H-1791.3

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**HOUSE BILL 2166**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives McCabe, Blake, Pettigrew, Wilcox, Takko, Buys, Kochmar, Hayes, Vick, Harmsworth, Haler, MacEwen, Wilson, and Magendanz

AN ACT Relating to extending the federal internet tax freedom act to Washington state by preserving the current treatment; amending RCW 35.21.714, 35.21.717, 35.21.860, 35.21.865, 35.21.870, and 35A.82.060; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  This section is the tax preference performance statement for the sales and use tax exemption contained in sections 2 and 3 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes the tax exemption in sections 2 and 3 of this act as ones intended to reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d) and to accomplish a general purpose not identified in RCW 82.32.808(2) (a) through (e).

(2) It is the legislature's specific public policy objective to provide telecommunications service providers and internet access providers with certainty and continuity regarding the application of sales and use tax and city or town license fee or tax to telecommunications service purchased, used, or sold to provide internet access or to otherwise enable users to access content, information, or other services offered over the internet. It is the legislature's intent to preserve internet service providers' current sales and use tax exemption for telecommunications services purchased, used, or sold to provide internet access service or to otherwise enable users to access content, information, or other services offered over the internet and to preserve and limit city or town license fees or taxes in a parallel manner. A federal law known as the internet tax freedom act currently prohibits the state from imposing sales or use tax on telecommunications service used to provide internet access and Washington cities and towns from imposing telephone business tax under RCW 35.21.860 through 35.21.870 on the same service. The internet tax freedom act was originally enacted as a temporary measure in 1998 and has been extended four times. The internet tax freedom act is currently scheduled to expire October 1, 2015.

(3) The legislature intends to permanently establish the tax preference provided in sections 2 and 3 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to sales of telecommunications service described in RCW 82.04.297(2)(b).

NEW SECTION. **Sec.**  A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply to the use of telecommunications service described in RCW 82.04.297(2)(b).

**Sec.**  RCW 35.21.714 and 2007 c 6 s 1018 are each amended to read as follows:

(1) Any city ((~~which~~)) that imposes a license fee or tax upon the business activity of engaging in the telephone business which is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax((~~: PROVIDED, That~~)). However, the city ((~~shall~~)) may not impose the fee or tax on that portion of network telephone service ((~~which~~)) that represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3)(a) Except as provided otherwise in this subsection, the definitions in RCW 82.04.065 and 82.16.010 apply to this section.

(b) "Internet access service" has the same meaning is provided in RCW 82.04.297; however, for the purposes of this section, "internet access service" includes the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(i) To provide such service; or

(ii) To otherwise enable users to access content, information, or other services offered over the internet.

**Sec.**  RCW 35.21.717 and 2009 c 535 s 1101 are each amended to read as follows:

(1) A city or town may tax internet access providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification.

(2) For the purposes of this section, "internet access" has the same meaning as in RCW 82.04.297; however, for the purposes of this section, "internet access" includes the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(a) To provide such service; or

(b) To otherwise enable users to access content, information, or other services offered over the internet.

**Sec.**  RCW 35.21.860 and 2014 c 118 s 2 are each amended to read as follows:

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW 82.16.010, or telephone business, as defined in RCW 82.16.010, or service provider for use of the right‑of‑way, except:

(a) A tax authorized by RCW 35.21.865 may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right‑of‑way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, the replacement structure is higher than the replaced structure, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii)(A) The placement of personal wireless facilities on structures owned by the city or town located in the right‑of‑way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

(B) A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW 35.21.865 and 35.21.870 to the extent the fees exceed the costs allowable under subsection (1) of this section.

(3) For the purposes of this section, "network telephone service" as defined in RCW 82.16.010 does not include the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(a) To provide such service; or

(b) To otherwise enable users to access content, information, or other services offered over the internet.

**Sec.**  RCW 35.21.865 and 1983 c 99 s 4 are each amended to read as follows:

(1) No city or town may change the rate of tax it imposes on the privilege of conducting an electrical energy, natural gas, or telephone business which change applies to business activities occurring before the effective date of the change, and no rate change may take effect before the expiration of sixty days following the enactment of the ordinance establishing the change except as provided in RCW 35.21.870.

(2) For the purposes of this section, "network telephone service" as defined in RCW 82.16.010 does not include the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(a) To provide such service; or

(b) To otherwise enable users to access content, information, or other services offered over the internet.

**Sec.**  RCW 35.21.870 and 2014 c 216 s 306 are each amended to read as follows:

(1) No city or town may impose a tax on the privilege of conducting an electrical energy, natural gas, steam energy, or telephone business at a rate which exceeds six percent unless the rate is first approved by a majority of the voters of the city or town voting on such a proposition.

(2)(a) If a city or town is imposing a rate of tax under subsection (1) of this section in excess of six percent on April 20, 1982, the city or town must decrease the rate to a rate of six percent or less by reducing the rate each year on or before November 1st by ordinances to be effective on January 1st of the succeeding year, by an amount equal to one-tenth the difference between the tax rate on April 20, 1982, and six percent.

(b) Nothing in this subsection prohibits a city or town from reducing its rates by amounts greater than the amounts required in this subsection.

(3) Voter approved rate increases under subsection (1) of this section may not be included in the computations under this subsection.

(4) No city or town may impose a tax on the privilege of conducting a natural gas business with respect to sales that are exempt from the tax imposed under chapter 82.16 RCW as provided in RCW 82.16.310 at a rate higher than its business and occupation tax rate on the sale of tangible personal property or, if the city or town does not impose a business and occupation tax on the sale of tangible personal property, at a rate greater than .002.

(5) For the purposes of this section, "network telephone service" as defined in RCW 82.16.010 does not include the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(a) To provide such service; or

(b) To otherwise enable users to access content, information, or other services offered over the internet.

**Sec.**  RCW 35A.82.060 and 2007 c 6 s 1014 are each amended to read as follows:

(1) Any code city ((~~which~~)) that imposes a license fee or tax upon the business activity of engaging in the telephone business ((~~which~~)) that is measured by gross receipts or gross income may impose the fee or tax, if it desires, on one hundred percent of the total gross revenue derived from intrastate toll telephone services subject to the fee or tax((~~: PROVIDED, That~~)). However, the city ((~~shall~~)) may not impose the fee or tax on that portion of network telephone service ((~~which~~)) that represents charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services, or charges for network telephone service that is purchased for the purpose of resale, or charges for mobile telecommunications services provided to customers whose place of primary use is not within the city.

(2) Any city that imposes a license tax or fee under subsection (1) of this section has the authority, rights, and obligations of a taxing jurisdiction as provided in RCW 82.32.490 through 82.32.510.

(3)(a) Except as provided otherwise in this subsection, the definitions in RCW 82.04.065 and 82.16.010 apply to this section.

(b) "Internet access service" has the same meaning as provided in RCW 82.04.297; however, for the purposes of this section, "internet access service" includes the sale of telecommunications service purchased, used, or sold by a person that provides a service that enables users to connect to the internet to access content, information, or other services offered over the internet, to the extent such telecommunications service is purchased, used, or sold:

(i) To provide such service; or

(ii) To otherwise enable users to access content, information, or other services offered over the internet.

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