

SENATE BILL REPORT

SB 6796

As of February 3, 2010

Title: An act relating to assessing a business and occupation tax surcharge on automatic teller fees in excess of one dollar and fifty cents.

Brief Description: Assessing a business and occupation tax surcharge on automatic teller fees in excess of one dollar and fifty cents.

Sponsors: Senators Gordon, Prentice, Hargrove, Oemig, Kline, Eide, Jacobsen, Shin and Keiser.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/02/10.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Diane Smith (786-7410)

Background: Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state without any deduction for the costs of doing business. Revenues are deposited in the State General Fund.

A business may have more than one B&O tax rate, depending on the type of activities conducted. There are a number of different rates. The main rates are: 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for professional and personal services, and activities not classified elsewhere. All banking activity in Washington pays 1.5 percent on its service income, which includes income from interest and fees. Credit unions in Washington do not pay B&O tax.

An automated teller machine (ATM) is an electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or convenience account. ATMs do not include a device used primarily to facilitate check guarantees or check authorizations, used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by a store cashier, or used for payment of goods and services.

Financial institutions may issue debit and credit cards to their customers for use at ATMs throughout the United States and around the world to obtain cash, bank balances, view and

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make bank transactions, and, in some cases, receive stamps. The issuing financial institution may charge the customer a convenience fee when a card is used at an ATM. In addition, the owner of an ATM may charge an access fee. The owner keeps the access fee for each ATM transaction, which is paid by the cardholder's issuing financial institution. Financial institutions, international sales organizations sponsored by a financial institution, and merchants may own ATMs for use by the public on owned or leased premises.

Summary of Bill: Gross income of a financial institution from ATM access fees or surcharges that are above \$1.50 are subject to a B&O tax surcharge, based on a sliding scale. Gross income from access fees or surcharges above \$1.50 but below \$2.00 are subject to a 5 percent B&O tax surcharge; above \$2.00 but below \$2.50 is 7.5 percent; above \$2.50 is 10 percent.

For the calendar year 2015, the Department of Revenue (DOR) must conduct a study on the B&O tax surcharge and national trends in ATM charges, to determine if the threshold of surcharge assessment should be adjusted. The DOR must present the final report to the Legislature by October 31, 2015.

Appropriation: None.

Fiscal Note: Requested on January 28, 2010.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony: PRO: This bill gives incentives for financial institutions to reduce their ATM fees. The B&O surcharge is not a tax directly on customers. There is a small drafting error. The proceeds go into the general fund to help the state fund good programs. This only applies to ATMs within the state.

CON: Besides significant administrative concerns, there are accounting problems. As a matter of policy, though, ATMs are a nationwide network and banks must pay for access to other banks' ATMs. Effectively, the bill makes banks pay B&O tax for credit unions and out-of-state banks if we give our customers access to large ATM networks. This makes the bill have a disproportionate effect on community banks. Because it is very expensive to operate the ATM network, providing this service is a loss-leader. The surcharge is a disincentive for small banks to continue to offer the service.

OTHER: Before the bill could be implemented, several questions would need to be addressed. The \$2 and \$2.50 surcharge/fee loopholes need to be fixed. Should the B&O surcharges apply to all businesses charging ATM surcharges/fees or only financial institutions? Where is the ATM fee or surcharge imposed? Is it always where the ATM is? Will these fees/surcharges be subject to apportionment, as most service income from interstate banks is? Should regular B&O credits be allowed against the new B&O surcharge? As written, under one interpretation of the language, the graduated surcharge requires applying up to three different rates on one fee.

Persons Testifying: PRO: Senator Gordon, prime sponsor.

CON: Brad Tower, Community Bankers of Washington; Denny Eliason, Washington Bankers Association.

OTHER: Drew Shirk, DOR.