

SENATE BILL REPORT

SB 5083

As of January 31, 2011

Title: An act relating to clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction.

Brief Description: Clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction.

Sponsors: Senators Ranker, Kilmer, Swecker, Hobbs, Holmquist Newbry, Zarelli, Hargrove, Eide, Harper, Tom, Honeyford, White, Parlette, Ericksen, Shin, Hewitt, Sheldon, Roach and Benton.

Brief History:

Committee Activity: Ways & Means: 1/27/11.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts from all business activities conducted within the state without any deduction for the costs of doing business. Thus, the nature of the B&O tax is that of a pyramiding tax as each successive sale is subject to the tax on the gross proceeds of the sale. A business may have more than one B&O tax rate, depending on the types of activities conducted. The tax rate for most types of businesses that provide services is 1.8 percent.

Currently, provisions in law allow originating brokers and cooperating brokers to pay the B&O tax only on their share of a commission when they both participate in a transaction. However, other real estate offices are also subject to the B&O tax on their share of a commission paid from either the originating real estate office's commission or the cooperating real estate office's commission. Thus, when referral fees are paid to a third-party broker or when multiple cooperating brokers are involved in a transaction, the paying broker does not get to deduct the fee and the recipient must also pay the B&O tax on the fee.

Additionally, real estate agents or associate brokers are not subject to the B&O tax where the brokerage office has paid the tax on the gross commission.

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.

Summary of Bill: Any real estate firm who receives a commission at the time of closing on a real estate transaction must pay the B&O tax only upon their respective shares of the commission.

Terms and definitions are updated to be consistent with real estate licensing laws.

The act applies both prospectively and retroactively.

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: The existing statute is based on the principle that when a B&O tax is paid to different offices, those offices only pay the B&O tax on what they receive. In the last year or two, Department of Revenue field auditors have come up with a different interpretation of the statute. When amounts are paid to more than two offices, the amount that gets paid to more than two offices gets taxed twice. This is currently under appeals. We just want to make sure that the companies only pay the B&O tax on what they get paid.

Persons Testifying: PRO: Bill Clarke, Washington Realtors Association.