

HOUSE BILL REPORT

HB 2505

As Passed Legislature

Title: An act relating to extending the business and occupation tax exemption for amounts received as credits against contracts with or funds provided by the Bonneville power administration and used for low-income ratepayer assistance and weatherization.

Brief Description: Extending the business and occupation tax exemption for amounts received as credits against contracts with or funds provided by the Bonneville power administration and used for low-income ratepayer assistance and weatherization.

Sponsors: Representatives Robinson, Boehnke, Chapman, Leavitt, Orcutt, Doglio and Tharinger.

Brief History:

Committee Activity:

Finance: 2/20/20, 2/27/20 [DP].

Floor Activity:

Passed House: 3/7/20, 96-0.

Passed Senate: 3/10/20, 46-0.

Passed Legislature.

Brief Summary of Bill

- Reinstates the business and occupation tax exemption for power conservation and demand management credits and funding from the Bonneville Power Administration, if the tax savings are used for low-income ratepayer assistance.
- Expires the new exemption on January 1, 2030.
- Adds a tax preference performance statement.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 12 members: Representatives Tarleton, Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Chapman, Frame, Macri, Orwall, Springer, Stokesbary, Vick and Wylie.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

Background:

Business and 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.

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.

Bonneville Power Administration.

The Bonneville Power Administration (BPA) is a federal nonprofit agency that markets wholesale electrical power from 31 federal hydroelectric projects in the Columbia River Basin, one nonfederal nuclear plant, and several other small nonfederal power plants. The dams are operated by the United States Army Corps of Engineers and the Bureau of Reclamation. About one-third of the electric power used in the northwest comes from the BPA.

Under the federal Northwest Power Act, consumer-owned utilities have preference and priority in purchasing-power from the BPA. Investor-owned utilities can purchase power from the BPA under certain conditions. The BPA provides credits and funding for the costs of some or all utility energy savings through various mechanisms under specific power contracts.

The Department of Revenue has concluded that the credits and payments received by utilities under the BPA's energy savings programs are subject to the B&O tax.

Business and occupation tax exemptions provide a dollar-for-dollar offset against tax liability. Legislation was passed in 2010 creating an exemption for credits or funds received

by utility customers of the BPA for the purpose of implementing energy conservation or demand-side management programs. This exemption expired on June 30, 2015.

Consumer-owned and investor-owned utilities may provide reduced utility rates for low-income customers. According to the Low-Income Home Energy Assistance Program within the United States Department of Health and Human Services, some consumer-owned utilities and all investor-owned utilities within the state offer some type of low-income rate assistance.

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.

Summary of Bill:

Credits against power contracts with, or funds provided by, the BPA for energy conservation programs or demand-side management programs are exempt from the B&O tax, provided that the tax savings are used for low-income ratepayer assistance. This tax exemption expires on January 1, 2030.

A TPPS provides that this tax preference is designed to induce certain behavior by taxpayers and to create low-income ratepayer tax and utility rate relief. The Legislature's specific public policy objectives are to: (1) increase investment in energy efficiency and conservation programs; (2) support efforts by utilities to acquire all cost-effective energy conservation and noncarbon-emitting energy resources as required under Washington law; and (3) increase funds dedicated to low-income ratepayer assistance and weatherization in Washington.

The Legislature directs JLARC, at a minimum, evaluate the average annual investment in energy conservation projects by Washington State utilities that have power contracts with BPA and to evaluate the average additional funds from tax savings resulting from this act that are dedicated to low-income ratepayer assistance and weatherization by Washington State utilities that have power contracts with BPA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2020.

Staff Summary of Public Testimony:

(In support) Virtually all public utilities have long-term power contracts with BPA. Local utilities play a significant role in fulfilling BPA's conservation commitments. As a result, BPA provides local public utilities credits for their conservation and rate-payer assistance programs. This is not new money and should not be subject to B&O. In fact, it is using money from ratepayers which is already taxed under public utilities tax. By reinstating this small but important tax credit, the Legislature will eliminate the double taxation and restore equity in state taxation. Moreover, it will assist a state priority by promoting conservation and meeting obligations under the Green Energy Act.

(Opposed) None.

Persons Testifying: Nicholas Garcia, Washington Public Utility Districts Association; Marian Dacca, Tacoma Public Utilities; and Dena Diamond-Ott, Cowlitz Public Utility District.

Persons Signed In To Testify But Not Testifying: None.