

# HB 2993

## Bill Analysis

February 4, 1998

**Brief Description:** Eliminating the business and occupation tax on property managers' compensation.

**Bill Sponsors:** Representatives Van Luven, Quall, Sherstad, Dyer, D. Sommers and B. Thomas.

**Staff:** Rick Peterson, 786-7150.

**Background:** Washington's major business tax is the business and occupation (B&O) tax. There are several different B&O tax rates. As of July 1, 1998, the three principal rates are:

Manufacturing and wholesaling	0.484%
Retailing	0.471%
Service	1.5%

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 on 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 1.5 percent on these payments.

Who has control over the workers is determined by who decides on the hiring and firing of

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.

The agreement must provide that the worker's compensation is the ultimate obligation of the property owner, the property manager is liable for payment only as agent of the owner, and the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

**Appropriation:** None.

**Fiscal Note:** Requested.

**Effective Date:** July 1, 1998.