
Finance Committee

HB 2273

Brief Description: Conforming Washington's tax structure to the streamlined sales and use tax agreement.

Sponsors: Representatives Simpson, Roach, Williams, Ericks, McDonald, P. Sullivan, Hasegawa, Sells, Roberts, McCoy, Hunt, Morrell, Upthegrove and Moeller.

Brief Summary of Bill

- Provisions are adopted that allow Washington State to conform to the Streamlined Sales and Use Tax Agreement (SSTA), including language that authorizes:
 - the on-line registration of remote sellers;
 - monetary allowances or vendor compensation for sellers that participate in the SSTA;
 - conditional amnesty for previously unregistered sellers;
 - new requirements for sourcing tax to the transaction location;
 - confidentiality and privacy protections for participating sellers;
 - the development of a taxability matrix under the SSTA; and
 - a change in the manner delivery charges are taxed.
- Establishes a permanent mitigation mechanism to provide relief to local governments for which sales tax collections are reduced as a result of the implementation of the sourcing requirements.

Hearing Date: 3/3/05

Staff: Mark Matteson (786-7145).

Background:

In the 2002 session, the Legislature adopted the Simplified Sales and Use Tax Administration Act, which authorized the Department of Revenue (Department) 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 thirty-four states and Washington D.C. in November 2002.

During the 2003 legislative session, the Legislature enacted legislation at the request of the Department of Revenue to implement the uniform definitions and administrative provisions of the

SSTA. However, the legislation did not implement six additional provisions that are necessary for the state to conform fully to the SSTA. The provisions concern:

- On-line registration of remote sellers;
- Monetary allowance for sellers using certified service providers or tax compliance software. (Certified service providers are third parties that are authorized to collect and remit sales and use taxes to states that participate under the SSTA);
- Conditional amnesty for previously unregistered sellers;
- Requirements governing the location to which tax is attributed during a transaction (i.e., "Sourcing");
- Confidentiality and privacy protections for sellers using certified services providers;
- The development of a taxability matrix to facilitate the administration of tax for sellers; and
- An amendment to the original SSTA agreement concerning how tax is applied to delivery charges when a delivery includes both taxable and nontaxable items.

Under the sales and use tax in Washington State, local sales and use taxes are sourced according to the following rules:

- Sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made.
- Sales tax from the sale of a service, with or without a sale of goods, is sourced to the place where the service is primarily performed.
- Sales tax from the lease or rental of goods is sourced to the place of first use. In the case of short-term rentals, this is the place of business of the lessor. In the case of rentals or leases involving periodic payments, this is the primary place of use by the renter or lessee for each payment period.

In the 2004 session, legislation was introduced at the request of the Department to fully conform to the SSTA. In subsequent substitute versions of the legislation, mitigation proposals were incorporated for the purpose of providing relief to jurisdictions that would have been affected by changes in sales tax sourcing requirements. However, the legislation did not pass.

In September 2004, the Department issued an updated study of the sourcing provisions of the SSTA. The study indicated that the sales tax base for most local jurisdictions would be affected by the sourcing provisions, either adversely or positively. The study estimated a shift in sales tax base of approximately \$10.5 billion in sales, resulting in gains to some jurisdictions of about \$28.5 million and losses in other jurisdictions of about \$32 million.

Summary of Bill:

Provisions are included that would allow the state to fully conform to the Streamlined Sales and Use Tax Agreement.

Sellers are authorized to designate an agent to register the seller with the state, if not already registered. Sellers who agree to collect and remit sales and use taxes under the SSTA may register through an on-line system authorized under the SSTA.

The Department of Revenue is required to adopt rules providing for monetary allowances for sellers who use certified service providers, tax compliance software, or another means of collecting and remitting tax that is authorized under the SSTA. In addition, the Department may

adopt rules to provide vendor compensation for sellers who collect and remit sales and use taxes to the state, but this authority is contingent upon action by Congress or the courts that would allow states to require remote sellers to collect sales or use taxes.

The Department is prohibited from making assessments for past uncollected sales and use taxes against an unregistered seller who, within twelve months of the effective date of the state's participation in the SSTA, registers under the agreement and then collects and remits sales and use taxes to the state for a period of at least 36 months. This amnesty does not apply if the seller has already received an audit notice from the Department, if the seller has in fact collected sales and use taxes but not remitted them to the state, or if the seller is liable for sales and use taxes in the seller's capacity as a buyer.

The SSTA general sourcing rules are adopted. The rules provide:

1. If a good or service is received by the purchaser at the business location of the seller, the sales tax is sourced to that business location.
2. If the good is not received by the purchaser at the business location of the seller, the sales tax is sourced to the location where receipt occurs, if known by the seller.
3. If neither of the first two rules apply, the sales tax is sourced to the address indicated for the purchaser in records normally maintained by the seller, if the use of this address by the seller does not constitute bad faith.
4. If none of the first three rules apply, the sales tax is sourced to the address for the purchaser obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if the use of this address by the seller does not constitute bad faith.
5. If none of the first four rules apply, the sales tax is sourced to the address from which delivery is made.

The general sourcing rules do not apply to purchases of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, and mobile homes. In such purchases, the tax is sourced to the location from which delivery was made.

For the lease or rental of tangible personal property, tax is sourced depending on whether the lease or rental requires periodic payments. If periodic payments are required, tax on the first payment is sourced like sales of tangible personal property, but tax on subsequent payments are sourced to the primary property location of the lessee. If payments are not periodic, then tax is sourced like sales of tangible personal property.

Special sourcing provisions apply to sales of digital goods, electronically delivered software, direct mail, or services, where the property or service sold is delivered to multiple jurisdictions concurrently. In these circumstances, the purchaser is obligated either to provide a form to the seller relieving the seller of the requirement to collect and remit tax or to provide sufficient information to the seller to allow the seller to determine the proper amount of tax to collect. If the seller is relieved of the requirement, the purchaser must remit tax directly.

Protections are provided with respect to confidentiality and privacy for businesses that use certified service providers under the SSTA. Certified service providers are required to perform tax calculations, remittance, and reporting functions and may not retain the personally identifiable information of consumers, with very limited exceptions. The Department will provide public notification to consumers of its practices relating to the collection, use, and retention of personally identifiable information. Personally identifiable information will not be retained any longer than

required to ensure the validity of exemptions. This provision may be enforced by petitioning the superior court of Thurston County for injunctive relief.

The Department is required to complete a taxability matrix and will provide notice of changes in the taxability of products or services listed in the matrix. Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the Department in the matrix.

The taxability of delivery charges is changed to allow sellers to apportion their delivery charges between taxable and nontaxable property within a shipment and apply tax to only that portion that represents delivery charges for taxable property.

The streamlined sales and use tax mitigation account is created. Full mitigation is provided to those local jurisdictions negatively impacted by the change in sourcing rules. Deposited into the account from the general fund are monies that represent the estimated cumulative losses of negatively impacted local jurisdictions. The treasurer, with the guidance of the Department must distribute the mitigation funds monthly at the same time that other local tax distributions are made. The Department is charged with estimating the losses of the negatively impacted local jurisdictions with the help of an oversight committee. The oversight committee is comprised of one representative from a positively and negatively impacted city, county, and transportation authority. If full mitigation is not provided to negatively impacted jurisdictions, the sourcing requirements are restored to their status prior to the effective date of the act.

For the purposes of gathering data, the Department may require retailers to report additional information. If the report is received by the due date the taxpayer receives a credit of \$500 for quarterly and annual filers or the greater of \$500 or one percent of the sales tax reported on the taxpayer's return for the month the report is due for monthly filers. If the report is not received by the due date the taxpayer is penalized by the same amounts.

Appropriation: None.

Fiscal Note: Requested on March 1, 2005.

Effective Date: The sourcing provisions (sections 501 through 503) and the mitigation provisions (sections 901 through 905) of the bill are effective the later of July 1, 2006, or the first day of the calendar quarter at least six months after the SSTA takes effect. The amnesty provisions of the bill are effective on the date that Washington becomes a member state of the SSTA. The provisions concerning vendor compensation are effective when Congress or the court determine that the state may impose sales and use tax collection and remittance duties upon remote sellers. All other provisions are effective July 1, 2005.