

# SENATE BILL REPORT

## SB 6662

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As Passed Senate, February 16, 1998

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

**Sponsors:** Senators Strannigan, T. Sheldon and Schow.

**Brief History:**

**Committee Activity:** Ways & Means: 2/6/98, 2/9/98 [DP].  
Passed Senate, 2/16/98, 47-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Hochstatter, Kohl, Long, McDonald, Roach, Rossi, Schow, Swecker, Winsley and Zarelli.

**Staff:** Terry Wilson (786-7433)

**Background:** Washington's major business tax is the business and occupation (B&O) tax. This tax is imposed on the gross receipts of business activities conducted within the state.

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. 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.

The agreement must provide that the 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:** Available.

**Effective Date:** The bill takes effect on July 1, 1998.

**Testimony For:** Property managers often employ site managers who are not necessarily the employees of the property management company. If the management company changes, the site managers often stay. The wages are paid from money held in trust and cannot be used to benefit the property management company. The company is just an agent of the owner. Mobile home parks provide affordable housing, but the tax on the wages forces the owner to put the handle the payroll accounts which defeats the purpose of having a manager. The language was developed with the Department of Revenue and the Governor's office.

**Testimony Against:** None.

**Testified:** PRO: Jeff Powel, IREM; Terri Hotvedt, WA State Commercial Association of Realtors; John Woodring, WAA; Martin Faveluke, Manufactured Housing Communities of WA.