

# SENATE BILL REPORT

## SSB 6696

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As Passed Senate, March 2, 2004

**Title:** An act relating to tax deductions and exemptions for postage costs.

**Brief Description:** Providing tax deductions and exemptions for postage costs.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators McCaslin, Fraser, B. Sheldon, Kline, Berkey and Rasmussen).

**Brief History:**

**Committee Activity:** Ways & Means: 2/9/04, 2/23/04 [DPS].

Passed Senate: 3/2/04, 46-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6696 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Catherine Suter (786-7442)

**Background:** Like most businesses, printers and mailing bureaus are required to pay business and occupation (B&O) tax on their gross receipts. Retail sales tax is imposed on the retail sale of most tangible personal property and some services. Printing and mailing bureau services are among the services that are subject to retail sales tax. Retail sales tax is paid by the buyer and collected by the seller, based on the selling price of the item sold. Use tax is imposed on the use of an item when the acquisition of the item has not been subject to retail sales tax. Use tax is imposed at the same rate as retail sales tax.

For B&O tax and retail sales tax, the amount of tax is based on statutory definitions that apply tax to the full amount paid by the customer, without any deduction for expenses paid by the seller such as the cost of materials used, labor costs, or delivery costs. However, delivery costs were not included for the purpose of calculating use tax before June 1, 2002. On that date, legislation took effect that required inclusion of delivery costs when calculating use tax.

Notwithstanding the statutory provisions requiring inclusion of delivery costs when calculating retail sales and B&O taxes, the Department of Revenue (department) issued administrative rules more than 30 years ago that allowed printers and mailing bureaus to deduct the cost of postage if the postage is purchased for a customer and the customer is charged for the postage. The use tax legislation enacted in 2002 caused the department to review its rules on printers and mailing bureaus. The department discovered that it lacked the statutory authority for the portions of the rules which allow printers and mailing bureaus to deduct postage when calculating B&O and retail sales taxes.

Taxpayers are entitled to rely on rules and other written advice of the department until the written rules or advice is modified by the department. The department has begun the process of revising its rules for printers and mailing bureaus. When the rules revision is complete, printers and mailing bureaus will be required to include the cost of postage purchased for customers when calculating B&O and retail sales tax.

**Summary of Bill:** B&O, retail sales, and use tax does not apply to charges made for postage, if all of the following requirements are met:

1. the postage is purchased from the United States Postal Service;
2. the postage was purchased on behalf of a buyer who directed the seller to deliver printed materials to recipients at no charge to the recipients; and
3. the charges are separately stated and represent the actual cost of the postage.

These provisions apply retroactively as well as prospectively.

The Department of Revenue is directed to advocate at the National Streamlined Sales and Use Tax Project for distinction between postage and delivery charges.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** Small businesses rely heavily on direct mail so imposing sales tax on direct mail will seriously harm their ability to market their businesses. The law exempted sales tax and B&O tax on postage from mailing bureaus and printing operations for many years. It is only because of legislation passed two years ago that this even becomes an issue. Other unexpected taxation resulted from that same legislation two years ago and the Legislature fixed that problem last year. They need to fix this problem this year. If this tax is applied, many small businesses will be looking to get their mailings done out of state rather than pay the tax. Alternatively, people will go around this taxation and have postage done another way: many businesses already request two separate checks, one for the printing services and one for the postage, made out to USPS. This will become more widespread if this bill does not pass, so the state will not realize any revenues from imposing these taxes.

Concerns: Currently in law there are two rules for printers and mailing bureaus, but because legislation was introduced last session, the Department of Revenue has not yet changed its rule in the Washington Administrative Code. Retroactivity is unnecessary in this bill because taxpayers are allowed to use administrative rules that are in place, even if definitions are slightly different. The definitions for delivery charges and direct mail in the national Streamlined Sales and Use Tax Project were introduced by the national direct mailing industry as the correct terms to use.

**Testimony Against:** None.

**Testified:** PRO: Gary Smith, IBA; Mark Johnson, NFIB; Bill Stauffacher, Pacific Printing and Imaging Association; Senator Ray Schow; CONCERNS: Julie Sexton, Department of Revenue.