

Municipal Tax Fairness



Background:

Many of the state's cities impose business and occupation (B&O) taxes and/or a public utility tax. Over the years, each city enacted its own definitions and tax classifications through various ordinances. This led to a complicated and confusing situation in which taxpayers are confronted with differing interpretations of the tax laws from the state to the local level and among the cities. As a result, the legislature in 2003 required adoption of a model B&O ordinance by the state's cities that impose a B&O tax (EHB 2030). The Association of Washington Cities (AWC) adopted a model ordinance intended to provide a more uniform system of municipal B&O taxes. The stated intent of the model ordinance is to eliminate multiple taxation of business income while continuing to allow some local control and flexibility to municipal governments.

Cities impose B&O taxes on the gross receipts of activities conducted by businesses without any deduction for the costs of doing business. A city with a B&O tax imposes the tax on a business if the city determines that there is nexus. Currently, if nexus is established, some cities assert a B&O tax on the entire value of the transaction or particular activity involved without regard to the place where the transaction or business activity occurs. Under the adopted model ordinance, taxpayers may be treated as having nexus even where the taxpayers' only activity is delivering into a city using its own trucks or acting on its behalf.

Recently, the City of Seattle has adopted a square footage tax to replace the revenues from business lost as a result of actions by the state legislature. The new tax is intentionally complex to drive business to pay their tax under the older structure rather than experience savings from the law change.

Problem:

Thirty-eight cities and the Department of Revenue collect business and occupation taxes in Washington. This means thirty-nine forms to fill out, thirty-nine governments to pay taxes to and thirty-nine potential different interpretations. In an attempt to establish uniformity, the 2003 legislature required adoption of a model B&O ordinance by the state's cities that impose a B&O tax (EHB 2030). The model code adopted by the cities allows for substantial deviations that eliminate B&O tax consistency among the cities. The lack of uniformity and centralization of administration and collection of the B&O tax system makes our state B&O tax system unnecessarily complex. The current model ordinance as adopted by the cities violates the spirit, if not the letter, of the legislation as it does nothing to ensure consistent application and fair allocation of the B&O tax among multiple jurisdictions.

Solution:

1. Ensure that, where a business performs activities in multiple jurisdictions, municipal B&O taxes are apportioned so a business is taxed only on the transaction or business activities performed within the taxing jurisdiction and collectively at no more than 100 percent of its gross receipts taxable in Washington.
2. Support the transfer of the duty to collect and administer municipal B&O and public utility taxes to the state Department of Revenue. This would lessen the taxpayers' reporting burden, ensure consistent application of B&O taxation and increase tax compliance for local jurisdictions.
3. Support a model municipal B&O code that is consistent with the state B&O code and that is applied consistently among jurisdictions and prevent discriminatory replacement taxes from being adopted.
4. Taxation of gross receipts should occur only in the city where the transaction or business activity occurs. A requirement of a significant physical presence in the jurisdiction should be a prerequisite to taxation by that city.