
SENATE BILL 6136

State of Washington

68th Legislature

2024 Regular Session

By Senators Kuderer, Frame, Hasegawa, Lovelett, Nobles, Saldaña, and Wellman

Read first time 01/10/24. Referred to Committee on Housing.

1 AN ACT Relating to a business and occupation tax on the privilege
2 of providing property for rent and supporting access to affordable
3 rental property by exempting from tax landlords participating in a
4 rent stabilization program; adding new sections to chapter 82.04 RCW;
5 adding a new section to chapter 43.330 RCW; creating new sections;
6 providing an effective date; and providing expiration dates.

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

8 NEW SECTION. **Sec. 1.** The legislature acknowledges Washington's
9 tax structure is unique in that, in the absence of a personal or
10 corporate net income tax, the state relies heavily on a combination
11 of sales taxes, property taxes, and the business and occupation tax.
12 The legislature further acknowledges that Washington has one of the
13 most regressive tax systems in the country, in which the poorest
14 individuals spend significantly more in state and local taxes as a
15 percentage of household income than the state's wealthiest residents.
16 The regressive nature of Washington's tax structure exacerbates
17 housing affordability, with more than 1,000,000 residents spending
18 over 30 percent of their income on housing. The legislature agrees
19 with the state supreme court's opinion in *Quinn v. State*, No.
20 100769-8, where the court recognized that this burden falls

1 disproportionately on black, indigenous, and people of color, who are
2 overrepresented in low-income brackets.

3 The legislature recognizes that much of the state's current tax
4 structure can be traced to the 1930s during a time of rapid
5 socioeconomic change and subsequent tax reform in which the state
6 began to move away from property tax as its primary source of
7 revenue. The legislature acknowledges that, despite voters
8 overwhelmingly approving a graduated income tax in 1932, the court
9 invalidated the tax in *Culliton v. Chase*, 174 Wash. 363, 289 P.2d 81
10 (1933), on the grounds that it violated the constitutional
11 requirement that all taxes be uniform on the same class of property.
12 However, to address a shortfall in state revenue, on the same day the
13 court decided *Culliton*, it also upheld the business and occupation
14 tax as a constitutional excise tax on the privilege of engaging in
15 business, and not a property tax, in *State ex rel. Stiner v. Yelle*,
16 25 P.2d 91 (1993).

17 The legislature acknowledges that courts have long upheld taxes
18 levied on the privilege of doing business in this state. The
19 legislature recognizes that, since the 1930s, courts continue to
20 apply the principles set forth in *Culliton* and other similar cases
21 when distinguishing excise taxes from property taxes. The legislature
22 further recognizes that a decision from the 1960s invalidating a
23 state business and occupation tax on rental income is out of step
24 with the court's otherwise consistent analysis. In that case,
25 *Apartment Operators Association of Seattle, Inc. v. Schumacher*, 56
26 Wash.2d 46, 351 P.2d 124 (1960), the court in a brief per curiam
27 opinion held that a rental tax is an unconstitutional, nonuniform tax
28 on property under *Culliton*. The legislature acknowledges that in
29 subsequent cases, including the recent opinion upholding the state
30 capital gains tax in *Quinn*, the court has acknowledged that *Apartment*
31 *Operators* is flawed. In *Quinn*, the court reiterated the well-
32 established rule that a tax measured by income remains an excise so
33 long as it relates to the exercise of a privilege granted by the
34 state or rights "in and to property," such as the power to lease or
35 sell property.

36 The legislature finds that, considering the aforementioned
37 precedent, the privilege of providing property for rent is subject to
38 the business and occupation tax. The legislature also acknowledges
39 the pressing need for affordable and stable housing, the importance
40 of retaining small businesses, and the advantages of leveraging tax

1 policies to support a sustainable rental market that protects
2 residents from excessive rent increases, particularly those in lower-
3 income brackets. In furtherance of this acknowledgment and in
4 considering the impact of rent-related taxes, the legislature intends
5 to provide a tax exemption to landlords that comply with the rent
6 increase restrictions of this act.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
8 RCW to read as follows:

9 (1) (a) Beginning January 1, 2025, any person engaging within this
10 state in the business of renting or leasing of residential real
11 property is taxable under RCW 82.04.290(2).

12 (b) Beginning January 1, 2027, any person engaging within this
13 state in the business of renting or leasing of commercial real
14 property is taxable under RCW 82.04.290(2).

15 (2) The measure of tax under this section is the gross proceeds
16 from all rent.

17 (3) This section does not apply to a mere license to use real
18 property, such as the furnishing of lodging and all other services by
19 a hotel, rooming house, tourist court, motel, trailer camp, and the
20 granting of any similar license to use real property, as provided
21 under RCW 82.04.050, for a period of less than one month.

22 (4) All receipts from the tax imposed under this section must be
23 deposited into the home security fund account under RCW 43.185C.060
24 for support of the eviction prevention rental assistance program in
25 RCW 43.185C.185.

26 (5) For the purposes of this section, the following definitions
27 apply:

28 (a) "Rent" means a recurring and periodic payment for the use and
29 occupancy of real property, including charges for utilities, and any
30 nonrefundable fees retained by a landlord, such as those for late
31 payments, property damage, application processing, and any other
32 nonrefundable charge. "Rent" does not include refundable fees or
33 charges, including any portion of a security, damage, pet, or other
34 deposit returned to the tenant.

35 (b) "Renting or leasing" means the granting of a right to use
36 residential or commercial real property for a continuous period of
37 one month or more.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04
2 RCW to read as follows:

3 (1) (a) Beginning January 1, 2025, and until January 1, 2035, in
4 computing the tax imposed under section 2(1)(a) of this act there may
5 be deducted from the measure of tax all rent derived from the renting
6 or leasing of real property for which a person has obtained a
7 certification from the department of commerce under section 4 of this
8 act.

9 (b) Beginning January 1, 2027, and until January 1, 2037, in
10 computing the tax imposed under section 2(1)(b) of this act there may
11 be deducted from the measure of tax all rent derived from the renting
12 or leasing of commercial real property for which a person has
13 obtained a certification from the department of commerce under
14 section 4 of this act.

15 (2) To claim a deduction under this section a person must
16 electronically file with the department all returns, forms, and any
17 other information required by the department, in an electronic format
18 as provided or approved by the department.

19 (3) Any person claiming a deduction under this section must
20 provide to the department documentation sufficient to verify
21 certification under section 4 of this act.

22 (4) A deduction under this section may not reduce the amount of
23 tax due to less than zero.

24 (5) (a) Any person claiming the deduction under this section must
25 adhere to the terms of certification under section 4 of this act for
26 the full calendar year for which the deduction is claimed.

27 (b) If at any time the department finds that a person has not
28 complied with the terms of certification under section 4 of this act,
29 the department must disallow the deduction provided in this section
30 for all periods within that calendar year.

31 (6) The department must publish guidance to assist landlords in
32 determining the amount of tax due under this chapter. The guidance
33 must include information about the certification program under
34 section 4 of this act.

35 (7) The definitions in section 2 of this act apply to this
36 section.

37 (8) This section expires January 1, 2037.

38 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.330
39 RCW to read as follows:

1 (1) The department must develop and administer a residential rent
2 stabilization program. The department must adopt rules in accordance
3 with chapter 34.05 RCW to establish a process to review and certify
4 landlords choosing to comply with the rent increase restrictions
5 under subsection (2) of this section.

6 (2) Except as authorized by the exemption under subsection (3) of
7 this section, the certification under this section must only be
8 granted to landlords who do not increase the amount charged for rent:

9 (a) During the first 12 months after the tenancy begins; and

10 (b) During any 12-month period, in an amount greater than five
11 percent.

12 (3) During the first 12 months after the qualified sale of a
13 manufactured/mobile home community to an eligible organization as
14 defined in RCW 59.20.030 whose mission aligns with the long-term
15 preservation and affordability of the manufactured/mobile home
16 community, the eligible organization may increase the annual rent and
17 fees combined for the manufactured/mobile home community in an amount
18 greater than allowed under subsection (2) of this section as needed
19 to cover the cost of purchasing the manufactured/mobile home
20 community if the increase is approved by vote or agreement with the
21 majority of the manufactured/mobile home owners in the manufactured/
22 mobile home community.

23 (4) The department must develop a certification application. The
24 application for certification must include, at a minimum, the
25 following information:

26 (a) The name, address, and tax identification number of the
27 applicant;

28 (b) Documentation, including the address or parcel number, of all
29 real property in this state in which the applicant rents or leases to
30 a tenant;

31 (c) The rent charged for each rental property, including all fees
32 and nonrefundable charges; and

33 (d) Any other information deemed necessary by the department to
34 determine if the applicant meets the certification requirements of
35 this section.

36 (5) The department must make information about the rent
37 stabilization program available on its website. The information must
38 include information about the tax deduction under section 3 of this
39 act.

40 (6) The following definitions apply throughout this section.

1 (a) "Manufactured/mobile home" has the same meaning as in RCW
2 59.20.030.

3 (b) "Rent" has the same meaning as in section 2 of this act.

4 (7) This section expires January 1, 2037.

5 NEW SECTION. **Sec. 5.** (1) The department of commerce, in
6 consultation with the office of the attorney general, the department
7 of revenue, and relevant stakeholder groups, must develop
8 recommendations for a rent stabilization program for commercial
9 rental property. The recommendations must be comparable to the rent
10 restrictions and other relevant provisions under section 4 of this
11 act. The department of commerce must submit a report with the
12 recommendations to the appropriate committees of the legislature by
13 December 1, 2025.

14 (2) This section expires December 1, 2026.

15 NEW SECTION. **Sec. 6.** (1) This section is the tax preference
16 performance statement for the tax preference contained in section 3,
17 chapter . . ., Laws of 2024 (section 3 of this act). This performance
18 statement is only intended to be used for subsequent evaluation of
19 the tax preferences. It is not intended to create a private right of
20 action by any party or to be used to determine eligibility for
21 preferential tax treatment.

22 (2) The legislature categorizes this tax preference as one
23 intended to induce certain designated behavior by taxpayers as
24 indicated in RCW 82.32.808(2)(a).

25 (3) It is the legislature's specific public policy objective to
26 create and maintain a stable and affordable rental housing market in
27 this state by providing a tax incentive to landlords that limit
28 increases in rent.

29 (4) If a review finds that average increases to the amount
30 charged for rent in Washington is consistent with the rent increase
31 requirements under section 4 of this act, then the legislature
32 intends to extend the expiration date of this tax preference.

33 (5) In order to obtain the data necessary to perform the review
34 in subsection (4) of this section, the joint legislative audit and
35 review committee may access any data collected by the department of
36 revenue, department of commerce, or any other data collected by the
37 state.

1 NEW SECTION. **Sec. 7.** Sections 2 and 3 of this act take effect
2 January 1, 2025.

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