
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4607.1/02

ATTY/TYPIST: JM:mos

BRIEF DESCRIPTION:

2 **ESHB 2658** - S COMM AMD
3 By Committee on Ways & Means

4

5 Strike everything after the enacting clause and insert the
6 following:

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,
19 while allowing for some continued local control and flexibility to
20 cities.

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

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

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

27 (3) Cable television services;

28 (4) Sewer or water services;

29 (5) Drainage services;

30 (6) Solid waste services;

31 (7) Steam services; or

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

1 NEW SECTION. **Sec. 3.** MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL

2 ORDINANCE. (1)(a) Cities that impose a business and occupation tax
3 measured by gross receipts shall work through the association of
4 Washington cities to adopt a model ordinance on municipal gross
5 receipts business and occupation tax. The model ordinance and
6 subsequent amendments shall be adopted using a process that includes
7 opportunity for input from business stakeholders and other members of
8 the public. Input shall be solicited from statewide business
9 associations and from local chambers of commerce and downtown business
10 associations in cities that levy a business and occupation tax measured
11 by gross receipts.

12 (b) The municipal research council shall contract to post the model
13 ordinance on an internet web site and to make paper copies available
14 for inspection. Additionally, a city, code city, or town that imposes
15 a business and occupation tax measured by gross receipts must make
16 copies of its ordinance available for inspection and copying as
17 provided in chapter 42.17 RCW.

18 (c) The definitions and tax classifications in the model ordinance
19 may not be amended more frequently than once every four years, however
20 the model ordinance may be amended at any time to comply with changes
21 in state law.

22 (2) A city, code city, or town that imposes a business and
23 occupation tax measured by gross receipts must adopt the mandatory
24 provisions of the model ordinance. The following provisions are
25 mandatory:

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

28 (b) A uniform, minimum small business tax threshold of at least the
29 equivalent of twenty thousand dollars in gross income annually. A city
30 may elect to deviate from this requirement by creating a higher
31 threshold or exemption but it shall not deviate lower than the level
32 required in this subsection. A city with a small business tax
33 exemption or threshold in excess of that provided in this subsection
34 prior to January 1, 2002, shall retain its current threshold;

35 (c) Tax reporting frequencies that meet the requirements of section
36 5 of this act;

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

1 (e) Claim periods that meet the requirements of section 8 of this
2 act;

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

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

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

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

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

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

24 (b) Notwithstanding anything to the contrary in this section, if
25 imposition of the tax would place an undue burden upon interstate
26 commerce or violate constitutional requirements, a taxpayer shall be
27 allowed a credit only to the extent necessary to preserve the validity
28 of the tax.

29 (c) Persons taxable under the retailing or wholesaling
30 classification with respect to selling products in a city, code city,
31 or town shall be allowed a credit against those taxes for any eligible
32 gross receipts taxes paid by the person (i) with respect to the
33 manufacturing of the products sold in the city, code city, or town, and
34 (ii) with respect to the extracting of the products, or the ingredients
35 used in the products, sold in the city, code city, or town. The amount
36 of the credit shall not exceed the tax liability arising with respect
37 to the sale of those products.

1 (d) Persons taxable under the manufacturing classification with
2 respect to manufacturing products in a city, code city, or town shall
3 be allowed a credit against that tax for any eligible gross receipts
4 tax paid by the person with respect to extracting the ingredients of
5 the products manufactured in the city, code city, or town. The amount
6 of the credit shall not exceed the tax liability arising with respect
7 to the manufacturing of those products.

8 (e) Persons taxable under the retailing or wholesaling
9 classification with respect to selling products in a city, code city,
10 or town shall be allowed a credit against those taxes for any eligible
11 gross receipts taxes paid by the person with respect to the printing,
12 or the printing and publishing, of the products sold within the city,
13 code city, or town. The amount of the credit shall not exceed the tax
14 liability arising with respect to the sale of those products.

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

20 NEW SECTION. **Sec. 5.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
21 REPORTING FREQUENCY. A city, code city, or town that imposes a
22 business and occupation tax measured by gross receipts shall allow
23 reporting and payment of tax on a monthly, quarterly, or annual basis.
24 The frequency for any particular person may be assigned at the
25 discretion of the city, code city, or town, except that monthly
26 reporting may be assigned only if it can be demonstrated that the
27 taxpayer is remitting excise tax to the state on a monthly basis. For
28 persons assigned a monthly frequency, payment is due within twenty-five
29 days after the end of the month in which the taxable activities occur.
30 For persons assigned a quarterly or annual frequency, payment is due on
31 or before the last day of the month next succeeding the end of the
32 period in which the taxable activities occur.

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

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

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

9 (1) If payment of any tax due on a return to be filed by a taxpayer
10 is not received by the city, code city, or town by the due date, a
11 penalty of five percent of the amount of the tax shall be assessed; and
12 if the tax is not received on or before the last day of the month
13 following the due date, a total penalty of ten percent of the amount of
14 the tax shall be assessed; and if the tax is not received on or before
15 the last day of the second month following the due date, a total
16 penalty of twenty percent of the amount of the tax shall be assessed.
17 A penalty so added shall not be less than five dollars.

18 (2) If payment of any tax assessed by the city, code city, or town
19 is not received by the city, code city, or town by the due date
20 specified in the notice, or any extension thereof, the city, code city,
21 or town shall add a penalty of ten percent of the amount of the
22 additional tax found due. A penalty so added shall not be less than
23 five dollars.

24 (3) If a warrant is issued by the city, code city, or town for the
25 collection of taxes, increases, and penalties, a penalty of five
26 percent of the amount of the tax, but not less than ten dollars, shall
27 be added to it.

28 (4) If the city, code city, or town finds that all or any part of
29 a deficiency resulted from the disregard of specific written
30 instructions as to reporting or tax liabilities, the city, code city,
31 or town shall add a penalty of ten percent of the amount of the
32 additional tax found due because of the failure to follow the
33 instructions. A taxpayer disregards specific written instructions when
34 the city, code city, or town has informed the taxpayer in writing of
35 the taxpayer's tax obligations and the taxpayer fails to act in
36 accordance with those instructions unless the city, code city, or town
37 has not issued final instructions because the matter is under appeal.
38 The city, code city, or town shall not assess the penalty under this

1 section upon any taxpayer who has made a good faith effort to comply
2 with the specific written instructions provided by the city, code city,
3 or town to that taxpayer. Specific written instructions may be given
4 as a part of a tax assessment, audit, determination, or closing
5 agreement, provided that such specific written instructions shall apply
6 only to the taxpayer addressed or referenced on such documents. Any
7 specific written instructions by the city, code city, or town shall be
8 clearly identified as such and shall inform the taxpayer that failure
9 to follow the instructions may subject the taxpayer to the penalties
10 imposed by this subsection.

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

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

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

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

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

36 NEW SECTION. **Sec. 9.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
37 REFUND PERIOD. A city, code city, or town that imposes a business and

1 occupation tax measured by gross receipts may not make a refund for
2 taxes, penalties, or interest paid more than four years before the
3 beginning of the calendar year in which the refund application is made
4 or examination of records is completed. The execution of a written
5 waiver under section 8(3) of this act shall extend the time for making
6 a refund or credit of any taxes paid during, or attributable to, the
7 years covered by the waiver if, before the expiration of the waiver
8 period, an application for refund of such taxes is made by the taxpayer
9 or the city, code city, or town discovers a refund or credit is due.

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

16 (a) Eligible gross receipts tax.

17 (b) Extracting.

18 (c) Manufacturing. Software development may not be defined as a
19 manufacturing activity.

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

24 (e) Retailing.

25 (f) Retail sale.

26 (g) Services. The term "services" excludes retail or wholesale
27 services.

28 (h) Wholesale sale.

29 (i) Wholesaling.

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

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

35 (1) If, upon receipt of an application by a taxpayer for a refund
36 or for an audit of the taxpayer's records, or upon an examination of
37 the returns or records of any taxpayer, it is determined by the

1 department that within the statutory period for assessment of taxes,
2 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
3 penalty, or interest has been paid in excess of that properly due, the
4 excess amount paid within, or attributable to, such period shall be
5 credited to the taxpayer's account or shall be refunded to the
6 taxpayer, at the taxpayer's option. Except as provided in subsections
7 (2) and (3) of this section, no refund or credit shall be made for
8 taxes, penalties, or interest paid more than four years prior to the
9 beginning of the calendar year in which the refund application is made
10 or examination of records is completed.

11 (2) The execution of a written waiver under RCW 82.32.050 or
12 82.32.100 shall extend the time for making a refund or credit of any
13 taxes paid during, or attributable to, the years covered by the waiver
14 if, prior to the expiration of the waiver period, an application for
15 refund of such taxes is made by the taxpayer or the department
16 discovers a refund or credit is due.

17 (3) Notwithstanding the foregoing limitations there shall be
18 refunded or credited to taxpayers engaged in the performance of United
19 States government contracts or subcontracts the amount of any tax paid,
20 measured by that portion of the amounts received from the United
21 States, which the taxpayer is required by contract or applicable
22 federal statute to refund or credit to the United States, if claim for
23 such refund is filed by the taxpayer with the department within one
24 year of the date that the amount of the refund or credit due to the
25 United States is finally determined and filed within four years of the
26 date on which the tax was paid: PROVIDED, That no interest shall be
27 allowed on such refund.

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

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

1 (a) Interest at the rate of three percent per annum shall be
2 allowed by the department and by any court on the amount of any refund,
3 credit, or other recovery allowed to a taxpayer for taxes, penalties,
4 or interest paid by the taxpayer before January 1, 1992. This rate of
5 interest shall apply for all interest allowed through December 31,
6 1998. Interest allowed after December 31, 1998, shall be computed at
7 the rate as computed under RCW 82.32.050(2). The rate so computed
8 shall be adjusted on the first day of January of each year for use in
9 computing interest for that calendar year.

10 (b) For refunds or credits of amounts paid or other recovery
11 allowed to a taxpayer after December 31, 1991, the rate of interest
12 shall be the rate as computed for assessments under RCW 82.32.050(2)
13 less one percent. This rate of interest shall apply for all interest
14 allowed through December 31, 1998. Interest allowed after December 31,
15 1998, shall be computed at the rate as computed under RCW 82.32.050(2).
16 The rate so computed shall be adjusted on the first day of January of
17 each year for use in computing interest for that calendar year.

18 (6)(a) Interest allowed on a credit notice or refund issued after
19 July 1, 2002, shall be computed from the last day of each calendar year
20 containing the overpayment, and the last day of the final month
21 included in a credit notice or refund if not the end of a calendar
22 year.

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

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

30 NEW SECTION. Sec. 12. FURTHER STUDY AND IMPLEMENTATION. (1) The
31 department of revenue shall continue to work with the association of
32 Washington cities and the business community on the issues of
33 apportionment and allocation of income and to report to the governor
34 and the fiscal committees of the legislature on its progress by the
35 first day of the fifty-eighth legislature. In addition, the work group
36 shall address the revenue impact to the local jurisdictions. In its
37 report, the department shall quantify the impact of various
38 alternatives to the allocation and apportionment of income and

1 alternatives for dealing with revenue impacts. The department shall
2 also examine the impacts of allocation and apportionment alternatives
3 on businesses operating in both single and multiple local
4 jurisdictions.

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

8 NEW SECTION. **Sec. 13.** The department of revenue shall continue to
9 work with the association of Washington cities and the business
10 community on issues concerning the application of gross receipts taxes
11 to the creation of intellectual property and report to the governor and
12 the fiscal committees of the legislature on its progress by the first
13 day of the fifty-eighth legislature. The work group shall address
14 alternative means of taxation, including whether deductions or
15 exemptions are warranted. The work group shall also consider the
16 revenue impact to the local jurisdictions.

17 NEW SECTION. **Sec. 14.** MUNICIPAL BUSINESS AND OCCUPATION TAX--
18 IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. Cities imposing
19 business and occupation taxes must comply with all requirements of
20 sections 2 through 10 of this act by December 31, 2003. A city that
21 has not complied with the requirements of sections 2 through 10 of this
22 act by December 31, 2003, may not impose a tax measured by gross
23 receipts tax that is imposed by a city on the privilege of engaging in
24 business activities.

25 NEW SECTION. **Sec. 15.** CAPTIONS. Captions used in this act are
26 not any part of the law.

27 NEW SECTION. **Sec. 16.** Sections 2 through 10 and 14 of this act
28 are each added to chapter 35.21 RCW.

29 NEW SECTION. **Sec. 17.** EFFECTIVE DATE. Section 11 of this act
30 takes effect July 1, 2002."

1 **ESHB 2658** - S COMM AMD
2 By Committee on Ways & Means

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4 On page 1, line 2 of the title, after "uniformity;" strike the
5 remainder of the title and insert "amending RCW 82.32.060; adding new
6 sections to chapter 35.21 RCW; creating new sections; prescribing
7 penalties; and providing an effective date."

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