
SUBSTITUTE SENATE BILL 5900

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Horn, Reardon, Rossi, T. Sheldon, Mulliken, Esser and Schmidt; by request of Governor Locke)

READ FIRST TIME 03/10/03.

1 AN ACT Relating to changing requirements regarding state and local
2 tax to provide for municipal business and occupation tax uniformity and
3 fairness; adding new sections to chapter 35.21 RCW; creating new
4 sections; prescribing penalties; and providing an effective date.

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

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

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

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

- 5 (1) A light and power business or a natural gas distribution
6 business, as defined in RCW 82.16.010;
- 7 (2) A telephone business, as defined in RCW 82.04.065;
- 8 (3) Cable television services;
- 9 (4) Sewer or water services;
- 10 (5) Drainage services;
- 11 (6) Solid waste services; or
- 12 (7) Steam services.

13 NEW SECTION. **Sec. 3.** MUNICIPAL GROSS RECEIPTS TAX--DEFINITIONS.
14 The definitions in this section apply throughout this act, unless the
15 context clearly requires otherwise.

- 16 (1) "Business" has the same meaning as given in chapter 82.04 RCW.
- 17 (2) "City" means a city, town, or code city.
- 18 (3) "Business and occupation tax" or "gross receipts tax" means a
19 tax imposed on or measured by the value of products, the gross income
20 of the business, or the gross proceeds of sales, as the case may be,
21 and that is the legal liability of the business.
- 22 (4) "Value of products" has the same meaning as given in chapter
23 82.04 RCW.
- 24 (5) "Gross income of the business" has the same meaning as given in
25 chapter 82.04 RCW.
- 26 (6) "Gross proceeds of sales" has the same meaning as given in
27 chapter 82.04 RCW.

28 NEW SECTION. **Sec. 4.** MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL
29 ORDINANCE. (1)(a) The cities, working through the association of
30 Washington cities, shall form a model ordinance development committee
31 made up of a representative sampling of cities that as of the effective
32 date of this section impose a business and occupation tax. This
33 committee shall work through the association of Washington cities to
34 adopt a model ordinance on municipal gross receipts business and
35 occupation tax. The model ordinance and subsequent amendments shall be
36 adopted using a process that includes opportunity for substantial input

1 from business stakeholders and other members of the public. Input
2 shall be solicited from statewide business associations and from local
3 chambers of commerce and downtown business associations in cities that
4 levy a business and occupation tax.

5 (b) The municipal research council shall contract to post the model
6 ordinance on an internet web site and to make paper copies available
7 for inspection upon request. The department of revenue and the
8 department of licensing shall post copies of or links to the model
9 ordinance on their internet web sites. Additionally, a city that
10 imposes a business and occupation tax must make copies of its ordinance
11 available for inspection and copying as provided in chapter 42.17 RCW.

12 (c) The definitions and tax classifications in the model ordinance
13 may not be amended more frequently than once every four years, however
14 the model ordinance may be amended at any time to comply with changes
15 in state law. Any amendment to a mandatory provision of the model
16 ordinance must be adopted with the same effective date by all cities.

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

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

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

27 (c) Tax reporting frequencies that meet the requirements of section
28 7 of this act;

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

31 (e) Claim periods that meet the requirements of section 10 of this
32 act;

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

35 (g) Definitions, which at a minimum, must include the definitions
36 enumerated in sections 3 and 12 of this act. The definitions in
37 chapter 82.04 RCW shall be used as the baseline for all definitions in

1 the model ordinance, and any deviation in the model ordinance from
2 these definitions must be described by a comment in the model
3 ordinance.

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

7 (4) Any city that adopts an ordinance that deviates from the
8 nonmandatory provisions of the model ordinance shall make a description
9 of such differences available to the public, in written and electronic
10 form.

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

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

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

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

30 (c) Persons taxable under the retailing or wholesaling
31 classification with respect to selling products in a city shall be
32 allowed a credit against those taxes for any eligible gross receipts
33 taxes paid by the person (i) with respect to the manufacturing of the
34 products sold in the city, and (ii) with respect to the extracting of
35 the products, or the ingredients used in the products, sold in the

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

3 (d) Persons taxable under the manufacturing classification with
4 respect to manufacturing products in a city shall be allowed a credit
5 against that tax for any eligible gross receipts tax paid by the person
6 with respect to extracting the ingredients of the products manufactured
7 in the city and with respect to manufacturing the products other than
8 in the city. The amount of the credit shall not exceed the tax
9 liability arising with respect to the manufacturing of those products.

10 (e) Persons taxable under the retailing or wholesaling
11 classification with respect to selling products in a city shall be
12 allowed a credit against those taxes for any eligible gross receipts
13 taxes paid by the person with respect to the printing, or the printing
14 and publishing, of the products sold within the city. The amount of
15 the credit shall not exceed the tax liability arising with respect to
16 the sale of those products.

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

22 NEW SECTION. **Sec. 7.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
23 REPORTING FREQUENCY. A city that imposes a business and occupation tax
24 shall allow reporting and payment of tax on a monthly, quarterly, or
25 annual basis. The frequency for any particular person may be assigned
26 at the discretion of the city, except that monthly reporting may be
27 assigned only if it can be demonstrated that the taxpayer is remitting
28 excise tax to the state on a monthly basis. For persons assigned a
29 monthly frequency, payment is due within the same time period provided
30 for monthly taxpayers under RCW 82.32.045. For persons assigned a
31 quarterly or annual frequency, payment is due within the same time
32 period as provided for quarterly or annual frequency under RCW
33 82.32.045.

34 NEW SECTION. **Sec. 8.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
35 PENALTIES AND INTEREST. (1) A city that imposes a business and

1 occupation tax shall compute interest charged a taxpayer on an
2 underpaid tax or penalty in accordance with RCW 82.32.050.

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

6 NEW SECTION. **Sec. 9.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
7 PENALTIES. A city that imposes a business and occupation tax shall
8 provide for the imposition of penalties in accordance with chapter
9 82.32 RCW.

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

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

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

- 23 (a) Eligible gross receipts tax.
- 24 (b) Extracting.
- 25 (c) Manufacturing. Software development may not be defined as a
26 manufacturing activity.
- 27 (d) Retailing.
- 28 (e) Retail sale.
- 29 (f) Services. The term "services" excludes retail or wholesale
30 services.
- 31 (g) Wholesale sale.
- 32 (h) Wholesaling.
- 33 (i) To manufacture.
- 34 (j) Commercial and industrial use.

1 (k) Engaging in business.

2 (l) Person.

3 (2) Any tax classifications in addition to those enumerated in
4 subsection (1) of this section that are included in the model ordinance
5 must be uniform among all cities.

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

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

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

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

22 (2) Gross income derived as royalties from the granting of
23 intangible rights shall be allocated to the commercial domicile of the
24 taxpayer.

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

29 (a) The payroll factor is a fraction, the numerator of which is the
30 total amount paid in the city during the tax period by the taxpayer for
31 compensation and the denominator of which is the total compensation
32 paid everywhere during the tax period. Compensation is paid in the
33 city if:

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

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

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

5 (b) The service income factor is a fraction, the numerator of which
6 is the total service income of the taxpayer in the city during the tax
7 period, and the denominator of which is the total service income of the
8 taxpayer everywhere during the tax period. Service income is in the
9 city if:

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

11 (ii) The income-producing activity is performed in more than one
12 location and a greater proportion of the service-income-producing
13 activity is performed in the city than in any other location, based on
14 costs of performance, and the taxpayer is not taxable at the customer
15 location; or

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

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

25 (i) Separate accounting;

26 (ii) The use of a single factor;

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

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

31 (4) The definitions in this subsection apply throughout this
32 section.

33 (a) "Apportionable income" means the gross income of the business
34 taxable under the service classifications of a city's gross receipts
35 tax, including income received from activities outside the city if the
36 income would be taxable under the service classification if received
37 from activities within the city, less any exemptions or deductions
38 available.

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

5 (c) "Individual" means any individual who, under the usual common
6 law rules applicable in determining the employer-employee relationship,
7 has the status of an employee of that taxpayer.

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

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

13 (f) "Service-taxable income" or "service income" means gross income
14 of the business subject to tax under either the service or royalty
15 classification.

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

23 (h) "Taxable in the customer location" means either that a taxpayer
24 is subject to a gross receipts tax in the customer location for the
25 privilege of doing business, or that the government where the customer
26 is located has the authority to subject the taxpayer to gross receipts
27 tax regardless of whether, in fact, the government does so.

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

1 NEW SECTION. **Sec. 15.** STUDY OF POTENTIAL NET FISCAL IMPACTS. (1)

2 The department of revenue shall conduct a study of the net fiscal
3 impacts of this act, with particular emphasis on the revenue impacts of
4 the apportionment and allocation method contained in section 13 of this
5 act and any revenue impact resulting from the increased uniformity and
6 consistency provided through the model ordinance. In conducting the
7 study, the department shall use, and regularly consult with, a
8 committee composed of an equal representation from interested business
9 representatives and from a representative sampling of cities imposing
10 business and occupation taxes. The department shall report the final
11 results of the study to the governor and the fiscal committees of the
12 legislature by January 1, 2006. In addition, the department shall
13 provide progress reports to the governor and the fiscal committees of
14 the legislature on January 1, 2004, and January 1, 2005. As part of
15 its report, the department shall suggest alternatives for addressing
16 any adverse revenue impacts to local jurisdictions.

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

20 (3) It is the intent of the legislature through this study to
21 provide accurate fiscal impact analysis and recommended options to
22 alleviate revenue impacts from this act so as to allow local
23 jurisdictions to anticipate and appropriately address any potential
24 adverse revenue impacts from this act.

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

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

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

3 NEW SECTION. **Sec. 19.** EFFECTIVE DATE. Section 13 of this act
4 takes effect January 1, 2008.

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