

FINAL BILL REPORT

ESSB 6470

PARTIAL VETO

C 332 L 98

Synopsis as Enacted

Brief Description: Specifying the tax treatment of canned and custom software.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators West, Anderson, Kohl, Snyder, Loveland, Fairley, T. Sheldon and Jacobsen; by request of Governor Locke).

Senate Committee on Ways & Means

Background: The sales tax is imposed on each retail sale of most articles of tangible personal property and certain services. Taxable services include construction, repair, telephone, lodging of less than 30 days, physical fitness, and some recreation and amusement services. The use tax is imposed on the use of articles of tangible personal property when the sale or acquisition has not been subject to the sales tax. The use tax commonly applies to purchases made from out-of-state firms.

The business and occupation tax (B&O) is levied for the privilege of doing business in Washington. The tax is levied on the gross receipts of all business activities conducted within the state. There are no deductions for the costs of doing business. Currently, the rate imposed on retail sales is 0.471 percent and on general services is 1.75 percent through June 30, 1998, and 1.5 percent thereafter.

Computer software designed for use by many people without modification is known as canned software. Canned software is considered tangible personal property and the sale is subject to sales tax. The retailer pays B&O tax under the retailing classification. Custom software is software designed for use by a single consumer. The creation of custom software is considered a service. It is not subject to retail sales tax and the seller pays B&O tax under the service classification. The customization of canned software is considered a retail sale. As such, the sale is subject to sales tax and the seller pays B&O tax under the retailing classification.

Summary: The customization of canned software is considered a service. Therefore, the sale is not subject to sales tax and the seller pays B&O tax under the service classification.

A B&O tax credit is authorized for persons engaged in the business of the creation, distribution, wholesaling, or warehousing of canned or custom software if the principal place of business of the person is located in a distressed county. The credit is 100 percent of the tax otherwise due for the first 36 months in which the person is engaged in business in the distressed county. After this, the credit is reduced to 90 percent for persons engaged in the business of the creation or distribution of canned or custom software and 70 percent for persons engaged in the business of the wholesaling or warehousing of canned or custom software. A distressed county is defined as any county in which the average level of

unemployment for the previous three years exceeds the average state unemployment for those years by 20 percent.

Votes on Final Passage:

Senate	49 0
House	98 0

Effective: July 1, 1998

Partial Veto Summary: The B&O tax credit is vetoed.