
HOUSE BILL 1747

State of Washington 58th Legislature 2003 Regular Session

By Representatives McIntire, Santos, Conway, McDermott and Kenney

Read first time 02/06/2003. Referred to Committee on Finance.

1 AN ACT Relating to uniform local business license taxes on software
2 businesses; adding a new section to chapter 35.21 RCW; creating a new
3 section; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that certainty and
6 uniformity of tax treatment of the software industry is important to
7 the industry and consumers. The intent of this act is to make the tax
8 treatment of software clear and certain for local governments,
9 developers, programmers, and consumers.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
11 to read as follows:

12 (1) Any city that imposes a license fee or tax for the privilege of
13 doing business measured by rates against gross receipts shall impose
14 the tax upon persons engaged in the business of creating, producing, or
15 selling or licensing software only in accordance with this section.

16 (2) The following definitions apply.

17 (a) "Canned software" means software that is created for sale to
18 more than one person.

1 (b) "Custom software" means software created for a single person.

2 (c) "Customization of canned software" means any alteration,
3 modification, or development of applications using or incorporating
4 canned computer software for a specific person. "Customization of
5 canned software" includes individualized configuration of software to
6 work with other software and computer hardware, but does not include
7 routine installation. Customization of canned software does not change
8 the underlying character or taxability of the original canned software.

9 (d) "Master copies" of software means copies of software from which
10 a software developer, author, inventor, publisher, licensor,
11 sublicensor, or distributor makes copies for sale or license.

12 (e) "Retained rights" means any and all rights, including
13 intellectual property rights such as those rights arising from
14 copyrights, patents, and trade secret laws, that are owned or are held
15 under contract or license by a software developer, author, inventor,
16 publisher, licensor, sublicensor, or distributor.

17 (f) "Software" means any information, program, or routine, or any
18 set of one or more programs, routines, or collections of information
19 used, or intended for use, to convey information that causes one or
20 more computers or pieces of computer-related peripheral equipment, or
21 any combination thereof, to perform a task or set of tasks. "Software"
22 includes only those copies of information, programs, or routines
23 intended for use by an end user and specifically excludes retained
24 rights in software and master copies of software. "Software" includes
25 the associated documentation that describes the code and its use,
26 operation, and maintenance and typically is delivered with the code to
27 the consumer. All software is classified as either canned or custom.

28 (3) The sale of canned software, other than a sale to a person who
29 presents a resale certificate under RCW 82.04.470, regardless of the
30 method of delivery to the end user, shall be taxed as a retail sale.
31 Any sale of canned software which is not a sale at retail shall be
32 taxed as a wholesale sale. The licensing of canned software to an end
33 user shall be taxed as a sale, not as a royalty or otherwise as
34 compensation for the use of intangible property. The sale of custom
35 software, or the customization of canned software, shall be taxed as a
36 service, not a sale.

37 (4) The production of canned software in a city shall be taxed as
38 manufacturing.

1 (5) The creation and distribution of custom software is taxable as
2 a service activity. Duplication of the software for the same person,
3 or by the same person for its own use, does not change the character of
4 the software. The customization of canned software is taxable as a
5 service activity.

6 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2004.

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