S-4176.3

SUBSTITUTE SENATE BILL 6136

State of Washington   **68th Legislature**   **2024 Regular Session**

By Senate Housing (originally sponsored by Senators Kuderer, Frame, Hasegawa, Lovelett, Nobles, Saldaña, and Wellman)

READ FIRST TIME 01/25/24.

1   AN ACT Relating to a business and occupation tax on the privilege
2 of providing property for rent; adding a new section to chapter 82.04
3 RCW; creating a new section; and providing an effective date.

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

5   NEW SECTION. **Sec. 1.** The legislature acknowledges Washington's
6 tax structure is unique in that, in the absence of a personal or
7 corporate net income tax, the state relies heavily on a combination
8 of sales taxes, property taxes, and the business and occupation tax.
9 The legislature further acknowledges that Washington has one of the
10 most regressive tax systems in the country, in which the poorest
11 individuals spend significantly more in state and local taxes as a
12 percentage of household income than the state's wealthiest residents.
13 The regressive nature of Washington's tax structure exacerbates
14 housing affordability, with more than 1,000,000 residents spending
15 over 30 percent of their income on housing. The legislature agrees
16 with the state supreme court's opinion in *Quinn v. State*, No.
17 100769-8, where the court recognized that this burden falls
18 disproportionately on black, indigenous, and people of color, who are
19 overrepresented in low-income brackets.
20   The legislature recognizes that much of the state's current tax
21 structure can be traced to the 1930s during a time of rapid

socioeconomic change and subsequent tax reform in which the state
began to move away from property tax as its primary source of
revenue. The legislature acknowledges that, despite voters
overwhelmingly approving a graduated income tax in 1932, the court
invalidated the tax in *Culliton v. Chase*, 174 Wash. 363, 289 P.2d 81
(1933), on the grounds that it violated the constitutional
requirement that all taxes be uniform on the same class of property.
However, to address a shortfall in state revenue, on the same day the
court decided *Culliton*, it also upheld the business and occupation
tax as a constitutional excise tax on the privilege of engaging in
business, and not a property tax, in *State ex rel. Stiner v. Yelle*,
25 P.2d 91 (1993).

The legislature acknowledges that courts have long upheld taxes
levied on the privilege of doing business in this state. The
legislature recognizes that, since the 1930s, courts continue to
apply the principles set forth in *Culliton* and other similar cases
when distinguishing excise taxes from property taxes. The legislature
further recognizes that a decision from the 1960s invalidating a
state business and occupation tax on rental income is out of step
with the court's otherwise consistent analysis. In that case,
Apartment Operators Association of Seattle, Inc. v. Schumacher, 56
Wash.2d 46, 351 P.2d 124 (1960), the court in a brief per curiam
opinion held that a rental tax is an unconstitutional, nonuniform tax
on property under *Culliton*. The legislature acknowledges that in
subsequent cases, including the recent opinion upholding the state
capital gains tax in *Quinn*, the court has acknowledged that *Apartment
Operators* is flawed. In *Quinn*, the court reiterated the well-
established rule that a tax measured by income remains an excise so
long as it relates to the exercise of a privilege granted by the
state or rights "in and to property," such as the power to lease or
sell property.

The legislature finds that, considering the aforementioned
precedent, the privilege of providing property for rent is subject to
the business and occupation tax. The legislature also acknowledges
the pressing need for affordable housing and intends to dedicate all
revenue from the tax on rental property to the home security fund
account for support of the eviction prevention rental assistance
program.

1   NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
2 RCW to read as follows:
3   (1) Any person engaging within this state in the business of
4 renting or leasing of real property is taxable under RCW
5 82.04.290(2).
6   (2) The measure of tax under this section is the gross proceeds
7 from all rent.
8   (3) This section does not apply to:
9   (a) A mere license to use real property, such as the furnishing
10 of lodging and all other services by a hotel, rooming house, tourist
11 court, motel, trailer camp, and the granting of any similar license
12 to use real property, as provided under RCW 82.04.050, for a period
13 of less than one month;
14   (b) A municipal corporation as defined in RCW 39.69.010;
15   (c) A political subdivision as defined in RCW 29A.92.010; or
16   (d) Taxable rent subject to the leasehold excise tax under RCW
17 82.29A.030.
18   (4) All receipts from the tax imposed under this section must be
19 deposited into the home security fund account under RCW 43.185C.060
20 for support of the eviction prevention rental assistance program in
21 RCW 43.185C.185.
22   (5) For the purposes of this section, the following definitions
23 apply:
24   (a) "Rent" means a recurring and periodic payment for the use and
25 occupancy of real property, including charges for utilities, and any
26 nonrefundable fees retained by a landlord, such as those for late
27 payments, property damage, application processing, and any other
28 nonrefundable charge. "Rent" does not include refundable fees or
29 charges, including any portion of a security, damage, pet, or other
30 deposit returned to the tenant.
31   (b) "Renting or leasing" means the granting of a right to use
32 residential or commercial real property for a continuous period of
33 one month or more.
34   (c) "Taxable rent" has the same meaning as in RCW 82.29A.020.

35   NEW SECTION. **Sec. 3.** This act takes effect January 1, 2025.

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