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**Finance Committee**

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**HB 2938**

**Brief Description:** Encouraging participation in Washington trade conventions by modifying tax provisions related to establishing substantial nexus.

**Sponsors:** Representatives Orcutt and Walkinshaw.

**Brief Summary of Bill**

- Allows an out-of-state business to participate in one trade convention in Washington each year without the participation being used as the sole basis to establish nexus for Washington tax purposes.

**Hearing Date:** 2/5/16

**Staff:** Jeffrey Mitchell (786-7139).

**Background:**

As currently interpreted by the United State Supreme Court, the commerce clause of the United States Constitution prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state. Under the Court's decision in *Quill Corp. v. North Dakota* (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state. Physical presence can be established through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives that act on behalf of the taxpayer in the taxing state.

In 2010, Washington adopted an economic presence test for nexus with respect to service-related activities. For these classifications, a business does not need to have a physical presence to have nexus and be subject to Washington tax. Economic nexus is established by having sales in excess of \$267,000 to Washington customers. (The threshold is adjusted from year-to-year.)

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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.*

Until 2015, Washington could not impose wholesaling B&O tax on sales of goods that originated outside the state unless the goods were:

- received by the purchaser in this state; and
- the out-of-state seller had physical presence nexus (i.e., the same physical nexus requirement that is used for sales tax purposes).

In 2015, ESSB 6138 economic nexus standards were extended to out-of-state businesses with no physical presence in Washington, but who make wholesale sales into Washington. If these businesses have more than \$267,000 of receipts from this state then economic nexus standards with Washington will apply and these business will be required to remit wholesaling B&O tax at the rate of 0.484 percent.

ESSB 6138 also modified nexus standards are modified to include remote sellers who:

- enter into agreements with Washington residents who, for a commission or other consideration, refer potential customers to the remote seller such as by a link on a website and;
- generate more than \$10,000 in gross receipts during the prior calendar year under such agreements from sales into this state.

This type of nexus is referred to as "click-through" nexus. This change in nexus standards will require these remote sellers to collect and remit Washington sales tax for sales made into the state. Remote sellers that collect and remit retail sales tax will also be required to pay B&O tax on their Washington sales. Remote sellers have the ability to rebut a determination by the Department of Revenue that they have established click-through nexus with the state. Any provision of the click-through nexus standards that conflict with any future change in federal law will expire.

**Summary of Bill:**

For purposes of business and occupation taxes and sales and use taxes, the department may not consider the mere attendance of one or more representatives of a business at a single trade convention per year in Washington state in determining if the person is physically present in this state for the purposes of establishing substantial nexus with this state with respect to making retail sales. This exclusion does not apply if the business makes retail sales at the trade convention.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** July 1, 2016.