

HB 2030 - H AMD 323

By Representative Kessler

ADOPTED 03/19/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The
4 legislature finds that businesses in Washington are concerned about the
5 potential for multiple taxation that arises due to the various city
6 business and occupation taxes and are concerned about the lack of
7 uniformity among city jurisdictions. The current system has a negative
8 impact on Washington's business climate. The legislature further finds
9 that local business and occupation tax revenue provides a sizable
10 portion of city revenue that is used for essential services. The
11 legislature recognizes that local government services contribute to a
12 healthy business climate.

13 The legislature intends to provide for a more uniform system of
14 city business and occupation taxes that eliminates multiple taxation,
15 while allowing for some continued local control and flexibility to
16 cities.

17 NEW SECTION. **Sec. 2.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
18 LIMITED SCOPE. This act does not apply to taxes on any service that
19 historically or traditionally has been taxed as a utility business for
20 municipal tax purposes, such as:

- 21 (1) A light and power business or a natural gas distribution
22 business, as defined in RCW 82.16.010;
23 (2) A telephone business, as defined in RCW 82.04.065;
24 (3) Cable television services;
25 (4) Sewer or water services;
26 (5) Drainage services;
27 (6) Solid waste services; or
28 (7) Steam services.

1 NEW SECTION. **Sec. 3.** MUNICIPAL GROSS RECEIPTS TAX--DEFINITIONS.

2 The definitions in this section apply throughout this act, unless the
3 context clearly requires otherwise.

4 (1) "Business" has the same meaning as given in chapter 82.04 RCW.

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

6 (3) "Business and occupation tax" or "gross receipts tax" means a
7 tax imposed on or measured by the value of products, the gross income
8 of the business, or the gross proceeds of sales, as the case may be,
9 and that is the legal liability of the business.

10 (4) "Value of products" has the same meaning as given in chapter
11 82.04 RCW.

12 (5) "Gross income of the business" has the same meaning as given in
13 chapter 82.04 RCW.

14 (6) "Gross proceeds of sales" has the same meaning as given in
15 chapter 82.04 RCW.

16 NEW SECTION. **Sec. 4.** MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL

17 ORDINANCE. (1)(a) The cities, working through the association of
18 Washington cities, shall form a model ordinance development committee
19 made up of a representative sampling of cities that as of the effective
20 date of this section impose a business and occupation tax. This
21 committee shall work through the association of Washington cities to
22 adopt a model ordinance on municipal gross receipts business and
23 occupation tax. The model ordinance and subsequent amendments shall be
24 adopted using a process that includes opportunity for substantial input
25 from business stakeholders and other members of the public. Input
26 shall be solicited from statewide business associations and from local
27 chambers of commerce and downtown business associations in cities that
28 levy a business and occupation tax.

29 (b) The municipal research council shall contract to post the model
30 ordinance on an internet web site and to make paper copies available
31 for inspection upon request. The department of revenue and the
32 department of licensing shall post copies of or links to the model
33 ordinance on their internet web sites. Additionally, a city that
34 imposes a business and occupation tax must make copies of its ordinance
35 available for inspection and copying as provided in chapter 42.17 RCW.

36 (c) The definitions and tax classifications in the model ordinance
37 may not be amended more frequently than once every four years, however

1 the model ordinance may be amended at any time to comply with changes
2 in state law. Any amendment to a mandatory provision of the model
3 ordinance must be adopted with the same effective date by all cities.

4 (2) A city that imposes a business and occupation tax must adopt
5 the mandatory provisions of the model ordinance. The following
6 provisions are mandatory:

7 (a) A system of credits that meets the requirements of section 6 of
8 this act and a form for such use;

9 (b) A uniform, minimum small business tax threshold of at least the
10 equivalent of twenty thousand dollars in gross income annually. A city
11 may elect to deviate from this requirement by creating a higher
12 threshold or exemption but it shall not deviate lower than the level
13 required in this subsection. If a city has a small business threshold
14 or exemption in excess of that provided in this subsection as of
15 January 1, 2003, and chooses to deviate below the threshold or
16 exemption level that was in place as of January 1, 2003, the city must
17 notify all businesses licensed to do business within the city at least
18 one hundred twenty days prior to the potential implementation of a
19 lower threshold or exemption amount;

20 (c) Tax reporting frequencies that meet the requirements of section
21 7 of this act;

22 (d) Penalty and interest provisions that meet the requirements of
23 sections 8 and 9 of this act;

24 (e) Claim periods that meet the requirements of section 10 of this
25 act;

26 (f) Refund provisions that meet the requirements of section 11 of
27 this act; and

28 (g) Definitions, which at a minimum, must include the definitions
29 enumerated in sections 3 and 12 of this act. The definitions in
30 chapter 82.04 RCW shall be used as the baseline for all definitions in
31 the model ordinance, and any deviation in the model ordinance from
32 these definitions must be described by a comment in the model
33 ordinance.

34 (3) Except for the system of credits developed to address multiple
35 taxation under subsection (2)(a) of this section, a city may adopt its
36 own provisions for tax exemptions, tax credits, and tax deductions.

37 (4) Any city that adopts an ordinance that deviates from the

1 nonmandatory provisions of the model ordinance shall make a description
2 of such differences available to the public, in written and electronic
3 form.

4 NEW SECTION. **Sec. 5.** MUNICIPAL GROSS RECEIPTS TAX--NEXUS. A city
5 may not impose a business and occupation tax on a person unless that
6 person has nexus with the city. For the purposes of this section, the
7 term "nexus" means business activities conducted by a person sufficient
8 to subject that person to the taxing jurisdiction of a city under the
9 standards established for interstate commerce under the commerce clause
10 of the United States Constitution.

11 NEW SECTION. **Sec. 6.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
12 MULTIPLE TAXATION--CREDIT SYSTEM. (1) A city that imposes a business
13 and occupation tax shall provide for a system of credits to avoid
14 multiple taxation as follows:

15 (a) Persons who engage in business activities that are within the
16 purview of more than one classification of the tax shall be taxable
17 under each applicable classification.

18 (b) Notwithstanding anything to the contrary in this section, if
19 imposition of the tax would place an undue burden upon interstate
20 commerce or violate constitutional requirements, a taxpayer shall be
21 allowed a credit only to the extent necessary to preserve the validity
22 of the tax.

23 (c) Persons taxable under the retailing or wholesaling
24 classification with respect to selling products in a city shall be
25 allowed a credit against those taxes for any eligible gross receipts
26 taxes paid by the person (i) with respect to the manufacturing of the
27 products sold in the city, and (ii) with respect to the extracting of
28 the products, or the ingredients used in the products, sold in the
29 city. The amount of the credit shall not exceed the tax liability
30 arising with respect to the sale of those products.

31 (d) Persons taxable under the manufacturing classification with
32 respect to manufacturing products in a city shall be allowed a credit
33 against that tax for any eligible gross receipts tax paid by the person
34 with respect to extracting the ingredients of the products manufactured
35 in the city and with respect to manufacturing the products other than

1 in the city. The amount of the credit shall not exceed the tax
2 liability arising with respect to the manufacturing of those products.

3 (e) Persons taxable under the retailing or wholesaling
4 classification with respect to selling products in a city shall be
5 allowed a credit against those taxes for any eligible gross receipts
6 taxes paid by the person with respect to the printing, or the printing
7 and publishing, of the products sold within the city. The amount of
8 the credit shall not exceed the tax liability arising with respect to
9 the sale of those products.

10 (2) The model ordinance shall be drafted to address the issue of
11 multiple taxation for those tax classifications that are in addition to
12 those enumerated in subsection (1)(c) through (e) of this section. The
13 objective of any such provisions shall be to eliminate multiple
14 taxation of the same income by two or more cities.

15 NEW SECTION. **Sec. 7.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
16 REPORTING FREQUENCY. A city that imposes a business and occupation tax
17 shall allow reporting and payment of tax on a monthly, quarterly, or
18 annual basis. The frequency for any particular person may be assigned
19 at the discretion of the city, except that monthly reporting may be
20 assigned only if it can be demonstrated that the taxpayer is remitting
21 excise tax to the state on a monthly basis. For persons assigned a
22 monthly frequency, payment is due within the same time period provided
23 for monthly taxpayers under RCW 82.32.045. For persons assigned a
24 quarterly or annual frequency, payment is due within the same time
25 period as provided for quarterly or annual frequency under RCW
26 82.32.045.

27 NEW SECTION. **Sec. 8.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
28 PENALTIES AND INTEREST. (1) A city that imposes a business and
29 occupation tax shall compute interest charged a taxpayer on an
30 underpaid tax or penalty in accordance with RCW 82.32.050.

31 (2) A city that imposes a business and occupation tax shall compute
32 interest paid on refunds or credits of amounts paid or other recovery
33 allowed a taxpayer in accordance with RCW 82.32.060.

34 NEW SECTION. **Sec. 9.** MUNICIPAL BUSINESS AND OCCUPATION TAX--

1 PENALTIES. A city that imposes a business and occupation tax shall
2 provide for the imposition of penalties in accordance with chapter
3 82.32 RCW.

4 NEW SECTION. **Sec. 10.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
5 CLAIM PERIOD. The provisions relating to the time period allowed for
6 an assessment or correction of an assessment for additional taxes,
7 penalties, or interest shall be in accordance with chapter 82.32 RCW.

8 NEW SECTION. **Sec. 11.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
9 REFUND PERIOD. The provisions relating to the time period allowed for
10 a refund of taxes paid shall be in accordance with chapter 82.32 RCW.

11 NEW SECTION. **Sec. 12.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
12 DEFINITIONS--TAX CLASSIFICATIONS. (1) In addition to the definitions
13 in section 3 of this act, the following terms and phrases must be
14 defined in the model ordinance under section 4 of this act, and such
15 definitions shall include any specific requirements as noted in this
16 subsection:

- 17 (a) Eligible gross receipts tax.
- 18 (b) Extracting.
- 19 (c) Manufacturing. Software development may not be defined as a
20 manufacturing activity.
- 21 (d) Retailing.
- 22 (e) Retail sale.
- 23 (f) Services. The term "services" excludes retail or wholesale
24 services.
- 25 (g) Wholesale sale.
- 26 (h) Wholesaling.
- 27 (i) To manufacture.
- 28 (j) Commercial and industrial use.
- 29 (k) Engaging in business.
- 30 (l) Person.
- 31 (2) Any tax classifications in addition to those enumerated in
32 subsection (1) of this section that are included in the model ordinance
33 must be uniform among all cities.

1 NEW SECTION. **Sec. 13.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
2 ALLOCATION AND APPORTIONMENT OF INCOME. A city that imposes a business
3 and occupation tax shall provide for the allocation and apportionment
4 of a person's gross income, other than persons subject to the
5 provisions of chapter 82.14A RCW, as follows:

6 (1) Gross income derived from all activities other than those taxed
7 as service or royalties shall be allocated to the location where the
8 activity takes place.

9 (a) In the case of sales of tangible personal property, the
10 activity takes place where delivery to the buyer occurs.

11 (b) If a business activity allocated under this subsection (1)
12 takes place in more than one city and all cities impose a gross
13 receipts tax, a credit shall be allowed as provided in section 6 of
14 this act; if not all of the cities impose a gross receipts tax, the
15 affected cities shall allow another credit or allocation system as they
16 and the taxpayer agree.

17 (2) Gross income derived as royalties from the granting of
18 intangible rights shall be allocated to the commercial domicile of the
19 taxpayer.

20 (3) Gross income derived from activities taxed as services shall be
21 apportioned to a city by multiplying apportionable income by a
22 fraction, the numerator of which is the payroll factor plus the
23 service-income factor and the denominator of which is two.

24 (a) The payroll factor is a fraction, the numerator of which is the
25 total amount paid in the city during the tax period by the taxpayer for
26 compensation and the denominator of which is the total compensation
27 paid everywhere during the tax period. Compensation is paid in the
28 city if:

29 (i) The individual is primarily assigned within the city;

30 (ii) The individual is not primarily assigned to any place of
31 business for the tax period and the employee performs fifty percent or
32 more of his or her service for the tax period in the city; or

33 (iii) The individual is not primarily assigned to any place of
34 business for the tax period, the individual does not perform fifty
35 percent or more of his or her service in any city and the employee
36 resides in the city.

37 (b) The service income factor is a fraction, the numerator of which
38 is the total service income of the taxpayer in the city during the tax

1 period, and the denominator of which is the total service income of the
2 taxpayer everywhere during the tax period. Service income is in the
3 city if:

4 (i) The customer location is in the city; or

5 (ii) The income-producing activity is performed in more than one
6 location and a greater proportion of the service-income-producing
7 activity is performed in the city than in any other location, based on
8 costs of performance, and the taxpayer is not taxable at the customer
9 location; or

10 (iii) The service-income-producing activity is performed within the
11 city, and the taxpayer is not taxable in the customer location.

12 (c) If the allocation and apportionment provisions of this
13 subsection do not fairly represent the extent of the taxpayer's
14 business activity in the city or cities in which the taxpayer does
15 business, the taxpayer may petition for or the tax administrators may
16 jointly require, in respect to all or any part of the taxpayer's
17 business activity, that one of the following methods be used jointly by
18 the cities to allocate or apportion gross income, if reasonable:

19 (i) Separate accounting;

20 (ii) The use of a single factor;

21 (iii) The inclusion of one or more additional factors that will
22 fairly represent the taxpayer's business activity in the city; or

23 (iv) The employment of any other method to effectuate an equitable
24 allocation and apportionment of the taxpayer's income.

25 (4) The definitions in this subsection apply throughout this
26 section.

27 (a) "Apportionable income" means the gross income of the business
28 taxable under the service classifications of a city's gross receipts
29 tax, including income received from activities outside the city if the
30 income would be taxable under the service classification if received
31 from activities within the city, less any exemptions or deductions
32 available.

33 (b) "Compensation" means wages, salaries, commissions, and any
34 other form of remuneration paid to individuals for personal services
35 that are or would be included in the individual's gross income under
36 the federal internal revenue code.

37 (c) "Individual" means any individual who, under the usual common

1 law rules applicable in determining the employer-employee relationship,
2 has the status of an employee of that taxpayer.

3 (d) "Customer location" means the city or unincorporated area of a
4 county where the majority of the contacts between the taxpayer and the
5 customer take place.

6 (e) "Primarily assigned" means the business location of the
7 taxpayer where the individual performs his or her duties.

8 (f) "Service-taxable income" or "service income" means gross income
9 of the business subject to tax under either the service or royalty
10 classification.

11 (g) "Tax period" means the calendar year during which tax liability
12 is accrued. If taxes are reported by a taxpayer on a basis more
13 frequent than once per year, taxpayers shall calculate the factors for
14 the previous calendar year for reporting in the current calendar year
15 and correct the reporting for the previous year when the factors are
16 calculated for that year, but not later than the end of the first
17 quarter of the following year.

18 (h) "Taxable in the customer location" means either that a taxpayer
19 is subject to a gross receipts tax in the customer location for the
20 privilege of doing business, or that the government where the customer
21 is located has the authority to subject the taxpayer to gross receipts
22 tax regardless of whether, in fact, the government does so.

23 NEW SECTION. **Sec. 14.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
24 IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. Cities imposing
25 business and occupation taxes must comply with all requirements of
26 sections 2 through 13 of this act by December 31, 2004. A city that
27 has not complied with the requirements of sections 2 through 13 of this
28 act by December 31, 2004, may not impose a tax that is imposed by a
29 city on the privilege of engaging in business activities. Cities
30 imposing business and occupation taxes after December 31, 2004, must
31 comply with sections 2 through 13 of this act.

32 NEW SECTION. **Sec. 15.** STUDY OF POTENTIAL NET FISCAL IMPACTS. (1)
33 The department of revenue shall conduct a study of the net fiscal
34 impacts of this act, with particular emphasis on the revenue impacts of
35 the apportionment and allocation method contained in section 13 of this
36 act and any revenue impact resulting from the increased uniformity and

1 consistency provided through the model ordinance. In conducting the
2 study, the department shall use, and regularly consult with, a
3 committee composed of an equal representation from interested business
4 representatives and from a representative sampling of cities imposing
5 business and occupation taxes. The department shall report the final
6 results of the study to the governor and the fiscal committees of the
7 legislature by November 30, 2005. In addition, the department shall
8 provide progress reports to the governor and the fiscal committees of
9 the legislature on November 30, 2003, and November 30, 2004. As part
10 of its report, the department shall examine and recommend options to
11 address any adverse revenue impacts to local jurisdictions.

12 (2) For the purposes of this section, "net fiscal impacts" means
13 accounting for the potential of both positive and negative fiscal
14 impacts on local jurisdictions that may result from this act.

15 (3) It is the intent of the legislature through this study to
16 provide accurate fiscal impact analysis and recommended options to
17 alleviate revenue impacts from this act so as to allow local
18 jurisdictions to anticipate and appropriately address any potential
19 adverse revenue impacts from this act.

20 NEW SECTION. **Sec. 16.** BASELINE STUDY. The department of revenue
21 shall report by December 31, 2004, to the governor and the fiscal
22 committees of the legislature on the definitions used in the proposed
23 model ordinance. The report shall detail the status of the definitions
24 using the baseline standards under section 4(2)(g) of this act, noting
25 any deviations from the definitions in chapter 82.04 RCW and the reason
26 for such deviation. The report shall also estimate the fiscal impact
27 on taxpayers of any deviations from the definitions under chapter 82.04
28 RCW.

29 NEW SECTION. **Sec. 17.** CAPTIONS. Captions used in this act are
30 not any part of the law.

31 NEW SECTION. **Sec. 18.** Sections 2 through 14 of this act are each
32 added to chapter 35.21 RCW.

33 NEW SECTION. **Sec. 19.** EFFECTIVE DATE. Section 13 of this act

1 takes effect January 1, 2008."

2 Correct the title.

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