

SENATE BILL REPORT

SSB 6424

As Passed Senate, March 4, 2004

Title: An act relating to clarifying the taxation of staffing services.

Brief Description: Clarifying the taxation of staffing services.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hewitt, Regala, Esser, Eide, Hale, Berkey, Kohl-Welles, Rasmussen and Pflug).

Brief History:

Committee Activity: Ways & Means: 1/27/04, 2/23/04 [DPS].

Passed Senate: 3/4/04, 43-3.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6424 be substituted therefor, and the substitute bill do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Hale, Honeyford, Johnson, Pflug, Prentice, Rasmussen, Regala, Roach, Sheahan, B. Sheldon and Winsley.

Staff: Catherine Suter (786-7442)

Background: The business & occupation (B&O) tax is levied for the privilege of doing business in Washington. The tax is levied on the gross receipts of all business activities conducted within the state. There are generally no deductions for the costs of doing business. Currently, there are six different B&O tax rates. The three principal rates are:

Manufacturing/wholesaling 0.484%
Retailing 0.471%
Services 1.5%

Temporary staffing businesses hire their own employees and assign them to support or supplement a client's workforce in temporary situations such as employee absences, temporary skill shortages, and seasonal workload increases. Temporary staffing services do not include employee leasing or employee placement services.

The apportioned gross income on activities that are conducted both within and without the state is currently calculated on the basis of separate accounting, or when not available, on a firm's cost of doing business, per RCW 82.04.460. Washington is the only state that apportions in this way. Most states use a three-factor formula that accounts for income divided by property, payroll, and sales.

Temporary staffing businesses currently pay the services B&O tax rate of 1.5 percent. For years, these businesses had been deducting the amounts they received for wages and benefits

paid to the temporary workers from their gross receipts. This was in accordance with Department of Revenue (DOR) policy.

In 2002, DOR issued an administrative decision and the Washington Supreme Court issued a court decision in *Evergreen Staffing v. City of Tacoma*, both concluding that temporary staffing businesses are not entitled to the B&O deduction. As a result, DOR informed temporary staffing businesses that they must include wage and benefit payments in their taxable income for future periods.

Summary of Bill: The B&O rate for temporary staffing services is reduced from 1.5 percent to 0.484 percent, with the exception that services provided to perform retailing services are subject to the 0.471 percent retailing rate and the retail sales tax must be collected and remitted.

Temporary staffing businesses are subject to the apportioned gross income statute.

Amnesty on tax assessments, penalties, and interest is granted to temporary staffing services that attempt in good faith to collect and remit applicable retail sales and use taxes for three years from this bill's effective date. If a temporary staffing service is liable but does not collect in good faith, DOR may make an assessment or correction for the four years prior to this bill's effective date.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2004.

Testimony For: Washington State has over 300 temporary staffing companies, employing 40,000 people per day. These companies play a major role in the economic development and resilience of our state. They assist business to respond to fluctuations in the economy, and provide a bridge to full-time employment for people returning to the workplace, just entering the workforce, or working while in school.

Temporary staffing companies have a profit margin of only 2-3 percent in the best of times, so when the Supreme Court decision raised their taxes by 350 percent, all were hit hard, two companies folded, and two more are about to fold.

Temporary staffing companies in the hi-tech sector are now competing with not only other companies in the area, but with India, Canada, and Russia. Therefore, they cannot pass on such an increase in taxes to their customers.

The court action was an unfair way to raise taxes, and only leads to instability in this industry and, because of whom they serve, all industries in Washington.

Testimony Against: None.

Testified: PRO: Senator Deborah Regala; Bob Gee, Temporary Staffing Association; Jon Raymond, Star Technical (Seattle) and Washington Association of Computing Services Org.; Jeff Christensen, ArtSource (Bellevue); Callie Allison; Select Staff (Tacoma).