

SENATE BILL REPORT

SHB 2132

AS REPORTED BY COMMITTEE ON WAYS & MEANS, APRIL 8, 1991

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.

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

HOUSE COMMITTEE ON REVENUE

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators von Reichbauer, Chairman; Johnson, Vice Chairman; McCaslin, Moore, Owen, Pelz, Rasmussen, Sellar, Vognild, and West.

Staff: Meg Jones (786-7416)

Hearing Dates: April 2, 1991; April 4, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, L. Kreidler, Matson, Metcalf, Murray, Newhouse, Owen, Saling, L. Smith, and West.

Staff: Terry Wilson (786-7715)

Hearing Dates: April 8, 1991

BACKGROUND:

Under current state law, business and occupation tax (B&O) is levied against independent contractors but not against employees or servants. Since 1972, the Department of Revenue has issued bulletins to assist citizens in determining whether they were liable for B&O tax. Some categories of business people fit definitions of either an independent contractor or an employee. Life insurance agent is one such category.

The federal Internal Revenue Service includes a full-time life insurance salesperson as an employee for purposes of taxation if he or she performs services under a contract requiring personal performance by the individual. Most captive agents fit this definition.

In Washington State, full time life insurance salespersons report that confusion exists in the industry about whether they are to register with the Department of Revenue as independent contractors. The reported result is that some agents pay B&O tax, while others in the same office, under the same contracts of agency, do not. The Department of Revenue addressed this in April and May, 1990 with bulletins providing a clearer definition of employee for insurance agents:

1. The agent may not have a direct interest in the profits or losses or any liability for the expenses of the insurance business selling the insurance policies; and
2. The agent must either: a) be subject to the control of the insurance company in the performance of the details of the agent's work, or b) the employer must withhold federal income tax, not just social security contributions.

Life insurance sales people report that confusion still exists in applying the "control" aspect of the definition.

SUMMARY:

The Legislature intends to use the federal tax statutory definition of employee to define life insurance sales people for purposes of business and occupation tax (B&O) status because of difficulty in distinguishing between independent contractors and employees using the Department of Revenue's tests.

The exemption of employees and servants from B&O tax liability is amended to include in the definition of employee those persons defined in Section 3121 (d)(3)(B) of the Internal Revenue code.

Appropriation: none

Revenue: none

Fiscal Note: available

Effective Date: July 1, 1991

TESTIMONY FOR (Financial Institutions & Insurance):

The B&O tax has been applied inequitably resulting in some life insurance salesmen being taxed as independent contractors and some as employees when doing the same work. This has been a problem since the late 1970s.

TESTIMONY AGAINST (Financial Institutions & Insurance): None

TESTIFIED (Financial Institutions & Insurance): PRO: Dan Koch,
WSALU

TESTIMONY FOR (Ways & Means):

There are many kinds of contracts in the insurance industry. It is confusing who is an employee and who is an independent contractor. This is a bright line that will end the confusion.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): Floyd Watkins, Matt Ryan, State Association of Life Underwriters (pro)