
SENATE BILL 6424

State of Washington

58th Legislature

2004 Regular Session

By Senators Hewitt, Regala, Esser, Eide, Hale, Berkey, Kohl-Welles,
Rasmussen and Pflug

Read first time 01/20/2004. Referred to Committee on Ways & Means.

1 AN ACT Relating to clarifying the taxation of staffing services;
2 amending RCW 82.04.460 and 82.04.290; adding a new section to chapter
3 82.32 RCW; creating new sections; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **PART I - INTENT**

6 NEW SECTION. **Sec. 101.** The legislature finds that the issue of
7 the taxability of staffing agencies has been the subject of
8 considerable confusion and dispute by the staffing industry, the
9 department of revenue, and the courts since the Washington supreme
10 court issued its decision in *Rho Company v. Department of Revenue* in
11 1989. The court cleared up much of the confusion caused by the *Rho*
12 decision in *City of Tacoma v. The William Rogers Company, Inc.*, issued
13 in December of 2002. The *Rogers* decision states that certain temporary
14 staffing agencies are taxable on their gross income, which includes
15 amounts paid as wages, benefits, and costs for the workers that they
16 provide to others. This decision does have an adverse fiscal impact on
17 those temporary staffing agencies that have been deducting the amounts
18 paid as wages, benefits, and costs to their workers.

1 The legislature has determined that it is in the best interests of
2 the state and the temporary staffing industry to alleviate the fiscal
3 impact to the industry, and to fully resolve the issues of the
4 classification and measure of the tax. The legislature finds that this
5 can be achieved by lowering the rate of tax imposed on the gross income
6 of a temporary staffing agency, which amount includes all wages,
7 benefits, and costs paid to or for workers, and clarifying that persons
8 providing retail services will be taxable under the retailing or
9 wholesaling classification.

10 **PART II - BUSINESS AND OCCUPATION TAX RATE**

11 NEW SECTION. **Sec. 201.** (1) Except as provided in subsection (2)
12 of this section, upon every person engaging in this state in the
13 business of providing staffing services taxable under this subsection;
14 as to such persons the amount of tax with respect to such business
15 shall be equal to the gross income of the business, multiplied by the
16 rate of 0.484 percent.

17 (2) Persons providing staffing services to provide services
18 described in RCW 82.04.050 if performed for a consumer, are taxable
19 under RCW 82.04.250 or 82.04.270 as applicable, and liable for
20 collecting and remitting the retail sales tax imposed under RCW
21 82.08.020.

22 (3) For the purpose of this section and section 401 of this act,
23 "staffing services" means an arrangement in which the taxpayer recruits
24 and hires employees from the labor market and assigns them on a
25 temporary basis to perform services for another to support, or
26 supplement, the customer's work force, or to provide assistance in
27 special work situations such as employee absences, skill shortages, and
28 seasonal workloads, or to perform special assignments or projects, all
29 under the direction and supervision of the customer. "Staffing
30 services" does not include employee leasing or employee placement
31 services.

32 **PART III - APPORTIONMENT**

33 **Sec. 301.** RCW 82.04.460 and 1985 c 7 s 154 are each amended to
34 read as follows:

1 (1) Any person rendering services taxable under RCW 82.04.290 or
2 section 201 of this act and maintaining places of business both within
3 and without this state which contribute to the rendition of such
4 services shall, for the purpose of computing tax liability under RCW
5 82.04.290 or section 201 of this act, apportion to this state that
6 portion of (~~his~~) the person's gross income which is derived from
7 services rendered within this state. Where such apportionment cannot
8 be accurately made by separate accounting methods, the taxpayer shall
9 apportion to this state that proportion of (~~his~~) the taxpayer's total
10 income which the cost of doing business within the state bears to the
11 total cost of doing business both within and without the state.

12 (2) Notwithstanding the provision of subsection (1) of this
13 section, persons doing business both within and without the state who
14 receive gross income from service charges, as defined in RCW 63.14.010
15 (relating to amounts charged for granting the right or privilege to
16 make deferred or installment payments) or who receive gross income from
17 engaging in business as financial institutions within the scope of
18 chapter 82.14A RCW (relating to city taxes on financial institutions)
19 shall apportion or allocate gross income taxable under RCW 82.04.290 to
20 this state pursuant to rules promulgated by the department consistent
21 with uniform rules for apportionment or allocation developed by the
22 states.

23 (3) The department shall by rule provide a method or methods of
24 apportioning or allocating gross income derived from sales of telephone
25 services taxed under this chapter, if the gross proceeds of sales
26 subject to tax under this chapter do not fairly represent the extent of
27 the taxpayer's income attributable to this state. The rules shall be,
28 so far as feasible, consistent with the methods of apportionment
29 contained in this section and shall require the consideration of those
30 facts, circumstances, and apportionment factors as will result in an
31 equitable and constitutionally permissible division of the services.

32 **Sec. 302.** RCW 82.04.290 and 2003 c 343 s 2 are each amended to
33 read as follows:

34 (1) Upon every person engaging within this state in the business of
35 providing international investment management services, as to such
36 persons, the amount of tax with respect to such business shall be equal

1 to the gross income or gross proceeds of sales of the business
2 multiplied by a rate of 0.275 percent.

3 (2) Upon every person engaging within this state in any business
4 activity (~~((other than or in addition to those))~~ not otherwise
5 enumerated in (~~((RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255,~~
6 ~~82.04.260, 82.04.270, 82.04.298, 82.04.2905, 82.04.280, 82.04.2907,~~
7 ~~82.04.272, and 82.04.2906, and subsection (1) of this section))~~ this
8 chapter; as to such persons the amount of tax on account of such
9 activities shall be equal to the gross income of the business
10 multiplied by the rate of 1.5 percent.

11 (3) This section includes, among others, and without limiting the
12 scope hereof (whether or not title to materials used in the performance
13 of such business passes to another by accession, confusion or other
14 than by outright sale), persons engaged in the business of rendering
15 any type of service which does not constitute a "sale at retail" or a
16 "sale at wholesale." The value of advertising, demonstration, and
17 promotional supplies and materials furnished to an agent by his
18 principal or supplier to be used for informational, educational and
19 promotional purposes shall not be considered a part of the agent's
20 remuneration or commission and shall not be subject to taxation under
21 this section.

22 PART IV - AMNESTY

23 NEW SECTION. Sec. 401. A new section is added to chapter 82.32
24 RCW to read as follows:

25 (1) Absent a person's fraud or intentional misrepresentation of a
26 material fact, no assessment for taxes imposed under chapters 82.08 and
27 82.12 RCW for staffing services, or related penalties or interest, may
28 be made by the department against a person who in good faith:

29 (a) Upon the effective date of this act, collects and remits to the
30 department the applicable taxes imposed under chapters 82.08 and 82.12
31 RCW on sales made to consumers in this state; and

32 (b) For a period of at least thirty-six months from the effective
33 date of this act, continues to collect and remit to the department the
34 applicable taxes imposed under chapters 82.08 and 82.12 RCW on sales
35 made to consumers in this state; provided however, that should the

1 person quit doing business as a staffing service, then the thirty-six
2 month period shall be reduced to the period that the person conducted
3 business as a staffing service from the effective date of this act.

4 (2) The provisions of this section do not apply to any persons
5 providing staffing services with respect to:

6 (a) Taxes imposed under chapters 82.08 and 82.12 RCW and collected
7 or remitted to the department by persons providing staffing services;
8 or

9 (b) That person's liability for taxes imposed under chapters 82.08
10 and 82.12 RCW in that person's capacity as a consumer.

11 (3) With respect to taxes described in subsection (1) of this
12 section and for which liability arose prior to the effective date of
13 this act, the periods of limitation for making an assessment or
14 correction of an assessment prescribed in RCW 82.32.050(3) and
15 82.32.100(3) do not run during the thirty-six month period in
16 subsection (1) of this section.

17 (4) If a person providing staffing services fails to meet the
18 requirements in subsection (1) of this section, the department may make
19 an assessment or correction of an assessment for the four-year period
20 preceding the effective date of this act.

21 **PART V - MISCELLANEOUS**

22 NEW SECTION. **Sec. 501.** Part headings used in this act are not any
23 part of the law.

24 NEW SECTION. **Sec. 502.** This act takes effect July 1, 2004.

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