

1 **SHB 2658 - H AMD 0123 Failed 2-19-02**

2 By Representative Cairnes

3 Strike everything after the enacting clause and insert:

4 "NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. (1) The
5 legislature finds that:

6 (a) Businesses in Washington are concerned about the potential
7 multiple taxation that arises due to the various city gross receipts
8 taxes and the lack of uniformity among city jurisdictions;

9 (b) The current system of city gross receipts taxes has a negative
10 impact on Washington's business climate by creating complexity and
11 inconsistencies for taxpayers;

12 (c) City gross receipts tax revenue provides a sizable portion of
13 city revenue that is used for essential services;

14 (d) Local government services contribute to a healthy business
15 climate; and

16 (e) Cities have and should retain the flexibility to tailor their
17 tax structures to meet unique local needs, but that flexibility must be
18 balanced with predictability and ease of administration of city gross
19 receipts taxes.

20 (2) Therefore, it is the intent of the legislature to:

21 (a) Require cities that impose a gross receipts tax to adopt a
22 model ordinance that creates a more uniform system of city gross
23 receipts taxes;

24 (b) Eliminate any potential for multiple taxation of the same
25 gross income;

26 (c) Make city gross receipts taxes simpler, more predictable, and
27 easier to administer, while allowing for some continued local control
28 and flexibility for cities.

29 NEW SECTION. **Sec. 2.** MUNICIPAL GROSS RECEIPTS TAX--LIMITED
30 SCOPE. Sections 3 through 15 of this act do not apply to gross
31 receipts taxes on business activities that, before February 1, 2002,
32 have been historically or traditionally taxed as a utility business for
33 municipal tax purposes such as:

34 (1) A light and power business or a natural gas distribution
35 business, as defined in RCW 82.16.010;

36 (2) A telephone business, as defined in RCW 82.04.065;

- 1 (3) Cable television services;
- 2 (4) Sewer or water services;
- 3 (5) Drainage services;
- 4 (6) Solid waste services; or
- 5 (7) Steam services.

6 NEW SECTION. **Sec. 3.** MUNICIPAL GROSS RECEIPTS TAX--DEFINITIONS.

7 The definitions in this section apply throughout this chapter unless
8 the context clearly requires otherwise:

9 (1) "Business" has the same meaning as that provided in RCW
10 82.04.140.

11 (2) "City" means a city, town, or code city.

12 (3) "Business and occupation tax" or "gross receipts tax" means a
13 tax which is imposed on or measured by the value of products, the gross
14 income of the business, or the gross proceeds of sales, as the case may
15 be and which is also not, pursuant to law or custom, separately stated
16 from the sales price. As used throughout this chapter, the terms
17 "value of products," "gross income of the business," and "gross
18 proceeds of sales" have the same meaning as those provided in chapter
19 82.04 RCW.

20 (4) "Local jurisdiction" means any city, town, code city, county,
21 municipal district or corporation, political subdivision, Indian
22 reservation, or federal area located in the state of Washington.

23 NEW SECTION. **Sec. 4.** MUNICIPAL GROSS RECEIPTS TAX--MODEL

24 ORDINANCE. (1)(a) The association of Washington cities shall form a
25 model ordinance development committee made up of a representative
26 sampling of large, medium, and small cities that currently impose a
27 gross receipts tax. By September 1, 2003, this committee shall develop
28 and adopt a model ordinance regarding municipal gross receipts taxes in
29 accordance with the provisions of this chapter. The committee shall
30 develop the model ordinance and any subsequent amendments using a
31 process that includes substantial input from business stakeholders and
32 other members of the public. Input shall be solicited from statewide
33 business associations and from local chambers of commerce and downtown
34 business associations in cities that levy a gross receipts tax.

35 (b) The municipal research and services center shall post the
36 officially adopted version of the model ordinance and a summary of any
37 stakeholder input on its internet web site and shall have paper copies

1 available upon request. Additionally, a city that imposes a gross
2 receipts tax must make copies of its full and complete gross receipts
3 tax ordinance available in both electronic and paper form. The model
4 ordinance and accompanying information shall also be made available to
5 the department of revenue taxpayer information services division and
6 the department of licensing master license program.

7 (c) The definitions and tax classifications provided in the model
8 ordinance may not be amended more frequently than once every four
9 years. However, the model ordinance may be amended at any time to
10 comply with changes in state law. Any amendment made to the model
11 ordinance under this subsection (1)(c) shall be posted on the internet
12 web site of the municipal research and services center at least one
13 hundred twenty days prior to the effective date of the amendment. In
14 addition, any amendment to a mandatory provision of the model ordinance
15 must be uniformly adopted with the same effective date by all cities
16 imposing a gross receipts tax.

17 (2) The model ordinance must contain, at a minimum, the following,
18 mandatory provisions:

19 (a) The following core definitions from the state business and
20 occupation tax: RCW 82.04.030 ("Person," "company"); RCW 82.04.040
21 ("Sale," "casual or isolated sale"); RCW 82.04.050 ("Sale at retail,"
22 "retail sale"); RCW 82.04.060 ("Sale at wholesale," "wholesale sale");
23 RCW 82.04.070 ("Gross proceeds of sales"); RCW 82.04.080 ("Gross income
24 of the business"); RCW 82.04.090 ("Value proceeding or accruing"); RCW
25 82.04.100 ("Extractor"); RCW 82.04.110 ("Manufacturer"); RCW 82.04.120
26 ("To manufacture"); RCW 82.04.130 ("Commercial or industrial use"); RCW
27 82.04.140 ("Business"); RCW 82.04.150 ("Engaging in business"); and RCW
28 82.04.190 ("Consumer"). The incorporation of these core definitions in
29 the model ordinance shall be construed to include, as an extension of
30 each definition, any state level determination, regulation,
31 interpretation, or court opinion pertaining to any one of these
32 definitions. In addition, if the model ordinance or an individual city
33 uses a classification, exemption, deduction or credit substantially
34 similar to one set forth in the state's gross receipts tax system, the
35 definitions used for the classification, exemption, deduction, or
36 credit shall be identical to those provided in the state's gross
37 receipts business and occupation tax system. However, this subsection
38 (2) shall not be construed to limit any individual city's flexibility
39 to establish its own classifications or rate structures for gross

1 receipts tax purposes subject to the provisions of RCW 35.21.710 nor
2 shall it be construed to reduce, limit, or eliminate a city's ability
3 to continue to tax an activity at the rate established for an activity
4 prior to January 1, 2002, pursuant to either a gross receipts tax or
5 utility tax;

6 (b) The system of credits contained in section 6 of this act and
7 a form for such use;

8 (c) A uniform, minimum small business tax exemption of at least
9 the equivalent of twenty-five thousand dollars in gross income. A city
10 may elect to deviate from this requirement by creating a higher
11 threshold, but it shall not deviate lower than the level required in
12 this subsection (2)(c). A city with a small business tax exemption or
13 threshold in excess of that provided in this subsection (2)(c) prior to
14 January 1, 2001, shall retain its current threshold;

15 (d) Tax reporting frequencies that meet the requirements of
16 section 8 of this act;

17 (e) Penalty and interest provisions that meet the requirements of
18 sections 9 and 10 of this act;

19 (f) Claim periods that meet the requirements of section 11 of this
20 act;

21 (g) Refund provisions that meet the requirements of section 12 of
22 this act.

23 (3) Except for the system of credits developed to address multiple
24 taxation under subsection (2)(b) of this section, the model ordinance
25 may adopt its own provisions for tax exemptions, tax credits, and tax
26 deductions.

27 (4) In drafting the mandatory definitions required under
28 subsection (2)(a) of this section, the committee established in
29 subsection (1)(a) of this section shall, by December 1, 2003, develop
30 recommendations to the legislature regarding possible amendments to the
31 state's gross receipts tax definitions to make them more clear,
32 concise, understandable, and easier to administer as part of the model
33 ordinance.

34 NEW SECTION. **Sec. 5.** MUNICIPAL GROSS RECEIPTS TAX--MODEL
35 ORDINANCE ADOPTION REQUIRED. (1) A city with a population of fifty
36 thousand or more and imposing a gross receipts tax must adopt and
37 implement, at a minimum, the mandatory provisions of the model
38 ordinance provided in section 4 of this act by January 1, 2004.

1 However, if a definition required to be adopted as a mandatory
2 provision of the model ordinance under section 4(2)(a) of this act
3 would cause a city with a population of fifty thousand or more to lose
4 more than ten percent of the total gross receipts taxes received by
5 that city, the city may delay the adoption of that particular
6 definition until January 1, 2005.

7 (2) A city with a population of less than fifty thousand and
8 imposing a gross receipts tax must adopt and implement, at a minimum,
9 the mandatory provisions of the model ordinance provided in section 4
10 of this act by January 1, 2005. However, if a definition required to
11 be adopted as a mandatory provision of the model ordinance under
12 section 4(2)(a) of this act would cause a city with a population of
13 less than fifty thousand to lose more than ten percent of the total
14 gross receipts taxes received by that city, the city may delay the
15 adoption of that particular definition until January 1, 2006.

16 (3) While it is the intent of the legislature to allow some
17 deviation from the nonmandatory provisions of the model ordinance,
18 cities are encouraged to deviate as little as possible from the
19 nonmandatory portions of the model ordinance to maintain the highest
20 degree of uniformity among the cities imposing a gross receipts tax.
21 If a city chooses to deviate from the nonmandatory provisions of the
22 model ordinance, the deviation should be noted along with an
23 explanatory statement regarding the deviation. Both the deviation and
24 the explanatory statement shall then be placed in a centralized
25 depository such as the municipal research and services center to
26 provide taxpayers with quick access to all deviations in both paper and
27 electronic form.

28 NEW SECTION. **Sec. 6.** MUNICIPAL GROSS RECEIPTS TAX--MULTIPLE
29 TAXATION--CREDIT SYSTEM. (1) It is the intent of the legislature in
30 providing the system of credits in subsections (3)(a) and (b) of this
31 section to eliminate any circumstance that would result in any city or
32 multiple cities imposing a gross receipts business and occupation tax
33 on greater than one hundred percent of the gross income of the
34 business.

35 (2)(a) Persons who engage in business activities that are within
36 the purview of more than one classification of a gross receipts
37 business and occupation tax shall be taxable under each applicable
38 classification.

1 (b) Notwithstanding anything to the contrary in this section, if
2 imposition of the tax would place an undue burden upon interstate
3 commerce or violate other constitutional requirements, a taxpayer shall
4 be allowed a credit to the extent necessary to preserve the validity of
5 the tax.

6 (3)(a) Every person engaged in manufacturing activities is allowed
7 a credit against the measure of tax of any manufacturing gross receipts
8 tax imposed by a local jurisdiction for any portion of the measure of
9 tax which has been previously subjected to a local jurisdiction gross
10 receipts tax on either extracting or previously performed manufacturing
11 activities.

12 (b) Every person engaged in making retail or wholesale sales is
13 allowed a credit against the measure of tax of any retailing or
14 wholesaling gross receipts tax imposed by a local jurisdiction for any
15 portion of the measure of tax which has been previously subjected to a
16 local jurisdiction gross receipts tax on either extracting or
17 manufacturing activities.

18 (c) The model ordinance provided for in section 4 of this act
19 shall be drafted to address the issue of multiple taxation for those
20 tax classifications that are in addition to those enumerated in (a) and
21 (b) of this subsection. The objective of any such provisions shall be
22 to eliminate multiple taxation of the same income by two or more cities
23 through the use of credits against the measure of tax.

24 NEW SECTION. **Sec. 7.** MUNICIPAL GROSS RECEIPTS TAX--NEXUS. A
25 city may not impose a gross receipts tax on a person unless that person
26 has nexus with the city. For the purposes of this section, the term
27 "nexus" means business activities conducted by a person sufficient to
28 subject that person to the taxing jurisdiction of a city under the
29 standards established for interstate commerce under the commerce clause
30 of the United States Constitution.

31 NEW SECTION. **Sec. 8.** MUNICIPAL GROSS RECEIPTS TAX--REPORTING
32 FREQUENCY. A city that imposes a gross receipts tax shall allow
33 reporting and payment of tax on a monthly, quarterly, or annual basis.
34 The frequency for any particular person may be assigned at the
35 discretion of the city, except that monthly reporting may be assigned
36 only if it can be demonstrated that the taxpayer is remitting excise
37 tax to the state on a monthly basis. For persons assigned a monthly

1 frequency, payment is due within the same time period provided for
2 monthly taxpayers under RCW 82.32.045(1). For persons assigned a
3 quarterly or annual frequency, payment is due within the same time
4 period as provided for quarterly or annual frequency under RCW
5 82.32.045(2).

6 NEW SECTION. Sec. 9. MUNICIPAL GROSS RECEIPTS TAX--PENALTIES AND
7 INTEREST. (1) A city that imposes a gross receipts tax shall compute
8 interest charged a taxpayer on an underpaid tax or penalty in
9 accordance with RCW 82.32.050.

10 (2) A city that imposes a gross receipts tax shall compute
11 interest paid on refunds or credits of amounts paid or other recovery
12 allowed a taxpayer in accordance with RCW 82.32.060.

13 NEW SECTION. Sec. 10. MUNICIPAL BUSINESS AND OCCUPATION TAX--
14 PENALTIES. A city that imposes a gross receipts tax shall provide for
15 the imposition of penalties as follows:

16 (1) If payment of any tax due on a return to be filed by a
17 taxpayer is not received by the city by the due date, the taxpayer
18 shall be charged a penalty equivalent to that provided in RCW
19 82.32.090(1).

20 (2) If payment of any tax assessed by the city is not received by
21 the city by the due date specified in the notice, or any extension, the
22 city shall add a penalty equivalent to that provided in RCW
23 82.32.090(2).

24 (3) If a warrant is issued by the city for the collection of
25 taxes, increases, and penalties, a penalty equivalent to that provided
26 in RCW 82.32.090(3) shall be added to it.

27 (4) If the city, code city, or town finds that all or any part of
28 a deficiency resulted from the disregard of specific written
29 instructions as to reporting or tax liabilities, the city shall add a
30 penalty equivalent to that provided in RCW 82.32.090(4). A taxpayer
31 disregards specific written instructions when the city has informed the
32 taxpayer in writing of the taxpayer's tax obligations and the taxpayer
33 fails to act in accordance with those instructions unless the city has
34 not issued final instructions because the matter is under appeal. The
35 city shall not assess the penalty under this section upon any taxpayer
36 who has made a good faith effort to comply with the specific written
37 instructions provided by the city to that taxpayer. Specific written

1 instructions may be given as a part of a tax assessment, audit,
2 determination, or closing agreement, provided that specific written
3 instructions apply only to the taxpayer addressed or referenced on the
4 documents. Any specific written instructions by the city shall be
5 clearly identified as such and shall inform the taxpayer that failure
6 to follow the instructions may subject the taxpayer to the penalties
7 imposed by this subsection.

8 (5) If the city finds that all or any part of the deficiency
9 resulted from an intent to evade the tax, a further penalty equivalent
10 to that provided in RCW 82.32.090(5) shall be added.

11 (6) The aggregate of penalties imposed under subsections (1), (2),
12 and (3) of this section shall not exceed the limit for penalties
13 provided in RCW 82.32.090(6). This subsection does not prohibit or
14 restrict the application of other penalties authorized by law.

15 (7) The city may not impose both the evasion penalty and the
16 penalty for disregarding specific written instructions on the same tax
17 found to be due.

18 (8) For the purposes of this section, "return" means any document
19 a person is required by the city to file to satisfy or establish a tax
20 obligation that is administered by the city and that has a due date
21 defined by ordinance.

22 NEW SECTION. **Sec. 11.** MUNICIPAL GROSS RECEIPTS TAX--CLAIM
23 PERIOD. The provisions relating to the time period allowed for an
24 assessment or correction of an assessment for additional taxes,
25 penalties, or interest shall be substantially identical to those
26 provided in RCW 82.32.050(3).

27 NEW SECTION. **Sec. 12.** MUNICIPAL GROSS RECEIPTS TAX--REFUND
28 PERIOD. The provisions relating to the time period allowed for a
29 refund of taxes paid shall be substantially identical to those provided
30 in RCW 82.32.060 (1) and (2).

31 NEW SECTION. **Sec. 13.** MUNICIPAL GROSS RECEIPTS TAX--
32 APPORTIONMENT PROVISIONS. (1) For the purposes of apportioning or
33 allocating gross income of the business for city gross receipts taxes:
34 (a) The total tax measure apportioned or allocated to all
35 applicable local jurisdictions shall not exceed the total tax measure
36 computed by the state for the purpose of state gross receipts taxation.

1 (b) All state and federal constitutional provisions and laws
2 pertaining to the establishment of due process and commerce clause
3 protections for the taxation of interstate commerce are duly applicable
4 to the establishment of due process and commerce clause protections for
5 the taxation of intrastate commerce.

6 (2) The following specific guidelines shall be applied by any city
7 that imposes a gross receipts tax:

8 (a) For the purposes of imposing a gross receipts tax on
9 extracting, manufacturing, or processing for hire activities, the
10 activities are subject to tax in the local jurisdiction where the
11 activities occur. If the activities occur in more than one local
12 jurisdiction, the activities are consistently, equitably, and
13 reasonably apportioned between or among those local jurisdictions even
14 though the taxpayer may not have an office or other permanent place of
15 business in each jurisdiction.

16 (b) For the purposes of imposing a gross receipts tax on retail
17 sales, all sales are subject to tax in the local jurisdiction where the
18 sales occur. For the purposes of determining where a retail sale
19 occurs under this subsection (2)(b), the methods provided in RCW
20 82.14.020 (1) through (5) for determining where a retail sale occurs
21 apply.

22 (c) For the purposes of imposing a gross receipts tax on wholesale
23 sales, all sales are subject to tax in the local jurisdiction where the
24 sales occur. For the purposes of determining where a wholesale sale
25 occurs under this subsection, the methods provided in RCW 82.14.020 (1)
26 through (5) for determining where a retail sale occurs apply as if the
27 wholesale sale was a retail sale.

28 (d) For the purposes of imposing a gross receipts tax on any
29 person rendering services, other than services defined as a retail sale
30 under RCW 82.04.050, the services are subject to tax in the local
31 jurisdiction where the services were primarily performed. If the
32 person rendering services performs substantial service activities in
33 more than one local jurisdiction, the person shall apportion to each
34 local jurisdiction that portion of the total gross income that is
35 derived from services rendered in each local jurisdiction. Where
36 apportionment cannot be accurately made by separate accounting methods,
37 the person shall apportion to each local jurisdiction that proportion
38 of the total gross income which is derived from services which the cost
39 of performing the services within a local jurisdiction bears to the

1 total cost of performing the services in all local jurisdictions. The
2 city shall apportion the gross receipts derived from services even
3 though the taxpayer may not have an office or other permanent place of
4 business in each jurisdiction where it performs the services.

5 (e) Under no circumstances may a business apportion or allocate
6 gross receipts to a jurisdiction in which it has no nexus for tax
7 purposes.

8 (f) Upon the effective date of this section, the model ordinance
9 developed under section 4 of this act shall not contain any provisions
10 relating to the apportionment or allocation of gross income.

11 NEW SECTION. **Sec. 14.** MUNICIPAL GROSS RECEIPTS TAX--
12 APPORTIONMENT PROVISIONS STUDY. The department of revenue shall work
13 with the association of Washington cities and the business community to
14 study the possible impacts of section 13 of this act regarding the
15 issues of apportionment and allocation of income as they relate to
16 cities, businesses engaged in business solely within the boundaries of
17 a single, local jurisdiction, and businesses engaged in business within
18 multiple local jurisdictions. In conducting the study, the department
19 shall perform an independent analysis of the specific revenue impacts
20 to cities, if any, which may occur when section 13 of this act is
21 implemented. If the department determines that revenue impacts are
22 anticipated as a result of the implementation of section 13 of this
23 act, it shall, on January 1, 2004, make recommendations to the governor
24 and the fiscal committees of the legislature regarding actions the
25 legislature could take to mitigate the financial impact. In addition
26 to methods offered by the department to financially mitigate any
27 impact, the recommendations may also include the substantive alteration
28 or repeal of section 13 of this act.

29 NEW SECTION. **Sec. 15.** MUNICIPAL GROSS RECEIPTS TAX--
30 IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. A city that has not
31 complied with the model ordinance adoption requirements of section 5 of
32 this act may not impose a gross receipts tax on business activities
33 subject to the mandatory provisions of the model ordinance.

34 NEW SECTION. **Sec. 16.** MUNICIPAL GROSS RECEIPTS TAX--PREEMPTION
35 OF GROSS RECEIPTS TAXATION OF INTELLECTUAL PROPERTY. (1) A city shall
36 not impose a gross receipts tax upon any intellectual property creating

1 activity. However, nothing in this section shall be construed to
2 prohibit a city from imposing a gross receipts tax on the sale of
3 tangible personal property or services that include the benefits from
4 intellectual property creating activities.

5 (2) For the purposes of this section, "intellectual property
6 creating activity" means research, development, authorship, creation,
7 or general or specific inventive activity without regard to whether the
8 intellectual property creating activity results in the creation of
9 patents, trademarks, trade secrets, matter subject to copyright, or any
10 other intellectual property.

11 **Sec. 17.** RCW 82.32.060 and 1999 c 358 s 13 are each amended to
12 read as follows:

13 (1) If, upon receipt of an application by a taxpayer for a refund
14 or for an audit of the taxpayer's records, or upon an examination of
15 the returns or records of any taxpayer, it is determined by the
16 department that within the statutory period for assessment of taxes,
17 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
18 penalty, or interest has been paid in excess of that properly due, the
19 excess amount paid within, or attributable to, such period shall be
20 credited to the taxpayer's account or shall be refunded to the
21 taxpayer, at the taxpayer's option. Except as provided in subsections
22 (2) and (3) of this section, no refund or credit shall be made for
23 taxes, penalties, or interest paid more than four years prior to the
24 beginning of the calendar year in which the refund application is made
25 or examination of records is completed.

26 (2) The execution of a written waiver under RCW 82.32.050 or
27 82.32.100 shall extend the time for making a refund or credit of any
28 taxes paid during, or attributable to, the years covered by the waiver
29 if, prior to the expiration of the waiver period, an application for
30 refund of such taxes is made by the taxpayer or the department
31 discovers a refund or credit is due.

32 (3) Notwithstanding the foregoing limitations there shall be
33 refunded or credited to taxpayers engaged in the performance of United
34 States government contracts or subcontracts the amount of any tax paid,
35 measured by that portion of the amounts received from the United
36 States, which the taxpayer is required by contract or applicable
37 federal statute to refund or credit to the United States, if claim for
38 such refund is filed by the taxpayer with the department within one

1 year of the date that the amount of the refund or credit due to the
2 United States is finally determined and filed within four years of the
3 date on which the tax was paid: PROVIDED, That no interest shall be
4 allowed on such refund.

5 (4) Any such refunds shall be made by means of vouchers approved
6 by the department and by the issuance of state warrants drawn upon and
7 payable from such funds as the legislature may provide. However,
8 taxpayers who are required to pay taxes by electronic funds transfer
9 under RCW 82.32.080 shall have any refunds paid by electronic funds
10 transfer.

11 (5) Any judgment for which a recovery is granted by any court of
12 competent jurisdiction, not appealed from, for tax, penalties, and
13 interest which were paid by the taxpayer, and costs, in a suit by any
14 taxpayer shall be paid in the same manner, as provided in subsection
15 (4) of this section, upon the filing with the department of a certified
16 copy of the order or judgment of the court.

17 (a) Interest at the rate of three percent per annum shall be
18 allowed by the department and by any court on the amount of any refund,
19 credit, or other recovery allowed to a taxpayer for taxes, penalties,
20 or interest paid by the taxpayer before January 1, 1992. This rate of
21 interest shall apply for all interest allowed through December 31,
22 1998. Interest allowed after December 31, 1998, shall be computed at
23 the rate as computed under RCW 82.32.050(2). The rate so computed
24 shall be adjusted on the first day of January of each year for use in
25 computing interest for that calendar year.

26 (b) For refunds or credits of amounts paid or other recovery
27 allowed to a taxpayer after December 31, 1991, the rate of interest
28 shall be the rate as computed for assessments under RCW 82.32.050(2)
29 less one percent. This rate of interest shall apply for all interest
30 allowed through December 31, 1998. Interest allowed after December 31,
31 1998, shall be computed at the rate as computed under RCW 82.32.050(2).
32 The rate so computed shall be adjusted on the first day of January of
33 each year for use in computing interest for that calendar year.

34 (6)(a) Interest allowed on a credit notice or refund issued after
35 July 1, 2002, shall be computed from the last day of each calendar year
36 containing the overpayment, and the last day of the final month
37 included in a credit notice or refund if not the end of a calendar
38 year.

1 (b) The department's credit notices shall include any applicable
2 interest. Interest allowed with a credit notice shall accrue up to the
3 date the taxpayer could reasonably be expected to use the credit
4 notice, as defined by the department's rules.

5 (c) If a credit notice is converted to a refund, interest shall be
6 recomputed to the date the refund is issued, but not to exceed the
7 amount of interest that would have been allowed with the credit notice.

8 NEW SECTION. Sec. 18. CAPTIONS. Captions used in this act are
9 not any part of the law.

10 NEW SECTION. Sec. 19. CODIFICATION. Sections 1 through 16, 18,
11 and 20 of this act constitute a new chapter in Title 35 RCW.

12 NEW SECTION. Sec. 20. EFFECTIVE DATES. (1) Section 13 of this
13 act takes effect January 1, 2005.

14 (2) Section 17 of this act takes effect July 1, 2002."

15 Correct the title.

EFFECT: Makes changes to the model ordinance development and implementation process. Requires the Association of Washington Cities to forward the model ordinance and any associated information to the Department of Revenue Taxpayer Information Services division and Department of Licensing Master License program. Requires the work group to have the model resolution and ordinance developed by September 1, 2003. Once the ordinance is developed, any amendment must be posted on the Municipal Research and Services Center at least 120 days before the effective date. Any amendment to the mandatory provisions must be uniformly adopted with the same effective date by all cities with business and occupation (B&O) taxes. In the development of the model ordinance, the work group is required to develop recommendations to the Legislature by December 2003 regarding potential changes to the definitions in the state B&O tax code to make tax administration easier. Cities with population of 50,000 or more that impose B&O taxes must adopt mandatory provisions of the model ordinance by January 2004, unless the adoption would incur B&O

revenue losses in excess of 10 percent, in which case the city may adopt the ordinance by January 2005. For cities of less than 50,000, the corresponding compliance dates are 2005 and 2006, respectively. Any city that fails to adopt the mandatory provisions by the compliance deadlines is prohibited from imposing a B&O tax.

With respect to nonmandatory provisions, any deviations from the model ordinance must be posted to a centralized location.

Requires the model ordinance to include deductions (instead of credits) for income that has been taxed under any city B&O manufacturing or extracting tax.

Requires the de minimus threshold for small business to be \$25,000 worth of gross receipts for a B&O tax may apply.

Ties provisions regarding reporting frequency, interest, penalties, and statutes of limitation to the state excise tax administrative code.

Requires the model ordinance to include certain specific definitions from the state B&O statutes. Provides that the incorporation of the definitions must be construed to include, as extensions of the definitions, any state-level determination, regulation, interpretation, or court opinion pertaining to these terms. If the tax classification, exemption, deduction, or credit is substantially similar to that of the state, then the provisions in a city's ordinance must be identical to the state statutory language.

Provides that the total taxable income may not exceed 100 percent of the income if it were taxed under the state B&O tax. Requires that, for the purposes of nexus and determining taxable income, federal interstate commerce provisions apply to intrastate activity. The activities of extracting, manufacturing, and processing for hire are subject to tax in the jurisdiction where the activity occurs. Retail and wholesale sales are subject to tax where the sale takes place, generally. Service activities are

subject to tax where the service is performed. If a business provides services in more than one jurisdiction, the business must apportion to each jurisdiction that portion of its income derived in that jurisdiction. Prohibits a business from apportioning any gross income to a jurisdiction in which it has no nexus. The apportionment provisions take effect in 2005.

Precludes cities from taxing intellectual property creating activity beginning 90 days after the enactment of the bill.

Requires the Department of Revenue (DOR) to continue to work with stakeholders on the impacts of the apportionment provisions of the bill. The DOR is to conduct an independent analysis. The work group must provide a report to the Governor and the Legislature by the first day of the 2004 session.