
SENATE BILL 5357

State of Washington

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By Senator Haugen

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1 AN ACT Relating to certain sales tax sourcing provisions within the
2 streamlined sales and use tax agreement; amending RCW 82.32.730,
3 82.14.490, and 82.14.390; adding new sections to chapter 82.32 RCW;
4 repealing RCW 82.14.495 and 82.14.500; and providing an effective date.

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

6 **Sec. 1.** RCW 82.32.730 and 2008 c 324 s 1 are each amended to read
7 as follows:

8 (1) Except as provided in subsections (5) through (7) of this
9 section and section 2 of this act, for purposes of collecting or paying
10 sales or use taxes to the appropriate jurisdictions, all sales at
11 retail shall be sourced in accordance with this subsection and
12 subsections (2) through (4) of this section.

13 (a) When tangible personal property, an extended warranty, or a
14 service defined as a retail sale under RCW 82.04.050 is received by the
15 purchaser at a business location of the seller, the sale is sourced to
16 that business location.

17 (b) When the tangible personal property, extended warranty, or a
18 service defined as a retail sale under RCW 82.04.050 is not received by
19 the purchaser at a business location of the seller, the sale is sourced

1 to the location where receipt by the purchaser or the purchaser's
2 donee, designated as such by the purchaser, occurs, including the
3 location indicated by instructions for delivery to the purchaser or
4 donee, known to the seller.

5 (c) When (a) and (b) of this subsection do not apply, the sale is
6 sourced to the location indicated by an address for the purchaser that
7 is available from the business records of the seller that are
8 maintained in the ordinary course of the seller's business when use of
9 this address does not constitute bad faith.

10 (d) When (a), (b), and (c) of this subsection do not apply, the
11 sale is sourced to the location indicated by an address for the
12 purchaser obtained during the consummation of the sale, including the
13 address of a purchaser's payment instrument, if no other address is
14 available, when use of this address does not constitute bad faith.

15 (e) When (a), (b), (c), or (d) of this subsection do not apply,
16 including the circumstance where the seller is without sufficient
17 information to apply those provisions, then the location shall be
18 determined by the address from which tangible personal property was
19 shipped, from which the digital good or the computer software delivered
20 electronically was first available for transmission by the seller, or
21 from which the extended warranty or service defined as a retail sale
22 under RCW 82.04.050 was provided, disregarding for these purposes any
23 location that merely provided the digital transfer of the product sold.

24 (2) The lease or rental of tangible personal property, other than
25 property identified in subsection (3) or (4) of this section, shall be
26 sourced as provided in this subsection.

27 (a) For a lease or rental that requires recurring periodic
28 payments, the first periodic payment is sourced the same as a retail
29 sale in accordance with subsection (1) of this section. Periodic
30 payments made subsequent to the first payment are sourced to the
31 primary property location for each period covered by the payment. The
32 primary property location shall be as indicated by an address for the
33 property provided by the lessee that is available to the lessor from
34 its records maintained in the ordinary course of business, when use of
35 this address does not constitute bad faith. The property location is
36 not altered by intermittent use at different locations, such as use of
37 business property that accompanies employees on business trips and
38 service calls.

1 (b) For a lease or rental that does not require recurring periodic
2 payments, the payment is sourced the same as a retail sale in
3 accordance with subsection (1) of this section.

4 (c) This subsection (2) does not affect the imposition or
5 computation of sales or use tax on leases or rentals based on a lump
6 sum or accelerated basis, or on the acquisition of property for lease.

7 (3) The lease or rental of motor vehicles, trailers, semitrailers,
8 or aircraft that do not qualify as transportation equipment shall be
9 sourced as provided in this subsection.

10 (a) For a lease or rental that requires recurring periodic
11 payments, each periodic payment is sourced to the primary property
12 location. The primary property location is as indicated by an address
13 for the property provided by the lessee that is available to the lessor
14 from its records maintained in the ordinary course of business, when
15 use of this address does not constitute bad faith. This location is
16 not altered by intermittent use at different locations.

17 (b) For a lease or rental that does not require recurring periodic
18 payments, the payment is sourced the same as a retail sale in
19 accordance with subsection (1) of this section.

20 (c) This subsection does not affect the imposition or computation
21 of sales or use tax on leases or rentals based on a lump sum or
22 accelerated basis, or on the acquisition of property for lease.

23 (4) The retail sale, including lease or rental, of transportation
24 equipment shall be sourced the same as a retail sale in accordance with
25 subsection (1) of this section.

26 (5)(a) A purchaser of direct mail that is not a holder of a direct
27 pay permit shall provide to the seller in conjunction with the purchase
28 either a direct mail form or information that shows the jurisdictions
29 to which the direct mail is delivered to recipients.

30 (i) Upon receipt of the direct mail form, the seller is relieved of
31 all obligations to collect, pay, or remit the applicable tax and the
32 purchaser is obligated to pay or remit the applicable tax on a direct
33 pay basis. A direct mail form shall remain in effect for all future
34 sales of direct mail by the seller to the purchaser until it is revoked
35 in writing.

36 (ii) Upon receipt of information from the purchaser showing the
37 jurisdictions to which the direct mail is delivered to recipients, the
38 seller shall collect the tax according to the delivery information

1 provided by the purchaser. In the absence of bad faith, the seller is
2 relieved of any further obligation to collect tax on any transaction
3 where the seller has collected tax pursuant to the delivery information
4 provided by the purchaser.

5 (b) If the purchaser of direct mail does not have a direct pay
6 permit and does not provide the seller with either a direct mail form
7 or delivery information as required by (a) of this subsection, the
8 seller shall collect the tax according to subsection (1)(e) of this
9 section. This subsection does not limit a purchaser's obligation for
10 sales or use tax to any state to which the direct mail is delivered.

11 (c) If a purchaser of direct mail provides the seller with
12 documentation of direct pay authority, the purchaser is not required to
13 provide a direct mail form or delivery information to the seller.

14 (6) The following are sourced to the location at or from which
15 delivery is made to the consumer:

16 (a) A retail sale of watercraft;

17 (b) A retail sale of a modular home, manufactured home, or mobile
18 home;

19 (c) A retail sale, excluding the lease and rental, of a motor
20 vehicle, trailer, semitrailer, or aircraft, that do not qualify as
21 transportation equipment; and

22 (d) Florist sales. In the case of a sale in which one florist
23 takes an order from a customer and then communicates that order to
24 another florist who delivers the items purchased to the place
25 designated by the customer, the location at or from which the delivery
26 is made to the consumer is deemed to be the location of the florist
27 originally taking the order.

28 (7) A retail sale of the providing of telecommunications services
29 or ancillary services, as those terms are defined in RCW 82.04.065,
30 shall be sourced in accordance with RCW 82.32.520.

31 (8) The definitions in this subsection apply throughout this
32 section.

33 (a) "Delivered electronically" means delivered to the purchaser by
34 means other than tangible storage media.

35 (b) "Direct mail" means printed material delivered or distributed
36 by United States mail or other delivery service to a mass audience or
37 to addressees on a mailing list provided by the purchaser or at the
38 direction of the purchaser when the cost of the items are not billed

1 directly to the recipients. "Direct mail" includes tangible personal
2 property supplied directly or indirectly by the purchaser to the direct
3 mail seller for inclusion in the package containing the printed
4 material. "Direct mail" does not include multiple items of printed
5 material delivered to a single address.

6 (c) "Florist sales" means the retail sale of tangible personal
7 property by a florist. For purposes of this subsection (8)(c),
8 "florist" means a person whose primary business activity is the retail
9 sale of fresh cut flowers, potted ornamental plants, floral
10 arrangements, floral bouquets, wreaths, or any similar products, used
11 for decorative and not landscaping purposes.

12 (d) "Receive" and "receipt" mean taking possession of tangible
13 personal property, making first use of services, or taking possession
14 or making first use of digital goods, whichever comes first. "Receive"
15 and "receipt" do not include possession by a shipping company on behalf
16 of the purchaser.

17 (e) "Transportation equipment" means:

18 (i) Locomotives and railcars that are used for the carriage of
19 persons or property in interstate commerce;

20 (ii) Trucks and truck tractors with a gross vehicle weight rating
21 of ten thousand one pounds or greater, trailers, semitrailers, or
22 passenger buses that are:

23 (A) Registered through the international registration plan; and

24 (B) Operated under authority of a carrier authorized and
25 certificated by the United States department of transportation or
26 another federal authority to engage in the carriage of persons or
27 property in interstate commerce;

28 (iii) Aircraft that are operated by air carriers authorized and
29 certificated by the United States department of transportation or
30 another federal or foreign authority to engage in the carriage of
31 persons or property in interstate or foreign commerce; or

32 (iv) Containers designed for use on and component parts attached or
33 secured on the items described in (e)(i) through (iii) of this
34 subsection.

35 (9) In those instances where there is no obligation on the part of
36 a seller to collect or remit this state's sales or use tax, the use of
37 tangible personal property or of a service, subject to use tax, is

1 sourced to the place of first use in this state. The definition of use
2 in RCW 82.12.010 applies to this subsection.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW
4 to read as follows:

5 (1) Retail sales of tangible personal property and digital goods
6 shall be sourced to the location where the order is received by the
7 seller if:

8 (a) The order is received in this state by the seller and where
9 receipt of the product by the purchaser or the purchaser's donee occurs
10 in this state. However, when products are sold in conjunction with a
11 retail service, both the product and the service must be sourced as
12 required in RCW 82.32.730;

13 (b) The location where receipt of the product by the purchaser
14 occurs is determined pursuant to RCW 82.32.730(1) (b) through (d); and

15 (c) At the time the order is received, the recordkeeping system of
16 the seller used to calculate the proper amount of tax to be imposed
17 captures the location where the order is received.

18 (2) For purposes of this section, the location where the order is
19 received by or on behalf of the seller means the physical location of
20 a seller or third party such as an established outlet, office location,
21 or automated order receipt system operated by or on behalf of the
22 seller where an order is initially received by or on behalf of the
23 seller and not where the order may be subsequently accepted, completed,
24 or fulfilled. An order is received when all of the information
25 necessary to the determination whether the order can be accepted has
26 been received by or on behalf of the seller. The location from which
27 the product is shipped may not be used in determining the location
28 where the order is received by the seller.

29 (3) This section does not apply to sales made pursuant to RCW
30 82.32.730 (2) through (7) and (9).

31 **Sec. 3.** RCW 82.14.490 and 2007 c 6 s 503 are each amended to read
32 as follows:

33 Sales and use taxes authorized under this chapter shall be sourced
34 in accordance with RCW 82.32.730 and section 2 of this act.

1 **Sec. 4.** RCW 82.14.390 and 2008 c 48 s 1 are each amended to read
2 as follows:

3 (1) Except as provided in subsection ~~((7))~~ (6) of this section,
4 the governing body of a public facilities district (a) created before
5 July 31, 2002, under chapter 35.57 or 36.100 RCW that commences
6 construction of a new regional center, or improvement or rehabilitation
7 of an existing new regional center, before January 1, 2004; (b) created
8 before July 1, 2006, under chapter 35.57 RCW in a county or counties in
9 which there are no other public facilities districts on June 7, 2006,
10 and in which the total population in the public facilities district is
11 greater than ninety thousand that commences construction of a new
12 regional center before February 1, 2007; (c) created under the
13 authority of RCW 35.57.010(1)(d); or (d) created before September 1,
14 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in
15 which there are no other public facilities districts on July 22, 2007,
16 and in which the total population in the public facilities district is
17 greater than seventy thousand, that commences construction of a new
18 regional center before January 1, 2009, or before January 1, 2011, in
19 the case of a new regional center in a county designated by the
20 president as a disaster area in December 2007, may impose a sales and
21 use tax in accordance with the terms of this chapter. The tax is in
22 addition to other taxes authorized by law and shall be collected from
23 those persons who are taxable by the state under chapters 82.08 and
24 82.12 RCW upon the occurrence of any taxable event within the public
25 facilities district. The rate of tax shall not exceed 0.033 percent of
26 the selling price in the case of a sales tax or value of the article
27 used in the case of a use tax.

28 ~~(2)((a) The governing body of a public facilities district~~
29 ~~imposing a sales and use tax under the authority of this section may~~
30 ~~increase the rate of tax up to 0.037 percent if, within three fiscal~~
31 ~~years of July 1, 2008, the department determines that, as a result of~~
32 ~~RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW~~
33 ~~82.14.020, a public facilities district's sales and use tax collections~~
34 ~~for fiscal years after July 1, 2008, have been reduced by a net loss of~~
35 ~~at least 0.50 percent from the fiscal year before July 1, 2008. The~~
36 ~~fiscal year in which this section becomes effective is the first fiscal~~
37 ~~year after July 1, 2008.~~

1 ~~(b) The department shall determine sales and use tax collection net~~
2 ~~losses under this section as provided in RCW 82.14.500 (2) and (3).~~
3 ~~The department shall provide written notice of its determinations to~~
4 ~~public facilities districts. Determinations by the department of a~~
5 ~~public facilities district's sales and use tax collection net losses as~~
6 ~~a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to~~
7 ~~RCW 82.14.020 are final and not appealable.~~

8 ~~(c) A public facilities district may increase its rate of tax after~~
9 ~~it has received written notice from the department as provided in (b)~~
10 ~~of this subsection. The increase in the rate of tax must be made in~~
11 ~~0.001 percent increments and must be the least amount necessary to~~
12 ~~mitigate the net loss in sales and use tax collections as a result of~~
13 ~~RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW~~
14 ~~82.14.020. The increase in the rate of tax is subject to RCW~~
15 ~~82.14.055.~~

16 ~~(3))~~ The tax imposed under subsection (1) of this section shall be
17 deducted from the amount of tax otherwise required to be collected or
18 paid over to the department of revenue under chapter 82.08 or 82.12
19 RCW. The department of revenue shall perform the collection of such
20 taxes on behalf of the county at no cost to the public facilities
21 district.

22 ~~((4))~~ (3) No tax may be collected under this section before
23 August 1, 2000. The tax imposed in this section shall expire when the
24 bonds issued for the construction of the regional center and related
25 parking facilities are retired, but not more than twenty-five years
26 after the tax is first collected.

27 ~~((5))~~ (4) Moneys collected under this section shall only be used
28 for the purposes set forth in RCW 35.57.020 and must be matched with an
29 amount from other public or private sources equal to thirty-three
30 percent of the amount collected under this section, provided that
31 amounts generated from nonvoter approved taxes authorized under chapter
32 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100
33 RCW shall not constitute a public or private source. For the purpose
34 of this section, public or private sources includes, but is not limited
35 to cash or in-kind contributions used in all phases of the development
36 or improvement of the regional center, land that is donated and used
37 for the siting of the regional center, cash or in-kind contributions

1 from public or private foundations, or amounts attributed to private
2 sector partners as part of a public and private partnership agreement
3 negotiated by the public facilities district.

4 ~~((+6))~~ (5) The combined total tax levied under this section shall
5 not be greater than 0.037 percent. If both a public facilities
6 district created under chapter 35.57 RCW and a public facilities
7 district created under chapter 36.100 RCW impose a tax under this
8 section, the tax imposed by a public facilities district created under
9 chapter 35.57 RCW shall be credited against the tax imposed by a public
10 facilities district created under chapter 36.100 RCW.

11 ~~((+7))~~ (6) A public facilities district created under chapter
12 36.100 RCW is not eligible to impose the tax under this section if the
13 legislative authority of the county where the public facilities
14 district is located has imposed a sales and use tax under RCW
15 82.14.0485 or 82.14.0494.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.32 RCW
17 to read as follows:

18 The department must adopt by rule reasonable compensation to be
19 paid to businesses for the incremental expenses of establishing or
20 maintaining a uniform system for administering, collecting, and
21 remitting sales and use taxes based on the sourcing provisions in
22 section 2 of this act. The department may be guided by the provisions
23 adopted by the governing board of the agreement to determine the amount
24 of the compensation and the conditions for receiving such compensation.

25 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
26 repealed:

27 (1) RCW 82.14.495 (Streamlined sales and use tax mitigation
28 account--Creation) and 2007 c 6 s 902; and

29 (2) RCW 82.14.500 (Streamlined sales and use tax mitigation
30 account--Funding--Determination of losses) and 2007 c 6 s 903.

31 NEW SECTION. **Sec. 7.** This act takes effect July 1, 2010.

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