
SENATE BILL 6004

State of Washington 59th Legislature 2005 Regular Session

By Senators Franklin, Kline and Kohl-Welles

Read first time 02/18/2005. Referred to Committee on Ways & Means.

1 AN ACT Relating to the taxation of intangible personal property;
2 amending RCW 82.03.130 and 82.03.140; adding a new chapter to Title 82
3 RCW; creating new sections; and prescribing penalties.

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

5 **PART I. FINDING--PURPOSE--DEFINITIONS**

6 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND DECLARATION OF
7 PURPOSE. The legislature finds that intangible wealth, such as stocks
8 and bonds, represents approximately one-fourth to one-third of all
9 property wealth with a taxable situs in this state. The legislature
10 further finds that the present system of taxing all tangible property
11 with limited exceptions and of exempting all intangible property from
12 taxation is regressive, in that such a system inures to the benefit of
13 the more affluent residents and businesses in Washington who have
14 sufficient wealth to make substantial investments in or own substantial
15 intangible property.

16 The legislature further finds that while the transfer, sale, or use
17 of tangible personal property is subject to various excise taxes in the

1 state of Washington, as a general rule, no comparable taxes are imposed
2 on intangible property.

3 The legislature further finds that persons of limited wealth with
4 limited income may own intangible property and for this reason
5 relatively small holdings of intangible property should be exempt from
6 any tax on the ownership of intangible property.

7 The legislature declares the purpose of this chapter is to subject
8 intangible personal property to a tax on the privilege of ownership of
9 the property, subject to the exemptions contained in this chapter for
10 the limited intangible holdings of individuals, in order to provide a
11 more equitable and fair system of taxation of both tangible and
12 intangible wealth in this state.

13 NEW SECTION. **Sec. 2.** DEFINITIONS. When used in this chapter:

14 (1) "Company" or "association," when used in reference to a
15 corporation, includes successors and assigns of the company or
16 association.

17 (2) "Department" means the department of revenue.

18 (3) "Financial organization" means any bank, trust company, savings
19 bank, industrial bank, land bank, safe deposit company, private banker,
20 savings and loan association, building and loan association, credit
21 union, currency exchange, cooperative bank, small loan company, sales
22 finance company, or investment company, and any other corporation at
23 least ninety percent of whose assets consist of intangible property and
24 at least ninety percent of whose gross income consists of dividends or
25 interest or other charges resulting from the use of money or credit.

26 (4) "Fiscal year" means an accounting period of twelve months
27 ending on the last day of any month other than December.

28 (5) "Income" means (a) interest received upon intangible personal
29 property; (b) dividends and other distributions, whether in the form of
30 cash or property, to the extent that they represent the yield of
31 intangible personal property; and (c) all other earnings or yield,
32 including capital gains, of intangible personal property regardless of
33 the name by which designated. For the purpose of computing the tax
34 imposed under this chapter, the gross income, including taxes, charges,
35 and other deductions which may be made therefrom, shall be the basis
36 upon which the tax shall be measured.

1 (6) "Intangible personal property" or "intangible property" means:
2 Moneys on hand or on deposit or in transit, shares of stock, and other
3 units of interest, in corporations, joint stock companies, and other
4 associations conducted for profit, not, however, including the interest
5 of a partner under a partnership agreement; securities such as bonds,
6 certificates of indebtedness, debentures, notes receivable; land
7 contracts receivable, real estate and chattel mortgages receivable,
8 conditional sales contracts receivable, and other obligations for the
9 payment of money; whether such intangible personal property is secured
10 or unsecured.

11 (7) "Nonresident" means a person who is not a resident.

12 (8) "Owner" means any person who: (a) Has both the entire legal
13 and equitable interest in intangible personal property or both a legal
14 and equitable estate therein which entitles him or her to the present
15 enjoyment thereof; (b) holds intangible personal property as an
16 administrator, executor, personal representative, receiver, trustee in
17 bankruptcy, or assignee for the benefit of creditors; or (c) is the
18 beneficiary of an inter vivos or testamentary trust to the extent that
19 the trust embraces intangible personal property. If there is more than
20 one beneficiary, the person who is entitled to the present enjoyment of
21 the trust property is the "owner." If more than one beneficiary is
22 entitled to the present enjoyment of the trust property, all the
23 beneficiaries so entitled are the "owners" according to their
24 respective interests. If there is more than one beneficiary, only some
25 of which are entitled to the present enjoyment of the trust property,
26 those beneficiaries who are so entitled are the "owners." If a trustee
27 of a trust may accumulate the income thereof, the trustee is the
28 "owner" to the extent that the income is so accumulated. A beneficiary
29 domiciled in this state shall be taxable irrespective of the state or
30 other jurisdiction of the creation or administration of the trust.

31 (9) "Partnership" means a syndicate, group, pool, joint venture, or
32 other unincorporated organization, through or by means of which any
33 business, financial operation, or venture is carried on, and which is
34 not a trust, an estate, or a corporation; and the term "partner" means
35 a member in the syndicate, group, pool, joint venture, or organization.

36 (10) "Person" has the same meaning as provided in RCW 82.04.030,
37 except does not include any municipal corporation, the state of

1 Washington or any political subdivision of the state of Washington, or
2 the United States or any instrumentality of the United States.

3 (11) "Resident" or "domicile" means:

4 (a) An individual who is domiciled in this state unless the person
5 maintains no permanent place of abode in this state and does maintain
6 a permanent place of abode elsewhere and spends in the aggregate not
7 more than thirty days of the taxable year in this state; or who is not
8 domiciled in this state but maintains a permanent place of abode in
9 this state and spends in the aggregate more than one hundred eighty-
10 three days of the taxable year in this state;

11 (b) The estate of a decedent who at the person's death was
12 domiciled in this state;

13 (c) A trust created by a will of a decedent who at the person's
14 death was domiciled in this state;

15 (d) An irrevocable trust, the grantor of which was domiciled in
16 this state at the time the trust became irrevocable. For purpose of
17 this subsection (11)(d), a trust shall be considered irrevocable to the
18 extent that the grantor is not treated as the owner thereof under
19 sections 671 through 678 of the internal revenue code; and

20 (e) When referring to a corporation means its commercial domicile
21 (the principal place from which it conducts its business).

22 (12) The "situs" of intangible personal property is the domicile of
23 the owner of the property, except that any intangible personal
24 property, not otherwise exempt under the laws of this state, owned by
25 a person having a domicile outside of this state but owned or used in
26 connection with the conduct of the person's business in Washington, or
27 placed in the hands of a manager or agent in Washington to the extent
28 that the intangible personal property is invested in a course of
29 repeated transactions in obligations of persons residing in Washington
30 or secured by property located in Washington shall have a situs at the
31 place of business, or where the manager or agent resides, as the case
32 may be, within this state; however, in the case of intangible personal
33 property owned or used in connection with the owner's business both
34 within and outside the state of Washington, all such property shall
35 have a "situs" in this state to the extent of the percentage of the
36 whole of the property as determined by the allocation formula set forth
37 in this chapter.

1 (13) "State" when applied to a jurisdiction other than this state
2 means any state of the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, and any territory or possession of the
4 United States.

5 (14) "Tax" means all taxes, interest, or penalties levied under
6 this chapter.

7 (15) "Tax year" or "taxable year" means (a) the calendar year, or
8 the taxpayer's fiscal year when permission is obtained from the
9 department to use the taxpayer's fiscal year as the tax period in lieu
10 thereof, or (b) in the case of a return made for a fractional part of
11 a year under this chapter, the period for which the return is made.

12 (16) "Taxpayer" means any person subject to the tax imposed by this
13 chapter.

14 **PART II. IMPOSITION PROVISIONS**

15 NEW SECTION. **Sec. 3.** IMPOSITION PROVISIONS--RATES--DEPOSIT OF TAX
16 REVENUE. (1) For calendar year 2006 and any fiscal year ending after
17 the effective date of this act, and for each year thereafter or portion
18 thereof, there is levied upon each resident or nonresident owner of
19 intangible personal property having a situs within this state an annual
20 tax on the privilege of ownership of each item of such property.
21 Except as otherwise provided, the tax on intangible personal property
22 is one percent of the income derived from the intangible personal
23 property.

24 (2) Where, due to death or change of domicile during the tax year,
25 the intangible personal property owned by a taxpayer is subject to the
26 tax levied in this section for only a part of a tax year, the tax shall
27 be computed in the same manner as though the property had been subject
28 to tax for the entire tax year and shall then be reduced
29 proportionately. However, where an executor, administrator, or
30 personal representative appointed and qualified in Washington succeeds
31 to the ownership of intangible personal property previously subject to
32 tax under this chapter to the decedent for whose estate the executor or
33 administrator is so appointed and qualified, for the purpose of the
34 computation of the tax the combined ownership of the decedent and the
35 executor or administrator during the tax year shall be regarded as the

1 continuous ownership of a single owner, and the executor,
2 administrator, or personal representative shall be considered to have
3 been the owner during the entire period thereof.

4 (3) The revenue collected under this section shall be deposited in
5 the general fund to be used for institutions of higher education, as
6 defined in RCW 28B.10.016.

7 **PART III. APPORTIONMENT PROVISIONS**

8 NEW SECTION. **Sec. 4.** APPORTIONMENT PROVISIONS. (1) The
9 percentage of intangible property subject to tax under this chapter
10 which is owned or used in connection with the conduct of an owner's
11 business both within and without this state shall be apportioned as
12 provided in this chapter.

13 (2) For persons other than financial organizations and those
14 engaged in transportation services, intangible property shall be
15 apportioned to this state by multiplying the income by a fraction, the
16 numerator of which is the sum of the property factor, payroll factor,
17 and sales factor, and the denominator of which is three.

18 NEW SECTION. **Sec. 5.** PROPERTY FACTOR. The property factor is a
19 fraction, the numerator of which is the average value of the taxpayer's
20 real and tangible personal property owned and used or rented and used
21 in this state during the tax period and the denominator of which is the
22 average value of all the taxpayer's real and tangible personal property
23 owned and used or rented and used in all states in which the taxpayer
24 is taxable for the tax year.

25 NEW SECTION. **Sec. 6.** VALUATION OF PROPERTY--RENTED PROPERTY.
26 Property owned by the taxpayer is valued at its original cost.
27 Property rented by the taxpayer is valued at eight times the net annual
28 rental rate. Net annual rental rate is the annual rental rate paid by
29 the taxpayer less any annual rental rate received by the taxpayer from
30 subrentals.

31 NEW SECTION. **Sec. 7.** AVERAGE VALUE OF PROPERTY. The average
32 value of property shall be determined by averaging the values at the
33 beginning and ending of the reporting period but the department may

1 require the averaging of monthly values during the tax period if
2 reasonably required to reflect properly the average value of the
3 taxpayer's property.

4 NEW SECTION. **Sec. 8.** PAYROLL FACTOR. The payroll factor is a
5 fraction, the numerator of which is the total amount paid in the state
6 during the tax period by the taxpayer for compensation, and the
7 denominator of which is the total compensation paid in all states in
8 which the taxpayer is taxable for the tax year.

9 NEW SECTION. **Sec. 9.** COMPENSATION PAID WITHIN STATE.
10 Compensation is paid in this state if:

11 (1) The individual's service is performed entirely within this
12 state;

13 (2) The individual's service is performed both within and without
14 this state, but the service performed without this state is incidental
15 to the individual's service within the state; or

16 (3) Some of the service is performed in this state and (a) the base
17 of operations, or if there is no base of operations, the place from
18 which the service is directed or controlled is in this state, or (b)
19 the base of operations or the place from which the service is directed
20 or controlled is not in any state in which some part of the service is
21 performed, but the individual's residence is in this state.

22 NEW SECTION. **Sec. 10.** SALES FACTOR. The sales factor is a
23 fraction, the numerator of which is the total sales of the taxpayer in
24 this state during the tax year and the denominator of which is the
25 total sales of the taxpayer in all states in which the taxpayer is
26 taxable for the tax year.

27 As used in this section, "sales" means all gross receipts from:

28 (1) Sales of tangible personal property;

29 (2) Rentals of tangible personal property;

30 (3) Sales of real property held for sale in the ordinary course of
31 a taxpayer's trade or business;

32 (4) Rentals of real property; and

33 (5) Sales of services.

1 NEW SECTION. **Sec. 11.** SALES OF TANGIBLE PERSONALTY, REAL
2 PROPERTY, RENTALS AND SERVICES WITHIN STATE. Sales of tangible
3 personal property are in this state if:

4 (1) The property is delivered or shipped to a purchaser, other than
5 the United States government, within this state regardless of the
6 freight on board point or other conditions of the sale; or

7 (2) The property is shipped from an office, store, warehouse,
8 factory, or other place of storage in this state and (a) the purchaser
9 is the United States government or (b) the taxpayer is not taxable in
10 the state of the purchaser.

11 (3) The sale is made from an office located in this state to a
12 purchaser, including the United States government, in another state in
13 which the taxpayer is not taxable and the property is shipped to the
14 purchaser from a state in which the taxpayer is not taxable.

15 (4) Sales and rentals of real property are in this state if the
16 property is located in this state.

17 (5) Rentals of tangible personal property are in this state to the
18 extent that the property is used in this state.

19 (6) Sales of services are in this state to the extent that the
20 service is performed in this state.

21 NEW SECTION. **Sec. 12.** INTERSTATE TRANSPORTATION SERVICES. For
22 taxpayers engaged in transportation services rendered partly within
23 this state and partly within another state, intangible personal
24 property shall be apportioned under sections 13 through 16 of this act.

25 NEW SECTION. **Sec. 13.** INTERSTATE TRANSPORTATION OTHER THAN OIL OR
26 GAS BY PIPELINE--ALLOCATION. In the case of a taxpayer other than one
27 engaged in the transportation service of oil or gas by pipeline or an
28 air carrier, intangible personal property attributable to Washington is
29 that portion of the taxpayer's entire intangible personal property that
30 the revenue miles of the taxpayer in Washington bear to the total
31 revenue miles of the taxpayer. A revenue mile means the transportation
32 for a consideration of one net ton in weight or one passenger the
33 distance of one mile. The intangible personal property attributable to
34 Washington in the case of a taxpayer engaged in the transportation both
35 of property and of individuals shall be that portion of the entire
36 intangible personal property of the taxpayer which is equal to the

1 average of the passenger miles and ton mile fractions, separately
2 computed and individually weighted by the ratio of gross receipts from
3 passenger transportation to total gross receipts from all
4 transportation, and by the ratio of gross receipts from freight
5 transportation to total gross receipts from all transportation,
6 respectively. If it is shown to the satisfaction of the department
7 that the foregoing information is not available or cannot be obtained
8 without unreasonable expense to the taxpayer, the department may use
9 such other data which may be available and which in the opinion of the
10 department will result in an equitable allocation of such receipts to
11 this state.

12 NEW SECTION. **Sec. 14.** INTERSTATE TRANSPORTATION OF OIL BY
13 PIPELINE--ALLOCATION. In the case of a taxpayer engaged in the
14 transportation of oil by pipeline, intangible personal property
15 attributable to Washington is that portion of the entire intangible
16 personal property that the barrel miles transported in Washington bear
17 to the total barrel miles transported by the taxpayer.

18 NEW SECTION. **Sec. 15.** INTERSTATE TRANSPORTATION OF GAS BY
19 PIPELINE--ALLOCATION. In the case of a taxpayer engaged in the
20 transportation of gas by pipeline, intangible personal property
21 attributable to Washington is that portion of the entire intangible
22 personal property of the taxpayer that the thousand cubic feet miles
23 transported in Washington bear to the total thousand cubic feet miles
24 transported by the taxpayer.

25 NEW SECTION. **Sec. 16.** AIR CARRIERS. In the case a taxpayer is
26 engaged in transportation as a carrier by aircraft, the portion of the
27 entire intangible personal property of the carrier attributable to
28 Washington is the average of the following two percentages:

29 (1) The revenue tons handled by the air carrier at airports within
30 this state for the tax year divided by the total revenue tons handled
31 by the carrier at all airports.

32 (2) The air carrier's originating revenue within this state divided
33 by the total originating revenue of the carrier.

1 of a deferred compensation plan not subject to federal income tax under
2 subchapter D of the internal revenue code, as amended or renumbered on
3 January 1, 2006.

4 (c) Obligations of the United States, or guaranteed as to principal
5 or interest by the United States, which are exempt from taxation by
6 reason of an act of congress. The term "United States" includes any
7 possessions, agencies, or instrumentalities of the United States.

8 (d) Intangible personal property belonging to partners in any firm
9 or copartnership to the extent of intangible personal property with
10 respect to which the partnership has paid the tax as provided in this
11 chapter.

12 **PART V. ADMINISTRATIVE PROVISIONS**

13 NEW SECTION. **Sec. 19.** ADMINISTRATION. The department shall
14 administer this chapter.

15 NEW SECTION. **Sec. 20.** ANNUAL RETURN--PAYMENT OF TAX--EXTENSION OF
16 TIME. On or before the last day of the fourth month following the end
17 of the tax year each person owning intangible personal property subject
18 to tax under this chapter shall make a return in form and content as
19 prescribed by the department, showing the income derived from
20 intangible property subject to taxation under this chapter for the
21 preceding tax year. The taxpayer shall transmit the return to the
22 department with the taxpayer's remittance covering the tax payable for
23 the preceding tax year. The department, for good cause shown, may, on
24 the application of any taxpayer, extend the time by not more than
25 ninety days for making the return but interest at twelve percent per
26 annum shall be added to the amount of tax due for the period of the
27 extension. In collecting the tax levied under this chapter, the
28 department may in special circumstances prescribe a different return.

29 NEW SECTION. **Sec. 21.** TRUSTEES OR AGENTS--INFORMATION RETURN.
30 Every person domiciled in or carrying on or transacting business in
31 Washington, as trustee or agent for another, having in his or her
32 custody any taxable intangible personal property of another for
33 investment or collection, shall file an information return in such form

1 as may be prescribed by the department on or before the last day of the
2 fourth month following the end of the tax year.

3 NEW SECTION. **Sec. 22.** RULES. The department may adopt rules
4 under chapter 34.05 RCW for the administration and enforcement of this
5 title. The rules, to the extent possible without being inconsistent
6 with this title, shall follow the internal revenue code and the
7 regulations and rulings of the United States treasury department with
8 respect to the federal income tax. The department may adopt as a part
9 of these rules any portions of the internal revenue code and treasury
10 department regulations and rulings, in whole or in part.

11 **Sec. 23.** RCW 82.03.130 and 1998 c 54 s 1 are each amended to read
12 as follows:

13 BOARD OF TAX APPEALS--JURISDICTION. (1) The board shall have
14 jurisdiction to decide the following types of appeals:

15 (a) Appeals taken pursuant to RCW 82.03.190.

16 (b) Appeals from a county board of equalization pursuant to RCW
17 84.08.130.

18 (c) Appeals by an assessor or landowner from an order of the
19 director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if
20 filed with the board of tax appeals within thirty days after the
21 mailing of the order, the right to such an appeal being hereby
22 established.

23 (d) Appeals by an assessor or owner of an intercounty public
24 utility or private car company from determinations by the director of
25 revenue of equalized assessed valuation of property and the
26 apportionment thereof to a county made pursuant to chapter 84.12 and
27 84.16 RCW, if filed with the board of tax appeals within thirty days
28 after mailing of the determination, the right to such appeal being
29 hereby established.

30 (e) Appeals by an assessor, landowner, or owner of an intercounty
31 public utility or private car company from a determination of any
32 county indicated ratio for such county compiled by the department of
33 revenue pursuant to RCW 84.48.075: PROVIDED, That

34 (i) Said appeal be filed after review of the ratio under RCW
35 84.48.075(3) and not later than fifteen days after the mailing of the
36 certification; and

1 (ii) The hearing before the board shall be expeditiously held in
2 accordance with rules prescribed by the board and shall take precedence
3 over all matters of the same character.

4 (f) Appeals from the decisions of sale price of second class
5 shorelands on navigable lakes by the department of natural resources
6 pursuant to RCW 79.94.210.

7 (g) Appeals from urban redevelopment property tax apportionment
8 district proposals established by governmental ordinances pursuant to
9 RCW 39.88.060.

10 (h) Appeals from interest rates as determined by the department of
11 revenue for use in valuing farmland under current use assessment
12 pursuant to RCW 84.34.065.

13 (i) Appeals from revisions to stumpage value tables used to
14 determine value by the department of revenue pursuant to RCW 84.33.091.

15 (j) Appeals from denial of tax exemption application by the
16 department of revenue pursuant to RCW 84.36.850.

17 (k) Appeals pursuant to RCW 84.40.038(3).

18 (l) Appeals relating to intangible personal property tax
19 deficiencies and refunds, including penalties and interest, under
20 chapter . . . RCW (sections 1 through 22 of this act).

21 (2) Except as otherwise specifically provided by law hereafter, the
22 provisions of RCW 1.12.070 shall apply to all notices of appeal filed
23 with the board of tax appeals.

24 **Sec. 24.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to read
25 as follows:

26 ELECTION OF FORMAL OR INFORMAL HEARING. In all appeals over which
27 the board has jurisdiction under RCW 82.03.130, a party taking an
28 appeal may elect either a formal or an informal hearing, such election
29 to be made according to rules of practice and procedure to be
30 promulgated by the board: PROVIDED, That nothing shall prevent the
31 assessor or taxpayer, as a party to an appeal pursuant to RCW
32 84.08.130, within twenty days from the date of the receipt of the
33 notice of appeal, from filing with the clerk of the board notice of
34 intention that the hearing be a formal one: PROVIDED, HOWEVER, That
35 nothing herein shall be construed to modify the provisions of RCW
36 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW
37 82.03.130(1) (e) or (l), the director of revenue may, within ten days

1 from the date of its receipt of the notice of appeal, file with the
2 clerk of the board notice of its (~~intention that the hearing be held~~
3 ~~pursuant to chapter 34.05 RCW~~) election of a formal hearing. In the
4 event that appeals are taken from the same decision, order, or
5 determination, as the case may be, by different parties and only one of
6 such parties elects a formal hearing, a formal hearing shall be
7 granted.

8 **PART VI. MISCELLANEOUS**

9 NEW SECTION. Sec. 25. RCW 84.36.070 does not apply to the tax
10 imposed in this chapter.

11 NEW SECTION. Sec. 26. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. Sec. 27. Section captions and part headings as used
16 in this act are not any part of the law.

17 NEW SECTION. Sec. 28. Sections 1 through 22 of this act
18 constitute a new chapter in Title 82 RCW.

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