

HOUSE BILL REPORT

HB 1184

As Passed House:
March 4, 2011

Title: An act relating to clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction.

Brief Description: Clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction.

Sponsors: Representatives Maxwell, Orcutt, Kenney, Finn, Smith, Ryu, Goodman, Asay, Tharinger, Alexander, Pedersen, Appleton, Kelley, Eddy, Van De Wege, Sullivan, Dammeier, Angel, Seaquist, Clibborn, Bailey, Upthegrove, Rolfes, Carlyle and Frockt.

Brief History:

Committee Activity:

Ways & Means: 2/1/11, 2/24/11 [DP].

Floor Activity:

Passed House: 3/4/11, 97-0.

Brief Summary of Bill

- Exempts real estate commissions that are shared among more than two real estate firms from business and occupation tax.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass. Signed by 27 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Chandler, Cody, Dickerson, Haigh, Haler, Hinkle, Hudgins, Hunt, Kagi, Kenney, Ormsby, Parker, Pettigrew, Ross, Schmick, Seaquist, Springer, Sullivan and Wilcox.

Staff: Rick Peterson (786-7150).

Background:

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.

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. Revenues are deposited in the State General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. There are a number of different rates. The main rates are: 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.8 percent for professional and personal services, and activities not classified elsewhere.

When the real estate commission on a particular transaction is shared between an originating broker and a cooperating broker, each broker pays the B&O tax only on their share of a commission. However, the payment of a portion of the commission to a third broker for referring a potential buyer or seller is not allowed by the Department of Revenue as a deduction from B&O tax. The broker receiving a referral fee is liable for B&O tax on the fee.

In 2008 the Legislature changed the terms used to describe businesses and professionals providing real estate brokerage services to real estate firms, brokers, managing brokers, and designated brokers.

Summary of Bill:

The business and occupation tax applies to the respective share of the commission for each real estate firm that receives a commission at the time of closing on a real estate transaction. The terms and definitions related to real estate brokerage services are updated to be consistent with real estate licensing laws.

The bill applies both prospectively and retroactively.

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 is a clarification. It is a tax audit situation where tax was applied where it had not been applied before. The tax on real estate commissions is paid by the office on their respective share of the total commission. The Department of Revenue has reached a new interpretation that the commission paid to a third real estate office is to be taxed twice. Taxpayers that are being audited are asked to pay tax on money they did not receive. Audits go back four years and it is incredibly difficult for brokers to pay these back taxes. It is unfair to double tax. The bill would restore a long standing practice. The business and occupation tax would be paid in an appropriate manner and not double taxed.

(Opposed) None.

Persons Testifying: Representative Maxwell, prime sponsor; Bill Clarke, Washington Realtors; and Dick Beeson, Windemere Real Estate.

Persons Signed In To Testify But Not Testifying: None.