
**Technology & Economic Development
Committee**

HB 1904

Brief Description: Concerning the sale and taxation of Washingtonians' personal information and related data.

Sponsors: Representative Smith.

Brief Summary of Bill

- Imposes a business and occupation tax on the sale of personal information in Washington.

Hearing Date: 1/16/18

Staff: Lily Smith (786-7175).

Background:

According to the Federal Trade Commission, companies known as "data brokers" collect personal information from consumers and sell or share it with others. Data brokers collect this information from a wide variety of publically available sources, and use both raw and inferred data about those individuals to develop and market products, verify identities, and detect fraud. Consumers are often unaware of these practices.

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. Business and occupation taxes are collected by the Department of Revenue (DOR), and revenues are deposited in the State General Fund.

Persons with a substantial nexus to the state are subject to B&O taxes for engaging in business activities. For purposes of applying B&O taxes, "apportionable income" is the gross income of a business engaging in activities that can be allocated to the state. This income can come from

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activities performed outside the state if it would be taxable if received from activities in the state. This income is allocated to Washington by multiplying the apportionable amount by a receipts factor, expressed as a fraction.

For defined apportionable activities, a person is considered to be engaging within the state when that person generates gross income of the business from sources, such as customers or intangible property, within the state. The person does not need to be physically present in the state.

Summary of Bill:

Beginning on January 1, 2018, a B&O tax is imposed on the sale of personal information in Washington. The tax applies to each person engaging in the sale of personal information in the state, in the amount of 3.3 percent of the gross income of such business.

In applying the tax, an individual is considered located in the state if the Internet service provider used by the individual is located in the state. "Personal information" is information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to:

- a name;
- a physical or email address;
- physical characteristics or description;
- driver's license and other identification numbers; and
- financial, medical, employment, or education information.

Personal information includes browser habits and any other data that can be attributed to an individual and used for marketing, or determining access and costs related to insurance, credit, or health care. It does not include photographs.

The sale of personal information is an apportionable activity for computing tax liability. The receipts factor for calculating the apportionment is the ratio that the number of Washington addresses in the personal information bears to all addresses in the personal information. If the taxpayer is not able to calculate this ratio, an alternate method references the population of all the states of the United States in the taxpayer's market. Any other reasonable methods allowed by DOR may also be used.

The sale of personal information is excluded from the definitions of "digital goods," "digital automated service," and "gross income on royalties" for the purposes of applying the B&O tax.

The sales or charges made for services received by persons engaging in "credit bureau services" is removed from definition of the term "sale at retail" or "retail sale."

"Addresses" means both physical and Internet provider addresses.

Appropriation: None.

Fiscal Note: Available.

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