

SENATE BILL REPORT

SB 6265

As of January 29, 2008

Title: An act relating to clarifying the business and occupation taxation of property management companies in regards to on-site property managers' wages and benefits.

Brief Description: Clarifying that the gross wages and benefits of on-site property managers are exempt from the business and occupation taxation of property management companies.

Sponsors: Senators Marr, Schoesler, Sheldon and Roach.

Brief History:

Committee Activity: Ways & Means: 1/28/08.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: The business and occupation (B&O) tax is imposed on the gross receipts of business activities without any deduction for the costs of doing business. However, a business that acts as an agent for another business is not liable for B&O tax on amounts that merely pass through the agent as reimbursement for expenses incurred by the agent on behalf of the agent's client. For example, an attorney might pay court costs on behalf of a client. When the attorney is reimbursed for those costs by the client, the attorney is not liable for B&O tax on the reimbursements. The attorney is only liable for B&O tax on amounts charged as fees for the attorney's services.

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 of 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.

Under legislation adopted in 1998, a property management company is not taxable on amounts they receive for, and pay to, an on-site employee under the following: (1) the employee works primarily at the owner's property; (2) the employee's duties include leasing

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property units, maintaining the property, collecting rents, or similar activities; and (3) under the property management agreement the employee's compensation is the ultimate obligation of the property owner and not the property manager, and that all actions, including hiring, firing, compensation, and conditions of employment, are subject to the approval of the property owner.

In October 2006 the Department of Revenue issued an excise tax advisory clarifying that an on-site employee may work at multiple properties owned by different owners, but the exemption is only available if a majority (more than 50 percent) of the services are performed for a single owner and the exemption applies only to that single owner's share of the on-site employee's wages and benefits.

Summary of Bill: The B&O tax exemption allowed to property managers for payments received for compensation of an on-site employee is expanded by eliminating the requirement that the on-site employee work primarily at a single property owner's property. An employee may work at one or more properties managed by a property management company.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is a clarification of the intent of the original legislation that the on-site personnel's wages paid by property management companies are not subject to the business and occupation tax.

Persons Testifying: PRO: Thomas J. Sante, GVA Kidder Mathews.