Special Notice

WASHINGTON STATE DEPARTMENT OF REVENUE

DECEMBER 4, 2014

Tax Implications of Firearms transfers

Introduction

This Special Notice explains how the passage of Initiative 594 ("I-594") affects the tax collection responsibilities of licensed Washington firearms dealers.

For tax purposes, I-594:

- Effective December 4, 2014, I-594 removes the requirement for firearms dealers to collect sales or use tax from the transferee on firearms transfers between unlicensed persons whether such transfers are in-state or interstate transfers.
- Keeps the requirement for firearms dealers to collect sales or use tax from the transferee on interstate firearms transfers by a licensed dealer.

Effective December 4, 2014, I-594 requires background checks on virtually all firearms transfers. See I-594 for the limited exceptions to the background check requirement. Contact your local law enforcement officials for questions unrelated to state taxes. Previously, background checks were only required on direct purchases from licensed firearms dealers.

The following terms apply for purposes of this Special Notice:

"Licensed dealer" means a dealer who has a Federal Firearms License (FFL) pursuant to 18 U.S.C. Sec. 923(c).

"Unlicensed person" means any person who is not an FFL gun dealer under Chapter 9.41 RCW.

"Transfer" means the intended delivery of a firearm to another person regardless of whether there is consideration or promise of payment, including, but not limited to transfers, sales, gifts and loans of firearms.

"Transferee" means the person that will receive the firearm in Washington.

"In-state firearms dealer involved in transferring a firearm." This is the firearms dealer that will perform the background check before delivering the firearm to the transferee

in Washington.

Must a licensed dealer facilitating the transfer of a firearm between unlicensed persons collect sales tax or use tax from the transferee?

No. An in-state firearms dealer is not required to collect sales tax or use tax when a firearm is transferred between unlicensed parties.

Is the interstate transfer of a firearm from a licensed dealer subject to sales tax or use tax?

Yes. An in-state firearms dealer involved in the transfer of a firearm from an out-of-state licensed firearms dealer to an unlicensed person in this state (interstate transfers) remains responsible for collecting use tax from the transferee.

The tax due is generally determined by the purchase price paid by the transferee to the seller, which includes freight, delivery and insurance charges. If this purchase price is not known, or if the transferee acquires the firearm in a manner other than an arms-length sales transaction, the firearms dealer must determine the taxable amount by using the current fair market value of the firearm as provided by RCW 82.12.010. Current fair market value may be determined by the insured value, a recent appraisal, or a reliable resource, such as a respected publisher of gun values. Values are subject to audit verification.

Does the buyer/transferee owe use tax if the in-state firearms dealer does not collect the tax?

Yes. I-594 does not relieve the purchaser/transferee from the obligation to pay use tax. The purchaser/transferee receiving the firearm must pay use tax directly to the Department of Revenue as follows:

- An unlicensed purchaser/transferee that does not have a tax reporting account with the Department must report and pay the tax by completing and filing a Consumer Use Tax Return. See the Department's website at www.dor.wa.gov.
- An unlicensed purchaser/transferee that has a tax reporting account must report and pay the use tax on their Excise Tax Return.

What taxes apply to the background check fee or other transfer fee?

Retail sales and use tax

Neither retail sales nor use tax applies to charges or fees for performing background checks. This includes charges for processing required federal, state, and local forms, contacting the National Instant Criminal Background Check System (NICS), and for handling the transfer.

Business and occupation (B&O) tax

Income from separately stated service charges or fees for background checks is taxable under the service and other activities B&O tax classification. The tax applies to income from charges for both transfers between unlicensed persons and transfers involving a firearms dealer in another state.

How does a firearms dealer report transfers on the excise tax return?

When completing the excise tax return, an in-state firearms dealer:

- Reports income from transfer fees or charges under the service and other activities B&O tax classification.
- Reports and remits use tax on sales/transfers of firearms on the use tax lines when the seller/transferor is a licensed firearms dealer in another state and the buyer/transferee receives the firearm in Washington.

What documentation must the Gun Dealer keep for tax purposes?

Documentation substantiating whether the transfer is between unlicensed parties or involves a firearms dealer located in another state must be retained in the in-state gun dealer's books and records. The Department of Revenue requires records be retained for a period of four years plus the current year.