

# SENATE BILL REPORT

## ESSB 6011

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As Passed Senate, March 19, 2003

**Title:** An act relating to the business and occupation tax treatment of staffing businesses.

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

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

**Brief History:**

**Committee Activity:** Ways & Means: 3/10/03 [DPS].

Passed Senate: 3/19/03, 46-1.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6011 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rossi, Chair; Hewitt, Vice Chair; Zarelli, Vice Chair; Doumit, Fairley, Hale, Honeyford, Johnson, Parlette, Regala, Roach, Sheahan, B. Sheldon and Winsley.

**Staff:** Catherine Suter (786-7442)

**Background:** Temporary staffing agencies currently pay the services business and occupation (B&O) tax rate of 1.5 percent. For years, these agencies have been deducting the amounts they received for wages and benefits paid to the temporary workers from their gross receipts. This was in accordance with Department of Revenue (DOR) policy.

In 2002, DOR issued an administrative decision and the Washington Supreme Court issued a court decision in *Evergreen Staffing v. City of Tacoma*, both concluding that temporary staffing agencies are not entitled to the B&O deduction. As a result, DOR is in the process of informing these staffing agencies that they will have to include the wage and benefit payments in their taxable income for future periods. This is estimated to result in approximately \$20.6 million of increased B&O tax revenue for the 03-05 biennium.

Temporary staffing agencies are businesses that hire their own employees and assign them to support or supplement a client's workforce in temporary situations such as employee absences, temporary skill shortages, and seasonal workload increases. Temporary staffing services do not include employee leasing or employee placement services.

The apportioned gross income on activities that are conducted both within and without the state is currently calculated on the basis of separate accounting, or when not available, on a firm's cost of doing business, per RCW 82.04.460. Washington is the only state that apportions in this way. Most states use a three-factor formula that accounts for income divided by property, payroll, and sales.

**Summary of Bill:** The B&O rate for temporary staffing services that would otherwise be subject to the services B&O rate is reduced from 1.5 percent to 0.484 percent. Apportioned gross income is calculated using a variation on the three-factor formula. An alternative apportionment method may be used on a case-by-case basis if this method does not fairly represent the extent of a taxpayer's business in Washington.

**Appropriation:** None.

**Fiscal Note:** Requested on March 6, 2003.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The temporary staffing industry is faced with a very confusing and complex tax change, due to the courts rewriting tax law. The majority of this industry will see a 300 percent increase in B&O taxes. Those businesses cannot pass on the tax to their clients because the Fortune 500 clients are moving out of state due to our poor business climate and the clients remaining in Washington cannot afford to pay more. Everyone is facing declining margins due to the recession. Temporary staffing businesses themselves cannot cut their costs enough to absorb the impending tax increase.

The temporary staffing industry is very important to the high tech industry.

The underlying policies of this bill are good: to clarify tax law and to avoid future litigation.

**Testimony Against:** None.

**Testified:** PRO: Jan Gee, Washing Staffing Association and Washington Association of Computer Services Organizations; Jon Raymond, Star Tech Group, Inc.; Steve Neighbors, TERRA Resource Group; no position: Bob Heller, Department of Revenue.