

Summary of [SB 6176/HB 2490](#) Tax & Licensing Simplification Act

Part I: Increasing Uniformity between State and Local B&O Taxes

Sec 103: (35.102.040) After June 30, 2012 only DOR may amend the city B&O Tax Model Ordinance.

Sec 104: (35.102.050) Cities may not impose B&O tax unless there is “substantial” nexus with city.

Sec 105: Mandates that cities must have the same B&O tax definitions as the state.

DOR may issue official guidance on any provision of a city’s B&O tax. This guidance would preempt any conflicting interpretation by the city after the effective date of this section.

Sec 108: DOR may adopt rules and issue interpretive and policy statements as it considers necessary. DOR’s rules, interpretations and policy statements will “take precedence” over any conflicting rules, interpretations and policy statements by cities.

Sec 109: A person may meet its burden of proving that a sale is wholesale rather than retail by using the requirements of RCW 82.04.470. If a city requests, DOR must assist the city in determining whether a person as met the requirements.

Sec 110: Apportionment (35.102.130): Eliminates two-factor apportionment based on receipts and payroll for “service classification” and mandates adoption of single-factor apportionment using the receipts factor for “apportionable activities”.

Part II: Local Business Licensing Simplification

Sec 202: Business licenses must be issued and renewed through the state’s Business Licensing System (BLS):

- All cities that impose a business and occupation tax must, by July 1, 2014, have their general business licenses issued and renewed, through the Department of Revenue’s (DOR’s) BLS.
- By January 1, 2018, all cities that require general business licenses *but do not* impose a business and occupation tax must have such licenses issued and renewed through the BLS.

DOR may delay or phase-in the issuance and renewal of general business licenses beyond these dates if funding or other resources are insufficient to enable DOR to meet the deadlines or as necessary to ensure the business licensing system is adequately prepared to handle all general business licenses and that the transition to mandatory DOR issuance and renewal of general business licenses is as seamless as possible. DOR is authorized to establish a schedule, working with affected cities, for assuming the issuance and renewal of general business licenses.

Sec 203: A city may use only one of the following types of fees for general business licenses:

- A flat fee as established by the city;
- A flat fee calculated by multiplying a specific dollar amount by fulltime equivalent employees (FTEs) as represented by the quotient resulting from (Total hours worked by the business's employees located within the city/ 1920); or
- A range of flat fees based on FTEs under the above quotient.

Eliminates square footage fee authority.

Sec 204: DOR is not authorized to enforce a city's licensing laws except to the extent of issuing or renewing a license according to this [new RCW 35] chapter or 19.02 or refusing to issue or renew due to an incomplete application, nonpayment of appropriate licensing fee or nonpayment of any penalty for late renewal.

Sec 206: Cities may not require a person to obtain or renew a general business license unless the person engages in business within a city. A person engages in business within a city:

- if the person has business property or employees located in the city on either a permanent or nonpermanent basis, or .
- if the person, either directly or through an agent or other representative, engages in activities in the city that are significantly associated with the person's ability to establish or maintain a market for the person's products or services in the city.
- Engaging in business within a city is intended to be construed consistent with the *physical presence requirement* for purposes of imposing a sales or use tax collection obligation as established in *Quill Corp. v. North Dakota*.

Part IV: Reducing State B&O Classifications

The state has over 50 B&O tax classifications. The state will eliminate or consolidate most of these to 19.

Part V: Centralized Administration of City B&O Taxes

Sec 501: DOR administration of local B&O taxes. Legislature's intent for DOR to administer local B&O taxes in a manner similar to the administration and collection of local sales & use taxes.

Sec 502:

- No city may impose a B&O tax after December 31, 2014 unless administered by DOR.
- DOR may delay implementation, and as such cities may continue to administer until DOR takes over.
- DOR will charge an administration fee not to exceed one percent (1%) of each city's B&O receipts.
- DOR may collect and administer a city's B&O tax without entering into a contract with the city. If a contract is entered into between a city and DOR to administer B&O taxes a provision must include a way to resolve conflicts using a nonjudicial process first before resorting to litigation.

Sec 503: DOR may take any lawful action to carry out its duties.

Sec 504: Penalties and interest on city business and occupation taxes collected by DOR belong to the state and must be deposited in to the general fund.

Sec 505: Audit provisions: Collection and administration of local B&O taxes by the DOR includes the authority for DOR to conduct audits for any city imposing a business and occupation tax. However, a city may also conduct its own B&O tax audits subject to the following limitations:

- Cities conducting their own audit may not conduct one at the same time DOR is conducting an audit.
- Cities need consent from DOR to conduct an audit if DOR has notified the business of DOR's intent to conduct an audit and the city's B&O tax is within the scope of the audit or DOR's current audit plan includes the business and the city's B&O tax is within the scope of the planned audit.
- Cities conducting their own audit must use any format and template required by DOR.
- Cities conducting their own audit must forward the results of the audit to DOR in a form and format acceptable to DOR so that DOR, not the city, may issue any resulting assessment, credit, or refund deemed appropriate by DOR.

- DOR may make an independent determination of whether a city's audit justifies the issuance of an assessment, refund, credit, future reporting instructions or other appropriate action.
- Cities do not have authority to conduct an audit of state B&O taxes.

Part VI: Miscellaneous

Sec 602: Except as follows, this act takes effect July 1, 2012.

Sec 302 takes effect July 1, 2014; Sec 345 and 346 take effect August 1, 2012; Secs 401 – 416 and 418 – 462 take effect January 1, 2013; Sec 417 takes effect if the contingency in Sect 461 occurs.

Sec 603: Sec 301 expires July 1, 2014