

# HOUSE BILL REPORT

## HB 2655

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### As Reported by House Committee On: Finance

**Title:** An act relating to the excise taxation of crowdfunding donations.

**Brief Description:** Concerning the excise taxation of crowdfunding donations.

**Sponsors:** Representatives Stokesbary, Vick, MacEwen, Zeiger and Magendanz.

#### **Brief History:**

##### **Committee Activity:**

Finance: 1/29/16, 2/5/16 [DPS].

#### **Brief Summary of Substitute Bill**

- Exempts qualifying crowdfunding donations from business and occupation and sales and use taxes.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Lytton, Chair; Robinson, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Frame, Manweller, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Pollet and Reykdal.

**Staff:** Sarah McLaughlin Emmans (786-7288).

#### **Background:**

##### Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service when used in this state. The state, most cities, and all

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counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location. A seller who also manufactures the product being sold owes use tax on the product.

#### Business and Occupation Tax.

Washington's major business tax is the business and occupation (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. The tax is imposed on the gross receipts from all business activities conducted within the state. Revenues are deposited in the State General Fund. There are several rate categories, and a business may be subject to more than one B&O tax rate, depending on the types of activities conducted. Retailing activities are subject to a rate of 0.471 percent, and service and other activities are subject to a rate of 1.5 percent.

#### Crowdfunding.

Crowdfunding is defined by the World Bank as "the practice of raising funds from multiple individuals via the World Wide Web." There are four general categories of crowdfunding:

1. Equity-based: Investors receive a stake in the company.
2. Lending-based: Investors are repaid for their investment over a period of time.
3. Donation-based: Contributions are for a charitable cause. A reward may sometimes be given in exchange for the contribution.
4. Reward-based: Investors receive a tangible item or service in return for their funds.

In general, the fundraiser – an individual or a business – sets a financial goal for the project, and no money is collected unless the goal is met. Most crowdfunding occurs via a host, or an online platform that may charge fees from a fundraiser, sometimes in the form of a percentage of funding raised.

#### Taxation of Crowdfunding in Washington State.

While there is no specific statute regarding the taxation of crowdfunding, the Department of Revenue (DOR) has published guidance that outlines its interpretation of taxation as it relates to crowdfunding activities. Fundraisers must report all funds raised in the reporting period in which the financial goal is completed. Fundraisers must register with the DOR if they are required to collect sales tax for a project, or if their annual gross income exceeds \$12,000. Fundraisers must collect sales tax on all donations if a retail service (e.g., meal), digital product (e.g., software), or tangible personal property (e.g., book) is provided as a reward in exchange for a donation. For B&O tax purposes, fundraisers must report retailing receipts if taxable rewards are given in exchange for donations, while receipts for non-retail services are considered a service and other classification. In a given fundraising transaction, any funding received that exceeds the amount solicited on the crowdfunding platform is considered a donation and therefore not subject to tax.

#### Tax Preference Performance Statement.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5882, which requires all new tax preference legislation to include a tax preference performance statement. New tax preference means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objective of the tax preference,

and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference.

Engrossed Substitute Senate Bill 5882 also establishes an automatic 10-year expiration date for new tax preference if an alternative expiration date is not provided in the new tax preference legislation.

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**Summary of Substitute Bill:**

All qualifying donations made through a crowdfunding website are exempt from the B&O tax and sales tax. Rewards received in exchange for a qualifying donation are exempt from use tax.

"Qualifying donation" is defined as any donation made through a crowdfunding website, including those made in exchange for a reward of a retail service, digital product, digital code or tangible personal property, as long as two conditions are met:

1. the value of the reward does not exceed 80 percent of the value of the contribution; and
2. the reward is not provided or sold in the donee's (fundraiser's) regular course of business.

The bill is exempted from a tax preference performance review and from the automatic 10-year expiration.

The act applies to receipts, sales, and uses made on or after July 1, 2016.

**Substitute Bill Compared to Original Bill:**

Digital products and digital codes are added to the definition of "reward."

A use tax exemption is added for a donee, for the use of a reward offered in exchange for a qualifying donation.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect July 1, 2016.

**Staff Summary of Public Testimony:**

(In support) The bill deals with with scenarios where fundraisers have products or businesses in development and need funding to pay the bills while building toward a sustainable business model. The users are usually small businesses starting up or expanding. The DOR

treats all donations made in exchange for any kind of reward as a taxable transaction. Although this is not a significant chunk of money to the state it is a meaningful amount for small businesses. Since the economy is seeing a growing use of crowdfunding as a tool, the state needs to encourage it. Crowdfunding is a way to raise capital without incurring debt. This is the only form of raising capital subject to both the B&O and sales tax.

(Opposed) None.

**Persons Testifying:** Representative Stokesbary, prime sponsor; and Jennifer Muhm, BuddingStem.

**Persons Signed In To Testify But Not Testifying:** None.