

---

HOUSE BILL 2368

---

State of Washington                      60th Legislature                      2007 Regular Session

By Representative Santos

Read first time 02/27/2007. Referred to Committee on Finance.

1            AN ACT Relating to the model gross receipts business and occupation  
2 tax code; amending RCW 35.102.030, 35.102.040, 35.102.070, 35.102.130,  
3 35.102.140, and 42.56.230; amending 2003 c 79 s 19 (uncodified); adding  
4 a new section to chapter 35.102 RCW; and providing an effective date.

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

6            **Sec. 1.** RCW 35.102.030 and 2003 c 79 s 3 are each amended to read  
7 as follows:

8            The definitions in this section apply throughout this chapter (~~(79,~~  
9 ~~Laws of 2003,~~) unless the context clearly requires otherwise.

10            (1) "Business" has the same meaning as given in chapter 82.04 RCW.

11            (2) "City" means a city, town, or code city.

12            (3) "Business and occupation tax" or "gross receipts tax" means a  
13 tax imposed (~~(on or measured)~~) by the use of rates or percentages  
14 against the value of products, the gross income of the business, or the  
15 gross proceeds of sales, as the case may be, and that is the legal  
16 liability of the business.

17            (4) "Value of products" has the same meaning as given in chapter  
18 82.04 RCW.

1 (5) "Gross income of the business" has the same meaning as given in  
2 chapter 82.04 RCW.

3 (6) "Gross proceeds of sales" has the same meaning as given in  
4 chapter 82.04 RCW.

5 **Sec. 2.** RCW 35.102.040 and 2006 c 301 s 7 are each amended to read  
6 as follows:

7 (1)(a) The cities, working through the association of Washington  
8 cities, a nonprofit private organization, shall form a model ordinance  
9 development committee made up of a representative sampling of cities  
10 that as of July 27, 2003, impose a business and occupation tax. This  
11 committee shall work through the association of Washington cities to  
12 adopt a model ordinance on municipal gross receipts business and  
13 occupation ~~((tax))~~ taxes. The model ordinance and subsequent  
14 amendments shall be adopted using a process that includes opportunity  
15 for substantial input from business stakeholders and other members of  
16 the public. Input shall be solicited from statewide business  
17 associations and from local chambers of commerce and downtown business  
18 associations in cities that levy a business and occupation tax.

19 (b) The municipal research council shall contract to post the model  
20 ordinance on an internet web site and to make paper copies available  
21 for inspection upon request. The department of revenue and the  
22 department of licensing shall post copies of or links to the model  
23 ordinance on their internet web sites. Additionally, a city that  
24 imposes a business and occupation tax must make copies of its ordinance  
25 available for inspection and copying as provided in chapter 42.56 RCW.

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

31 (2) A city that imposes a business and occupation tax must adopt  
32 the mandatory provisions of the model ordinance. When the mandatory  
33 provisions of the model ordinance are directly tied to a statute, any  
34 amendment to that statute will supersede the model ordinance if the  
35 model ordinance is not amended by the effective date of the amended  
36 statute. The following provisions are mandatory:

1 (a) A system of credits that meets the requirements of RCW  
2 35.102.060 and a form for such use;

3 (b) A uniform, minimum (~~(small-business)~~) tax threshold or  
4 exemption of at least the equivalent of twenty thousand dollars in  
5 gross income annually. A city may elect to deviate from this  
6 requirement by creating a higher threshold or exemption but it shall  
7 not deviate lower than the level required in this subsection. If a  
8 city has a (~~(small-business)~~) minimum tax threshold or exemption in  
9 excess of that provided in this subsection as of January 1, 2003, and  
10 chooses to deviate below the threshold or exemption level that was in  
11 place as of January 1, 2003, the city must notify all businesses  
12 licensed to do business within the city at least one hundred twenty  
13 days prior to the potential implementation of a lower threshold or  
14 exemption amount;

15 (c) Tax reporting frequencies that meet the requirements of RCW  
16 35.102.070;

17 (d) Penalty and interest provisions that meet the requirements of  
18 RCW 35.102.080 and 35.102.090;

19 (e) Claim periods that meet the requirements of RCW 35.102.100;

20 (f) Refund provisions that meet the requirements of RCW 35.102.110;  
21 and

22 (g) Definitions, which at a minimum, must include the definitions  
23 enumerated in RCW 35.102.030 and 35.102.120. The definitions in  
24 chapter 82.04 RCW shall be used as the baseline for all definitions in  
25 the model ordinance, and any deviation in the model ordinance from  
26 these definitions must be described by a comment in the model  
27 ordinance.

28 (3) Except for the deduction required by RCW 35.102.160 and the  
29 system of credits developed to address multiple taxation under  
30 subsection (2)(a) of this section, a city may adopt its own provisions  
31 for tax exemptions, tax credits, and tax deductions.

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

36 **Sec. 3.** RCW 35.102.070 and 2003 c 79 s 7 are each amended to read  
37 as follows:

1 A city that imposes a business and occupation tax shall allow  
2 reporting and payment of tax on a monthly, quarterly, or annual basis.  
3 The frequency for any particular person may be assigned at the  
4 discretion of the city, except that monthly reporting may be assigned  
5 only if it can be demonstrated that the taxpayer is remitting excise  
6 tax to the state on a monthly basis. For persons assigned a monthly  
7 frequency, payment ~~((is))~~ may not be due ~~((within the same))~~ prior to  
8 the time period provided for monthly taxpayers under RCW 82.32.045.  
9 For persons assigned a quarterly or annual frequency, payment ~~((is))~~  
10 may not be due ~~((within the same))~~ prior to the time period as provided  
11 for quarterly or annual frequency under RCW 82.32.045.

12 **Sec. 4.** RCW 35.102.130 and 2003 c 79 s 13 are each amended to read  
13 as follows:

14 A city that imposes a business and occupation tax shall provide for  
15 the allocation and apportionment of a person's gross income, other than  
16 persons subject to the provisions of chapter 82.14A RCW, as follows:

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

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

22 (b) If a business activity allocated under this subsection (1)  
23 takes place in more than one city and all cities impose a gross  
24 receipts tax, a credit shall be allowed as provided in RCW 35.102.060;  
25 if not all of the cities impose a gross receipts tax, the affected  
26 cities shall allow another credit or allocation system as they and the  
27 taxpayer agree.

28 (2) Gross income derived as royalties, or from ~~((the))~~ any other  
29 granting of intangible rights shall be allocated to the commercial  
30 domicile of the taxpayer.

31 (3) Gross income derived from activities taxed ~~((as services))~~  
32 under the service and other classifications shall be apportioned to a  
33 city by multiplying apportionable income by a fraction, the numerator  
34 of which is the sum of the payroll factor ~~((plus))~~, the service-income  
35 factor, and the property factor, and the denominator of which is  
36 ~~((two))~~ three.

1 (a) The payroll factor is a fraction, the numerator of which is the  
2 total amount paid in the city during the tax period by the taxpayer for  
3 compensation and the denominator of which is the total compensation  
4 paid everywhere during the tax period. Compensation is paid in the  
5 city if any one of the following tests, applied consecutively, is met:

6 (i) ~~The ((individual is primarily assigned))~~ employee's service,  
7 including those of corporate officers, is performed entirely within the  
8 city; or

9 (ii) ~~The ((individual is not primarily assigned to any place of~~  
10 ~~business for the tax period and the employee performs fifty percent or~~  
11 ~~more of his or her service for the tax period in the city; or~~

12 ~~(iii) The individual is not primarily assigned to any place of~~  
13 ~~business for the tax period, the individual does not perform fifty~~  
14 ~~percent or more of his or her service in any city[, ] and the employee~~  
15 ~~resides in the city))~~ employee's service is performed both within and  
16 without the city, but the service performed without the city is  
17 incidental to the employee's service within the city. For the purposes  
18 of this subsection (3)(a)(ii), the word "incidental" means any service  
19 which is temporary or transitory in nature, or which is rendered in  
20 connection with an isolated transaction. If the employee's services  
21 are performed both within and without the city, the employee's  
22 compensation will be attributed to the city:

23 (A) If the employee's base of operations is in the city;

24 (B) If there is no base of operations in any city in which some  
25 part of the service is performed, but the place from which the service  
26 is directed or controlled is in the city; or

27 (C) If the base of operations or the place from which the service  
28 is directed or controlled is not in any city in which some part of the  
29 service is performed, but the employee's residence is in the city. For  
30 the purposes of this subsection (3)(a)(ii)(C), the term "base of  
31 operations" is the place of more or less permanent nature from which  
32 the employee starts work and to which he or she customarily returns in  
33 order to receive instructions from the taxpayer or communications from  
34 customers or other persons or to replenish stock or other materials,  
35 repair equipment, or perform any other functions necessary to the  
36 exercise of the employee's trade or profession at some other point or  
37 points.

1 (b) The service income factor is a fraction, the numerator of which  
2 is the total service income of the taxpayer in the city during the tax  
3 period, and the denominator of which is the total service income of the  
4 taxpayer everywhere during the tax period. Service income is in the  
5 city if:

6 (i) ~~The ((customer location is in))~~ income-producing activity is  
7 performed wholly within the city; or

8 (ii) The income-producing activity is performed in more than one  
9 location and a greater proportion of the service-income-producing  
10 activity is performed in the city than in any other location, based on  
11 costs of performance(~~, and the taxpayer is not taxable at the customer~~  
12 ~~location;~~ or

13 ~~(iii) The service income producing activity is performed within the~~  
14 ~~city, and the taxpayer is not taxable in the customer location)).~~ For  
15 the purposes of this subsection (3)(b):

16 (A) The term "income-producing activity" applies to each separate  
17 item of income and means the transactions and activity directly engaged  
18 in by the taxpayer in the regular course of its trade or business for  
19 the ultimate purpose of obtaining gains or profit. Such activity does  
20 not include transactions and activities performed on behalf of the  
21 taxpayer, such as those conducted on its behalf by an independent  
22 contractor; and

23 (B) "Cost of performance" means direct costs determined in a manner  
24 consistent with generally accepted accounting principles and in  
25 accordance with accepted conditions or practices in the trade or  
26 business of the taxpayer.

27 (c) The property factor is a fraction, the numerator of which is  
28 the total property of the taxpayer in the city during the tax period,  
29 and the denominator of which is the total property of the taxpayer  
30 everywhere during the tax period. The numerator of the property factor  
31 shall include the average value of the real and tangible personal  
32 property owned or rented by the taxpayer and used in the city during  
33 the tax period in the regular course of the trade or business of the  
34 taxpayer. The property shall be assigned as follows:

35 (i) Property in transit between taxpayer locations shall be  
36 assigned to the destination.

37 (ii) Property in transit between a seller and the taxpayer, as  
38 buyer, shall be assigned to the destination city.

1       (iii) The value of mobile or movable property shall be assigned on  
2 the basis of total time within the city during the tax period.

3       (iv) The automobile assigned to traveling employees shall be  
4 assigned to the city in which the employee's compensation is assigned  
5 under the payroll factor.

6       (d)(i) A taxpayer may also choose not to apportion their service  
7 and other revenues as provided in (a) through (c) of this subsection,  
8 and if so, must then select the option in (d)(i)(A) or (B) of this  
9 subsection that applies to their situation and conforms with (d)(i)(C)  
10 of this subsection:

11       (A) If the taxpayer is located within a city imposing a gross  
12 receipts business and occupation tax, the gross income from the  
13 transaction shall be assigned to the city where the taxpayer is  
14 located; or

15       (B) If the taxpayer is located outside a city imposing a gross  
16 receipts business and occupation tax, the gross income from the  
17 transaction shall be assigned to the city in which the service is  
18 rendered.

19       (C) The two options in (d)(i)(A) and (B) of this subsection will  
20 apply unless there are two or more cities that impose a business and  
21 occupation tax involved in the transaction, in which case the revenue  
22 will be assigned to the city in which: (I) The service contract was  
23 signed with the city; (II) the taxpayer is domiciled if the revenue was  
24 derived from intangibles; or (III) the service is provided; in that  
25 order of priority.

26       (ii) If the taxpayer selects a method of reporting gross income  
27 contained in this subsection (3)(d), the method of reporting must be  
28 documented and used throughout the calendar year.

29       (e)(i) If the allocation and apportionment provisions of (a)  
30 through (c) of this subsection do not fairly represent the extent of  
31 the taxpayer's business activity in the city or cities in which the  
32 taxpayer does business, the taxpayer may petition for or the tax  
33 administrators may jointly require, in respect to all or any part of  
34 the taxpayer's business activity, that one of the following methods be  
35 used jointly by the cities to allocate or apportion gross income, if  
36 reasonable:

37       ((+i+)) (A) Separate accounting;

1       ~~((+ii+))~~ (B) ~~The~~ ~~((use of a single factor))~~ exclusion of any one or  
2 more of the factors;

3       ~~((+iii+))~~ (C) The inclusion of one or more additional factors that  
4 will fairly represent the taxpayer's business activity in the city; or

5       ~~((+iv+))~~ (D) The employment of any other method to effectuate an  
6 equitable allocation and apportionment of the taxpayer's income.

7       ~~((+4+))~~ (ii) A taxpayer must obtain approval from the city before  
8 reporting under any method contained in this subsection (3)(e). Such  
9 approval may be subject to audit verification before issuance. Once  
10 approved, the same method must be used for all subsequent tax reporting  
11 periods unless approval is again received from the city.

12       (4) The definitions in this subsection apply throughout this  
13 section.

14       (a) "Apportionable income" means the gross income of the business  
15 taxable under the service and other classifications of a city's gross  
16 receipts business and occupation tax, including income received from  
17 activities outside the city if the income would be taxable under the  
18 service and other classifications if received from activities within  
19 the city, less any exemptions or deductions available.

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

24       (c) ~~((Individual))~~ Employee means any individual who, under the  
25 usual common law rules applicable in determining the employer-employee  
26 relationship, has the status of an employee of that taxpayer.

27       (d) ~~("Customer location" means the city or unincorporated area of~~  
28 ~~a county where the majority of the contacts between the taxpayer and~~  
29 ~~the customer take place.~~

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

32       ~~(f) "Service taxable income" or "service income" means gross income~~  
33 ~~of the business subject to tax under either the service or royalty~~  
34 ~~classification.~~

35       ~~(g+))~~ "Tax period" means the calendar year during which tax  
36 liability is accrued. If taxes are reported by a taxpayer on a basis  
37 more frequent than once per year, taxpayers shall calculate the factors  
38 for the previous calendar year for reporting in the current calendar



1 year and correct the reporting for the previous year when the factors  
2 are calculated for that year, but not later than the end of the first  
3 quarter of the following year.

4 ~~((h) "Taxable in the customer location" means either that a  
5 taxpayer is subject to a gross receipts tax in the customer location  
6 for the privilege of doing business, or that the government where the  
7 customer is located has the authority to subject the taxpayer to gross  
8 receipts tax regardless of whether, in fact, the government does so.))~~

9 **Sec. 5.** RCW 35.102.140 and 2003 c 79 s 14 are each amended to read  
10 as follows:

11 Cities imposing business and occupation taxes must comply with all  
12 requirements of RCW 35.102.020 through 35.102.130 ~~((by December 31,  
13 2004. A city that has not complied with the requirements of RCW  
14 35.102.020 through 35.102.130 by December 31, 2004, may not impose a  
15 tax that is imposed by a city on the privilege of engaging in business  
16 activities. Cities imposing business and occupation taxes after  
17 December 31, 2004, must comply with RCW 35.102.020 through  
18 35.102.130))~~. Any city imposing a business and occupation tax and not  
19 complying with the requirements contained in RCW 35.102.020 through  
20 35.102.130 may not impose a business and occupation tax in an amount  
21 greater than the tax that would be due if the city had complied with  
22 all of the requirements contained in RCW 35.102.020 through 35.102.130.

23 NEW SECTION. **Sec. 6.** A new section is added to chapter 35.102 RCW  
24 to read as follows:

25 A city that imposes a business and occupation tax may provide that  
26 return or tax information shall be confidential, privileged, and  
27 subject to disclosure in the manner provided by RCW 82.32.330.

28 **Sec. 7.** RCW 42.56.230 and 2005 c 274 s 403 are each amended to  
29 read as follows:

30 The following personal information is exempt from public inspection  
31 and copying under this chapter:

- 32 (1) Personal information in any files maintained for students in  
33 public schools, patients or clients of public institutions or public  
34 health agencies, or welfare recipients;

1 (2) Personal information in files maintained for employees,  
2 appointees, or elected officials of any public agency to the extent  
3 that disclosure would violate their right to privacy;

4 (3) Information required of any taxpayer in connection with the  
5 assessment or collection of any tax if the disclosure of the  
6 information to other persons would (a) be prohibited to such persons by  
7 RCW 84.08.210, 82.32.330, 84.40.020, (~~or~~) 84.40.340, or section 6 of  
8 this act or (b) violate the taxpayer's right to privacy or result in  
9 unfair competitive disadvantage to the taxpayer; and

10 (4) Credit card numbers, debit card numbers, electronic check  
11 numbers, card expiration dates, or bank or other financial account  
12 numbers, except when disclosure is expressly required by or governed by  
13 other law.

14 **Sec. 8.** 2003 c 79 s 19 (uncodified) is amended to read as follows:  
15 Section 13 of this act takes effect January 1, (~~2008~~) 2009.

16 NEW SECTION. **Sec. 9.** Section 4 of this act takes effect January  
17 1, 2009.

--- END ---