

HOUSE BILL REPORT

SHB 2132

As Passed Legislature

Title: An act relating to business and occupation taxation of insurance salespersons.

Brief Description: Modifying the definition of employee to include certain insurance salespersons for the purposes of the business and occupation tax exemption under RCW 82.04.360.

Sponsor(s): By House Committee on Revenue (originally sponsored by Representatives Wang, Holland, Morris, Silver, Appelwick, McLean, May, Zellinsky and Bowman).

Brief History:

Reported by House Committee on:
Revenue, March 6, 1991, DPS;
Passed House, March 19, 1991, 97-1;
Passed Legislature, 97-1.

**HOUSE COMMITTEE ON
REVENUE**

Majority Report: *That Substitute House Bill No. 2132 be substituted therefor, and the substitute bill do pass.*
Signed by 15 members: Representatives Wang, Chair; Fraser, Vice Chair; Holland, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Appelwick; Belcher; Brumsickle; Day; Leonard; Morris; Morton; Phillips; Rust; Silver; and Van Luven.

Staff: Robin Appleford (786-7093).

Background: Under the business and occupation (B&O) tax, independent contractors are liable for tax while employees are not. From 1972 to 1990, the Department of Revenue (DOR) used five criteria to determine whether a life insurance agent was an independent contractor or employee. Under these guidelines, an employee is:

1. One who has no direct interest in the income or profits of the business other than a wage or commission;
2. One who has no liability for the expenses of maintaining an office or place of business, for overhead, or for compensation of employees;

3. One who has no liability for losses or indebtedness incurred in conducting the business of selling life insurance;
4. One for whom the insurance company provides office space, a telephone, and office supplies; and
5. One for whom the insurance company provides training, continuing supervision, and clerical service.

There was considerable confusion in the industry regarding DOR's application of these criteria. As a result, some insurance agents were not paying B&O tax even though they were liable for tax. Three years ago, DOR began negotiations with the Washington State Association of Life Underwriters (WSALU) to clarify the definitions of independent contractors and employees in the life insurance business.

The negotiations resulted in DOR issuing a bulletin in 1989 that attempted to better explain application of the tax to insurance agents. DOR also instituted a voluntary disclosure program to register agents who were liable for tax but had not been paying. Agents who voluntarily registered prior to June 1, 1989, were assessed back taxes plus interest for a period going back a maximum of four years. DOR's standard approach is to collect back taxes and interest from unregistered taxpayers for a period going back a maximum of seven years. DOR will also collect penalties if there is evidence of intent to evade taxes.

Since the bulletin was issued, the WSALU has worked with DOR to further clarify the criteria for distinguishing between life insurance employees and independent contractors. DOR issued a new rule in 1990 that refined the five criteria. However, there is still a sense among life agents that it is difficult to differentiate between employees and independent contractors for tax purposes.

Summary of Bill: The definition of employee under the B&O tax is expanded to include persons defined in Section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991. The effect of this change is to include full-time life insurance salespersons who perform services for remuneration for any person in the definition of employee for B&O tax purposes.

Fiscal Note: Requested February 27, 1991.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 1991.

Testimony For: The problem of distinguishing between life agent employees and independent contractors dates back to 1972. This is a good, simple solution, since if federal laws say the agent is taxable, the agent is taxable under state laws as well.

Testimony Against: None.

Witnesses: Matt Ryan; Floyd Watkins; and Dan Koch, W.S.A.L.U. (in favor).