

HB 1329

Bill Analysis

February 4, 1997

Brief Description: Paying the business and occupation tax by property management companies for on-site employees.

Bill Sponsors: Representatives Van Luven, Sheldon, Quall, Koster, Smith, Mulliken, Sherstad, Crouse, D. Sommers, Schoesler and Cooke.

Staff: Bob Longman (786-7139)

Background: Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Thus, the tax pyramids at each level of activity. For example, retailers are not allowed to deduct amounts paid to wholesalers; and contractors are not allowed to deduct amounts paid to a subcontractor. An exception to this rule is allowed for real estate brokers who may deduct commissions paid to another brokerage. Another exception is when a business acts as its client's agent. B&O tax does not apply to money received from the client as an advance payment for paying the client's bills. The B&O tax also does not apply when the business receives reimbursement for payments made on behalf of the client.

When a business hires and pays workers on behalf of a client, the question often arises of whether these payments to the business are subject to B&O tax. The answer depends upon whether the workers are considered employees of the business or employees of the client. If the client has control over the workers, then the workers are considered employees of the client and the payments to the hiring business are considered advance payments or reimbursements and are not subject to B&O tax. Otherwise, the hiring business pays B&O tax at the Other Activities rate of 2.09 percent on these payments.

Who has control over the workers is determined by who decides on the hiring and firing the workers; the duration of employment; the rate, amount, and other aspects of compensation; the workers' job assignments and instructions; and other factors.

Property owners often hire property management companies to manage their real property. Frequently, the property management companies also manage the personnel who perform the necessary services at the property location. The property owners may pay the on-site personnel through the property management company. Property managers have been

assessed B&O tax on these payments for on-site workers.

Summary of Bill: Business and occupation tax does not apply to amounts received by a property management company for the payment of gross wages or benefits to on-site personnel when paid from property management trust accounts. Workers are on-site personnel when they work at the owner's property; have duties that include leasing property units, maintaining the property, collecting rents, or similar activities; and are compensated by the property owner under a written property management agreement.

Fiscal Note: Available

Effective Date: The bill declares an emergency and takes effect April 1, 1997.