

HOUSE BILL REPORT

HB 2543

As Reported by House Committee On:
Finance

Title: An act relating to the sourcing, for sales and use tax purposes, of sales of tangible personal property by florists.

Brief Description: Concerning the sourcing, for sales and use tax purposes, of sales of tangible personal property by florists.

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

Brief History:

Committee Activity:

Finance: 1/22/08, 2/12/08 [DPS].

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Authorizes a continuation of origin-based sourcing for florists.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Condotta, Assistant Ranking Minority Member; Conway, Ericks, McIntire, Roach and Santos.

Minority Report: Do not pass. Signed by 1 member: Representative Orcutt, Ranking Minority Member.

Staff: Jeff Mitchell (786-7139).

Background:

In 2007 the Legislature enacted SSB 5089, which fully conformed Washington law with the streamlined sales and use tax agreement (SSUTA). The major provisions of the legislation take effect July 1, 2008. A major component of the legislation is the change from origin-based sourcing to destination based sourcing. Sourcing determines where a sale occurs and, therefore, what local jurisdiction is entitled to the sales tax generated from a particular transaction.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Until July 1, 2008, local sales and use taxes are sourced on an origin-based system according to the following rules: (1) sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made; (2) 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; and (3) 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.

Beginning July 1, 2008, local sales and use taxes are sourced on a destination-based system according to the following rules: (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; and (5) if none of the first four rules apply, the sales tax is sourced to the address from which the delivery is made.

The general destination-based sourcing rules under the SSUTA do not apply to purchases of motor vehicles, aircrafts, watercrafts, modular homes, manufactured homes, and mobile homes. For these purchases, the tax will continue to be sourced to the location from which delivery was made.

The Florists' Transworld Delivery (FTD) association is a network that provides a way for florists to serve each others' out-of-town customers by exchanging orders. Generally, a receiving florist takes an order from a customer and then communicates the order to a second florist who delivers the items to the place designated by the receiving florist.

The SSUTA was recently amended to extend an exclusion of sales by florists from the destination-based sourcing provisions. The amendment allows member states to source sales by florists according to their own rules through December 31, 2009. In the case of FTD's sales the location of the florist taking the order currently determines the local tax. The florist making delivery to the customer on behalf of the florist taking the order is considered to be making a wholesale sale.

Summary of Substitute Bill:

Florists are allowed to continue using origin-based sourcing. This continuation of origin-based sourcing includes FTD sales, which will continue to be sourced to the location of the florist taking the order.

Substitute Bill Compared to Original Bill:

The substitute bill makes origin-based sourcing permanent for florists.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2008.

Staff Summary of Public Testimony:

(In support) The FTD system has been in place since 1935. This is an agreement on the taxation of florist sales that was worked out with all the states. It significantly pre-dates the streamlined agreement creating a consistent way of taxing members. It clarifies who pays and who collects tax on florist sales. It has worked very well. When the streamlined agreement was being contemplated, the participants recognized the unique circumstances for florist sales. The streamlined agreement originally allowed an exception for florists. The expectation is that the streamlined agreement will continue to allow florists to use origin-based sourcing. Because of the Initiative 960 issue, an amendment is requested to make origin-based sourcing permanent. If the streamlined agreement makes origin-based sourcing permanent, this issue will have to be revisited – the amendment would fix this problem. It is important to remain compliant with the streamlined agreement.

(Opposed) None.

Persons Testifying: Gil Brewer, Department of Revenue; and Amber Carter, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.