

HOUSE BILL REPORT

HB 2035

As Passed Legislature

Title: An act relating to taxes on in-state broadcasters.

Brief Description: Concerning taxes on in-state broadcasters.

Sponsors: Representatives Lovick and Frame.

Brief History:

Committee Activity:

Finance: 2/25/19, 2/26/19 [DP].

Floor Activity:

Passed House: 3/7/19, 97-0.

Passed Senate: 4/25/19, 47-0.

Passed Legislature.

Brief Summary of Bill

- Updates the method for calculating the income derived from network, national, and regional advertising for in-state broadcasters.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 13 members: Representatives Tarleton, Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Chapman, Frame, Macri, Morris, Orwall, Springer, Stokesbary, Vick and Wylie.

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.

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.

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.

Radio and television broadcasters are subject to a tax rate of 0.484 percent on advertising income. However, the amount of advertising income subject to Washington's B&O tax is reduced by the income derived from network, national, and regional advertising, which is essentially defined as advertising income from sponsors who sell goods or services in two or more states. Also, the portion of local advertising income that represents the out-of-state audience is excluded from the B&O tax.

Radio and television broadcasters calculate the income derived from network, national, and regional advertising in one of two ways: using a standard deduction based on the national average of network, national, and regional advertising reported by the Federal Communications Commission (FCC), or the broadcaster itemizes the portion of revenue derived from network, national, and regional advertising. The FCC stopped publishing the information necessary to calculate the standard deduction in 1981. The portion of local advertising income that represents the out-of-state audience is determined by looking at the signal strength contour, and the portion of it that falls outside the state.

While not specifically addressed in a statute, gross income derived from distribution or retransmission rights to radio or television programming by broadcasters is considered royalty income and subject to a tax rate of 0.484 percent.

Summary of Bill:

The method for the calculation of the standard deduction for radio and television broadcaster's revenue from network, national, and regional advertising is updated to allow the DOR to use the national average of such advertising based on information from the United States Census Bureau's Economic Census. The DOR must publish the new amount by September 30, 2020, and the amount will be updated every fifth year.

In addition, updated signal strength contours are provided in order to determine the portion of local advertising income that represents the out-of-state audience.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This is an arcane issue as the existing statute has not been updated since 1967 and there are two technical corrections that need to be made. Although the law allows for two options to calculate certain advertising revenue subject to B&O taxes, one option is no longer available due to a change made at the federal level. This is not a tax preference or rate change. It is just a common sense solution to help taxpayers.

(Opposed) None.

Persons Testifying: Representative Lovick, prime sponsor; and Mark Allen, Washington State Association of Broadcasters.

Persons Signed In To Testify But Not Testifying: None.