are conformed to the SSTA bad debt deduction.

Retail sales for a telephone business for B&O tax purposes are sourced according to the method under the SSTA for sales tax purposes.

If a purchaser has notified a seller about over-collection of sales or use tax, the seller is presumed to have a reasonable business practice, if in the collection the seller uses a provider or a system certified by the state for the collection of tax, or has properly remitted to the state all taxes collected.

Under the authorization to allow the Department to allow sellers to pay sales tax in a different manner than under conventional circumstances, the reference to coin receptacles is updated to refer to vending machines. Vending machines are defined to mean a machine or other mechanical device that accepts any sort of payment and then provides property or services to the purchaser.

A number of drafting errors are corrected.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The provisions of the bill that modify the taxable nature of certain food items are effective retroactive to January 1, 2004. All other provisions are effective July 1, 2004.

Testimony For: None.

Testimony Against: None.

Testified: No one.