BILL REQ. #: S-2903.2/13 2nd draft

ATTY/TYPIST: JA:seg

BRIEF DESCRIPTION: Concerning converting the nonresident sales tax exemption to a refund program.
AN ACT Relating to converting the nonresident sales tax exemption to a refund program; amending RCW 82.08.0273; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 82.08.0273 and 2011 c 7 s 1 are each amended to read as follows:

(1) Subject to the conditions and limitations in this section, an exemption from the tax levied by RCW 82.08.020 in the form of a remittance from the department is provided for sales to nonresidents of this state of tangible personal property, digital goods, and digital codes.

The exemption only applies if:

(a) The property is for use outside this state;

(b) The purchaser is a bona fide resident of a province or territory of Canada or a state, territory, or possession of the United States, other than the state of Washington; and

(i) Such state, possession, territory, or province does not impose, or have imposed on its behalf, a generally applicable retail sales tax,
use tax, value added tax, gross receipts tax on retailing activities, or similar generally applicable tax, of three percent or more; or

(ii) If imposing a tax described in (b)(i) of this subsection, provides an exemption for sales to Washington residents by reason of their residence; and

(c) The purchaser agrees, when requested, to grant the department of revenue access to such records and other forms of verification at ((his or her)) the purchaser's place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the ((requirements)) provisions in subsections (1) and (3) through ((6)) (7) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must ((display proof of his or her current nonresident status as provided in this section)) pay the state and local sales tax to the seller at the time of purchase and then request a remittance from the department in accordance with this subsection and subsection (4) of this section. A request for remittance must include proof of the person's status as a nonresident at the time of the purchase for which a remittance is requested. The request for a remittance must also include any additional information and documentation as required by the department, which may include a description of the item purchased for which a remittance is requested, the sales price of the item, the amount of state and local sales tax
paid on the item, the date of the purchase, the name of the seller and
the physical address where the sale took place, and copies of sales
receipts showing the qualified purchases.

(b) Acceptable proof of a nonresident person's status includes one
piece of identification such as a valid driver's license from the
jurisdiction in which the out-of-state residency is claimed or a valid
identification card which has a photograph of the holder and is issued
by the out-of-state jurisdiction. Identification under this subsection
(3)(b) must show the holder's residential address and have as one of
its legal purposes the establishment of residency in that out-of-state
jurisdiction.

(c) In lieu of furnishing proof of a person's nonresident status
under (b) of this subsection (3), a person claiming exemption from
retail sales tax under the provisions of this section may provide the
seller with (an exemption certificate) a remittance form in
compliance with subsection (4)(b) of this section.

(4)(a) Nothing in this section requires the vendor to make tax
exempt retail sales to nonresidents. A vendor may choose to make sales
to nonresidents, collect the sales tax, and remit the amount of sales
tax collected to the state as otherwise provided by law. If the vendor
chooses to make a sale to a nonresident without collecting the sales
tax, the vendor must examine the purchaser's proof of nonresidence,
determine whether the proof is acceptable under subsection (3)(b) of
this section, and maintain records for each nontaxable sale which shall
show the type of proof accepted, including any identification numbers
where appropriate, and the expiration date, if any.

(b) In lieu of using the method provided in (a) of this subsection
to document an exempt sale to a nonresident, a seller may accept from
the purchaser a properly completed uniform exemption certificate
approved by the streamlined sales and use tax agreement governing board
or any other exemption certificate as may be authorized by the
department and properly completed by the purchaser. A nonresident
purchaser who uses an exemption certificate authorized in this
subsection (4)(b) must include the purchaser's driver's license number
or other state-issued identification number and the state of issuance.

(c) In lieu of using the methods provided in (a) and (b) of this
subsection to document an exempt sale to a nonresident, a seller may
capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax and who fails to maintain records of sales to nonresidents as provided in this section is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser’s proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW.)) (i) Beginning January 1, 2014, through December 31, 2014, a person may request a remittance from the department for state and local sales taxes paid by the person on qualified retail purchases made in Washington between August 1, 2013, and December 31, 2013.

(ii) Beginning January 1, 2015, a person may request a remittance from the department during any calendar year for state and local sales taxes paid by the person on qualified retail purchases made in Washington during the immediately preceding calendar year only. No application may be made with respect to purchases made before the immediately preceding calendar year only. No application may be made with respect to purchases made before the immediately preceding calendar year.

(b) The remittance request, including proof of nonresident status and any other documentation and information required by the department,
must be made using an electronic application process as prescribed by the department. Remittance requests may only be made by a person once each calendar quarter.

(c) The total amount of a remittance request must be at least twenty-five dollars. The department must deny any request for a remittance that is less than twenty-five dollars.

(d) The department will examine the applicant's proof of nonresident status and any other documentation and information as required in the application to determine whether the applicant is entitled to a remittance under this section.

(5)(a) Any person making fraudulent statements to the department, which includes the offer of fraudulent or fraudulently procured identification or fraudulent sales receipts, in order to receive a remittance of retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person requesting a remittance of sales tax from the department by providing proof of identification or sales receipts not the person's own, or counterfeit identification or sales receipts, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6) The exemption provided by this section is for both state and local sales taxes. For purposes of this section, "local sales tax" means a sales tax imposed by a local government under the authority of chapter 82.14 RCW, RCW 81.104.170, or other provision of law, and which is imposed on the same taxable event as the state sales tax imposed in this chapter.

(7) A nonresident who receives a refund of sales tax from the seller for any reason with respect to a purchase made in this state is not entitled to a remittance for the tax paid on the purchase. A person who receives both a remittance under this section and a refund from the seller with respect to the same purchase must immediately repay the remittance to the department. Interest as provided in chapter 82.32 RCW applies to amounts due under this section from the date that the department made the remittance until the amount due under this subsection is paid to the department. A person who receives a remittance with respect to a purchase for which the person had, at the
time the person submitted the application for a remittance, already
received a refund of sales tax from the seller is also liable for the
evasion penalty in RCW 82.32.090(7) and is ineligible to receive any
further remittance from the department under this section.

NEW SECTION. Sec. 2. If any provision of this act or its
application to any person or circumstance is held invalid, the
remainder of the act or the application of the provision to other
persons or circumstances is not affected.

NEW SECTION. Sec. 3. This act is necessary for the immediate
preservation of the public peace, health, or safety, or support of the
state government and its existing public institutions, and takes effect
July 1, 2013.

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