HOUSE BILL REPORT
HB 1302

As Reported By House Committee On:
Finance

Title: An act relating to intangible personal property.

Brief Description: Clarifying the taxation of intangible personal property.

Sponsors: Representatives Pennington, Kessler, Carrell, Boldt, Thompson, Sheldon, Cairnes, Lambert, B. Thomas, Mitchell, Chandler, Talcott, Cooke, Schoesler, Robertson, Huff, Mielke, Lisk, Delvin, Wensman, Mulliken, Backlund and L. Thomas.

Brief History:
Committee Activity:
Finance: 2/25/97, 3/7/97 [DPS].

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives B. Thomas, Chairman; Carrell, Vice Chairman; Mulliken, Vice Chairman; Boldt; Butler; Kastama; Morris; Pennington; Schoesler and Van Luven.

Minority Report: Do not pass. Signed by 4 members: Representatives Dunshee, Ranking Minority Member; Dickerson, Assistant Ranking Minority Member; Conway and Mason.

Staff: Bob Longman (786-7139).

Background: All property in this state is subject to property tax each year based on the value of the property, unless a specific exemption is provided by law. The state constitution requires that a taxing district apply taxes uniformly to each class of property within the district, and that all real estate be treated as one class. The constitution also allows the Legislature to exempt certain types of property from taxation.

Intangible property is property that has no physical substance and is not susceptible to being perceived by the senses. Some types of intangible property are exempt from taxation: money, mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, government bonds and warrants, stocks and shares of private corporations, private non-governmental personal service contracts, and private non-governmental athletic or sports franchises.

Other types of intangible property are taxable, such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, agreements to not compete, customer lists, and business goodwill.

Factors that affect the market value of real property or tangible personal property, such as location, zoning, or view, are sometimes referred to as "intangibles." However, these factors are not intangible property. These are merely items that buyers and sellers take into account in determining the market value of property. In contrast, intangible property can be bought and sold completely independently of other property.

Intangible assets are often difficult to identify, locate, and value. The correct treatment of intangible assets for property tax purposes is a matter of some controversy. Recent events have sparked a new level of interest in this issue.

In the late 1980s, the Department of Revenue was sued by Burlington Northern on the grounds that the company was being discriminated against. The taxpayer believed that assessed values established by the department tend to include the value of intangible assets held by the taxpayer, while assessed values established by county assessors did not include the value of intangible assets. This complex litigation was eventually resolved in the department’s favor.

Recently, Congress allowed the cost of some intangible assets to be amortized over a 15-year period for federal income tax purposes. This made it more likely that businesses would show intangible value on their books and that assessors would tend to tax it. Businesses began to complain about the assessment and taxation of previously untaxed property. Businesses also expressed concern that assessors would begin to further tax these and other intangible assets.

The department responded with a letter in January 1996, advising county assessors not to list and separately value intangible assets. In 1996, bills were introduced in the Legislature to exempt all intangibles from taxation, but none of these bills were enacted by the Legislature.

Summary of Substitute Bill: All intangible property is exempt from property tax. Intangible property includes, but is not limited to, the items exempt under current law and items such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, non-compete agreements, clientele, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, or integrity of a business.

Intangible property does not include zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, the availability of a skilled work force, and other characteristics or attributes of property.

The exemption is not intended to preclude the use of generally accepted appraisal practices in the valuation of real and tangible personal property. The exemption is not to be construed as modifying current rules relating to the treatment of computer software. The act is not intended to incorporate any other state's statutory or case law.

These provisions are effective for taxes levied for collection in 1999 and thereafter.

Substitute Bill Compared to Original Bill: The substitute deletes language requiring the presence of existing intangible assets to be considered in determining the highest and best use of taxable property. The substitute provides that the exemption is not intended to preclude the use of generally accepted appraisal practices in the valuation of real and tangible personal property. The effective date of the exemption is delayed until 1999 taxes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: We need tax stability in this state. Uncertainty over the taxation of intangibles is a problem. It creates difficulties for existing businesses and frightens away businesses that are thinking of locating here. The bill treats all intangibles uniformly. The bill exempts intangibles but still allows the taxable real and personal property to be valued at its full market value. This bill protects the use of the income approach for determining market value.

Testimony Against: The bill grants an exemption. It creates a tax shift. Some taxpayers will pay less but others will pay more. The exemption is open-ended. We don't know what the exemption includes. Many new intangibles have been created in the federal income tax system and these may apply to property tax. The bill creates a new definition of "highest and best use" that is not consistent with national appraisal standards. The fiscal impact is very uncertain, it could be very large.

Testified: (Pro) Representative Pennington, prime sponsor; Tom Dooley, Association of Washington Businesses; Bike Bernard, Madison Cooke; Galy Smith, Independent Business Association; Terri Hotvedt, Washington Association of

Realtors; Susan Hahn, Cascade Diesel and Truck Repair; and Carolyn Logue, National Association of Independent Business. (Con): Dave Wood, American Reinforced Plastics, Inc.; Jim Irish, Irish & Associates/Appraiser Institute, Washington Chapters; and Scott Noble and Paul Easter, Washington State Association of County Assessors.