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**SENATE BILL 6136**

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

**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 and supporting access to affordable rental property by exempting from tax landlords participating in a rent stabilization program; adding new sections to chapter 82.04 RCW; adding a new section to chapter 43.330 RCW; creating new sections; providing an effective date; and providing expiration dates.

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 and stable housing, the importance of retaining small businesses, and the advantages of leveraging tax policies to support a sustainable rental market that protects residents from excessive rent increases, particularly those in lower-income brackets. In furtherance of this acknowledgment and in considering the impact of rent-related taxes, the legislature intends to provide a tax exemption to landlords that comply with the rent increase restrictions of this act.

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

(1)(a) Beginning January 1, 2025, any person engaging within this state in the business of renting or leasing of residential real property is taxable under RCW 82.04.290(2).

(b) Beginning January 1, 2027, any person engaging within this state in the business of renting or leasing of commercial 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 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.

(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.

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

(1)(a) Beginning January 1, 2025, and until January 1, 2035, in computing the tax imposed under section 2(1)(a) of this act there may be deducted from the measure of tax all rent derived from the renting or leasing of real property for which a person has obtained a certification from the department of commerce under section 4 of this act.

(b) Beginning January 1, 2027, and until January 1, 2037, in computing the tax imposed under section 2(1)(b) of this act there may be deducted from the measure of tax all rent derived from the renting or leasing of commercial real property for which a person has obtained a certification from the department of commerce under section 4 of this act.

(2) To claim a deduction under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department.

(3) Any person claiming a deduction under this section must provide to the department documentation sufficient to verify certification under section 4 of this act.

(4) A deduction under this section may not reduce the amount of tax due to less than zero.

(5)(a) Any person claiming the deduction under this section must adhere to the terms of certification under section 4 of this act for the full calendar year for which the deduction is claimed.

(b) If at any time the department finds that a person has not complied with the terms of certification under section 4 of this act, the department must disallow the deduction provided in this section for all periods within that calendar year.

(6) The department must publish guidance to assist landlords in determining the amount of tax due under this chapter. The guidance must include information about the certification program under section 4 of this act.

(7) The definitions in section 2 of this act apply to this section.

(8) This section expires January 1, 2037.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The department must develop and administer a residential rent stabilization program. The department must adopt rules in accordance with chapter 34.05 RCW to establish a process to review and certify landlords choosing to comply with the rent increase restrictions under subsection (2) of this section.

(2) Except as authorized by the exemption under subsection (3) of this section, the certification under this section must only be granted to landlords who do not increase the amount charged for rent:

(a) During the first 12 months after the tenancy begins; and

(b) During any 12-month period, in an amount greater than five percent.

(3) During the first 12 months after the qualified sale of a manufactured/mobile home community to an eligible organization as defined in RCW 59.20.030 whose mission aligns with the long-term preservation and affordability of the manufactured/mobile home community, the eligible organization may increase the annual rent and fees combined for the manufactured/mobile home community in an amount greater than allowed under subsection (2) of this section as needed to cover the cost of purchasing the manufactured/mobile home community if the increase is approved by vote or agreement with the majority of the manufactured/mobile home owners in the manufactured/mobile home community.

(4) The department must develop a certification application. The application for certification must include, at a minimum, the following information:

(a) The name, address, and tax identification number of the applicant;

(b) Documentation, including the address or parcel number, of all real property in this state in which the applicant rents or leases to a tenant;

(c) The rent charged for each rental property, including all fees and nonrefundable charges; and

(d) Any other information deemed necessary by the department to determine if the applicant meets the certification requirements of this section.

(5) The department must make information about the rent stabilization program available on its website. The information must include information about the tax deduction under section 3 of this act.

(6) The following definitions apply throughout this section.

(a) "Manufactured/mobile home" has the same meaning as in RCW 59.20.030.

(b) "Rent" has the same meaning as in section 2 of this act.

(7) This section expires January 1, 2037.

NEW SECTION. **Sec.**  (1) The department of commerce, in consultation with the office of the attorney general, the department of revenue, and relevant stakeholder groups, must develop recommendations for a rent stabilization program for commercial rental property. The recommendations must be comparable to the rent restrictions and other relevant provisions under section 4 of this act. The department of commerce must submit a report with the recommendations to the appropriate committees of the legislature by December 1, 2025.

(2) This section expires December 1, 2026.

NEW SECTION. **Sec.**  (1) This section is the tax preference performance statement for the tax preference contained in section 3, chapter . . ., Laws of 2024 (section 3 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to create and maintain a stable and affordable rental housing market in this state by providing a tax incentive to landlords that limit increases in rent.

(4) If a review finds that average increases to the amount charged for rent in Washington is consistent with the rent increase requirements under section 4 of this act, then the legislature intends to extend the expiration date of this tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may access any data collected by the department of revenue, department of commerce, or any other data collected by the state.

NEW SECTION. **Sec.**  Sections 2 and 3 of this act take effect January 1, 2025.

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