

Breaking Developments in Tax Law

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Washington Tax Alert: Seller's Permits to Replace Resale Certificates

Effective January 1, 2010, Washington taxpayers purchasing tangible personal property for resale will no longer be allowed to issue resale certificates to vendors, but will instead be required to have secured a "seller's permit" issued by the Department of Revenue ("the Department"). The seller's permits will allow eligible taxpayers to purchase goods or services for resale without paying Washington retail sales tax. This change is a result of Senate Bill 6173, which was enacted during the 2009 legislative session in an effort to curb resale certificate abuse.

Eligibility

Seller's permits will be issued to Washington taxpayers who regularly make purchases for resale in the ordinary course of business, including qualified contractors. Eligibility will generally be determined based on the taxpayer's industry type and reporting history. The Department is required to deny an application to any applicant who is not entitled to make purchases at wholesale or is otherwise prohibited from using a seller's permit. Furthermore, the Department has the discretion to deny an application if it determines that doing so would be in the best interest of ensuring the collection of sales tax. The Department's decision to deny an application may be based on the applicant's reporting history, information obtained in the course of an audit, the applicant's master business application or seller's permit application, or other information available to the Department.

Process for Obtaining a Seller's Permit

The initial round of seller's permits will be issued to eligible taxpayers based on specific criteria. Taxpayers who do not automatically receive a seller's permit may apply directly to the Department. In September 2009, the Department will notify taxpayers who have been selected to receive seller's permits. In October, those taxpayers will receive their seller's permits by mail. Additionally, in September 2009, the Department will begin accepting online and paper applications for seller's permits. The Department is required to make a determination whether to grant seller's permits within 60 days.

Duration of Permits

The length of time that a seller's permit is valid varies depending on how long the taxpayer has been registered with the Department:

Seller's permits for taxpayers registered prior to January 1, 2009, will be valid for four years.

Seller's permits for taxpayers registered on or after January 1, 2009, will be valid initially for two years and may be renewed for four years thereafter.

Special Rules for Contractors

The transition from resale certificates to seller's permits will have a significant impact on certain taxpayers in the construction industry. Seller's permits for contractors are valid for only 12 months, and must be renewed each year. Furthermore, only certain contractors will be eligible for a seller's permit. As part of the application process, contractors will be required to provide information detailing their materials and labor purchases during the preceding 12 months for retail construction, speculative building, public road construction and government contracting. If less than 25 percent of the contractor's total expenditures for materials and labor purchases were for retail construction activities, the contractor will not be granted a seller's permit.

As a result, some contractors who are currently authorized to issue resale certificates will instead be required to pay retail sales tax up front to its vendors and subcontractors on wholesale purchases of materials and labor, and recoup the amount of sales tax paid by taking a "tax paid at source" deduction on a subsequent return or by requesting a refund. This could have a significant impact on cash flow for contractors who do not qualify for a seller's permit. For example, if a contractor is engaged primarily in government contracting or speculative building but also engages in some retail construction activities, the contractor will not be eligible for a seller's permit unless at least 25 percent of its materials and labor expenditures are for retail construction projects.

The application form for contractors will be available starting in September 2009.

Resale Purchases in Lieu of Seller's Permits

Taxpayers who do not qualify for or who have not obtained a seller's permit will be required to pay Washington sales tax on purchases for resale. Taxpayers who pay sales tax on purchases for resale may either take a deduction for "tax paid at source" on its combined excise tax return, or request a credit for sales tax paid on goods or services purchased for resale.

Recordkeeping Requirements for Vendors

Unless the vendor obtains a seller's permit from the buyer, the burden is on the vendor to establish that a sale was not a sale at retail (and therefore, no retail sales tax should be collected), subject to the following exceptions:

In lieu of a copy of the seller's permit, a vendor may accept from a buyer that is registered with the Department a properly completed uniform exemption certificate approved by the Streamlined Sales and Use Tax Agreement's Governing Board, provided that the certificate includes the seller's permit number issued to the buyer by the Department.

If the buyer is not required to be registered with the Department (e.g., an out-of-state buyer making drop shipment sales to customers in Washington), a vendor may accept either a uniform

sales and use tax exemption certificate developed by the Multistate Tax Commission, or a uniform exemption certificate approved by the Streamlined Sales and Use Tax Agreement's Governing Board.

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