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SENATE BILL 5900

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State of Washington

58th Legislature

2003 Regular Session

By Senators Horn, Reardon, Rossi, T. Sheldon, Mulliken, Esser and Schmidt; by request of Governor Locke

Read first time 02/19/2003. Referred to Committee on Ways & Means.

1 AN ACT Relating to changing requirements regarding state and local  
2 tax to provide for municipal business and occupation tax uniformity and  
3 fairness; adding new sections to chapter 35.21 RCW; creating new  
4 sections; prescribing penalties; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND INTENT. The  
7 legislature finds that businesses in Washington are concerned about the  
8 potential for multiple taxation that arises due to the various city  
9 business and occupation taxes and are concerned about the lack of  
10 uniformity among city jurisdictions. The current system has a negative  
11 impact on Washington's business climate. The legislature further finds  
12 that local business and occupation tax revenue provides a sizable  
13 portion of city revenue that is used for essential services. The  
14 legislature recognizes that local government services contribute to a  
15 healthy business climate.

16 The legislature intends to provide for a more uniform system of  
17 city business and occupation taxes that eliminates multiple taxation,  
18 while allowing for some continued local control and flexibility to  
19 cities.

1        NEW SECTION.    **Sec. 2.**    MUNICIPAL BUSINESS AND OCCUPATION TAX--  
2 LIMITED SCOPE.    This act does not apply to taxes on any service that  
3 historically or traditionally has been taxed as a utility business for  
4 municipal tax purposes, such as:

- 5        (1) A light and power business or a natural gas distribution  
6 business, as defined in RCW 82.16.010;
- 7        (2) A telephone business, as defined in RCW 82.04.065;
- 8        (3) Cable television services;
- 9        (4) Sewer or water services;
- 10       (5) Drainage services;
- 11       (6) Solid waste services; or
- 12       (7) Steam services.

13       NEW SECTION.    **Sec. 3.**    MUNICIPAL GROSS RECEIPTS TAX--DEFINITIONS.  
14 The definitions in this section apply throughout this act, unless the  
15 context clearly requires otherwise.

- 16       (1) "Business" has the same meaning as given in chapter 82.04 RCW.
- 17       (2) "City" means a city, town, or code city.
- 18       (3) "Business and occupation tax" or "gross receipts tax" means a  
19 tax imposed on or measured by the value of products, the gross income  
20 of the business, or the gross proceeds of sales, as the case may be,  
21 and that is the legal liability of the business.
- 22       (4) "Value of products" has the same meaning as given in chapter  
23 82.04 RCW.
- 24       (5) "Gross income of the business" has the same meaning as given in  
25 chapter 82.04 RCW.
- 26       (6) "Gross proceeds of sales" has the same meaning as given in  
27 chapter 82.04 RCW.

28       NEW SECTION.    **Sec. 4.**    MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL  
29 ORDINANCE.    (1)(a) The cities, working through the association of  
30 Washington cities, shall form a model ordinance development committee  
31 made up of a representative sampling of cities that as of the effective  
32 date of this section impose a business and occupation tax.    This  
33 committee shall work through the association of Washington cities to  
34 adopt a model ordinance on municipal gross receipts business and  
35 occupation tax.    The model ordinance and subsequent amendments shall be  
36 adopted using a process that includes opportunity for substantial input

1 from business stakeholders and other members of the public. Input  
2 shall be solicited from statewide business associations and from local  
3 chambers of commerce and downtown business associations in cities that  
4 levy a business and occupation tax.

5 (b) The municipal research council shall contract to post the model  
6 ordinance on an internet web site and to make paper copies available  
7 for inspection upon request. The department of revenue and the  
8 department of licensing shall post copies of or links to the model  
9 ordinance on their internet web sites. Additionally, a city that  
10 imposes a business and occupation tax must make copies of its ordinance  
11 available for inspection and copying as provided in chapter 42.17 RCW.

12 (c) The definitions and tax classifications in the model ordinance  
13 may not be amended more frequently than once every four years, however  
14 the model ordinance may be amended at any time to comply with changes  
15 in state law. Any amendment to a mandatory provision of the model  
16 ordinance must be adopted with the same effective date by all cities.

17 (2) A city that imposes a business and occupation tax must adopt  
18 the mandatory provisions of the model ordinance. The following  
19 provisions are mandatory:

20 (a) A system of credits that meets the requirements of section 6 of  
21 this act and a form for such use;

22 (b) A uniform, minimum small business tax threshold of at least the  
23 equivalent of twenty thousand dollars in gross income annually. A city  
24 may elect to deviate from this requirement by creating a higher  
25 threshold or exemption but it shall not deviate lower than the level  
26 required in this subsection. A city with a small business tax  
27 exemption or threshold in excess of that provided in this subsection  
28 prior to January 1, 2003, shall retain its current threshold;

29 (c) Tax reporting frequencies that meet the requirements of section  
30 7 of this act;

31 (d) Penalty and interest provisions that meet the requirements of  
32 sections 8 and 9 of this act;

33 (e) Claim periods that meet the requirements of section 10 of this  
34 act;

35 (f) Refund provisions that meet the requirements of section 11 of  
36 this act; and

37 (g) Definitions, which at a minimum, must include the definitions  
38 enumerated in sections 3 and 12 of this act. The definitions in

1 chapter 82.04 RCW shall be used as the baseline for all definitions in  
2 the model ordinance, and any deviation in the model ordinance from  
3 these definitions must be described by a comment in the model  
4 ordinance.

5 (3) Except for the system of credits developed to address multiple  
6 taxation under subsection (2)(a) of this section, a city may adopt its  
7 own provisions for tax exemptions, tax credits, and tax deductions.

8 (4) Any city that adopts an ordinance that deviates from the  
9 nonmandatory provisions of the model ordinance shall make a description  
10 of such differences available to the public, in written and electronic  
11 form.

12 NEW SECTION. **Sec. 5.** MUNICIPAL GROSS RECEIPTS TAX--NEXUS. A city  
13 may not impose a business and occupation tax on a person unless that  
14 person has nexus with the city. For the purposes of this section, the  
15 term "nexus" means business activities conducted by a person sufficient  
16 to subject that person to the taxing jurisdiction of a city under the  
17 standards established for interstate commerce under the commerce clause  
18 of the United States Constitution.

19 NEW SECTION. **Sec. 6.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
20 MULTIPLE TAXATION--CREDIT SYSTEM. (1) A city that imposes a business  
21 and occupation tax shall provide for a system of credits to avoid  
22 multiple taxation as follows:

23 (a) Persons who engage in business activities that are within the  
24 purview of more than one classification of the tax shall be taxable  
25 under each applicable classification.

26 (b) Notwithstanding anything to the contrary in this section, if  
27 imposition of the tax would place an undue burden upon interstate  
28 commerce or violate constitutional requirements, a taxpayer shall be  
29 allowed a credit only to the extent necessary to preserve the validity  
30 of the tax.

31 (c) Persons taxable under the retailing or wholesaling  
32 classification with respect to selling products in a city shall be  
33 allowed a credit against those taxes for any eligible gross receipts  
34 taxes paid by the person (i) with respect to the manufacturing of the  
35 products sold in the city, and (ii) with respect to the extracting of

1 the products, or the ingredients used in the products, sold in the  
2 city. The amount of the credit shall not exceed the tax liability  
3 arising with respect to the sale of those products.

4 (d) Persons taxable under the manufacturing classification with  
5 respect to manufacturing products in a city shall be allowed a credit  
6 against that tax for any eligible gross receipts tax paid by the person  
7 with respect to extracting the ingredients of the products manufactured  
8 in the city and with respect to manufacturing the products other than  
9 in the city. The amount of the credit shall not exceed the tax  
10 liability arising with respect to the manufacturing of those products.

11 (e) Persons taxable under the retailing or wholesaling  
12 classification with respect to selling products in a city shall be  
13 allowed a credit against those taxes for any eligible gross receipts  
14 taxes paid by the person with respect to the printing, or the printing  
15 and publishing, of the products sold within the city. The amount of  
16 the credit shall not exceed the tax liability arising with respect to  
17 the sale of those products.

18 (2) The model ordinance shall be drafted to address the issue of  
19 multiple taxation for those tax classifications that are in addition to  
20 those enumerated in subsection (1)(c) through (e) of this section. The  
21 objective of any such provisions shall be to eliminate multiple  
22 taxation of the same income by two or more cities.

23 NEW SECTION. **Sec. 7.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
24 REPORTING FREQUENCY. A city that imposes a business and occupation tax  
25 shall allow reporting and payment of tax on a monthly, quarterly, or  
26 annual basis. The frequency for any particular person may be assigned  
27 at the discretion of the city, except that monthly reporting may be  
28 assigned only if it can be demonstrated that the taxpayer is remitting  
29 excise tax to the state on a monthly basis. For persons assigned a  
30 monthly frequency, payment is due within the same time period provided  
31 for monthly taxpayers under RCW 82.32.045. For persons assigned a  
32 quarterly or annual frequency, payment is due within the same time  
33 period as provided for quarterly or annual frequency under RCW  
34 82.32.045.

35 NEW SECTION. **Sec. 8.** MUNICIPAL BUSINESS AND OCCUPATION TAX--

1 PENALTIES AND INTEREST. (1) A city that imposes a business and  
2 occupation tax shall compute interest charged a taxpayer on an  
3 underpaid tax or penalty in accordance with RCW 82.32.050.

4 (2) A city that imposes a business and occupation tax shall compute  
5 interest paid on refunds or credits of amounts paid or other recovery  
6 allowed a taxpayer in accordance with RCW 82.32.060.

7 NEW SECTION. **Sec. 9.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
8 PENALTIES. A city that imposes a business and occupation tax shall  
9 provide for the imposition of penalties in accordance with chapter  
10 82.32 RCW.

11 NEW SECTION. **Sec. 10.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
12 CLAIM PERIOD. The provisions relating to the time period allowed for  
13 an assessment or correction of an assessment for additional taxes,  
14 penalties, or interest shall be in accordance with chapter 82.32 RCW.

15 NEW SECTION. **Sec. 11.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
16 REFUND PERIOD. The provisions relating to the time period allowed for  
17 a refund of taxes paid shall be in accordance with chapter 82.32 RCW.

18 NEW SECTION. **Sec. 12.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
19 DEFINITIONS--TAX CLASSIFICATIONS. (1) In addition to the definitions  
20 in section 3 of this act, the following terms and phrases must be  
21 defined in the model ordinance under section 4 of this act, and such  
22 definitions shall include any specific requirements as noted in this  
23 subsection:

- 24 (a) Eligible gross receipts tax.
- 25 (b) Extracting.
- 26 (c) Manufacturing. Software development may not be defined as a  
27 manufacturing activity.
- 28 (d) Retailing.
- 29 (e) Retail sale.
- 30 (f) Services. The term "services" excludes retail or wholesale  
31 services.
- 32 (g) Wholesale sale.
- 33 (h) Wholesaling.
- 34 (i) To manufacture.

1 (j) Commercial and industrial use.

2 (k) Engaging in business.

3 (l) Person.

4 (2) Any tax classifications in addition to those enumerated in  
5 subsection (1) of this section that are included in the model ordinance  
6 must be uniform among all cities.

7 NEW SECTION. **Sec. 13.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
8 ALLOCATION AND APPORTIONMENT OF INCOME. A city that imposes a business  
9 and occupation tax shall provide for the allocation and apportionment  
10 of a person's gross income, other than persons subject to the  
11 provisions of chapter 82.14A RCW, as follows:

12 (1) Gross income derived from all activities other than those taxed  
13 as service or royalties shall be allocated to the location where the  
14 activity takes place.

15 (a) In the case of sales of tangible personal property, the  
16 activity takes place where delivery to the buyer occurs.

17 (b) If a business activity allocated under this subsection (1)  
18 takes place in more than one city and all cities impose a gross  
19 receipts tax, a credit shall be allowed as provided in section 6 of  
20 this act; if not all of the cities impose a gross receipts tax, the  
21 affected cities shall allow another credit or allocation system as they  
22 and the taxpayer agree.

23 (2) Gross income derived as royalties from the granting of  
24 intangible rights shall be allocated to the commercial domicile of the  
25 taxpayer.

26 (3) Gross income derived from activities taxed as services shall be  
27 apportioned to a city by multiplying apportionable income by a  
28 fraction, the numerator of which is the payroll factor plus the  
29 service-income factor and the denominator of which is two.

30 (a) The payroll factor is a fraction, the numerator of which is the  
31 total amount paid in the city during the tax period by the taxpayer for  
32 compensation and the denominator of which is the total compensation  
33 paid everywhere during the tax period. Compensation is paid in the  
34 city if:

35 (i) The individual is primarily assigned within the city;

36 (ii) The individual is not primarily assigned to any place of

1 business for the tax period and the employee performs fifty percent or  
2 more of his or her service for the tax period in the city; or

3 (iii) The individual is not primarily assigned to any place of  
4 business for the tax period, the individual does not perform fifty  
5 percent or more of his or her service in any city and the employee  
6 resides in the city.

7 (b) The service income factor is a fraction, the numerator of which  
8 is the total service income of the taxpayer in the city during the tax  
9 period, and the denominator of which is the total service income of the  
10 taxpayer everywhere during the tax period. Service income is in the  
11 city if:

12 (i) The customer location is in the city; or

13 (ii) The income-producing activity is performed in more than one  
14 location and a greater proportion of the service-income-producing  
15 activity is performed in the city than in any other location, based on  
16 costs of performance, and the taxpayer is not taxable at the customer  
17 location; or

18 (iii) The service-income-producing activity is performed within the  
19 city, and the taxpayer is not taxable in the customer location.

20 (c) If the allocation and apportionment provisions of this section  
21 do not fairly represent the extent of the taxpayer's business activity  
22 in the city or cities in which the taxpayer does business, the taxpayer  
23 may petition for or the tax administrators may jointly require, in  
24 respect to all or any part of the taxpayer's business activity, that  
25 one of the following methods be used jointly by the cities to allocate  
26 or apportion gross income, if reasonable:

27 (i) Separate accounting;

28 (ii) The use of a single factor;

29 (iii) The inclusion of one or more additional factors that will  
30 fairly represent the taxpayer's business activity in the city; or

31 (iv) The employment of any other method to effectuate an equitable  
32 allocation and apportionment of the taxpayer's income.

33 (4) The definitions in this subsection apply throughout this  
34 section.

35 (a) "Apportionable income" means the gross income of the business  
36 taxable under the service classifications of a city's gross receipts  
37 tax, including income received from activities outside the city if the



1 income would be taxable under the service classification if received  
2 from activities within the city, less any exemptions or deductions  
3 available.

4 (b) "Compensation" means wages, salaries, commissions, and any  
5 other form of remuneration paid to individuals for personal services  
6 that are or would be included in the individual's gross income under  
7 the federal internal revenue code.

8 (c) "Individual" means any individual who, under the usual common  
9 law rules applicable in determining the employer-employee relationship,  
10 has the status of an employee of that taxpayer.

11 (d) "Customer location" means the city or unincorporated area of a  
12 county where the majority of the contacts between the taxpayer and the  
13 customer take place.

14 (e) "Primarily assigned" means the business location of the  
15 taxpayer where the individual performs his or her duties.

16 (f) "Service-taxable income" or "service income" means gross income  
17 of the business subject to tax under either the service or royalty  
18 classification.

19 (g) "Tax period" means the calendar year during which tax liability  
20 is accrued. If taxes are reported by a taxpayer on a basis more  
21 frequent than once per year, taxpayers shall calculate the factors for  
22 the previous calendar year for reporting in the current calendar year  
23 and correct the reporting for the previous year when the factors are  
24 calculated for that year, but not later than the end of the first  
25 quarter of the following year.

26 (h) "Taxable in the customer location" means either that a taxpayer  
27 is subject to a gross receipts tax in the customer location for the  
28 privilege of doing business, or that the government where the customer  
29 is located has the authority to subject the taxpayer to gross receipts  
30 tax regardless of whether, in fact, the government does so.

31 NEW SECTION. **Sec. 14.** MUNICIPAL BUSINESS AND OCCUPATION TAX--  
32 IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. Cities imposing  
33 business and occupation taxes must comply with all requirements of  
34 sections 2 through 12 of this act by December 31, 2004. A city that  
35 has not complied with the requirements of sections 2 through 12 of this  
36 act by December 31, 2004, may not impose a tax that is imposed by a  
37 city on the privilege of engaging in business activities.

1        NEW SECTION.    **Sec. 15.**    BASELINE STUDY.    The department of revenue  
2 shall report by December 31, 2004, to the governor and the fiscal  
3 committees of the legislature on the definitions used in the proposed  
4 model ordinance.    The report shall detail the status of the definitions  
5 using the baseline standards under section 4(2)(g) of this act, noting  
6 any deviations from the definitions in chapter 82.04 RCW and the reason  
7 for such deviation.    The report shall also estimate the fiscal impact  
8 on taxpayers of any deviations from the definitions under chapter 82.04  
9 RCW.

10        NEW SECTION.    **Sec. 16.**    CAPTIONS.    Captions used in this act are  
11 not any part of the law.

12        NEW SECTION.    **Sec. 17.**    Sections 2 through 14 of this act are each  
13 added to chapter 35.21 RCW.

14        NEW SECTION.    **Sec. 18.**    EFFECTIVE DATE.    Section 13 of this act  
15 takes effect January 1, 2008.

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