

HOUSE BILL REPORT

HB 1495

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, Robertson and Dent.

Brief History:

Committee Activity:

Finance: 2/16/21, 2/19/21 [DP].

Floor Activity:

Passed House: 3/4/21, 98-0.

Passed Senate: 4/8/21, 48-1.

Passed Legislature.

Brief Summary of Bill

- Authorizes a business and occupation tax deduction on qualified dealer cash incentives for motor vehicle dealers.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 17 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai, Vick, Wylie and Young.

Staff: Nick Tucker (786-7383).

Background:

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

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 (businesses with taxable income of less than \$1 million) or 1.75 percent (businesses with taxable income of \$1 million or more) for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

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.
3. The dealer is not required to provide any service to the manufacturer in order to be eligible for the incentive.

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

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony:

(In support) Dealer cash is a rebate or discount paid by a manufacturer to a dealer to reduce the cost of a vehicle. Dealers purchase vehicles at a fixed price, but that price may not always reflect the market. A manufacturer may overprice a new model or may not have anticipated an economic downturn. Dealer cash often allows dealers to lower the price to the customer. Any discount helps customers making a large purchase such as a vehicle. This is a bona fide discount and it should be treated that way for purposes of taxation. Dealer cash is very similar to scan-down allowances for grocery businesses, which are not subject to taxation. This bill was passed last session but was vetoed by the Governor because of economic uncertainty due to the pandemic.

(Opposed) None.

Persons Testifying: Greg Anderson, Titus Will; Dan Wilder, Jr., Wilder Auto; and Scott Hazlegrove, Washington State Auto Dealers Association.

Persons Signed In To Testify But Not Testifying: None.