

SENATE BILL REPORT

SB 5289

As Passed Senate, March 31, 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: 2/08/11, 3/24/11 [DP].
Passed Senate: 3/31/11, 44-0.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Kastama, Keiser, Kohl-Welles, Pflug, Rockefeller, Schoesler and Tom.

Staff: Dean Carlson (786-7305)

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.

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.

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.

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. However, because of the nature of how housing authorities and non-profit management companies are organized in the area of low-income housing, they do not always qualify for the exemption provided in 2010.

Summary of Bill: A B&O tax deduction is permitted for amounts that (1) a nonprofit property management company receives for compensating on-site employees from the owner of property; (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.

The definition of nonprofit management company is modified to (1) require an organization to qualify for a property tax exemption for providing property management services for low-income housing in addition to the current requirement of being a 501(c) federally tax-exempt organization; and (2) include public corporations established by cities, towns, or counties for limited and specified purposes.

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: Public housing authorities manage federally subsidized housing programs. Some offer low-income housing through a federal tax credit program. In order to receive federal benefit a LLC or LP is created to manage a partnership between an investor and the housing authority while still being run by the housing authority. Last year, the Legislature retained the B&O tax exemption for housing authorities and nonprofit property management companies. However despite the intent, the low-income housing tax credit properties will be excluded from the exemption because the payments are received from an LLC or LP rather than directly from the housing authorities. Public

housing authorities have been significantly hurt by the economy and passage of this bill will be very beneficial. Plymouth is a nonprofit organization providing low-income housing. Our operations are extremely labor intensive. One of the major financing tools is the federal low-income housing tax credit program as a way to motivate private investment into low-income housing. Plymouth employees are the ones providing the property management services. All taxes are paid by Plymouth and we do pay other taxes. Because the employees are Plymouth employees, we are not qualified to receive the exemption past last year. We are just a victim of our financing method.

Persons Testifying: PRO: Megan Hyla, Assn. of Washington Housing Authorities; Paul Lambros, Plymouth Housing Group.