
ENGROSSED SUBSTITUTE HOUSE BILL 2658

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Finance (originally sponsored by Representatives Gombosky, Dunshee, Romero, Reardon, Berkey, Upthegrove, Edwards, Chase, Kenney, Linville, McIntire and Conway; by request of Governor Locke)

Read first time 02/11/2002. Referred to Committee on .

1 AN ACT Relating to changing requirements regarding state and local
2 tax to provide for municipal business and occupation tax uniformity;
3 amending RCW 82.32.060; adding new sections to chapter 35.21 RCW;
4 creating new sections; prescribing penalties; providing an effective
5 date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The
8 legislature finds that businesses in Washington are concerned about the
9 potential for multiple taxation that arises due to the various city
10 business and occupation taxes and are concerned about the lack of
11 uniformity among city jurisdictions. The current system has a negative
12 impact on Washington's business climate. The legislature further finds
13 that local business and occupation tax revenue provides a sizable
14 portion of city revenue that is used for essential services. The
15 legislature recognizes that local government services contribute to a
16 healthy business climate.

17 The legislature intends to provide for a more uniform system of
18 city business and occupation taxes that eliminates multiple taxation,

1 while allowing for some continued local control and flexibility to
2 cities.

3 NEW SECTION. **Sec. 2.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
4 LIMITED SCOPE. Sections 3 through 10 of this act do not apply to taxes
5 on:

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

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

9 (3) Cable television services;

10 (4) Sewer or water services;

11 (5) Drainage services;

12 (6) Solid waste services;

13 (7) Steam services; or

14 (8) Any other service that historically or traditionally has been
15 taxed as a utility business for municipal tax purposes.

16 NEW SECTION. **Sec. 3.** MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL
17 ORDINANCE. (1)(a) The association of Washington cities shall adopt a
18 model ordinance on municipal gross receipts business and occupation
19 tax. The association of Washington cities shall develop and adopt the
20 model ordinance and subsequent amendments using a process that includes
21 opportunity for input from business stakeholders and other members of
22 the public. Input shall be solicited from statewide business
23 associations and from local chambers of commerce and downtown business
24 associations in cities that levy a gross receipts business and
25 occupation tax.

26 (b) The municipal research and services center shall post the model
27 ordinance on its internet web site and shall have paper copies
28 available upon request. Additionally, a city, code city, or town that
29 imposes a business and occupation tax must make copies of its ordinance
30 available upon request, in both electronic and paper form.

31 (c) The definitions and tax classifications in the model ordinance
32 may not be amended by the association of Washington cities more
33 frequently than once every four years, however the model ordinance may
34 be amended at any time to comply with changes in state law.

35 (2) A city, code city, or town that imposes a business and
36 occupation tax must adopt the mandatory provisions of the model
37 ordinance. The following provisions are mandatory:

1 (a) A system of credits that meets the requirements of section 4 of
2 this act and a form for such use;

3 (b) A uniform, minimum small business tax threshold of at least the
4 equivalent of twenty thousand dollars in gross income. A city may
5 elect to deviate from this requirement by creating a higher threshold
6 or exemption but it shall not deviate lower than the level required in
7 this subsection. A city with a small business tax exemption or
8 threshold in excess of that provided in this subsection prior to
9 January 1, 2002, shall retain its current threshold;

10 (c) Tax reporting frequencies that meet the requirements of section
11 6 of this act;

12 (d) Penalty and interest provisions that meet the requirements of
13 sections 6 and 7 of this act;

14 (e) Claim periods that meet the requirements of section 8 of this
15 act;

16 (f) Refund provisions that meet the requirements of section 9 of
17 this act; and

18 (g) Definitions, which at a minimum, must include the definitions
19 enumerated in section 10 of this act. The definitions in chapter 82.04
20 RCW shall be used as the baseline for all definitions in the model
21 ordinance, and any deviation in the model ordinance from these
22 definitions must be described by a comment in the model ordinance.

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

26 (4) Any city that adopts an ordinance that deviates from the
27 nonmandatory provisions of the model ordinance shall make a description
28 of such differences available to the public, in written and electronic
29 form.

30 NEW SECTION. **Sec. 4.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
31 MULTIPLE TAXATION--CREDIT SYSTEM. (1) A city, code city, or town that
32 imposes a business and occupation tax measured by gross receipts shall
33 provide for a system of credits to avoid multiple taxation as follows:

34 (a) Persons who engage in business activities that are within the
35 purview of more than one classification of the tax shall be taxable
36 under each applicable classification.

37 (b) Notwithstanding anything to the contrary in this section, if
38 imposition of the tax would place an undue burden upon interstate

1 commerce or violate constitutional requirements, a taxpayer shall be
2 allowed a credit only to the extent necessary to preserve the validity
3 of the tax.

4 (c) Persons taxable under the retailing or wholesaling
5 classification with respect to selling products in a city, code city,
6 or town shall be allowed a credit against those taxes for any eligible
7 gross receipts taxes paid by the person (i) with respect to the
8 manufacturing of the products sold in the city, code city, or town, and
9 (ii) with respect to the extracting of the products, or the ingredients
10 used in the products, sold in the city, code city, or town. The amount
11 of the credit shall not exceed the tax liability arising with respect
12 to the sale of those products.

13 (d) Persons taxable under the manufacturing classification with
14 respect to manufacturing products in a city, code city, or town shall
15 be allowed a credit against that tax for any eligible gross receipts
16 tax paid by the person with respect to extracting the ingredients of
17 the products manufactured in the city, code city, or town. The amount
18 of the credit shall not exceed the tax liability arising with respect
19 to the manufacturing of those products.

20 (e) Persons taxable under the retailing or wholesaling
21 classification with respect to selling products in a city, code city,
22 or town shall be allowed a credit against those taxes for any eligible
23 gross receipts taxes paid by the person with respect to the printing,
24 or the printing and publishing, of the products sold within the city,
25 code city, or town. The amount of the credit shall not exceed the tax
26 liability arising with respect to the sale of those products.

27 (2) The model ordinance shall be drafted to address the issue of
28 multiple taxation for those tax classifications that are in addition to
29 those enumerated in subsection (1)(c) through (e) of this section. The
30 objective of any such provisions shall be to eliminate multiple
31 taxation of the same income by two or more cities.

32 NEW SECTION. **Sec. 5.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
33 REPORTING FREQUENCY. A city, code city, or town that imposes a
34 business and occupation tax measured by gross receipts shall allow
35 reporting and payment of tax on a monthly, quarterly, or annual basis.
36 The frequency for any particular person may be assigned at the
37 discretion of the city, code city, or town, except that monthly
38 reporting may be assigned only if it can be demonstrated that the

1 taxpayer is remitting excise tax to the state on a monthly basis. For
2 persons assigned a monthly frequency, payment is due within twenty-five
3 days after the end of the month in which the taxable activities occur.
4 For persons assigned a quarterly or annual frequency, payment is due on
5 or before the last day of the month next succeeding the end of the
6 period in which the taxable activities occur.

7 NEW SECTION. **Sec. 6.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
8 PENALTIES AND INTEREST. (1) A city, code city, or town that imposes a
9 business and occupation tax measured by gross receipts shall compute
10 interest charged a taxpayer on an underpaid tax or penalty in
11 accordance with RCW 82.32.050.

12 (2) A city, code city, or town that imposes a business and
13 occupation tax measured by gross receipts shall compute interest paid
14 on refunds or credits of amounts paid or other recovery allowed a
15 taxpayer in accordance with RCW 82.32.060.

16 NEW SECTION. **Sec. 7.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
17 PENALTIES. A city, code city, or town that imposes a business and
18 occupation tax measured by gross receipts shall provide for the
19 imposition of penalties as follows:

20 (1) If payment of any tax due on a return to be filed by a taxpayer
21 is not received by the city, code city, or town by the due date, a
22 penalty of five percent of the amount of the tax shall be assessed; and
23 if the tax is not received on or before the last day of the month
24 following the due date, a total penalty of ten percent of the amount of
25 the tax shall be assessed; and if the tax is not received on or before
26 the last day of the second month following the due date, a total
27 penalty of twenty percent of the amount of the tax shall be assessed.
28 A penalty so added shall not be less than five dollars.

29 (2) If payment of any tax assessed by the city, code city, or town
30 is not received by the city, code city, or town by the due date
31 specified in the notice, or any extension thereof, the city, code city,
32 or town shall add a penalty of ten percent of the amount of the
33 additional tax found due. A penalty so added shall not be less than
34 five dollars.

35 (3) If a warrant is issued by the city, code city, or town for the
36 collection of taxes, increases, and penalties, a penalty of five

1 percent of the amount of the tax, but not less than ten dollars, shall
2 be added to it.

3 (4) If the city, code city, or town finds that all or any part of
4 a deficiency resulted from the disregard of specific written
5 instructions as to reporting or tax liabilities, the city, code city,
6 or town shall add a penalty of ten percent of the amount of the
7 additional tax found due because of the failure to follow the
8 instructions. A taxpayer disregards specific written instructions when
9 the city, code city, or town has informed the taxpayer in writing of
10 the taxpayer's tax obligations and the taxpayer fails to act in
11 accordance with those instructions unless the city, code city, or town
12 has not issued final instructions because the matter is under appeal.
13 The city, code city, or town shall not assess the penalty under this
14 section upon any taxpayer who has made a good faith effort to comply
15 with the specific written instructions provided by the city, code city,
16 or town to that taxpayer. Specific written instructions may be given
17 as a part of a tax assessment, audit, determination, or closing
18 agreement, provided that such specific written instructions shall apply
19 only to the taxpayer addressed or referenced on such documents. Any
20 specific written instructions by the city, code city, or town shall be
21 clearly identified as such and shall inform the taxpayer that failure
22 to follow the instructions may subject the taxpayer to the penalties
23 imposed by this subsection.

24 (5) If the city, code city, or town finds that all or any part of
25 the deficiency resulted from an intent to evade the tax, a further
26 penalty of fifty percent of the additional tax found to be due shall be
27 added.

28 (6) The aggregate of penalties imposed under subsections (1), (2),
29 and (3) of this section shall not exceed thirty-five percent of the tax
30 due, or twenty dollars, whichever is greater. This subsection does not
31 prohibit or restrict the application of other penalties authorized by
32 law.

33 (7) The city, code city, or town may not impose both the evasion
34 penalty and the penalty for disregarding specific written instructions
35 on the same tax found to be due.

36 (8) For the purposes of this section, "return" means any document
37 a person is required by the city, code city, or town to file to satisfy
38 or establish a tax obligation that is administered by the city, code
39 city, or town, and that has a due date defined by ordinance.

1 NEW SECTION. **Sec. 8.** MUNICIPAL BUSINESS AND OCCUPATION TAX--FOUR-
2 YEAR CLAIM PERIOD. A city, code city, or town that imposes a business
3 and occupation tax measured by gross receipts may not make an
4 assessment or correction of an assessment for additional taxes,
5 penalties, or interest more than four years after the close of the tax
6 year, except (1) against a taxpayer who has not registered as required
7 by city, code city, or town, (2) upon a showing of fraud or of
8 misrepresentation of a material fact by the taxpayer, or (3) where a
9 taxpayer has executed a written waiver of such limitation.

10 NEW SECTION. **Sec. 9.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
11 REFUND PERIOD. A city, code city, or town that imposes a business and
12 occupation tax measured by gross receipts may not make a refund for
13 taxes, penalties, or interest paid more than four years before the
14 beginning of the calendar year in which the refund application is made
15 or examination of records is completed. The execution of a written
16 waiver under section 8(3) of this act shall extend the time for making
17 a refund or credit of any taxes paid during, or attributable to, the
18 years covered by the waiver if, before the expiration of the waiver
19 period, an application for refund of such taxes is made by the taxpayer
20 or the city, code city, or town discovers a refund or credit is due.

21 NEW SECTION. **Sec. 10.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
22 DEFINITIONS--TAX CLASSIFICATIONS. (1) For purposes of business and
23 occupation taxes measured by gross receipts imposed by cities, code
24 cities, or towns the following terms and phrases must be defined in the
25 model ordinance, and such definitions shall include any specific
26 requirements as noted in this subsection:

27 (a) Eligible gross receipts tax.

28 (b) Extracting.

29 (c) Manufacturing. Software development may not be defined as a
30 manufacturing activity.

31 (d) Nexus. The term "nexus" means activities conducted by a person
32 sufficient to subject that person to the taxing jurisdiction of a city,
33 code city, or town under the standards of the commerce clause of the
34 United States Constitution.

35 (e) Retailing.

36 (f) Retail sale.

1 (g) Services. The term "services" excludes retail or wholesale
2 services.

3 (h) Wholesale sale.

4 (i) Wholesaling.

5 (2) Any tax classifications in addition to those enumerated in
6 subsection (1) of this section that are included in the model ordinance
7 must be uniform among all cities.

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

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

23 (2) The execution of a written waiver under RCW 82.32.050 or
24 82.32.100 shall extend the time for making a refund or credit of any
25 taxes paid during, or attributable to, the years covered by the waiver
26 if, prior to the expiration of the waiver period, an application for
27 refund of such taxes is made by the taxpayer or the department
28 discovers a refund or credit is due.

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

1 date on which the tax was paid: PROVIDED, That no interest shall be
2 allowed on such refund.

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

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

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

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

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

37 (b) The department's credit notices shall include any applicable
38 interest. Interest allowed with a credit notice shall accrue up to the

1 date the taxpayer could reasonably be expected to use the credit
2 notice, as defined by the department's rules.

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

6 NEW SECTION. Sec. 12. FURTHER STUDY AND IMPLEMENTATION. (1) The
7 department of revenue shall continue to work with the association of
8 Washington cities and the business community on the issues of
9 apportionment and allocation of income and to report to the governor
10 and the fiscal committees of the legislature on its progress by the
11 first day of the fifty-eighth legislature. In addition, the work group
12 shall address the revenue impact to the local jurisdictions. In its
13 report, the department shall quantify the impact of various
14 alternatives to the allocation and apportionment of income and
15 alternatives for dealing with revenue impacts. The department shall
16 also examine the impacts of allocation and apportionment alternatives
17 on businesses operating in both single and multiple local
18 jurisdictions.

19 (2) By January 1, 2005, the model ordinance shall be amended solely
20 for the purpose of adopting a provision for apportionment and
21 allocation of business income.

22 NEW SECTION. Sec. 13. The department of revenue shall continue to
23 work with the association of Washington cities and the business
24 community on issues concerning the application of gross receipts taxes
25 to the creation of intellectual property and report to the governor and
26 the fiscal committees of the legislature on its progress by the first
27 day of the fifty-eighth legislature. The work group shall address
28 alternative means of taxation, including whether deductions or
29 exemptions are warranted. The work group shall also consider the
30 revenue impact to the local jurisdictions.

31 NEW SECTION. Sec. 14. MUNICIPAL BUSINESS AND OCCUPATION TAX--
32 IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. Cities imposing
33 business and occupation taxes must comply with all requirements of
34 chapter . . . , Laws of 2002 (this act) by December 31, 2003. A city
35 that has not complied with the requirements of chapter . . . , Laws of
36 2002 (this act) by December 31, 2003, may not impose a tax measured by

1 gross receipts tax that is imposed by a city on the privilege of
2 engaging in business activities.

3 NEW SECTION. **Sec. 15.** (1) A city, code city, or town shall not
4 impose a tax measured by "gross proceeds of sales," "gross income of
5 the business," or "value proceeding or accruing," as those terms are
6 used in chapter 82.04 RCW, upon any intellectual property creating
7 activity as a taxable incident, unless the city, code city, or town
8 imposed such a tax on January 1, 2002. Effective January 1, 2004, all
9 cities, code cities, and towns are prohibited from imposing a tax
10 measured by "gross proceeds of sales," "gross income of the business,"
11 or "value proceeding or accruing," as those terms are used in chapter
12 82.04 RCW, upon any intellectual property creating activity as a
13 taxable incident. Nothing in this section precludes a city, town, or
14 code city from imposing a tax upon the sale of products that includes
15 the benefits from intellectual property creating activities.

16 (2) "Intellectual property creating activity" means research,
17 development, authorship, creation, or general or specific inventive
18 activity, without regard to whether intellectual property creating
19 activity actually results in the creation of patents, trademarks, trade
20 secrets, subject matter subject to copyright, or other intellectual
21 property.

22 (3) Fee-for-service and contract manufacturing activities shall not
23 be considered primarily directed at the creation of intellectual
24 property creating activity rights, whether or not such rights are
25 incidentally created in the course of conducting such activities.

26 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in this act are
27 not any part of the law.

28 NEW SECTION. **Sec. 17.** Sections 2 through 10 and 15 of this act
29 are each added to chapter 35.21 RCW.

30 NEW SECTION. **Sec. 18.** EFFECTIVE DATES. (1) Section 11 of this
31 act takes effect July 1, 2002.

32 (2) Section 15 of this act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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