

# HOUSE BILL REPORT

## HB 2938

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### As Reported by House Committee On: Finance

**Title:** An act relating to encouraging participation in Washington trade conventions by modifying tax provisions related to establishing substantial nexus.

**Brief Description:** Encouraging participation in Washington trade conventions by modifying tax provisions related to establishing substantial nexus.

**Sponsors:** Representatives Orcutt and Walkinshaw.

#### **Brief History:**

##### **Committee Activity:**

Finance: 2/5/16, 2/8/16 [DPS].

#### **Brief Summary of Substitute Bill**

- Allows an out-of-state business to participate in one trade convention in Washington each year without the participation being used as the sole basis to establish nexus for Washington tax purposes.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Lytton, Chair; Robinson, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Frame, Manweller, Reykdal, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pollet.

**Staff:** Jeffrey Mitchell (786-7139).

#### **Background:**

As currently interpreted by the United States Supreme Court, the commerce clause of the United States Constitution prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the

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taxing state. Under the United States Supreme Court's decision in *Quill Corp. v. North Dakota* (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state. Physical presence can be established through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives that act on behalf of the taxpayer in the taxing state.

In 2010 Washington adopted an economic presence test for nexus with respect to service-related activities. For these classifications, a business does not need to have a physical presence to have nexus and be subject to Washington tax. Economic nexus is established by having sales in excess of \$267,000 to Washington customers. The threshold is adjusted from year to year.

Until 2015 Washington could not impose the wholesaling Business and Occupation Tax (B&O) on sales of goods that originated outside the state unless the goods were:

- received by the purchaser in this state; and
- the out-of-state seller had physical presence nexus (i.e., the same physical nexus requirement that is used for sales tax purposes).

In 2015 Engrossed Second Substitute Bill 6138 extended economic nexus standards to out-of-state businesses with no physical presence in Washington, but who make wholesale sales into Washington. If these businesses have more than \$267,000 of receipts from this state, then economic nexus standards with Washington will apply and these businesses will be required to remit the wholesaling B&O tax at the rate of 0.484 percent.

Engrossed Second Substitute Bill 6138 also modified nexus standards to include remote sellers who:

- enter into agreements with Washington residents who, for a commission or other consideration, refer potential customers to the remote seller such as by a link on a website; and
- generate more than \$10,000 in gross receipts during the prior calendar year under such agreements from sales into this state.

This type of nexus is referred to as "click-through" nexus. This change in nexus standards will require these remote sellers to collect and remit Washington sales tax for sales made into the state. Remote sellers that collect and remit retail sales tax will also be required to pay the B&O tax on their Washington sales. Remote sellers have the ability to rebut a determination by the Department of Revenue (DOR) that they have established click-through nexus with the state. Any provision of the click-through nexus standards that conflict with any future change in federal law will expire.

In 2013 legislation was enacted requiring all new tax preference legislation to include a tax preference performance statement. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference. Unless an alternate date is specified, the 2013 legislation specifies that new tax preferences expire after 10 years.

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**Summary of Substitute Bill:**

For purposes of B&O taxes and sales and use taxes, the DOR may not consider the mere attendance of one or more representatives of a business at a single trade convention per year in Washington in determining if the person is physically present in this state for the purposes of establishing substantial nexus with this state with respect to making retail sales. This exclusion does not apply if the business makes retail sales at the trade convention.

A tax preference performance statement is included that specifies the bill's public policy objective is to encourage participation in Washington trade conventions. By the end of 2025, the JLARC is required to evaluate whether the number of businesses participating in trade conventions has increased above 2015 levels. If the number of businesses participating in trade conventions has increased, the public policy objective of the bill will have been met, and the JLARC will recommend extending the expiration date. If the number of businesses participating in trade conventions has not increased, the JLARC must recommend ways to improve the tax preference to meet its public policy objective.

**Substitute Bill Compared to Original Bill:**

The substitute bill establishes growth in the number of businesses participating in trade conventions as the metric to determine whether the nexus exclusion has achieved its public policy objective. The substitute bill also clarifies that general participation by a representative at a trade convention will not establish physical presence and that a person taking orders for products or services where receipt will occur in Washington does not qualify for the nexus exclusion.

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**Appropriation:** None.**Fiscal Note:** Available.**Effective Date of Substitute Bill:** The bill takes effect on July 1, 2016.**Staff Summary of Public Testimony:**

(In support) Exhibitors are a huge component of conventions. They provide a tremendous amount of money towards the cost of hosting a convention and bring the cost down for everyone. Think of all the speakers and other participants who come to Washington and spend money. Hopefully, they come early and stay late and visit other areas of the state. If we lose just one conference, we lose millions of dollars of benefit. We are here to talk about a problem that we are seeing develop and we want to nip it in the bud. Tourism is a huge part of our economy. We had 42 Seattle-area conventions generating about \$380 million. This yielded \$30 million in state taxes. Bringing conventions to a location is a very competitive endeavor. Twenty to 25 percent of attendees will visit other parts of the state. Any potential

tax, even if well-intentioned, can hurt our reputation. Show producers have many choices – San Francisco, Portland, Vancouver, etc. Exhibitors are a major source of revenue. They are not selling to the general public, but trying to build relationships. It is important that we do not create an atmosphere that is detrimental to bringing conventions to Washington. Shows are looking to leave because of this issue. A sampling of comments we have received from professional events planners, who are very concerned about this issue, has been assembled. Exhibitor sales plus booth space and sponsorships contribute one-third of the revenue needed to fund our conventions. The nexus interpretation is Washington telling us not to come visit and spend money.

(Opposed) None.

**Persons Testifying:** Tom Norwalk, Katy Willis, and Becky Bogard, Visit Seattle; and Jeff Blosser, Washington State Convention Center.

**Persons Signed In To Testify But Not Testifying:** None.