

HOUSE BILL REPORT

SB 5289

As Passed House - Amended:
May 13, 2011

Title: An act relating to a business and occupation tax deduction for payments made to certain property management companies for personnel performing on-site functions.

Brief Description: Concerning a business and occupation tax deduction for payments made to certain property management companies for personnel performing on-site functions.

Sponsors: Senators Murray and Zarelli.

Brief History:

Committee Activity:

Ways & Means: 5/11/11 [DPA].

First Special Session

Floor Activity:

Passed House - Amended: 5/13/11, 85-3.

**Brief Summary of Bill
(As Amended by House)**

- Allows a business and occupation (B&O) tax deduction for a nonprofit property management company receiving compensation for on-site employees from the owner of a property.
- Allows a B&O tax deduction for a property management company receiving compensation for on-site employees either from a housing authority or from a limited liability company or limited partnership of which the sole managing member or sole general partner is a housing authority.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended. Signed by 26 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Rick Peterson (786-7150).

Background:

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, property management companies are not responsible for paying business and occupation (B&O) taxes on amounts they receive for and pay to an on-site employee when: (1) the employee works primarily at the owner's property; (2) the employee's duties include leasing 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 all actions, including hiring, firing, compensation, and conditions of employment taken by the property manager are subject to the approval of the property owner. The money must be paid from a property management trust account.

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 only applies to that single owner's share of the on-site employee's wages and benefits.

In 2010 Second Engrossed Substitute Senate Bill 6143 narrowed the B&O tax exemption covering property management companies for amounts received from a property owner for compensation of on-site personnel to apply only to: (1) nonprofit property management companies; and (2) property management companies receiving amounts from a housing authority for compensation of on-site personnel. In May 2010 the Department of Revenue issued a special notice providing additional clarity on the legislation.

Summary of Amended Bill:

Business and occupation (B&O) tax deductions are permitted for amounts: (1) a nonprofit property management company receives for compensating on-site employees from the owner of low-income housing qualified for a property tax exemption; (2) a property management company receives for compensating on-site employees from a housing authority; and (3) a property management company receives for compensating on-site employees from a limited liability company or limited partnership of which the sole managing member or sole general partner is a housing authority.

The B&O tax exemption is repealed for amounts received by: (1) a nonprofit property management company from a property owner for compensation of on-site personnel paid from a property management trust account; and (2) a property management company from a housing authority for compensation of on-site personnel paid from a property management trust account.

The definition for on-site personnel is changed to a definition of personnel performing on-site functions. The new definition enables personnel to work at the owner's property or centrally perform on-site functions, rather than to require that they work primarily at the owner's property. It removes provisions of the written property management agreement.

Taxpayers using the deduction must file a standard annual accountability report providing information about employment, wages, and employer-provided health and retirement benefits.

The deduction ends on July 1, 2016.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) We have provided housing for homeless disabled individuals for 30 years. We have 24-hour security desks and on-site social services to make sure our buildings are safe and stable. We have a much higher level of staff in the building performing front-line services than conventional apartments. We use the federal Low Income Housing Tax Credit Program to finance some of our properties. Under current law we must pay business and occupation (B&O) tax for payroll reimbursement for front-line employees in our tax credit properties. In order to take advantage of the federal dollars we must enter into a partnership. We are the general partner and the property manager for the limited partnership. The employees on site are our employees. All expenses are our responsibility and B&O tax paid reduces the revenue that we have available to provide services to our tenants. This bill correctly codifies the policy intent of the tax exemption adopted last session. It will save us money that we will use to sustain our properties and support our social services.

In recent years housing authorities have turned to the federal Low Income Housing Tax Credit Program (Program). When a housing authority uses this Program they enter into a limited partnership or limited liability company with private investors. But that partnership or company is managed by the housing authority. The purpose of the bill is to correct an unintended consequence of last year's legislation that expanded the tax base for the B&O tax but attempted to preserve the long-standing exemption that low-income housing properties operated by housing authorities and nonprofits have enjoyed for many years. The legislation failed to make the distinction between properties owned outright by housing authorities and nonprofits and those that are managed through limited partnership and companies. The B&O tax is a direct pass through and so is an operating expense to the housing authority and nonprofit. The effect is to diminish the ability to provide low-income housing services in a time when they are not enjoying as much public support as in the past. It effectively transfers money from one taxpayer supported program to another.

(Opposed) None.

Persons Testifying: Kathy Roseth, Plymouth Housing Group; and Dan Watson, King County Housing Authority and Association of Washington Housing Authorities.

Persons Signed In To Testify But Not Testifying: None.