

SENATE BILL REPORT

SB 5688

As Reported by Senate Committee On:
Trade & Economic Development, February 21, 2013
Ways & Means, March 1, 2013

Title: An act relating to simplifying definitions and classifications concerning state and local tax systems.

Brief Description: Simplifying definitions and classifications concerning state and local tax systems.

Sponsors: Senators Braun, Carrell, Dammeier, Rivers, Sheldon and Hobbs.

Brief History:

Committee Activity: Trade & Economic Development: 2/12/13, 2/21/13 [DPS-WM, DNP].
Ways & Means: 3/01/13 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5688 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Braun, Chair; Smith, Vice Chair; Baumgartner and Holmquist Newbry.

Minority Report: Do not pass.
Signed by Senator Schlicher.

Staff: Jack Brummel (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5688 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Bailey, Becker, Braun, Dammeier, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Nelson, Assistant Ranking Member; Conway, Fraser, Hasegawa, Kohl-Welles, Murray and Ranker.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser.

Staff: Dean Carlson (786-7305)

Background: State Business and Occupation (B&O) Tax. Washington's major business tax is the B&O tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Revenues are deposited in the state general fund. The main rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.8 percent for professional and personal services, and activities not classified elsewhere until June 30, 2013, at which time the 0.3 percent rate surcharge expires and the B&O rate for service and other category is 1.5 percent thereafter. In addition to these general B&O tax rates and classifications, there are reduced rates and separate classifications for these preferential rates. In total, there are over 50 different state B&O tax classifications.

Local B&O Taxes. Thirty-nine cities impose their own B&O taxes, with variations in rates, exemptions, deductions, and thresholds. In 2003, the Legislature directed the cities to form a committee and work with the Association of Washington Cities (AWC) to adopt a model ordinance on municipal B&O taxes. That model ordinance may be amended through a process allowing for business and public input. Amendments to definitions and tax classifications in the model ordinance are allowed no more than once every four years, however amendments to comply with state law are allowed at any time. Cities imposing a B&O tax must provide for:

- a system of credits that prevent multiple taxation of the same income;
- a gross receipts threshold for small businesses;
- tax reporting frequency requirements;
- provisions for penalties and interest;
- claim and refund provisions; and
- certain terms with definitions from the state B&O statutes or based on comparable definitions within the state B&O statutes.

Other than mandatory deductions for professional employer organizations and mandatory credits addressing multiple taxation, cities may adopt their own provisions for tax exemptions, credits, deductions, and other preferences, as well as tax classifications and tax rates. Cities that deviate from non-mandatory provisions of the model ordinance must make a description of the deviations available to the public.

Summary of Bill (Recommended Second Substitute): Part I. Beginning January 1, 2014, only the Department of Revenue (DOR) may amend the model ordinance. The four-year limitation on amendments is removed. Cities must have B&O tax ordinances that provide for assignment, agent, and courtesy dealer sales consistent with state law, as well as, tax classifications and definitions consistent with state law, with limited exception. B&O tax classifications must be uniform among all cities and with state B&O tax classifications. Descriptions of cities' deviations from non-mandatory provisions of the model ordinance must be made available to DOR for publication. Any DOR guidance, rule, or statement on

B&O taxes takes precedence over a city's conflicting interpretation. Professional employer services are taxable by cities under the service and other business activities classification. The burden of proving that a sale is a wholesale rather than a retail sale may be met by complying with state law and DOR must provide assistance in electronic verification if a city so requests.

Part II. Some state B&O tax classifications are consolidated to reduce complexity for taxpayers, decrease disputes between taxpayers and DOR, and move toward uniformity between state and local B&O tax systems. The following changes are made to the state B&O tax code:

- consolidates the extracting and extracting for hire classifications;
- consolidates the public road construction and government contracting classifications into the wholesaling classifications; and
- consolidates several manufacturing and wholesaling classifications.

Technical corrections are made.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): The classifications that were consolidated into the service and other activities category were removed. Technical corrections were made.

EFFECT OF CHANGES MADE BY TRADE & ECONOMIC DEVELOPMENT COMMITTEE (Recommended First Substitute): Deductions are provided to avoid unintended tax increases on several classes of taxpayers.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains two effective dates. Please refer to section 301 of the bill.

Staff Summary of Public Testimony on Original Bill (Trade & Economic Development):

PRO: Businesses are frustrated with trying to comply with the revenue collection process. There should be a single platform. This should be revenue neutral. The cities are allowed their uniqueness. This is not like last year's bill. The tax simplification report indicates businesses want one place to go. Being able to pay taxes in one spot is desirable. The state should be streamlining. The current system causes difficulty for business accountants. This bill is an outstanding attempt; nothing here prohibits flexibility for cities.

CON: Cities are trying to achieve streamlining goals at the local level. Cities only have between three and eight B&O classifications while the state has five. This would give DOR unfettered power to change local tax codes. The cities will lose millions on this. The cities have a better plan that would cover 90 percent of local B&O taxes collected. This will add expenses to the state. The cities should be allowed to proceed with their efforts at uniformity. This bill will not create a simpler system for the 400 businesses in Westport. The state exempts seafood processing, but if seafood processing tax is not allowed in Westport, 45

percent of its revenue will be lost. Local businesses will lose the ability to work with local officials when issues come up.

OTHER: Businesses want to make tax definitions consistent and less complex. They want to reduce the number of classifications. The state B&O tax classifications are a morass. This bill would help small businesses

Persons Testifying (Trade & Economic Development): PRO: Amber Carter, Assn. of WA Business; Chris Foster, Foster Furniture; Gary Smith, Independent Business Assn.

CON: Sally Clark, Seattle City Council President; Marty Campbell, Deputy Mayor City of Tacoma; Conrad Lee, Mayor City of Bellevue; Paul Roberts, Everett City Council; Victoria Lincoln, AWC; Randy Lewis, City of Westport.

OTHER: Erin Shannon, WA Policy Center.

Staff Summary of Public Testimony (Ways & Means): PRO: This will put more accountability into the model ordinance rule-making process. We think DOR would do a better job as businesses are used to going to them. Most cities do not have audit staff so this will allow more revenue to come into cities. This bill maintains rates and thresholds. This will make things more consistent. This is a multi-year process. Our accountants state that one of the biggest issues they face is the amount of the rates and forms from the different cities. It does not solve the problem for the cities to have a finite number of them using a portal, when all the other cities are doing their own thing.

CON: Westport has four classifications and three rates. How is it easier to use the state's 50-plus classifications. This will be much more complex for our businesses. This is about maintaining local control of our taxes. B&O taxes are individualized to the individual cities. We strongly support the city single portal projects. The portal provides simplification for the B&O cities. The model ordinance only has eight classifications. We would like you to let us continue on our collaboration. You are going to hear that this is about ease of paying the B&O tax. However, this would be more costly. We would like to maintain our eight classifications and to be able to tailor them to our economies. The tax code is being completely taken away from the cities and given to the states.

Persons Testifying (Ways & Means): PRO: Amber Carter, Assn. of WA Business; Gary Smith, Independent Business Assn.

CON: Randy Lewis, City of Westport; Jamie Carnell, City of Seattle; Briahna Taylor, City of Tacoma.