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**SUBSTITUTE SENATE BILL 6136**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Housing (originally sponsored by Senators Kuderer, Frame, Hasegawa, Lovelett, Nobles, Saldaña, and Wellman)

AN ACT Relating to a business and occupation tax on the privilege of providing property for rent; adding a new section to chapter 82.04 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature acknowledges Washington's tax structure is unique in that, in the absence of a personal or corporate net income tax, the state relies heavily on a combination of sales taxes, property taxes, and the business and occupation tax. The legislature further acknowledges that Washington has one of the most regressive tax systems in the country, in which the poorest individuals spend significantly more in state and local taxes as a percentage of household income than the state's wealthiest residents. The regressive nature of Washington's tax structure exacerbates housing affordability, with more than 1,000,000 residents spending over 30 percent of their income on housing. The legislature agrees with the state supreme court's opinion in *Quinn v. State*, No. 100769-8, where the court recognized that this burden falls disproportionately on black, indigenous, and people of color, who are overrepresented in low-income brackets.

The legislature recognizes that much of the state's current tax structure can be traced to the 1930s during a time of rapid socioeconomic change and subsequent tax reform in which the state began to move away from property tax as its primary source of revenue. The legislature acknowledges that, despite voters overwhelmingly approving a graduated income tax in 1932, the court invalidated the tax in *Culliton v. Chase*, 174 Wash. 363, 289 P.2d 81 (1933), on the grounds that it violated the constitutional requirement that all taxes be uniform on the same class of property. However, to address a shortfall in state revenue, on the same day the court decided *Culliton*, it also upheld the business and occupation tax as a constitutional excise tax on the privilege of engaging in business, and not a property tax, in *State ex rel. Stiner v. Yelle*, 25 P.2d 91 (1993).

The legislature acknowledges that courts have long upheld taxes levied on the privilege of doing business in this state. The legislature recognizes that, since the 1930s, courts continue to apply the principles set forth in *Culliton* and other similar cases when distinguishing excise taxes from property taxes. The legislature further recognizes that a decision from the 1960s invalidating a state business and occupation tax on rental income is out of step with the court's otherwise consistent analysis. In that case, *Apartment Operators Association of Seattle, Inc. v. Schumacher*, 56 Wash.2d 46, 351 P.2d 124 (1960), the court in a brief per curiam opinion held that a rental tax is an unconstitutional, nonuniform tax on property under *Culliton*. The legislature acknowledges that in subsequent cases, including the recent opinion upholding the state capital gains tax in *Quinn*, the court has acknowledged that *Apartment Operators* is flawed. In *Quinn*, the court reiterated the well-established rule that a tax measured by income remains an excise so long as it relates to the exercise of a privilege granted by the state or rights "in and to property," such as the power to lease or sell property.

The legislature finds that, considering the aforementioned precedent, the privilege of providing property for rent is subject to the business and occupation tax. The legislature also acknowledges the pressing need for affordable housing and intends to dedicate all revenue from the tax on rental property to the home security fund account for support of the eviction prevention rental assistance program.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Any person engaging within this state in the business of renting or leasing of real property is taxable under RCW 82.04.290(2).

(2) The measure of tax under this section is the gross proceeds from all rent.

(3) This section does not apply to:

(a) A mere license to use real property, such as the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as provided under RCW 82.04.050, for a period of less than one month;

(b) A municipal corporation as defined in RCW 39.69.010;

(c) A political subdivision as defined in RCW 29A.92.010; or

(d) Taxable rent subject to the leasehold excise tax under RCW 82.29A.030.

(4) All receipts from the tax imposed under this section must be deposited into the home security fund account under RCW 43.185C.060 for support of the eviction prevention rental assistance program in RCW 43.185C.185.

(5) For the purposes of this section, the following definitions apply:

(a) "Rent" means a recurring and periodic payment for the use and occupancy of real property, including charges for utilities, and any nonrefundable fees retained by a landlord, such as those for late payments, property damage, application processing, and any other nonrefundable charge. "Rent" does not include refundable fees or charges, including any portion of a security, damage, pet, or other deposit returned to the tenant.

(b) "Renting or leasing" means the granting of a right to use residential or commercial real property for a continuous period of one month or more.

(c) "Taxable rent" has the same meaning as in RCW 82.29A.020.

NEW SECTION. **Sec.**  This act takes effect January 1, 2025.

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