
Finance Committee

HB 1451

Brief Description: Modifying the taxation of temporary staffing services.

Sponsors: Representatives Ericks, Lovick, Walsh, Williams, Newhouse, Grant, Orcutt, Linville, Strow, Armstrong, Roach, Morris, Bailey, Warnick, Haler, O'Brien, Simpson, Santos, Eddy, McDonald and Kenney.

Brief Summary of Bill

- Reduces the business and occupation tax rate for temporary staffing service firms to 0.484 percent.
- Exempts temporary staffing firms from collecting retail sales tax when performing services subject to retail sales tax.
- Requires customers of staffing firms to directly pay the sales tax to the Department of Revenue.

Hearing Date: 1/31/07

Staff: Rick Peterson (786-7150).

Background:

A temporary staffing business recruits and provides temporary workers to other businesses and non-business customers, in situations such as employee absences, temporary skill shortages, and seasonal workload increases.

Temporary staffing businesses are subject to business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities without any deduction for the costs of doing business. However, a business that acts as an agent for another business is not liable for B&O tax on amounts that merely "pass through" the agent as reimbursement for expenses incurred by the agent on behalf of the agent's client. For example, an attorney might pay court costs on behalf of a client. When the attorney is reimbursed for those costs by the client, the attorney is not liable for

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B&O tax on the reimbursements. The attorney is only liable for B&O tax on amounts charged as fees for the attorney's services.

Temporary staffing businesses charge their clients amounts which include both payments to the temporary workers and fees charged for the service of providing the employees. Until 2005, some temporary staffing businesses had been paying B&O tax on the amounts received as fees for the service of providing employees, but not on the amounts received for payment to the temporary workers as wages and benefits. Temporary staffing businesses took the position that they are merely acting as agents for the client businesses, and the wage and benefit amounts are not part of the taxable gross receipts of a temporary staffing business.

In December 2002, the Washington Supreme Court decided that temporary staffing businesses are not agents for B&O tax purposes. As a result of this decision, temporary staffing businesses are required to pay tax on all amounts received from their clients. The decision involved taxes imposed by the City of Tacoma, but the logic of the court's opinion applies equally to state B&O taxes. As a result, the Department of Revenue (DOR) began informing temporary staffing businesses that they must include wage and benefit payments in their taxable gross receipts. In January 2005, the DOR published the *Staffing Industry Tax Guide* to inform staffing firms of their tax reporting requirements.

Under the B&O tax, different tax rates apply to separate categories of business activity. Most businesses engaging in service activities, including most staffing services, are subject to B&O tax at the rate of 1.5 percent of gross receipts. However, businesses that provide construction, repair, and similar services to a consumer are subject to B&O tax at the retailing rate of 0.471 percent and must collect retail sales tax from the consumer. Businesses that provide construction, repair, and similar services as wholesalers or subcontractors pay B&O tax at the wholesaling rate of 0.484 percent. The DOR instructions require temporary staffing firms to report B&O tax under the proper classification and rate according to the activity they engaged in, for example, 1.5 percent for service activity, 0.471 percent for retail activity, and 0.484 percent for wholesale activity. They must also collect retail sales tax from their customers when performing services subject to the retail sales tax.

If a business that provides services taxable at the 1.5 percent rate has a place of business outside the state that contributes to the performance of services, the business must apportion to this state the portion of gross income derived from services rendered in this state. If it is not practical to use separate accounting methods to determine the amount of services rendered in this state, the taxpayer must apportion income to this state in proportion to the cost of doing business within this state relative to the total cost of doing business both within and outside the state.

Summary of Bill:

The B&O tax rate for staffing firms is equal to 0.484 percent.

Staffing firms are not required to collect retail sales tax when performing services subject to retail sales tax. Customers of staffing firms are required to directly pay the sales tax to the DOR.

Staffing businesses that have a place of business outside the state that contributes to the performance of services must apportion income in the same manner as service businesses that are subject to the 1.5 percent B&O rate.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on May 1, 2007.