

HOUSE BILL REPORT

SHB 2590

As Passed House:

February 11, 2006

Title: An act relating to the excise taxation of nonprofit organizations organized and operated for zoological purposes.

Brief Description: Exempting nonprofit organizations organized for zoological purposes from certain excise taxes.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Dickerson and McIntire).

Brief History:

Committee Activity:

Finance: 1/17/06, 1/24/06 [DPS].

Floor Activity:

Passed House: 2/11/06, 94-2.

Brief Summary of Substitute Bill

- Extends the deductions under the business and occupation (B&O) tax and exemptions under the sales and use tax for artistic and cultural organizations to certain nonprofit zoological societies.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives McIntire, Chair; Hunter, Vice Chair; Orcutt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Ahern, Condotta, Conway, Ericks, Hasegawa, Santos and Shabro.

Staff: Mark Matteson (786-7145).

Background:

B&O 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. A business may have more than one B&O tax rate, depending on the

types of activities conducted. The tax rate for most types of businesses that provide services is 1.5 percent.

The B&O tax does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. In addition, nonprofit organizations are also generally subject to the tax.

Retail Sales and Use Taxes. The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax at a rate up to a maximum of 3.1 percent. Currently, local rates levied range from 0.5 percent to 2.4 percent. Sales tax is paid by the purchaser and collected by the seller.

The use tax is imposed on taxable items and services used in the state that were not subject to the retail sales tax, and includes purchases made in other states and purchases from sellers who do not collect Washington sales tax. The state and local rates are the same as those imposed under the retail sales tax. Use tax is paid directly to the Department of Revenue (Department).

All items or services sold or acquired at retail are subject to the retail sales and use taxes unless specifically exempted otherwise. Tax is due at the time of sale or first use within the state.

Artistic and Cultural Organizations. One category of nonprofit organizations that has been granted deductions from B&O tax for certain types of income, and an exemption from retail sales and use taxes for certain purchases, is artistic and cultural organizations. This category is defined to include only those organizations that are organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances, or cultural or art education programs. Examples of such organizations are performance art companies and art museums. Such organizations are allowed to deduct income derived from government grants, tuition for educational programs, items manufactured for artistic or cultural purposes by the organization, and business activities (such as admissions fees). These organizations are also exempt from paying sales and use taxes on objects of art, items with cultural value, objects used to create art, and items used to display art or to present cultural performances.

To qualify for the B&O tax deductions and sales and use tax exemptions, an artistic or cultural organization must be organized as a nonprofit corporation and must be managed by a board of at least eight persons, none of whom may be a paid employee of the organization. In addition, the corporation must satisfy other requirements pertaining to compensation to officers and members, licensing, use of moneys for which a deduction is sought, and accountability.

Zoological Societies. Zoological societies (zoos) are facilities provided to promote, preserve, and support wildlife. Zoos may provide a number of services to customers, including animal exhibitions, educational and outreach programs, and special events, among others. Zoos may receive funds from admissions, governments, fundraisers, or other means.

Some zoos are owned and/or managed by nonprofit corporations. The nonprofit may own and operate the zoo directly, such as in the case of Cougar Mountain Zoo in Issaquah, or may contract with the city that owns the zoo to manage it, such as in the case of Woodland Park Zoo in Seattle.

In July 2005, the state Board of Tax Appeals (Board) upheld a ruling by the Department that the Woodland Park Zoological Society, the organization that manages Woodland Park Zoo, is not an artistic or cultural organization for the purposes of state tax law and the respective deductions and exemptions under the B&O and sales and use taxes. In its ruling, the Board distinguished between organizations whose primary focus is human art or culture and those whose focus is animals.

Review of tax preferences. In 1982, the Legislature enacted legislation that initiated a sunset review of tax preferences, which includes tax exemptions, exclusions, deductions, credits, deferrals, and preferential rates. The legislation directed the Joint Select Committee on Sunset Review to prepare a bill that would terminate all tax preferences over a period of four years. If this termination bill had been enacted, the Legislative Budget Committee (LBC) would have been required to review each preference before its termination date and report back to the Legislature. The termination and review bill was not enacted, and the LBC did not conduct tax preference reviews. The LBC is now known as the Joint Legislative Audit and Review Committee.

Summary of Substitute Bill:

The deductions under the B&O tax and the exemptions under the sales and use taxes that are allowed to artistic or cultural nonprofit corporations are extended to nonprofit corporations that are organized for the exclusive purpose of providing zoological exhibitions, presentations, or performances, or zoological education programs, at a zoological facility that is publicly owned.

The Department must review the new exemptions and report its findings and recommendations to the Legislature by December 1, 2016. The Department shall provide a recommendation on whether the exemptions should be continued as is, modified, or discontinued.

Appropriation: None.

Fiscal Note: Requested on January 16, 2006.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The Woodland Park Zoo is a cultural treasure. It has so many visitors that it is well known throughout the country. The law concerning artistic and cultural organizations

has been in place for 20 years and has benefited all sorts of organizations. While we thought it was applicable to Woodland Park Zoo, a strict interpretation indicates otherwise. Nonetheless, we believe that it provides the sort of benefit that is as important as that provided by artistic and cultural organizations.

Woodland Park Zoo is engaged in broad cultural and educational initiatives, in addition to caring for and exhibiting animals. We have more than one million visitors each year. We have a broad range of educational programs, artistic displays, and award-winning exhibitries. Under any but the most narrow interpretation would Woodland Park Zoo be considered an artistic and cultural institution. This legislation will help the Woodland Park Zoo make the most of its resources.

Testimony Against: None.

Persons Testifying: Representative Dickerson, prime sponsor; and Martin Flynn and Deborah Jensen, Woodland Park Zoo Society.

Persons Signed In To Testify But Not Testifying: None.