

HB 2933

Bill Analysis

February 4, 1998

Brief Description: Prescribing the taxation of businesses warehousing and selling pharmaceutical drugs.

Bill Sponsors: Representatives Radcliff, Cooper, Cooke, Morris, Doumit, Dyer, L. Thomas, Zellinsky, Grant and Thompson.

Staff: Rick Peterson, 786-7150.

Background: The business and occupation tax (B&O) is levied for the privilege of doing business in Washington. The tax is levied on 100 percent of the gross receipts of all business activities (except utility activities) conducted within the state.

Although there are several different rates, beginning July 1, 1998, the principal rates will be as follows:

Manufacturing/wholesaling	0.484%
Retailing	0.471%
Services	1.5%

Wholesalers that sell goods to retailers pay wholesaling B&O (0.484 percent) on the sales price of the goods sold.

Washington does not assess B&O tax on sales of goods which originate in Washington if the receipt of the goods occurs outside Washington. Washington does not apply B&O tax on sales of goods which originate outside the state unless the goods are received by the purchaser in this state and the out-of-state seller has nexus.

Nexus is a term used to describe the connection between the taxpayer or potential taxpayer and the Washington market place. Activities for which Washington claims creates sufficient nexus to apply the B&O tax to an out-of-state seller include: the goods are located in Washington at the time of sale; the seller has a branch office, local outlet, or other place of business which is used in any way with the selling or distributing of the goods; the order for the goods is solicited in Washington by an agent of the out-of-state seller; the delivery is made by a local outlet or local stock of goods of the seller in Washington; the out-of-state

seller either directly or by an agent performs significant services to establish or maintain sales in Washington; or the out-of-state seller installs the product in Washington as a condition of sale. Issues over what activities give rise to nexus are often subject to litigation.

An out-of-state seller can avoid B&O wholesaling tax if they sell goods in Washington only through a direct seller's representative—. A direct seller's representative solicits sales of consumer products in this state in the home or other than a permanent retail establishment. The direct seller's representative must be paid based on sales or other output and must not be treated as an employee of the out-of-state wholesaler. If the out-of-state wholesaler does not own or lease real property or maintain an inventory in Washington, is not incorporated under Washington law, and makes sales in Washington exclusively through direct seller's representatives then they are not subject to B&O wholesaling or retailing tax. However, the direct seller's representative is subject to B&O tax on their commission income.

Washington based wholesalers sometimes face competition from out-of-state sellers who may not have sufficient nexus for the B&O tax to apply to their wholesale sales. These wholesalers may use direct seller's representatives or take orders by telephone or mail.

Summary of Bill: Wholesalers of pharmaceutical drugs are provided a tax reduction. The new tax is 0.484 percent of 4 percent of gross income.

Appropriation: None.

Fiscal Note: Available.

Effective Date: July 1, 1998.