



Reseller Permits to Replace Self-Issued Resale Certificates in Washington State Effective January 1, 2010

State & Local Tax

12.17.2009

The days of self-issued resale certificates in Washington state are numbered. Effective January 1, 2010, buyers in Washington must provide a reseller permit or a Streamlined Sales and Use Tax Agreement ("SSUTA") exemption certificate with the buyer's reseller permit number in order to purchase goods and services for resale without paying sales tax. Buyers that are not required to be registered with the Washington Department of Revenue (the "Department") may provide a Multistate Tax Commission ("MTC") exemption certificate in lieu of a reseller permit or SSUTA exemption certificate. Businesses that have not obtained a reseller permit or provided a valid SSUTA or MTC exemption certificate must pay sales tax on their purchases for resale, but may recover the tax by claiming a "taxable amount for tax paid at source" deduction or by requesting a refund.

The Department began automatically issuing permits in September. Businesses that did not automatically receive a permit and anticipate making purchases of goods or services for resale should apply for one. Applications are available for download at the Department's Web site. Alternatively, businesses may apply online.

The Department's Criteria for Issuing a Reseller Permit

The Department recently published criteria for determining whether a business is eligible for a reseller permit, WAC 458-20-10201.

Criteria for Businesses Other Than Construction Contractors

A business, other than a construction contractor, may receive a reseller permit if it satisfies the following criteria:

- (1) The business has an active tax reporting account with the Department;
- (2) The business, if it reports on a quarterly or monthly basis, reported gross income in the immediately preceding six months, or the business, if it reports on an annual basis, reported gross income on its last annual return; and
- (3) 5% or more of the business's gross income during the preceding period addressed above was reported under a retailing, wholesaling or manufacturing B&O tax classification.

The Department, however, may deny an application if it determines: (1) the applicant is not entitled to make purchases at wholesale based on the nature of the applicant's business, (2) the applicant was assessed a penalty for misuse of a resale certificate, or (3) denial is in the best interest of collecting the taxes due.

Criteria for Construction Contractors

The Department subjects construction contractors to greater scrutiny when determining eligibility for a reseller permit and undertakes a two-part inquiry. First, construction contractors must satisfy the following criteria:

- (1) The contractor submitted an application;
- (2) The contractor demonstrated it is entitled to make purchases at wholesale; and
- (3) The contractor reported in its application that more than 25% of its total material and labor purchases in the preceding 12 months were for retail construction activities performed by the contractor.

The Department may also approve an application if it believes approval is unlikely to jeopardize collection of the taxes due.

Second, the Department considers the following five factors when reviewing contractors' applications:

- (1) Whether the contractor has an active tax reporting account;
- (2) Whether the contractor, if it reports on a quarterly or monthly basis, reported gross income in the immediately preceding six months, or the contractor, if it reports on an annual basis, reported gross income on its last annual return;
- (3) Whether the contractor is properly certified and licensed with the Washington State Department of Labor & Industries;
- (4) Whether the contractor was assessed a penalty for misuse of a resale certificate; and
- (5) Any other factors relevant to the determination that denial of the application is in the best interest of collecting the taxes due.

For more information on who is a "contractor," see WAC 458-20-10201(302).

Administrative Appeals Process for a Denied Application

Brief Adjudicative Proceedings

Taxpayers, including construction contractors, that are denied a permit may appeal the Department's decision by filing a written appeal no later than 21 days after service of the Department's written notice that the taxpayer's application was denied. A form notice of appeal is available on the Department's Web site. Completed forms and additional material should be mailed or faxed to the Taxpayer Account Administration. The presiding officer is instructed to enter an initial order in writing within 21 days after receipt of taxpayer's appeal.

On appeal, the taxpayer is permitted a brief adjudicative proceeding conducted by a presiding officer. The brief adjudicative proceeding may convert to a formal proceeding at any time on motion by the taxpayer, the Department or the presiding officer.

Appeal of an Initial Order

A taxpayer may appeal the presiding officer's initial order by filing a petition for review or by making an oral request for review with the Department's appeals division. The petition for review must be made within 21 days after service of the initial order. A request for review should state the reasons review is sought. Completed forms and additional written information should be mailed or faxed to the Appeals Division, Reseller Permit Appeals.

Appeal of the initial order will be considered by a reviewing officer and subject to a second brief adjudicative proceeding. As noted above, the brief adjudicative proceeding may convert to a formal proceeding at any time on motion by the taxpayer, the Department or the reviewing officer.

The reviewing officer shall issue an order in writing within 21 days of the petition for review. If the Department does not issue an order within the 21 day time period, the taxpayer's request for review is deemed denied. Subsequent judicial review of the officer's order is permitted.

Action Items

Starting January 1, 2010, Washington sellers should begin charging sales tax on sales for resale if the buyer fails to provide a reseller permit or an SSUTA or MTC exemption certificate as described above. Buyers that make wholesale purchases in Washington should provide each vendor a hard or electronic copy of the buyer's reseller permit or SSUTA or MTC exemption certificate. Buyers that are required to be registered with the Department and that have not already received a reseller permit should submit an application with the Department as soon as possible.

For more information, visit the Department's Web site.

Contributing Authors:

Stephanie J. Boehl, 206.359.8000

Robert L. Mahon, 206.359.6360