
HOUSE BILL 3244

State of Washington 60th Legislature 2008 Regular Session

By Representatives Kessler, Orcutt, Grant, Ericks, Hinkle, Linville,
McDonald, and Kelley

Read first time 01/25/08. Referred to Committee on Finance.

1 AN ACT Relating to clarifying the definition of customer location
2 for purposes of municipal business and occupation taxes; and amending
3 RCW 35.102.130.

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

5 **Sec. 1.** RCW 35.102.130 and 2003 c 79 s 13 are each amended to read
6 as follows:

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

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

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

15 (b) If a business activity allocated under this subsection (1)
16 takes place in more than one city and all cities impose a gross
17 receipts tax, a credit shall be allowed as provided in RCW 35.102.060;
18 if not all of the cities impose a gross receipts tax, the affected

1 cities shall allow another credit or allocation system as they and the
2 taxpayer agree.

3 (2) Gross income derived as royalties from the granting of
4 intangible rights shall be allocated to the commercial domicile of the
5 taxpayer.

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

10 (a) The payroll factor is a fraction, the numerator of which is the
11 total amount paid in the city during the tax period by the taxpayer for
12 compensation and the denominator of which is the total compensation
13 paid everywhere during the tax period. Compensation is paid in the
14 city if:

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

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

19 (iii) The individual is not primarily assigned to any place of
20 business for the tax period, the individual does not perform fifty
21 percent or more of his or her service in any city((~~+~~)), and the
22 employee resides in the city.

23 (b) The service income factor is a fraction, the numerator of which
24 is the total service income of the taxpayer in the city during the tax
25 period, and the denominator of which is the total service income of the
26 taxpayer everywhere during the tax period. Service income is in the
27 city if:

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

29 (ii) The income-producing activity is performed in more than one
30 location and a greater proportion of the service-income-producing
31 activity is performed in the city than in any other location, based on
32 costs of performance, and the taxpayer is not taxable at the customer
33 location; or

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

36 (c) If the allocation and apportionment provisions of this
37 subsection do not fairly represent the extent of the taxpayer's
38 business activity in the city or cities in which the taxpayer does

1 business, the taxpayer may petition for or the tax administrators may
2 jointly require, in respect to all or any part of the taxpayer's
3 business activity, that one of the following methods be used jointly by
4 the cities to allocate or apportion gross income, if reasonable:

5 (i) Separate accounting;

6 (ii) The use of a single factor;

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

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

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

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

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

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

26 (d) "Customer location" means the location within the city or
27 unincorporated area of a county where the majority of the contacts
28 between the taxpayer and the customer take place. For the purposes of
29 this subsection (4)(d):

30 (i) It will be presumed that the customer's billing address as
31 regularly used in the taxpayer's books and records is the "customer
32 location."

33 (ii) Where the taxpayer can show that the customer's billing
34 address is not the location where the majority of the contacts between
35 the taxpayer and the customer take place, the taxpayer may use the
36 taxpayer's physical office location as the customer location.

37 (iii) Cities may require the use of a different customer location,

1 where there is clear and convincing evidence that the taxpayer has
2 manipulated the customer's billing address to reduce its municipal tax
3 obligation.

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

6 (f) "Service-taxable income" or "service income" means gross income
7 of the business subject to tax under either the service or royalty
8 classification.

9 (g) "Tax period" means the calendar year during which tax liability
10 is accrued. If taxes are reported by a taxpayer on a basis more
11 frequent than once per year, taxpayers shall calculate the factors for
12 the previous calendar year for reporting in the current calendar year
13 and correct the reporting for the previous year when the factors are
14 calculated for that year, but not later than the end of the first
15 quarter of the following year.

16 (h) "Taxable in the customer location" means either that a taxpayer
17 is subject to a gross receipts tax in the customer location for the
18 privilege of doing business, or that the government where the customer
19 is located has the authority to subject the taxpayer to gross receipts
20 tax regardless of whether, in fact, the government does so.

--- END ---