

SENATE BILL REPORT

SB 6665

As of March 23, 2016

Title: An act relating to state government.

Brief Description: Relating to state government.

Sponsors: Senator Braun.

Brief History:

Committee Activity: Ways & Means: 3/11/16

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: On June 1, 2010, Washington adopted an economic nexus standard for certain types of business activities. Under this standard, an out-of-state business deriving income within Washington in excess of \$250,000 from sources such as advertising or royalties, is subject to Washington's business and occupation (B&O) tax even though the business may not have a physical presence in the state.

The question has been raised as to whether national television networks have nexus with Washington, and therefore, owe B&O tax on their advertising and royalty income. Also at issue is whether or not the national networks owe B&O tax under the radio and television broadcasting classification of the B&O tax which has the tax rate of .484 percent on advertising revenues. The Department of Revenue maintains that the national networks are not considered radio and television broadcasters and, thus, both the advertising and royalty revenue received by national networks and apportioned to Washington are subject to the 1.5 percent B&O rate. The apportioned rate would be approximately 2.2 percent of their national income. Most, if any, national networks have not reported B&O taxes to the the state. This issue is likely to be litigated.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed First Substitute): A classification is created in the B&O tax statutes for the gross income of television programming providers, including advertising income, but not royalty income, with the service tax rate of 1.5 percent.

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.

Non-royalty income of television programming providers is apportioned to Washington by dividing Washington's population by the population of all the states in the taxpayer's market, with specific adjustments for national, regional, and local television programming providers. The apportionment for the different types of programming providers are as follows:

- national television programming providers - the applicable ratio may not exceed 1.1 percent;
- regional television programming providers - the ratio must exclude the population of a state outside the person's primary market to the extent necessary to ensure the ratio fairly represents the person's activity in this state; and
- local television programming providers - the applicable ratio is 100 percent reduced by the percentage of out-of-state viewers.

The bill applies prospectively and retroactively to June 1, 2010.

Penalties will be waived on taxes paid for the period June 1, 2010 through June 30 2016, if the taxes are remitted prior to October 1, 2016. This would include both advertising and royalty income.

Appropriation: None.

Fiscal Note: Requested on March 9, 2016

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2016

Staff Summary of Public Testimony: This bill reduces litigation risks by ending the dispute on how these companies pay their B&O tax. It would also provide for payment of those taxes by the end of this year. We believe our industry should be taxed at the local broadcaster rate because we have the same FCC licenses, but we believe the bill is a reasonable compromise and would bring certainty to the industry. Some members would prefer to litigate as the tax burden would still be greater than other areas of the country.

Persons Testifying: PRO: Rhonda Weaver, Comcast-NBCU.

OTHER: Drew Shirk, Department of Revenue.

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