

HOUSE BILL REPORT

HB 2229

As Passed House:
February 12, 2020

Title: An act relating to clarifying the scope of taxation on land development or management services.

Brief Description: Clarifying the scope of taxation on land development or management services.

Sponsors: Representatives Sullivan, Stokesbary, Bergquist, Gildon and Wylie.

Brief History:

Committee Activity:

Finance: 1/21/20, 1/28/20 [DP].

Floor Activity:

Passed House: 2/12/20, 95-0.

Brief Summary of Bill

- Specifies the business and occupation tax classification for "land development or management" as service and other activities.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 11 members: Representatives Tarleton, Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Chapman, Frame, Macri, Orwall, Springer, Stokesbary, Vick and Wylie.

Staff: Nick Tucker (786-7383).

Background:

Business and Occupation Tax.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

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.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

Construction Services.

General or prime contractors, who perform work for others at retail and do not own the real property, are subject to the retailing B&O classification.

Subcontractors, who perform work for others at wholesale, do not own the real property, and are hired by a general or prime contractor to perform all or a portion of the contract, are subject to the wholesaling B&O classification if provided a reseller permit by the general or prime contractor. Otherwise, subcontractors are subject to the retailing B&O classification.

Engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services provided to the consumer of, or person responsible for performing, the constructing, building, repairing, improving, or decorating services are subject to the service and other activities B&O classification.

Summary of Bill:

The B&O tax classification for "land development or management" is specified as service and other activities.

"Land development or management" means site identification, zoning, permitting, and other preconstruction regulatory services provided to the consumer of constructing, building, repairing, improving, or decorating services. This includes acting as an owner's representative during any design or construction period, including recommending a contractor, monitoring the budget and schedule, approving invoices, and interacting on the behalf of the consumer with the person who has control over the work itself or responsible for the performance of the work.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill simply codifies pre-existing practice and interpretation. It will not decrease state revenue. It clarifies the scope of sales taxable services to ensure that no new taxes or fees that are unwarranted or unjustified will be levied on essential projects.

RCW 82.04.051 was created in 1999 not to change law, but to clarify the taxation of services rendered in respect to construction. The clarification was made because administrative and

court decisions had confused the issue. Recent administrative interpretations have again confused the issue. There are certain industries where sales taxes are not being charged properly.

Failure to pass this bill will increase the cost of private development and the cost of construction for affordable housing, schools, and other public infrastructure.

(Opposed) None.

Persons Testifying: Dave Kessler, Latitude Development; Darrell Donovan, Donovan Brothers Incorporated; and Dylan Doty, Latitude Development.

Persons Signed In To Testify But Not Testifying: None.