

Nonresident Exemption & Canadian Provinces

Statute -- RCW 82.08.0273

- Allows a merchant to sell goods tax-free to residents of a state or province that does not have a retail sales/use tax of 3% or more

What Happened?

- In April 2010, DOR learned that B.C. would switch from a retail sales tax system to a VAT on July 1, 2010
- Because the VAT is not a retail sales tax, DOR determined that B.C. residents would qualify for the nonresident exemption
- This determination was consistent with how the DOR had handled other Canadian provinces with a VAT since 2003
- DOR announced this result in late May, 2010 and in early June sent out a press release
- Local governments – Whatcom County & City of Bellingham – were concerned about the potential revenue loss

- Whatcom County & Bellingham sued the Department in Skagit County & obtained a TRO ordering the Department not to give advice to retailers about whether the exemption applied or not.
- Several large retailers intervened in the suit, arguing that they were entitled to DOR advice that they could rely on
- In a follow-up proceeding, the Skagit County Court entered a preliminary injunction (effective pending a final decision) ordering DOR to advise retailers that residents of Canadian provinces with a VAT did NOT qualify for the exemption
- The local judge clearly was not pleased with being put in this position, and suggested that the case should proceed directly to the Court of Appeals for a rapid decision

Current Status

- DOR continues to believe that Canadian residents of VAT provinces qualify for the exemption
- Nonetheless, pursuant to the injunction, DOR continues to advise businesses that they do NOT qualify

- Some businesses are giving Canadian residents the exemption; others are not
- No further action has been taken in the Court case
- The expectation is that the issue will be presented to the Legislature in the upcoming session
- HOWEVER, if Tim Eyman's latest initiative passes, any legislation that reduces the exemption will have to pass by a 2/3 vote
- Questions have also been raised about whether nonresidents can get a refund from DOR if a merchant fails to make a sale tax-free