
Finance Committee

ESSB 6011

Brief Description: Providing a business and occupation tax for staffing services businesses.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Rossi).

Brief Summary of Engrossed Substitute Bill

- Reduces the business and occupation tax rate for temporary staffing service businesses from 1.5 percent to 0.484 percent.
- Provides three-factor apportionment of gross receipts for temporary staffing service businesses that operate both within and without this state.

Hearing Date: 4/1/03

Staff: Bob Longman (786-7139).

Background:

A temporary staffing business recruits and provides temporary workers to other businesses and non-business customers, in situations such as employee absences, temporary skill shortages, and seasonal workload increases.

Temporary staffing businesses are subject to business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities without any deduction for the costs of doing business. However, a business that acts as an agent for another business is not liable for B&O tax on amounts that merely "pass through" the agent as reimbursement for expenses incurred by the agent on behalf of the agent's client. For example, an attorney might pay court costs on behalf of a client. When the attorney is reimbursed for those costs by the client, the attorney is not liable for B&O tax on the reimbursements. The attorney is only liable for B&O tax on amounts charged as fees for the attorney's services.

Temporary staffing businesses charge their clients amounts which include both payments to the temporary workers and fees charged for the service of providing the employees. Temporary staffing businesses have been paying B&O tax on the amounts received as fees for the service of providing employees, but not on the amounts received for payment to the temporary workers as wages and benefits. Temporary staffing businesses have taken the

position that they are merely acting as agents for the client businesses, and the wage and benefit amounts are not part of the taxable gross receipts of a temporary staffing business.

In December 2002, the Washington Supreme Court decided that temporary staffing businesses are not agents for B&O tax purposes. As a result of this decision, temporary staffing businesses are required to pay tax on all amounts received from their clients. The decision involved taxes imposed by the City of Tacoma, but the logic of the court's opinion applies equally to state B&O taxes. As a result, the Department of Revenue began informing temporary staffing businesses that they must include wage and benefit payments in their taxable gross receipts.

Under the B&O tax, different tax rates apply to six separate categories of business activity. Most businesses engaging in service activities are subject to B&O tax at the rate of 1.5 percent of gross receipts. However, businesses that provide construction, repair, and similar services to a consumer are subject to B&O tax the retailing rate of 0.471 percent and must collect retail sales tax from the consumer. Businesses that provide these services as wholesalers or subcontractors pay B&O tax at the wholesaling rate of 0.484 percent. There is a dispute as to which rate properly applies to temporary staffing businesses that provide workers for construction or repair activities. This issue is under litigation in the courts.

If a business that provides services taxable at the 1.5 percent rate has a place of business outside the state that contributes to the performance of services, the business must apportion to this state the portion of gross income derived from services rendered in this state. If is not practical to use separate accounting methods to determine the amount of services rendered in this state, the taxpayer must apportion income to this state in proportion to the cost of doing business within this state relative to the total cost of doing business both within and without this state.

Summary of Bill:

The B&O tax rate for temporary staffing services, other than construction, repair, and similar services, is reduced from 1.5 percent to 0.484 percent.

For staffing activities conducted both within and without this state, gross receipts must be apportioned using a three-factor formula based on the percentages of property, payroll, and sales in this state. The factors must be calculated in a manner consistent with apportionment factors in the Uniform Division of Income for Tax Purposes Act, a model law developed for primarily for use with net income taxes.

If this method of apportionment does not fairly represent the extent of the taxpayer's business activity in this state, the department may allow or require the use of an alternative apportionment method, if reasonable, such as separate accounting, the exclusion of any one or more of the factors, or the inclusion of one or more additional factors.

Appropriation: None.

Fiscal Note: Requested on March 27, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.