

# HOUSE BILL REPORT

## HB 2903

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### As Passed Legislature

**Title:** An act relating to providing that qualified dealer cash incentives paid to auto dealers are bona fide discounts for purposes of the business and occupation tax.

**Brief Description:** Providing that qualified dealer cash incentives paid to auto dealers are bona fide discounts for purposes of the business and occupation tax.

**Sponsors:** Representatives Chapman, Stokesbary, Chambers, Gildon, Tharinger and Senn.

#### **Brief History:**

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

Finance: 2/4/20, 2/7/20 [DP].

##### **Floor Activity:**

Passed House: 2/27/20, 98-0.

Passed Senate: 3/11/20, 45-1.

Passed Legislature.

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

- Allows motor vehicle dealers to deduct qualified dealer cash incentives from the measure of tax subject to the service and other activities business and occupation classification.

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### 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.

**Staff:** Nick Tucker (786-7383).

#### **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

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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.

#### Motor Vehicle Dealers.

Motor vehicle dealers performing more than one activity may be subject to tax under one or more B&O classifications. Different tax classifications with different rates apply for the various business activities.

#### Tax Preferences.

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:**

Motor vehicle dealers are permitted to deduct the amount of any qualified dealer cash incentives from the measure of tax due under the service and other activities B&O classification.

"Qualified dealer cash incentive" means a payment or credit offered to a motor vehicle dealer by a manufacturer of a motor vehicle where:

1. the amount of the incentive is based on the quantity of a specific vehicle model, regardless of whether the dealer is required to sell a minimum number of the vehicles;
2. the dealer knew the terms of the incentive before selling the vehicle for which the incentive is provided; and
3. the dealer is not required to provide any service to the manufacturer in order to be eligible for the incentive.

The bill is exempted from TPPS requirements, the 10-year expiration of tax preferences, and JLARC review.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2021.

**Staff Summary of Public Testimony:**

(In support) This is a tax policy that everyone can support. This is a bill about fairness. Grocers are allowed a scan-down allowance and these dealer incentives are functionally the same kind of discount that grocers receive a tax deduction on.

The Department of Revenue thinks that these dealer incentives should be taxed at the service and other activities B&O classification, but this rate is three times the rate paid for the sale of the vehicle. Dealers believe these incentives are a discount and should not be subject to taxation because there is not additional service being performed.

The language in the bill is slightly different than the scan-down allowance in that it clarifies that the administrative task of providing details back to the manufacturer is not itself a service.

(Opposed) None.

**Persons Testifying:** Scott Hazlegrove and Brian Imai, Washington State Auto Dealers Association; and Greg Anderson, Titus Will Automotive.

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