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HOUSE BILL 2555

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State of Washington

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By Representatives Reardon, Gombosky, Kessler, Morris, McMorris, Cairnes, Van Luven, Woods, Delvin, Grant, Roach, Mulliken, Nixon and Conway

Read first time 01/21/2002. Referred to Committee on Finance.

1 AN ACT Relating to municipal tax fairness; amending RCW 35.21.710;  
2 adding a new chapter to Title 35 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) City gross receipts taxes are complicated and inconsistent from  
6 city to city;

7 (b) Cities whose ordinances do not include apportionment provisions  
8 have been required to resolve potential instances of multiple taxation  
9 on a case-by-case basis; and

10 (c) Cities have had and should retain the flexibility to tailor  
11 their tax structures to meet unique needs, but that flexibility must be  
12 balanced with predictability and ease of administration of city taxes.

13 (2) It is the intent of the legislature to:

14 (a) Require cities that impose a gross receipts tax to adopt a  
15 model ordinance that creates greater uniformity and consistency among  
16 city gross receipts taxes;

17 (b) Make city gross receipts business and occupation taxes simpler,  
18 more predictable, and easier to administer;

19 (c) Eliminate multiple taxation of the same gross income; and

1 (d) Establish methods for fair apportionment of gross income of  
2 businesses between and among local jurisdictions when a business is  
3 engaging in business in more than one local jurisdiction.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise:

6 (1) "Business" has the same meaning as that provided in RCW  
7 82.04.140.

8 (2) "City" means a city, town, or code city.

9 (3) "Business and occupation tax" or "gross receipts tax" means a  
10 tax which is imposed on or measured by the value of products, the gross  
11 income of the business, or the gross proceeds of sales, as the case may  
12 be and which is also not, pursuant to law or custom, separately stated  
13 from the sales price. As used in this subsection and throughout this  
14 chapter, the terms "value of products," "gross income of the business,"  
15 and "gross proceeds of sales" have the same meaning as those provided  
16 in chapter 82.04 RCW.

17 (4) "Local jurisdiction" means any city, town, code city, county,  
18 municipal district or corporation, political subdivision, Indian  
19 reservation, or federal area located in the state of Washington.

20 NEW SECTION. **Sec. 3.** (1) The director of the department of  
21 revenue shall appoint a special committee consisting of tax  
22 administrators from a representative sampling of cities that currently  
23 apply a gross receipts tax. The director shall ensure that the members  
24 of the special committee are balanced between small, medium, and large  
25 cities. The director shall seek nominations for the special committee  
26 from the largest statewide association representing cities.

27 (2) The special committee shall, by November 1, 2002, develop a  
28 model resolution and ordinance regarding the prospective implementation  
29 of local gross receipts taxes.

30 (3) To ensure ease of administration and compliance, the special  
31 committee shall draft a model ordinance that provides for a uniform  
32 system of city gross receipts taxation. In drafting the model  
33 ordinance, the special committee shall, at a minimum, include:

34 (a) The following core definitions from the state business and  
35 occupation tax: RCW 82.04.030 ("Person," "company."); RCW 82.04.040  
36 ("Sale," "casual or isolated sale."); RCW 82.04.050 ("Sale at retail,"  
37 "retail sale."); RCW 82.04.060 ("Sale at wholesale," "wholesale

1 price."); RCW 82.04.070 ("Gross proceeds of sales."); RCW 82.04.080  
2 ("Gross income of the business."); RCW 82.04.090 ("Value proceeding or  
3 accruing."); RCW 82.04.100 ("Extractor."); RCW 82.04.110  
4 ("Manufacturer."); RCW 82.04.120 ("To manufacture."); RCW 82.04.130  
5 ("Commercial or industrial use."); RCW 82.04.140 ("Business."); and RCW  
6 82.04.150 ("Engaging in business.") The incorporation of these core  
7 definitions in the model ordinance shall be construed to include, as an  
8 extension of each definition, any state level determination,  
9 regulation, interpretation, or court opinion pertaining to any one of  
10 these definitions. In addition, if the model ordinance or an  
11 individual city uses a classification, exemption, deduction or credit  
12 substantially similar to one set forth in the state's gross receipts  
13 tax system, the definitions used for the classification, exemption,  
14 deduction, or credit shall be identical to those provided in the  
15 state's gross receipts tax system. However, this subsection shall not  
16 be construed to limit any individual city's flexibility to establish  
17 its own classifications or rate structures for gross receipts tax  
18 purposes subject to the provisions of RCW 35.21.710 nor shall it be  
19 construed to reduce, limit, or eliminate a city's ability to continue  
20 to tax an activity at a rate established for an activity prior to  
21 January 1, 2002, pursuant to either a gross receipts tax or utility  
22 tax.

23 (b) Uniform due dates.

24 (c) Reasonable rates of interest to be applied to tax assessments,  
25 underpayments of tax, and refunds of tax.

26 (d) Reasonable penalties for the failure to timely file a tax  
27 return, the late payment of a tax assessment, the disregard of  
28 specific, written instructions from the taxing entity, and the intent  
29 to evade tax. However, the aggregate of penalties imposed for the  
30 failure to timely file a tax return, the late payment of a tax  
31 assessment, or the disregard of specific, written instructions from the  
32 taxing entity shall not exceed thirty-five percent of the tax due, or  
33 twenty dollars, whichever is greater. In addition, no taxing entity  
34 shall apply both the penalty for intent to evade tax and the penalty  
35 for disregard of specific written instructions. To the extent  
36 feasible, the penalty provisions provided for in chapter 82.32 RCW  
37 should guide the special committee.

38 (e) A uniform statute of limitation period for both assessments of  
39 additional taxes, penalties, and interest and refunds or credits of

1 overpaid taxes, penalties, and interest. In establishing the uniform  
2 statute of limitation periods under this subsection, the special  
3 committee shall not establish a statute of limitation period that  
4 exceeds the equivalent of four years plus the current tax year.  
5 However, if it can be shown that the taxpayer did not properly register  
6 with the taxing authority, the special committee may provide for a  
7 statute of limitation in this instance of no more than seven years plus  
8 the current tax year. In the circumstance where it can be shown that  
9 the taxpayer engaged in fraudulent activities with respect to its tax  
10 liability, the statute of limitation provided pursuant to this  
11 subsection (3)(e) need not apply. The special committee shall provide  
12 for the written waiver of these statutes of limitation upon mutual  
13 agreement between the taxpayer and the taxing authority, but a written  
14 waiver shall extend, identically, the period for making assessments and  
15 claiming refunds.

16 (f) Provisions for the fair apportionment of gross income that will  
17 eliminate any circumstance that would result in a city or multiple  
18 cities imposing tax on greater than one hundred percent of the gross  
19 income of the business. Upon the effective date of this section, the  
20 model ordinance shall not contain any provisions regarding  
21 apportionment or allocation of gross income.

22 (g) A uniform, minimum small business tax exemption of at least the  
23 equivalent of twenty-five thousand dollars in gross income. A city may  
24 elect to deviate from this requirement by creating a higher threshold,  
25 but it shall not deviate lower than the level required in this  
26 subsection (3)(g).

27 (4) Upon completion of the model ordinance by the special  
28 committee, the department of revenue shall, by rule, propose the formal  
29 adoption of the model ordinance in conformance with chapter 34.05 RCW.  
30 In publishing the rule under this subsection (4), the department shall  
31 include a section noting any instance where the model ordinance  
32 deviates from the state gross receipts tax and for each deviation,  
33 shall provide an explanatory statement setting forth the rationale for  
34 the deviation.

35 (5) By January 1, 2003, a city levying a gross receipts tax shall,  
36 at a minimum, adopt the provisions of the model ordinance that were  
37 mandated by subsection (3)(a) through (g) of this section. While it is  
38 the intent of the legislature in this subsection (5) to allow some  
39 deviation from the nonmandatory provisions of the model ordinance,

1 cities are encouraged to deviate as little as possible from the  
2 nonmandatory portions of the model ordinance to maintain the highest  
3 degree of uniformity among the cities imposing a gross receipts tax.  
4 If deviations from the nonmandatory provisions of the model ordinance  
5 are made by a city, the deviation should be noted along with an  
6 explanatory statement regarding the deviation and both the deviation  
7 and the explanatory statement shall then be placed in a centralized  
8 depository such as the municipal research services center to provide  
9 taxpayers with quick access to all deviations.

10 (6) When changes are made to the state's gross receipts tax that  
11 would require changes to the mandatory requirements of the model  
12 ordinance provided under subsection (3) of this section, the department  
13 of revenue shall reconvene a special committee using the same criteria  
14 as provided in subsection (1) of this section. The special committee  
15 formed under this subsection shall update the model ordinance where  
16 required to conform to the requirements of subsection (3) of this  
17 section. The department of revenue shall then readopt, by rule, the  
18 model ordinance with any changes required under this subsection by  
19 December 1 of each year and a city imposing a gross receipts tax shall  
20 adopt the changes by January 1 of the following year.

21 NEW SECTION. **Sec. 4.** (1) For the purposes of apportioning or  
22 allocating gross income of the business for city gross receipts taxes:

23 (a) The total tax measure apportioned or allocated to all  
24 applicable local jurisdictions shall not exceed the total tax measure  
25 computed for the purpose of state gross receipts taxation.

26 (b) All state and federal constitutional provisions and laws  
27 pertaining to the establishment of nexus for the taxation of interstate  
28 commerce shall be duly applicable to the establishment of nexus for the  
29 taxation of intrastate commerce.

30 (2) The following specific guidelines shall be applied by any city  
31 that imposes a gross receipts tax:

32 (a) For the purposes of imposing a gross receipts tax on  
33 extracting, manufacturing, or processing for hire activities, the  
34 activities are subject to tax in the local jurisdiction where the  
35 activities occur. If the activities occur in more than one local  
36 jurisdiction, the activities are consistently, equitably, and  
37 reasonably apportioned between or among those local jurisdictions even

1 though the taxpayer may not have an office or other permanent place of  
2 business in each jurisdiction.

3 (b) For the purposes of imposing a gross receipts tax on retail  
4 sales, all sales are subject to tax in the local jurisdiction where the  
5 sales occur. For the purposes of determining where a retail sale  
6 occurs under this subsection (2)(b), the methods provided in RCW  
7 82.14.020 (1) through (5) for determining where a retail sale occurs  
8 shall be applied.

9 (c) For the purposes of imposing a gross receipts tax on wholesale  
10 sales, all sales are subject to tax in the local jurisdiction where the  
11 sales occur. For the purposes of determining where a wholesale sale  
12 occurs under this subsection, the methods provided in RCW 82.14.020 (1)  
13 through (5) for determining where a retail sale occurs shall be applied  
14 as if the wholesale sale was a retail sale.

15 (d) For the purposes of imposing a gross receipts tax on any person  
16 rendering services, other than services defined as a retail sale under  
17 RCW 82.04.050, the services are subject to tax in the local  
18 jurisdiction where the services were primarily performed. If the  
19 person rendering services performs substantial service activities in  
20 more than one local jurisdiction, the person shall apportion to each  
21 local jurisdiction that portion of the total gross income that is  
22 derived from services rendered in each local jurisdiction. Where  
23 apportionment cannot be accurately made by separate accounting methods,  
24 the person shall apportion to each local jurisdiction that proportion  
25 of the total gross income which is derived from services which the cost  
26 of performing the services within a local jurisdiction bears to the  
27 total cost of performing the services in all local jurisdictions. The  
28 city shall apportion the gross receipts derived from services even  
29 though the taxpayer may not have an office or other permanent place of  
30 business in each jurisdiction where it performs the services.

31 (e) Under no circumstances may a business apportion or allocate  
32 gross receipts to a jurisdiction in which it has no nexus for tax  
33 purposes.

34 (3) The following credits are allowed for persons performing  
35 multiple activities in multiple local jurisdictions:

36 (a) Every person engaged in manufacturing activities is allowed a  
37 credit against the measure of tax of any manufacturing gross receipts  
38 tax imposed by a local jurisdiction for any portion of the measure of  
39 tax which has been previously subjected to a local jurisdiction gross

1 receipts tax on either extracting or previously performed manufacturing  
2 activities.

3 (b) Every person engaged in making retail or wholesale sales is  
4 allowed a credit against the measure of tax of any retailing or  
5 wholesaling gross receipts tax imposed by a local jurisdiction for any  
6 portion of the measure of tax which has been previously subjected to a  
7 local jurisdiction gross receipts tax on either extracting or  
8 manufacturing activities.

9 **Sec. 5.** RCW 35.21.710 and 1983 2nd ex.s. c 3 s 33 are each amended  
10 to read as follows:

11 (1) Any city which imposes a license fee or tax upon business  
12 activities consisting of the making of retail sales of tangible  
13 personal property which are measured by gross receipts or gross income  
14 from such sales, shall impose such tax at a single uniform rate upon  
15 all such business activities. The taxing authority granted to cities  
16 for taxes upon business activities measured by gross receipts or gross  
17 income from sales shall not exceed a rate of .0020; except that any  
18 city with an adopted ordinance at a higher rate, as of January 1, 1982  
19 shall be limited to a maximum increase of ten percent of the January  
20 1982 rate, not to exceed an annual incremental increase of two percent  
21 of current rate: PROVIDED, That any adopted ordinance which classifies  
22 according to different types of business or services shall be subject  
23 to both the ten percent and the two percent annual incremental increase  
24 limitation on each tax rate: PROVIDED FURTHER, That all surtaxes on  
25 business and occupation classifications in effect as of January 1,  
26 1982, shall expire no later than December 31, 1982, or by expiration  
27 date established by local ordinance. Cities which impose a license fee  
28 or tax upon business activities consisting of the making of retail  
29 sales of tangible personal property which are measured by gross  
30 receipts or gross income from such sales shall be required to submit an  
31 annual report to the state auditor identifying the rate established and  
32 the revenues received from each fee or tax. This section shall not  
33 apply to any business activities subject to the tax imposed by chapter  
34 82.16 RCW. For purposes of this section, the providing to consumers of  
35 competitive telephone service, as defined in RCW 82.04.065, shall be  
36 deemed to be the retail sale of tangible personal property.

37 (2) Subject to the full enactment of sections 3 and 4 of this act  
38 and notwithstanding subsection (1) of this section, the limitations

1 contained in this subsection shall apply to any city imposing a gross  
2 receipts tax that fully complies with the provisions contained in  
3 section 3 (3)(a) through (g) and (5) of this act. A city subject to  
4 the limitations contained in this subsection shall have the sole  
5 authority to set the rate of tax on any particular class of business  
6 activity. However, the rate of tax on any particular class of business  
7 activity shall not exceed a rate of 0.0020. A city imposing a gross  
8 receipts tax on a business activity at a rate equal to or greater than  
9 0.0020 as of January 1, 2002, may increase the rate of tax imposed on  
10 that particular business activity by an annual increment of not more  
11 than 0.00010, not to exceed a total of twenty-five percent of the rate  
12 in effect for that business activity on January 1, 2002.

13 (3) A city first imposing a gross receipts tax and fully complying  
14 with the provisions contained in section 3 (3)(a) through (g) and (5)  
15 of this act may do so only if the gross receipts tax is authorized by  
16 a proposition approved by a majority of the qualified voters of the  
17 city voting at a general election held within the city or at a special  
18 election called by the city for the purpose of submitting the  
19 proposition to the voters, and the initial tax rate for any particular  
20 business activity does not exceed a rate of 0.0010. After an initial  
21 rate is established under this subsection (3), the rate for that  
22 particular business activity may not be increased by an annual  
23 increment of more than 0.00010 and shall not exceed a rate of 0.0020.

24 (4) Any city that classifies according to different types of  
25 business activities shall apply a single uniform rate to substantially  
26 similar business activities.

27 NEW SECTION. Sec. 6. Section 4 of this act takes effect January  
28 1, 2005.

29 NEW SECTION. Sec. 7. Sections 1 through 4 of this act constitute  
30 a new chapter to be added to Title 35 RCW.

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