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**HOUSE BILL 1457**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Irwin, Pettigrew, Harmsworth, Springer, Taylor, Shea, Stokesbary, Stonier, Young, Schmick, Volz, Hayes, Griffey, Riccelli, Goodman, and Van Werven

AN ACT Relating to creating a sales tax holiday for back-to-school clothing and supplies; amending RCW 82.12.040; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating new sections; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that Washington families pay thousands of dollars in sales and use tax on their purchases of clothing and school supplies in August before the school year begins. The legislature further finds that a recent study has shown that temporarily exempting some of these purchases from sales and use tax would give Washington families a needed tax break and increase sales, which in turn would generate new jobs and more state and local tax revenue. Therefore, it is the legislature's intent to create a "back-to-school" sales tax holiday.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

(1) Subject to the conditions and limitations provided in this section, the tax levied by RCW 82.08.020 does not apply to the sale of the following tangible personal property: (a) Clothing items; and (b) school supply items.

(2)(a) A clothing item is exempt under this section if the sales price of the item is less than one hundred dollars.

(b) A school supply item is exempt under this section if the sales price of the item is less than ten dollars.

(3) The exemption authorized in this section only applies to purchases made on the second adjacent Friday, Saturday, and Sunday of August of each year.

(4) Rules adopted by the department for the administration of this section must be substantially consistent with the streamlined sales and use tax agreement, as that term is used in chapter 82.58 RCW.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Clothing item" means human wearing apparel suitable for general use.

(b) "School supply item" means an item commonly used by a student in a course of study.

NEW SECTION. **Sec.**  A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply to the use of the following tangible personal property: (a) Clothing items that are not used primarily for business-related activities; and (b) school supply items that are not used primarily for business-related activities.

(2) The definitions, conditions, and limitations in section 2 of this act apply to this section.

(3) For the purposes of this section, "business" has the meaning provided in RCW 82.04.140 and also includes activities engaged in by a common school, school district, or educational service district.

**Sec.**  RCW 82.12.040 and 2015 c 169 s 9 are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, must obtain from the department a certificate of registration, and must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)((~~(b)~~)) (c), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" includes the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)((~~(b)~~)) (c), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

(8) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

(9) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter.

(10) Notwithstanding subsections (1) through (4) of this section, a seller is not obligated to collect the tax imposed by this chapter if the product is exempt from retail sales tax under section 2 of this act, but is not exempt from use tax under section 3 of this act.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.808 do not apply to this act.

NEW SECTION. **Sec.**  This act expires January 1, 2028.

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