
HOUSE BILL 2812

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Orcutt, Haler, Ross, Fagan, and Johnson

Read first time 02/27/12. Referred to Committee on Ways & Means.

1 AN ACT Relating to developing a collaborative process between the
2 department of revenue and cities to increase uniformity between state
3 and local business and occupation taxes; amending RCW 35.102.020,
4 35.102.030, 35.102.040, 35.102.120, 35.102.140, and 35.102.160; adding
5 new sections to chapter 35.102 RCW; adding a new section to chapter
6 82.32 RCW; and providing an effective date.

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

8 **Sec. 1.** RCW 35.102.020 and 2007 c 6 s 1021 are each amended to
9 read as follows:

10 (~~Chapter 79, Laws of 2003~~) (1) This chapter does not apply to
11 utility taxes ((on any service)) imposed by a city. For purposes of
12 this subsection, "utility tax" means a tax that historically or
13 traditionally has been (~~taxed as a~~) imposed on utility (~~business~~)
14 businesses for municipal tax purposes(~~, such as:~~

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

17 ~~(2) A telephone business, as defined in RCW 82.16.010;~~

18 ~~(3) Cable television services;~~

19 ~~(4) Sewer or water services;~~

1 ~~(5) Drainage services;~~
2 ~~(6) Solid waste services; or~~
3 ~~(7) Steam services)).~~

4 (2) Notwithstanding subsection (1) of this section, city business
5 and occupation taxes apply to business activities that have
6 historically been taxed under a city's utility tax, such as cable
7 television service and telecommunications service, to the extent that
8 such activities are subject to state business and occupation tax.
9 Nothing in this chapter prevents a city from taxing business activities
10 under both its business and occupation tax and utility tax. However,
11 a city is free to exempt an activity from either or both of its utility
12 tax and business and occupation tax if such activity would otherwise be
13 subject to both taxes.

14 (3) No city may tax an activity under its business and occupation
15 tax if such activity is subject to the state public utility tax under
16 chapter 82.16 RCW. However, a city may tax such activities under the
17 city's utility tax.

18 **Sec. 2.** RCW 35.102.030 and 2003 c 79 s 3 are each amended to read
19 as follows:

20 The definitions in this section apply throughout this chapter (~~(79,~~
21 ~~Laws of 2003))~~, unless the context clearly requires otherwise.

22 (1) "Business" has the same meaning as given in chapter 82.04 RCW.

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

24 (3) "Business and occupation tax" or "gross receipts tax" means a
25 tax imposed on or measured by the value of products, the gross income
26 of the business, or the gross proceeds of sales, as the case may be,
27 and that is the legal liability of the business.

28 (4) "Value of products" has the same meaning as given in chapter
29 82.04 RCW.

30 (5) "Gross income of the business" has the same meaning as given in
31 chapter 82.04 RCW.

32 (6) "Gross proceeds of sales" has the same meaning as given in
33 chapter 82.04 RCW.

34 (7) "Department" means the department of revenue.

35 (8) "State business and occupation tax" means the tax imposed in
36 chapter 82.04 RCW.

1 (9) "State business and occupation tax definitions" means the
2 definitions in chapter 82.04 RCW, rules adopted by the department to
3 administer chapter 82.04 RCW, and interpretive statements or other
4 public guidance issued by the department relating to the tax imposed in
5 chapter 82.04 RCW.

6 (10) "City business and occupation tax" means a business and
7 occupation tax imposed by a city.

8 (11) "Service and other business activities classification" means
9 the classification under which an activity is taxed if it is not taxed
10 under some other classification.

11 **Sec. 3.** RCW 35.102.040 and 2010 c 271 s 706 are each amended to
12 read as follows:

13 (1)(a) (~~The cities, working through the association of Washington~~
14 ~~cities, shall form a model ordinance development committee made up of~~
15 ~~a representative sampling of cities that as of July 27, 2003, impose a~~
16 ~~business and occupation tax. This committee shall work through the~~
17 ~~association of Washington cities to adopt a model ordinance on~~
18 ~~municipal gross receipts business and occupation tax. The model~~
19 ~~ordinance and subsequent amendments shall)) After June 30, 2013, only
20 the department may amend the city business and occupation tax model
21 ordinance. Beginning July 1, 2013, the department may amend the model
22 ordinance as it deems appropriate. Amendments, other than those
23 required to conform with changes to state law, must be adopted using a
24 process that includes opportunity for substantial input from cities,
25 individually or through the association of Washington cities, business
26 stakeholders, and other members of the public. Input (~~shall~~) must be
27 solicited from statewide business associations and from local chambers
28 of commerce and downtown business associations in cities that levy a
29 business and occupation tax.~~

30 (b) The department of commerce (~~shall~~) must contract to post the
31 model ordinance on an internet web site and to make paper copies
32 available for inspection upon request. The department of revenue and
33 the department of licensing (~~shall~~) must post copies of or links to
34 the model ordinance on their internet web sites. Additionally, a city
35 that imposes a business and occupation tax must make copies of its
36 ordinance available for inspection and copying as provided in chapter
37 42.56 RCW.

1 ~~((c) The definitions and tax classifications in the model~~
2 ~~ordinance may not be amended more frequently than once every four~~
3 ~~years, however the model ordinance may be amended at any time to comply~~
4 ~~with changes in state law. Any amendment to a mandatory provision of~~
5 ~~the model ordinance must be adopted with the same effective date by all~~
6 ~~cities.))~~

7 (2) A city that imposes a business and occupation tax must adopt
8 the mandatory provisions of the model ordinance. The following
9 provisions are mandatory:

10 (a) A system of credits that meets the requirements of RCW
11 35.102.060 and a form for such use;

12 (b) A uniform, minimum small business tax threshold of at least the
13 equivalent of twenty thousand dollars in gross income annually. A city
14 may elect to deviate from this requirement by creating a higher
15 threshold or exemption, but it ~~((shall))~~ may not deviate lower than the
16 level required in this subsection~~((. If a city has a small business~~
17 ~~threshold or exemption in excess of that provided in this subsection as~~
18 ~~of January 1, 2003, and chooses to deviate below the threshold or~~
19 ~~exemption level that was in place as of January 1, 2003, the city must~~
20 ~~notify all businesses licensed to do business within the city at least~~
21 ~~one hundred twenty days prior to the potential implementation of a~~
22 ~~lower threshold or exemption amount))~~);

23 (c) Tax reporting frequencies that meet the requirements of RCW
24 35.102.070;

25 (d) Penalty and interest provisions that meet the requirements of
26 RCW 35.102.080 and 35.102.090;

27 (e) Claim periods that meet the requirements of RCW 35.102.100;

28 (f) Refund provisions that meet the requirements of RCW 35.102.110;

29 and

30 (g) Provisions consistent with RCW 82.04.480 and 82.04.520;

31 (h) Tax classifications for reporting purposes that include all of
32 the state business and occupation tax classifications, including those
33 created in RCW 82.04.230 through 82.04.298, and classifications created
34 after the effective date of this section and codified outside of those
35 statutes. The model ordinance may not include any classifications that
36 are not used for state business and occupation tax purposes; and

37 (i) Definitions, which at a minimum, must include the definitions
38 enumerated in RCW 35.102.030 and 35.102.120. ~~((The definitions in~~

1 ~~chapter 82.04 RCW shall be used as the baseline for all definitions in~~
2 ~~the model ordinance, and any deviation in the model ordinance from~~
3 ~~these definitions must be described by a comment in the model~~
4 ~~ordinance.))~~

5 (3) Except for the deduction required by RCW 35.102.160 and the
6 system of credits developed to address multiple taxation under
7 subsection (2)(a) of this section, a city may adopt its own provisions
8 for tax exemptions, tax credits, and tax deductions.

9 (4) Any city that adopts an ordinance that deviates from the
10 nonmandatory provisions of the model ordinance (~~shall~~) must make a
11 description of such differences available to the public, in written and
12 electronic form.

13 **Sec. 4.** RCW 35.102.120 and 2003 c 79 s 12 are each amended to read
14 as follows:

15 (1) In addition to the definitions in RCW 35.102.030, the following
16 terms and phrases must be defined in the model ordinance under RCW
17 35.102.040, and such definitions (~~shall~~) must include any specific
18 requirements as noted in this (~~subsection~~) section:

19 (a) Eligible gross receipts tax.

20 (b) Extracting.

21 (c) Manufacturing. (~~Software development may not be defined as a~~
22 ~~manufacturing activity.)) Except as provided in subsection (2) of this
23 section, "manufacturing" must have the same meaning as "to manufacture"
24 in RCW 82.04.120.~~

25 (d) Retailing.

26 (e) Retail sale.

27 (f) Services. The term "services" excludes retail or wholesale
28 services.

29 (g) Wholesale sale.

30 (h) Wholesaling.

31 (i) To manufacture.

32 (j) Commercial (~~and~~) or industrial use.

33 (k) Engaging in business.

34 (l) Person.

35 (2) (~~Any~~) (a) Except as otherwise provided in this section or
36 other provisions of this chapter:

1 (i) The state business and occupation tax definitions apply to the
2 model ordinance and any city's business and occupation tax in the same
3 manner as they apply for purposes of chapter 82.04 RCW; and

4 (ii) A city may not, for purposes of its business and occupation
5 tax, deviate from the state business and occupation tax definitions in
6 its ordinances, rules, other public guidance, and interpretations.

7 (b) For purposes of complying with (a) of this subsection (2),
8 references to the department in state business and occupation tax
9 definitions must be construed as references to the city or cities,
10 unless the context clearly requires otherwise.

11 (c) For purposes of complying with (a) of this subsection (2),
12 references to the state in state business and occupation tax
13 definitions must be construed as references to the city or cities,
14 unless the context clearly requires otherwise.

15 (d) Any portion of a state business and occupation tax definition
16 that relates solely to sales or use tax or otherwise does not apply to
17 the tax imposed in chapter 82.04 RCW does not apply to the model
18 ordinance or business and occupation taxes imposed by the cities.

19 (e) Except as otherwise provided in this section, the cities and
20 the model ordinance need not adopt any exclusionary language contained
21 in a state business and occupation tax definition, but only if the
22 exclusionary language has the effect of exempting a person, activity,
23 or income from the tax imposed in chapter 82.04 RCW.

24 (f) Notwithstanding (e) of this subsection (2), a city may not
25 deviate from the exclusion in RCW 82.04.062 from the definitions of
26 "wholesale sale," "sale at wholesale," "retail sale," and "sale at
27 retail." Cities imposing a business and occupation tax must compute
28 tax on the business of making sales of precious metal bullion or
29 monetized bullion consistent with RCW 82.04.062.

30 (g) Notwithstanding (e) of this subsection (2), cities may not
31 deviate from the exclusion in RCW 82.04.216 of steam, electricity, and
32 electrical energy from various terms denoting tangible items that may
33 be used, sold, or consumed.

34 (h) Language in a state business and occupation tax definition
35 governing how the defined term is to be applied for state business and
36 occupation tax purposes also applies for purposes of city business and
37 occupation taxes.

1 (3) Tax classifications in addition to those enumerated in
2 subsection (1) of this section ((that)), which are required to be
3 included in the model ordinance pursuant to RCW 35.102.040(2)(h), must
4 be uniform among all cities and with state business and occupation tax
5 classifications.

6 **Sec. 5.** RCW 35.102.140 and 2003 c 79 s 14 are each amended to read
7 as follows:

8 ~~((Cities imposing business and occupation taxes must comply with~~
9 ~~all requirements of RCW 35.102.020 through 35.102.130 by December 31,~~
10 ~~2004. A city that has not complied with the requirements of RCW~~
11 ~~35.102.020 through 35.102.130 by December 31, 2004, may not impose a~~
12 ~~tax that is imposed by a city on the privilege of engaging in business~~
13 ~~activities.)) (1) Cities imposing business and occupation taxes after~~
14 ~~December 31, 2004, must comply with ((RCW 35.102.020 through~~
15 ~~35.102.130)) this chapter.~~

16 (2) The department may issue, in consultation with the cities,
17 official written guidance on any provision of a city's business and
18 occupation tax that is required by this chapter to be administered
19 consistently with the state business and occupation tax. Any such
20 official public guidance issued by the department in consultation with
21 the cities preempts any conflicting interpretation of the city.
22 Likewise, any official public guidance issued by the department on a
23 state business and occupation tax matter preempts any conflicting
24 interpretation by the city on a matter involving a provision of the
25 city's business and occupation tax that is required by this chapter to
26 be administered consistently with the state business and occupation
27 tax. Nothing in this subsection is intended to affect the
28 interpretation or application of a city's business and occupation tax
29 for periods before the effective date of this section.

30 **Sec. 6.** RCW 35.102.160 and 2006 c 301 s 6 are each amended to read
31 as follows:

32 (1) The provision of professional employer services by a
33 professional employer organization is taxable under a city's service
34 and other business activities classification. A city that imposes its
35 business and occupation tax on professional employer services performed

1 by a professional employer organization(~~(, regardless of the tax~~
2 ~~classification applicable to such services, shall))~~ must provide a
3 deduction identical to the deduction in RCW 82.04.540(2).

4 (2) For the purposes of this section, "professional employer
5 organization" and "professional employer services" have the same
6 meanings as in RCW 82.04.540.

7 NEW SECTION. Sec. 7. A new section is added to chapter 35.102 RCW
8 to read as follows:

9 (1) Beginning on the effective date of this section, the department
10 may adopt rules and issue interpretive and policy statements in
11 accordance with the administrative procedure act, chapter 34.05 RCW, as
12 it considers necessary or useful in enhancing uniformity between state
13 and city business and occupation taxes and in carrying out the
14 department's duties under this chapter. Such rules and interpretive
15 and policy statements take precedence over any conflicting rules and
16 interpretive or policy guidance issued by the cities.

17 (2) Prior to adopting any rules or issuing any interpretative or
18 policy statements under this section, such rules, interpretative
19 statements, and policy statements must be developed in a collaborative
20 process with the affected cities that takes into consideration any
21 recommendations and concerns from the affected cities in the formation
22 of such rules, policies, or statements by providing opportunity for
23 substantial input from the affected cities individually or through the
24 association of Washington cities.

25 NEW SECTION. Sec. 8. A new section is added to chapter 35.102 RCW
26 to read as follows:

27 For purposes of city business and occupation taxes, a person may
28 meet its burden of proving that a sale is a wholesale sale rather than
29 a retail sale as provided in RCW 82.04.470. Upon request of a city,
30 the department must assist the city in determining whether a person has
31 met the requirements of RCW 82.04.470(6).

32 NEW SECTION. Sec. 9. A new section is added to chapter 82.32 RCW
33 to read as follows:

34 (1) A uniformity work group is created to review and make

1 recommendations in regards to the process through which increased
2 uniformity between state and local business and occupation taxes is
3 achieved.

4 (2) The work group must consist of the following members:

5 (a) Three members representing the cities, appointed by the
6 association of Washington cities;

7 (b) Three members representing the business community, appointed by
8 the Washington state chamber of commerce; and

9 (c) One member representing the department, to serve as a voting
10 chair, to be appointed by the department.

11 (3)(a) The work group must prepare and provide recommendations in
12 the form of implementing legislation to the appropriate fiscal
13 committees of both the house of representatives and the senate by
14 December 15, 2012.

15 (b) The recommendations prepared by the work group under this
16 section:

17 (i) Must be the result of the collaborative and cooperative efforts
18 of the work group members; and

19 (ii) Must include proposed legislation that increases uniformity
20 between the state and local business and occupation taxes, which
21 addresses the interpretation and implementation of any proposed changes
22 to applicable laws concerning apportionment and nexus in developing
23 such legislation.

24 NEW SECTION. **Sec. 10.** Except for section 9 of this act, this act
25 takes effect July 1, 2013.

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