

SENATE BILL REPORT

SB 5451

As Reported By Senate Committee On:
Health & Long-Term Care, February 23, 2005
Ways & Means, March 7, 2005

Title: An act relating to excise taxation of certain cosmetic medical services.

Brief Description: Modifying the excise taxation of cosmetic medical services.

Sponsors: Senators Keiser, Prentice, Doumit and Kohl-Welles.

Brief History:

Committee Activity: Health & Long-Term Care: 2/2/05, 2/23/05 [DPS-WM, w/oRec].
Ways & Means: 3/4/05, 3/7/05 [DP2S, DNP].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5451 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Thibaudeau, Vice Chair; Franklin, Kastama, Kline and Poulsen.

Minority Report: That it be referred without recommendation.

Signed by Senators Deccio, Ranking Minority Member; Benson, Brandland and Parlette.

Staff: Stephanie Yurcisin (786-7438)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5451 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Regala, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Hewitt, Parlette, Pflug, Rasmussen, Roach and Schoesler.

Staff: Terry Wilson (786-7433)

Background: The sales tax is paid 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, restaurant meals, physical fitness, and some amusement and recreation 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 state imposes a general tax of 6.5 percent of the selling price in the case of the sales tax and of the value of the article used in the case of the use tax. Cities, counties, and other taxing districts may impose sales and use taxes at various rates. The total state and local sales and use tax rates imposed are between 7 percent and 8.9 percent, depending on the location.

The business & occupation (B&O) tax 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. Persons engaged in retailing collect the sales tax from consumers and pay the retailing B&O tax at the rate of 0.471 percent. Persons performing services do not collect the sales tax and pay the service B&O tax at the rate of 1.5 percent.

Summary of Second Substitute Bill: Cosmetic medical services are included in the definition of retail sale. Cosmetic medical service is defined as any medical procedure performed on a person by a regulated health care professional, and any service directly related to the performance of the medical procedure, to improve a person's appearance that is not medically necessary to promote the proper function of the body or prevent or treat physical illness or disease. Services covered by medical or dental insurance or deductible as medical expenses for federal income tax purposes are presumed to be medically necessary services. Reconstructive surgery or dentistry is medically necessary.

As a result, the sales and use tax applies to the retail sale and use of these services. Revenues from the sales and use tax on these services are deposited into the health services account and used for children's health care services.

In addition, the cosmetic medical service provider's B&O tax rate will change from the 1.5 percent service rate to the 0.471 percent retailing rate.

Second Substitute Bill Compared to Substitute Bill: Technical amendments are made. The substitute bill applied only to persons over eighteen years of age. The second substitute bill removes the reference to in-office bleaching procedures of dentists.

Substitute Bill Compared to Original Bill: The substitute bill clarifies the definition of "cosmetic medical service" by stating that if the procedure is deductible under federal tax law or is covered by the individual's medical insurance, it will not be subject to the tax. It adds ancillary medical services performed as part of the cosmetic surgery to the taxable amount, and it clarifies that in-office tooth bleaching is the only dental procedure that is taxable.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For (Health & Long-Term Care): Children's health care deserves to be fully funded, and individuals who are motivated to pay this much for elective procedures will not be dissuaded by the extra tax. Providing proper care for children leads to much lower state expenditures in the long run.

Testimony Against (Health & Long-Term Care): This tax unfairly targets hard-working, middle class women who save to be able to afford procedures not covered by insurance. These procedures greatly improve the patients' self-esteem, and they subsidize reconstructive surgeries and pro bono surgeries. Patients will go out of state to have the procedure and the state will lose the B&O revenue. There is some confusion about whether certain things (e.g., LASIK) is covered.

Who Testified (Health & Long-Term Care): PRO: Lonnie Johns-Brum, National Organization of Women; Kairie Pierce, citizen; Nick Federici, National Association of Social Workers; Kevin Glackin-Coly, Children's Alliance.

CON: Jan Zempleney, Northwest Academy of Otolaryngology; Susie Tracy, Washington State Medical Association; Bill Portuese, Washington State Society of Facial Plastic Surgeons; Geoff Yuell, Washington Society of Plastic Surgeons; Aaron Weingeist, Washington Academy of Eye Physicians and Surgeons.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Robert Bohannon, American Academy of Dermatology.

Testimony For (Ways & Means): There is a need for revenue for health care services. This will generate revenue. This is a common sense closing of the medical service loophole.

Testimony Against (Ways & Means): Health care is a societal issue and should not be paid for with a narrow tax. This fiscal impact is overstated. Most procedures are done in other states. The fiscal note is not population or use based. This tax adversely affects middle-aged, middle-income women who save to be able to afford the procedures. Patients will go outside the state if there is a tax. These procedures subsidize reconstructive surgeries.

Who Testified (Ways & Means): PRO: Senator Keiser, prime sponsor; Nick Federici, National Association of Social Workers.

CON: Susie Tracy, Washington State Medical Association, Washington State Academy of Eye Physicians & Surgeons, Washington State Society of Oral & Maxillofacial Surgeons; Bill Portuese, Washington State Society of Facial Plastic Surgeons.