
Finance Committee

HB 2468

Brief Description: Improving the effectiveness and adequacy of the workforce education investment surcharge by decreasing compliance and administrative burdens for taxpayers and the department of revenue.

Sponsors: Representatives Hansen, Tharinger, Pollet and Wylie.

Brief Summary of Bill

- Makes changes to the Workforce Education Investment surcharge retroactively and prospectively.
- Clarifies the language for the types of businesses subject to the surcharge.
- Replaces the tiered advanced computing surcharge with a single surcharge of 1.22 percent of a business' gross service and other income.

Hearing Date: 1/23/20

Staff: Tracey O'Brien (786-7152).

Background:

Business & Occupation Tax.

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. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

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In addition, a taxpayer may be eligible to utilize other tax preferences, including credits and deductions, to reduce their tax liability. For example, a taxpayer engaging in activities subject to different B&O tax rates may be eligible for a Multiple Activities Tax Credit. A taxpayer may also be eligible for a small business credit that will either eliminate or reduce their B&O tax liability. In general, the credit is \$70 per month for service businesses and \$35 per month for all other businesses, multiplied by the number of months in the reporting period. The amount of the credit available phases out based on the business's gross receipts.

A business does not have to file an annual B&O tax return if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has annual gross proceeds of sales, gross income, or value of products for all B&O tax classifications of less than \$28,000 per year, or less than \$46,667 if at least 50 percent of its taxable income is from services or activities not classified elsewhere.

Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Workforce Education Investment Act Surcharge.

In 2019, the Legislature enacted the Workforce Education Investment Act (WEIA) from Engrossed Second Substitute House Bill 2158 (E2SHB 2158). As part of this legislation, a new three-tiered Workforce Education Investment surcharge was established.

The first tier of surcharge is imposed on selected businesses based on their primary business activity. An activity is considered to be a business' primary activity if more than 50 percent of the business' cumulative gross income was generated from engaging in that activity in the entire current or preceding calendar year. Selected business activities include 43 categories of service and other activities, including, but not limited to, architecture and engineering services, legal services, insurance carriers, financial services, medical services, software publishing, scientific research, electronic shopping, and telecommunications services.

Under the first tier of the Workforce Education Investment surcharge, if a business is primarily engaged in one or more of the activities described, the surcharge is 20 percent of the total amount of taxes payable by the business on activities taxed under the B&O tax rate for services.

The second tier of the surcharge is imposed on advanced computing businesses that have worldwide gross revenue of more than \$25 billion but less than \$100 billion. The surcharge is 33.33 percent of the total amount of taxes payable by the business on activities taxed under the B&O tax rate for services.

The third tier of the surcharge is imposed on advanced computing businesses that have worldwide gross revenue of more than \$100 billion. The surcharge is 66.66 percent of the total amount of taxes payable by the business on activities taxed under the B&O tax rate for services.

The total amount of surcharge paid by an affiliated advanced computing group must be at least \$4 million, but not more than \$7 million per year.

An advanced computing business is one that designs or develops software or computer hardware, including modifications thereto, or provides cloud computing services, operates an online marketplace, an online search engine, or an online social networking platform.

Workforce Education Investment Account.

As part of E2SHB 2158, the WEIA was created. All revenues from the Workforce Education Investment surcharges must be deposited in the WEIA. The account may be used only for higher education programs, higher education operations, higher education compensation, and state-funded student aid programs except for the 2019-21 biennium in which funds can be used for Career Connected Learning (CCL). Expenditures from the WEIA must be used to supplement, not supplant, other federal, state, and local funding for higher education.

Summary of Bill:

The mechanics of the Workforce Education Investment surcharge (surcharge) are changed. The rate is changed to 0.3 percent and it applies to the gross income of a specified person attributable to service related activities. A specified person is defined as a person who has gross income in Washington attributable to enumerated activities established in the Workforce Education Investment Act (WEIA). The statutory description of many of these activities are further clarified.

The rule of statutory construction change in favor of not applying the surcharge is clarified to apply to tax periods on or after January 1, 2022.

The tiered advanced computing surcharge is replaced with a single surcharge of 1.22 percent of a business' gross service and other income. The minimum surcharge amount to be paid by all members of an affiliated group of \$4 million is eliminated.

The surcharge will not apply to state or local governments or to municipal corporations.

The changes made to the WEI Act apply both prospectively and retroactively to January 1, 2020.

The requirements of tax preference performance statements, a JLARC review, and the automatic 10 year expiration do not apply to any tax preference creating under this act.

Appropriation: None.

Fiscal Note: Requested on January 13, 2020.

Effective Date: The bill contains an emergency clause and takes effect immediately.