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HOUSE BILL 2811

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representatives Orcutt, Ross, Anderson, Haler, Fagan, and Johnson

Read first time 02/27/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to prohibiting local jurisdictions from adopting  
2 throwback provisions in regards to the imposition of business and  
3 occupation taxes; amending RCW 35.102.130; creating a new section; and  
4 providing an effective date.

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

6            NEW SECTION.    **Sec. 1.** The legislature finds that allowing cities  
7 to have throwback provisions for business and occupation taxes, under  
8 which cities impose their own business and occupation tax on the income  
9 generated from activities that occur outside the city when the area  
10 outside the city does not also impose a business and occupation tax, is  
11 detrimental to the business community. Therefore, the legislature  
12 intends to prohibit cities from implementing throwback business and  
13 occupation taxing provisions in order to create a more fair and  
14 reasonable tax policy that enhances the state's ability to encourage  
15 existing businesses to continue to stay in Washington and new  
16 businesses to locate to Washington.

17            **Sec. 2.** RCW 35.102.130 and 2010 c 111 s 305 are each amended to  
18 read as follows:

1 A city that imposes a business and occupation tax must provide for  
2 the allocation and apportionment of a person's gross income, other than  
3 persons subject to the provisions of chapter 82.14A RCW, as follows:

4 (1) Gross income derived from all activities other than those taxed  
5 as (~~service or~~) royalties must be allocated to the location where the  
6 activity takes place.

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

9 (b)(i) In the case of sales of digital products, the activity takes  
10 place where delivery to the buyer occurs. The delivery of digital  
11 products (~~will be~~) is deemed to occur at:

12 (A) The seller's place of business if the purchaser receives the  
13 digital product at the seller's place of business;

14 (B) If not received at the seller's place of business, the location  
15 where the purchaser or the purchaser's donee, designated as such by the  
16 purchaser, receives the digital product, including the location  
17 indicated by instructions for delivery to the purchaser or donee, known  
18 to the seller;

19 (C) If the location where the purchaser or the purchaser's donee  
20 receives the digital product is not known, the purchaser's address  
21 maintained in the ordinary course of the seller's business when use of  
22 this address does not constitute bad faith;

23 (D) If no address for the purchaser is maintained in the ordinary  
24 course of the seller's business, the purchaser's address obtained  
25 during the consummation of the sale, including the address of a  
26 purchaser's payment instrument, if no other address is available, when  
27 use of this address does not constitute bad faith; and

28 (E) If no address for the purchaser is obtained during the  
29 consummation of the sale, the address where the digital good or digital  
30 code is first made available for transmission by the seller or the  
31 address from which the digital automated service or service described  
32 in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these  
33 purposes any location that merely provided the digital transfer of the  
34 product sold.

35 (ii) If none of the methods in (b)(i) of this subsection (1) for  
36 determining where the delivery of digital products occurs are available  
37 after a good faith effort by the taxpayer to apply the methods provided  
38 in (b)(i)(A) through (E) of this subsection (1), then the city and the

1 taxpayer may mutually agree to employ any other method to effectuate an  
2 equitable allocation of income from the sale of digital products. The  
3 taxpayer will be responsible for petitioning the city to use an  
4 alternative method under this subsection (1)(b)(ii). The city may  
5 employ an alternative method for allocating the income from the sale of  
6 digital products if the methods provided in (b)(i)(A) through (E) of  
7 this subsection (1) are not available and the taxpayer and the city are  
8 unable to mutually agree on an alternative method to effectuate an  
9 equitable allocation of income from the sale of digital products.

10 (iii) For purposes of this subsection (1)(b), the following  
11 definitions apply:

12 (A) "Digital automated services," "digital codes," and "digital  
13 goods" have the same meaning as in RCW 82.04.192;

14 (B) "Digital products" means digital goods, digital codes, digital  
15 automated services, and the services described in RCW 82.04.050 (2)(g)  
16 and (6)(b); and

17 (C) "Receive" has the same meaning as in RCW 82.32.730.

18 (c) In the case of gross income derived from activities taxed as  
19 services, the activity takes place where the service-income-producing  
20 activity is performed.

21 (d) If a business activity allocated under this subsection (1)  
22 takes place in more than one city and all cities impose a gross  
23 receipts tax, a credit must be allowed as provided in RCW 35.102.060;  
24 if not all of the cities impose a gross receipts tax, the affected  
25 cities must allow another credit or allocation system as they and the  
26 taxpayer agree.

27 (2) Gross income derived as royalties from the granting of  
28 intangible rights must be allocated to the commercial domicile of the  
29 taxpayer.

30 ~~(3) ((Gross income derived from activities taxed as services shall~~  
31 ~~be apportioned to a city by multiplying apportionable income by a~~  
32 ~~fraction, the numerator of which is the payroll factor plus the~~  
33 ~~service income factor and the denominator of which is two.~~

34 ~~(a) The payroll factor is a fraction, the numerator of which is the~~  
35 ~~total amount paid in the city during the tax period by the taxpayer for~~  
36 ~~compensation and the denominator of which is the total compensation~~  
37 ~~paid everywhere during the tax period. Compensation is paid in the~~  
38 ~~city if:~~

1       ~~(i) The individual is primarily assigned within the city;~~  
2       ~~(ii) The individual is not primarily assigned to any place of~~  
3 ~~business for the tax period and the employee performs fifty percent or~~  
4 ~~more of his or her service for the tax period in the city; or~~  
5       ~~(iii) The individual is not primarily assigned to any place of~~  
6 ~~business for the tax period, the individual does not perform fifty~~  
7 ~~percent or more of his or her service in any city, and the employee~~  
8 ~~resides in the city.~~

9       ~~(b) The service income factor is a fraction, the numerator of which~~  
10 ~~is the total service income of the taxpayer in the city during the tax~~  
11 ~~period, and the denominator of which is the total service income of the~~  
12 ~~taxpayer everywhere during the tax period. Service income is in the~~  
13 ~~city if:~~

14       ~~(i) The customer location is in the city; or~~  
15       ~~(ii) The income producing activity is performed in more than one~~  
16 ~~location and a greater proportion of the service income producing~~  
17 ~~activity is performed in the city than in any other location, based on~~  
18 ~~costs of performance, and the taxpayer is not taxable at the customer~~  
19 ~~location; or~~  
20       ~~(iii) The service income producing activity is performed within the~~  
21 ~~city, and the taxpayer is not taxable in the customer location.~~

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

29       ~~(i) Separate accounting;~~  
30       ~~(ii) The use of a single factor;~~  
31       ~~(iii) The inclusion of one or more additional factors that will~~  
32 ~~fairly represent the taxpayer's business activity in the city; or~~  
33       ~~(iv) The employment of any other method to effectuate an equitable~~  
34 ~~allocation and apportionment of the taxpayer's income.~~

35       ~~(4)) The definitions in this subsection apply throughout this~~  
36 ~~section.~~

37       (a) "Apportionable income" means the gross income of the business  
38 taxable under the service classifications of a city's gross receipts

1 tax, including income received from activities outside the city if the  
2 income would be taxable under the service classification if received  
3 from activities within the city, less any exemptions or deductions  
4 available.

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

9 ~~(e))~~ "Individual" means any individual who, under the usual common  
10 law rules applicable in determining the employer-employee relationship,  
11 has the status of an employee of that taxpayer.

12 ~~((d) "Customer location" means the city or unincorporated area of  
13 a county where the majority of the contacts between the taxpayer and  
14 the customer take place.~~

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

17 ~~(f) "Service taxable income" or "service income" means gross income  
18 of the business subject to tax under either the service or royalty  
19 classification.~~

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

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

32 NEW SECTION. **Sec. 3.** This act takes effect July 1, 2012.

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