

# SENATE BILL REPORT

## SB 6654

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As of February 27, 2020

**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:** Senators Mullet and Wilson, L.

**Brief History:**

**Committee Activity:** Ways & Means: 2/20/20.

**Brief Summary of Bill**

- Creates a permanent business and occupation tax deduction for qualified dealer cash incentives received by auto dealers.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Alia Kennedy (786-7405)

**Background:** Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. 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 if they do not make any profits or are 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 activities not classified elsewhere. Several preferential rates also apply to specific business activities.

Dealer Cash Incentives. A dealer cash incentive is a payment from a manufacturer to a dealer to incentivize the selling of certain cars or car models. The purpose of the incentive is to allow dealers to offer certain cars or car models at a lower price in order to encourage sales. The incentive is typically paid to the dealer when the dealer purchases the car from the manufacturer, when the dealer makes a sale of the car, or when the dealer achieves a specified overall sales volume for that car.

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*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.*

Amounts received as dealer cash incentives are taxable under the service and other activities classification of the B&O tax.

Tax Preference Performance Requirements. State law provides for a range of tax preferences that confer reduced tax liability for certain designated taxpayers. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Unless specifically exempted otherwise, legislation establishing or expanding a tax preference must include a tax preference performance statement identifying its public policy objective and provides certain metrics used by the Joint Legislative Audit and Review Committee in evaluating the effectiveness of the preference. If an exemption or specific expiration date is not provided in the enacting legislation, all new tax preferences automatically expire after ten years.

**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:

- 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;
- the dealer knew the terms of the incentive before selling the vehicle for which the incentive is provided; and
- 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 tax preference performance review and automatic expiration.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: A bill with a similar concept for scan-down allowances was passed last session. If the state is not taxing those amounts on the grocery store side, then it should not be taxing it on car dealers either. The Legislature has already determined this is appropriate tax policy. Dealer cash incentives generally serve to reduce costs to customers. Current law taxes those amounts at the business and occupation service rate. Dealers believe this is a discount to the customer and should not be subject to the business and occupation service tax because there is no additional service being performed.

**Persons Testifying:** PRO: Senator Mark Mullet, Prime Sponsor; Scott Hazlegrove, Washington State Auto Dealers Association; Greg Anderson, Titus Will.

**Persons Signed In To Testify But Not Testifying:** No one.