

HOUSE BILL REPORT

SHB 1572

As Passed House:

March 1, 2023

Title: An act relating to venue for actions for the recovery of taxes.

Brief Description: Concerning venue for actions for the recovery of taxes.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Springer and Orcutt).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/1/23, 2/10/23 [DPS].

Floor Activity:

Passed House: 3/1/23, 96-0.

Brief Summary of Substitute Bill

- Authorizes actions against a county for recovery of taxes paid under protest to be filed in the superior court of either of the two nearest judicial districts, but only if the action is solely against one county.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Staff: John Burzynski (786-7133).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Venue is the proper or possible place for a lawsuit to proceed, usually because the place has some connection either with the events that gave rise to the litigation or with the plaintiff or defendant.

The venue statute governing claims against counties provides, in relevant part, that legal actions against a county may be filed in the superior court of such county, or in the superior court of either of the two nearest judicial districts.

In contrast, the venue statute governing tax refund claims provides, in relevant part, that legal actions for the recovery of taxes paid under protest must be brought in the superior court of the county wherein the tax was collected or in any federal court of competent jurisdiction.

In *Hardel Mut. Plywood Corp. v. Lewis Cty.* (2022) (*Hardel*) the Washington Supreme Court (Court) noted these two venue statutes are in tension when a tax claim is brought against a county, and found that while the county claims statute is general and permissive, the tax recovery statute is mandatory and specific. The Court held that when both a general and specific statute potentially apply, it will give effect to the specific statute unless there is some indication the Legislature intended the general statute to govern. The Court concluded the more specific tax recovery statute controlled and that the Legislature intended tax refund actions to be litigated in the county that collected the tax.

Summary of Substitute Bill:

Legal actions against a county for recovery of taxes paid under protest may be filed in the superior court of either of the two nearest judicial districts as an alternative to filing in the county where the tax was collected or in federal court, but only if the action is solely against one county.

This modification of state law abrogates the Court's decision in *Hardel*. This act applies retroactively and prospectively, and further provides that any change in venue as a result of the Court's decision in *Hardel* may be reversed at the motion of the plaintiff.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill is a return to standard practice and will restore a sense of fairness. In a tax dispute with a county, the reasonable expectation is that you will adjudicate the dispute in a neighboring county, not the county you are in a dispute with. The need for both actual

fairness and the appearance of fairness applies in tax litigation against counties. The original pre-*Hardel* understanding of the tax venue statute reflects a long-standing commitment to a policy of fairness that is reflected in the general statute governing claims against counties. The *Hardel* decision is a deviation from the standard. The argument the Court embraced was raised previously and rejected.

Companies view themselves as partners with local government but are sometimes surprised by tax statements. This bill helps ensure the tax payer gets a fair shake, and is good for both the parties and the credibility of the program.

The retroactive aspect of this bill will not make the resolution of tax controversies more difficult. Existing cases have not yet shifted venue as a result of the *Hardel* decision because of the existing case backlog.

An emergency clause should be added to the bill to expedite its application for pending cases.

The Department of Revenue has asked the bill be amended to not apply to utility companies operating in multiple counties. This change would be acceptable.

(Opposed) None.

Persons Testifying: Representative Larry Springer, prime sponsor; Heath Curtiss, Hampton Lumber; Michelle DeLappe; and Norman Bruns.

Persons Signed In To Testify But Not Testifying: None.