
HOUSE BILL 2644

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Moeller, Alexander, Springer, Asay, Clibborn, Dahlquist, Darneille, Van De Wege, and Moscoso

Read first time 01/20/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to creating a sales tax holiday for back-to-school
2 clothing and supplies; amending RCW 82.12.040; adding a new section to
3 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating
4 a new section; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that Washington
7 families pay thousands of dollars in sales and use tax on their
8 purchases of clothing and school supplies in August before the school
9 year begins. The legislature further finds that a recent study has
10 shown that temporarily exempting some of these purchases from sales and
11 use tax would give Washington families a needed tax break and increase
12 sales, which in turn would generate new jobs and more state and local
13 tax revenue. Therefore, it is the legislature's intent to create a
14 "back-to-school" sales tax holiday.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW
16 to read as follows:

17 (1) Subject to the conditions and limitations provided in this

1 section, the tax levied by RCW 82.08.020 does not apply to the sale of
2 the following tangible personal property: (a) Clothing items; and (b)
3 school supply items.

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

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

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

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

14 (5) The definitions in this subsection apply throughout this
15 section.

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

18 (i) "Clothing item" includes, but is not limited to, the following:
19 Shop aprons; athletic supporters; baby receiving blankets; bathing
20 suits and caps; belts and suspenders; boots; coats and jackets;
21 diapers, children and adult, including disposable diapers; ear muffs;
22 footlets; formal wear; gloves and mittens for general use; hats and
23 caps; hosiery; insoles for shoes; lab coats; neckties; overshoes;
24 pantyhose; rainwear; sandals; scarves; shoes and shoe laces; slippers;
25 sneakers; socks and stockings; steel toed shoes; underwear; uniforms;
26 and athletic and nonathletic apparel.

27 (ii) "Clothing item" does not include: Belt buckles sold
28 separately; patches and emblems sold separately; sewing equipment and
29 supplies including, but not limited to, knitting needles, patterns,
30 pins, scissors, sewing machines, sewing needles, tape measures, and
31 thimbles; and sewing materials that become part of "clothing"
32 including, but not limited to, buttons, fabric, lace, thread, yarn, and
33 zippers.

34 (b) "School supply item" means binders; book bags; calculators;
35 cellophane tape; blackboard chalk; compasses; composition books;
36 crayons; erasers; folders, expandable, pocket, plastic, and manila;
37 glue, paste, and paste sticks; highlighters; index cards; index card
38 boxes; legal pads; lunch boxes; markers; notebooks; paper; loose leaf

1 ruled notebook paper, copy paper, graph paper, tracing paper, manila
2 paper, colored paper, poster board, and construction paper; pencil
3 boxes and other school supply boxes; pencil sharpeners; pencils; pens;
4 protractors; rulers; scissors; writing tablets; and backpacks, fanny
5 packs, and diaper bags.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW
7 to read as follows:

8 (1) The provisions of this chapter do not apply to the use of the
9 following tangible personal property: (a) Clothing items not used
10 primarily for conducting business; and (b) school supply items not used
11 primarily for conducting business.

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

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

17 **Sec. 4.** RCW 82.12.040 and 2011 1st sp.s. c 20 s 103 are each
18 amended to read as follows:

19 (1) Every person who maintains in this state a place of business or
20 a stock of goods, or engages in business activities within this state,
21 shall obtain from the department a certificate of registration, and
22 shall, at the time of making sales of tangible personal property,
23 digital goods, digital codes, digital automated services, extended
24 warranties, or sales of any service defined as a retail sale in RCW
25 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of
26 either possession or title, or both, of tangible personal property for
27 use in this state, collect from the purchasers or transferees the tax
28 imposed under this chapter. The tax to be collected under this section
29 must be in an amount equal to the purchase price multiplied by the rate
30 in effect for the retail sales tax under RCW 82.08.020. For the
31 purposes of this chapter, the phrase "maintains in this state a place
32 of business" (~~shall~~) includes the solicitation of sales and/or taking
33 of orders by sales agents or traveling representatives. For the
34 purposes of this chapter, "engages in business activity within this
35 state" includes every activity which is sufficient under the
36 Constitution of the United States for this state to require collection

1 of tax under this chapter. The department must in rules specify
2 activities which constitute engaging in business activity within this
3 state, and must keep the rules current with future court
4 interpretations of the Constitution of the United States.

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

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

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

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

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

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

38 (ii) The taking of orders; or

1 (iii) The processing of payments; and

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

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

13 (7) Notwithstanding subsections (1) through (4) of this section,
14 any person making sales is not obligated to collect the tax imposed by
15 this chapter if the person would have been obligated to collect retail
16 sales tax on the sale absent a specific exemption provided in chapter
17 82.08 RCW, and there is no corresponding use tax exemption in this
18 chapter. Nothing in this subsection (7) may be construed as relieving
19 purchasers from liability for reporting and remitting the tax due under
20 this chapter directly to the department.

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

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

30 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 May 1, 2012.

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