

HOUSE BILL REPORT

HB 2671

As Reported By House Committee On:
Finance

Title: An act relating to tax information on customer billings.

Brief Description: Establishing procedures for handling tax billing errors.

Sponsors: Representatives Thomas, Dunshee and Fortunato.

Brief History:

Committee Activity:

Finance: 1/25/00, 2/1/00 [DPS].

Brief Summary of Substitute Bill

- Requires certain utility businesses to identify on customers' bills the rate, origin, and amount of any tax levied on the businesses, if the tax is added to the customers' bills;
- Creates a procedure for customers to receive refunds if billed erroneously for taxes; and
- Makes it a violation of the Consumer Protection Act if certain utility businesses willfully fail to respond to customers' notices about erroneous taxes.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Dunshee, Democratic Co-Chair; Thomas, Republican Co-Chair; Cairnes, Republican Vice Chair; Reardon, Democratic Vice Chair; Carrell; Conway; Cox; Dickerson; Pennington; Santos; Van Loven and Veloria.

Staff: Linda Brooks (786-7153).

Background:

Light & Power and Gas Businesses

A light and power or gas business must show the rate and amount of any tax levied directly on its customers (such as sales tax) on its customers' bills. A light and power or gas business that adds a component to its customers' bills for any tax levied upon the revenue of the business (such as state or city utility tax) must also show the rate, origin, and approximate amount of the tax on the customers' bills. However, these requirements to show taxes on customers' bills only apply if a light and power or gas business serves more than 20,000 customers. There are also some exceptions. State business and occupation (B&O) taxes, privilege taxes paid by public utility districts, and regulatory fees paid to the Washington Utility and Transportation Commission are not required to be shown on customers' bills.

Telephone and Cable TV Businesses

Telephone and cable television businesses, like all businesses in the state, must list sales tax separately from the selling price in any sales invoice or billing. However, telephone and cable television businesses are not required to show state B&O taxes, city utility taxes, or any other type of tax levied upon their gross revenues on customers' bills.

Erroneous Billing of Taxes

If a customer sees that an amount of tax has been added as a component to a bill erroneously, he or she may ask the light and power, gas, cable television, or telephone business to provide a refund or credit. For example, if a person who lives in an unincorporated area sees an amount on a bill identified as a city utility tax, the person may notify the business that he or she does not live in a city and request a refund. There are no specific statutory requirements, however, governing how quickly a utility business must respond to a customer's notice, nor are there any specific penalties imposed for failure to respond.

Consumer Protection Act

Under the Consumer Protection Act, the attorney general or an individual may bring an action against a person who commits an unfair or deceptive act or practice in trade or commerce. An individual may recover three times the actual damages caused by the act or practice, up to \$10,000, plus reasonable attorney fees. The attorney general may also sue violators to obtain injunctive relief, civil penalties of \$2,000 per violation, restitution, and attorneys' fees. In order to recover, a plaintiff must show that an unfair or deceptive act in trade or commerce affecting the public interest caused the injury. A legislative declaration that a particular act or practice is unfair or deceptive in trade or commerce affecting the public interest relieves a plaintiff of having to prove these elements.

Cities and Towns

A city or town must provide a light and power, gas, cable television, or telephone business with 60 days notice whenever the city or town changes a utility tax rate.

Summary of Substitute Bill:

Light & Power and Gas Businesses

The rate, origin, and amount must be shown for any tax levied on the business, if the business is adding a component to its customers' bills for the tax. Previously, only taxes levied *on the revenue* of the business were required to be shown.

Telephone and Cable TV Businesses

Telephone and cable television businesses are subject to the same requirements imposed on light and power and gas businesses for showing taxes on their customers' bills. Specifically, a telephone or cable television business serving more than 20,000 customers must show on its customers' bills:

- the rate and amount of any tax (such as sales tax) levied directly on its customers; and
- the rate, origin, and amount of any tax levied on the business, if the business is adding a component to its customers' bills for the tax.

There are some exceptions. Telephone and cable television businesses are not required to show state B&O taxes nor any regulatory fees paid to the Washington Utility and Transportation Commission.

Erroneous Billing of Taxes

When a customer believes that an amount of tax has been added to his or her bill in error, the customer must notify the light and power, gas, cable television, or telephone business that issued the billing. A business has 60 days to either correct the error and make a refund with interest or to provide the customer with a written explanation as to why a refund is not due. In the event that a business makes a tax refund to a customer, then the governmental entity imposing the tax must allow the business to claim a tax credit or refund for the amount refunded to the customer.

If a business fails to make a refund or to provide a written explanation within 60 days, then a \$5 penalty must be credited to a customer's bill for each monthly billing period that begins more than 60 days after notice was received from a customer. A

customer may deduct this \$5 penalty from his or her bill if a business fails to include the credit on the customer's bill. A business cannot interrupt gas, electrical, cable television, or telephone service for nonpayment of any amount in dispute, as long as amounts not in dispute are paid when due.

On the other hand, if a business has investigated a complaint and determined that no error has been made, then the business must mail a written explanation to the customer. A business may then recover all tax amounts, interest and penalties withheld by a customer. However, at least 30 days must follow the mailing of the written explanation before any recovery occurs.

Consumer Protection Act

It is a Consumer Protection Act violation if a light and power, gas, cable television, or telephone business engages in a willful pattern of failing to respond to customers' notices about tax billing errors.

Cities and Towns

Cities and towns must notify gas, light and power, cable television, and telephone businesses of any annexations at least 60 days before the annexations take effect.

If a light and power, gas, cable television, or telephone business requests assistance, a city or town must provide the business with copies of any maps, street addresses, geographical information system (GIS) data bases, or other information that would assist the business in identifying its customers whose addresses are located within the city or town. Cities are not required, however, to provide any information that would be exempt from disclosure under the Public Records Act, such as personal or proprietary information about a person or business at a particular address. Also, light and power, gas, cable television, or telephone businesses cannot use any information provided by a city or town for commercial purposes.

Substitute Bill Compared to Original Bill: The requirement that cable television and telephone businesses show the rates of taxes on customers' bills does not take effect until January 1, 2001. If light and power, gas, cable television or telephone businesses make tax refunds to their customers, then governments must allow those businesses to claim tax credits or refunds for the amounts refunded to their customers. Clarification is also made that cities are not required to provide any information to businesses, if the information would be exempt from disclosure under the Public Records Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed, however, the requirement to specify the rate of taxes on customers' bills does not take effect until January 1, 2001.

Testimony For: This bill is about consumer protection. It requires taxes, tax rates, and origin to be identified on customers' bills. Customers need enough information about their taxes so that they can complain if there are errors. Customers are being taxed for city and special district taxes when they do not reside in those cities or special districts. Instead of identifying their customers who are actually located within a particular taxing jurisdiction, businesses have found it more convenient to just take a block of zip codes and apply tax to everyone within the zip code boundaries. The Department of Revenue has a GIS program that identifies addresses which are located in a particular taxing jurisdiction, and the department will give that program to companies who request it.

(Concerns) The telecommunications industry is supportive of efforts to clarify taxation for customers. It will take some time to reprogram billing systems to include tax rate information on customers' bills so an effective date for the legislation of January 1, 2001 is needed. Also, businesses pass taxes along to customers. If businesses must refund taxes to customers, then businesses should be reimbursed by governments for those refunds. It would be helpful if customers were required to put their complaints in writing so that there is a paper trail. Cities also should have to participate in the process of verifying whether customers are being taxed correctly, and businesses should not be liable if cities provide incorrect information. [The substitute bill incorporates an amendment setting a January 1, 2001 effective date for requiring tax rates on customers' bills. The substitute bill also requires governments to reimburse businesses for tax amounts that are refunded to customers.]

Cities support efforts to ensure that taxes are only collected from persons who are obligated to pay them. We have no disagreement in principle, but we have some concerns that cities may be asked to share information that cannot be disclosed under the Public Records Act. [The substitute bill incorporates language stating that cities are not required to provide any information that is exempt from disclosure under the Public Records Act.]

Testimony Against: None.

Testified: Representative Brian Thomas, prime sponsor; Daurell Bell, AT&T; Bill Garvin, MCI World Com; Bruce Shaull, Sprint; Tom Walker, U. S. West; and Ron Rosenbloom, Association of Washington Cities.