

VETO MESSAGE ON SHB 1413

June 16, 1995

To the Honorable Speaker and Members,

The House of Representatives of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval, Substitute House Bill No. 1413 entitled:

"AN ACT Relating to business and occupation taxation;"

Substitute House Bill No. 1413 would allow owners of amusement devices to deduct the amount paid to the owner of the premises where the device is located and used from the gross receipts of the business.

Amusement device owners pay the owner of the premises an amount for the right to locate a device on those premises. The device owner receives the entire amount from the device, and that amount is subject to the business and occupation tax. The device owner pays the premises owner an amount of money, usually a percentage of the receipts of the device. The amount paid to the premises owner is also subject to the business and occupation tax by the premises owner. The industry argues that this is double taxation, or pyramiding.

The business and occupation tax is a gross receipts tax rather than a tax on profits; therefore, pyramiding is a necessary and desirable feature in the tax. Furthermore, these are two separate and distinct business activities. One person is allowing the use of his/her space; the other person is providing the device. Allowing a deduction for what is essentially a cost of the business (space rental), would violate the nature of the tax. There are few deductions which allow a business to deduct basic business expenses. Vending machine owners for example, which do business in the same manner, do not receive this deduction.

The industry argued that it was merely sharing the proceeds of the device with the premises owner and was essentially a partner with the owner. However, the industry has not chosen to legally structure its arrangements in such a fashion. Instead, the device owner has the right to all of the proceeds of the device, and must pay to the premises owner a certain percentage of the proceeds. This is no different from a retailer agreeing to pay a salesperson a certain percentage of the proceeds of his or her sales, and is simply a cost of doing business under the law.

For these reasons, I have vetoed Substitute House Bill No. 1413 in its entirety.

Respectfully submitted,
Mike Lowry
Governor