

SENATE BILL REPORT

SB 5688

As Passed Senate, April 8, 1997

Title: An act relating to business and occupation tax reimbursements and advances received by property management companies for the payment of wages to on-site employees.

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

Sponsors: Senators Strannigan and Johnson.

Brief History:

Committee Activity: Ways & Means: 3/6/97, 3/26/97 [DP].
Passed Senate, 4/8/97, 47-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Hochstatter, Kohl, Long, Rossi, Snyder, Swecker and Zarelli.

Staff: Terry Wilson (786-7433)

Background: Washington's major business tax is the business and occupation (B&O) tax. Although there are several different rates, the principal rates are:

Manufacturing, wholesaling, & extracting	0.506%
Retailing	0.471%
Services	
- Business Services	2.0%
- Financial Services	1.6%
- Other activities	1.829%

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. For example, retailers are not allowed to deduct amounts paid to wholesalers, and contractors are not allowed to deduct amounts paid to subcontractors. An exception exists for real estate brokers who may deduct commissions paid to another brokerage. Another exception exists for money received from a client as an advance or reimbursement for payments made on behalf of the client where only the client is liable for the payment.

When a business employs workers on behalf of a client, advances and reimbursement for payments to the workers are subject to B&O tax if the workers are considered employees of the business. The workers are considered employees of the person who has control over them. This is determined by who decides on the hiring and firing the worker; the duration

of employment; the rate, amount, and other aspects of compensation; the worker's 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: B&O tax does not apply to amounts received by a property management company for the payment of gross wages or benefits to on-site personnel from property management trust accounts that are required to be maintained by law. 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on April 1, 1997.

Testimony For: Property managers only receive a management fee. Property managers do payroll service for the owners without a markup. Most property management companies do not pay the B&O tax on this income. This is the property owner's money, not the property managers. Assessing back taxes on the company would cause many to fail.

Testimony Against: None.

Testified: PRO: Jeff Powell, IREM; Jerry Hagad, WRA; Tom Sante, BOMA; Eric Newhinney, WAA; Martin Faveluke. Mfg. Housing Communities of WA.