

SENATE BILL REPORT

SHB 1095

As Passed Senate, February 10, 2021

Title: An act relating to the taxation of governmental financial assistance programs addressing the impacts of conditions giving rise to a gubernatorial or presidential emergency proclamation by creating state business and occupation tax and state public utility tax exemptions, a sales and use tax exemption for the receipt of such financial assistance, and clarifying the sales and use tax obligations for goods and services purchased by recipients of such financial assistance.

Brief Description: Concerning the taxation of governmental financial assistance programs addressing the impacts of conditions giving rise to a gubernatorial or presidential emergency proclamation by creating state business and occupation tax and state public utility tax exemptions, a sales and use tax exemption for the receipt of such financial assistance, and clarifying the sales and use tax obligations for goods and services purchased by recipients of such financial assistance.

Sponsors: House Committee on Finance (originally sponsored by Representatives Walen, Boehnke, Ryu, Leavitt, Corry, Wicks, Tharinger, Ortiz-Self, Callan, Graham, Fey, Frame, Stokesbary, Orwall, Rule, Bergquist and Pollet; by request of Department of Revenue).

Brief History: Passed House: 1/22/21, 98-0.

Committee Activity: Ways & Means: 2/02/21, 2/04/21 [DP].

Floor Activity:

Passed Senate: 2/10/21, 49-0.

Brief Summary of Bill

- Exempts qualifying grants received on or after February 29, 2020, related to a national or state emergency proclamation from state excise taxes.

SENATE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Liias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Staff: Jeffrey Mitchell (786-7438)

Background: Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent—businesses with taxable income of less than \$1 million—or 1.75 percent—businesses with taxable income of \$1 million or more—for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

A taxpayer may be eligible to use other tax preferences, including credits and deductions, to reduce their tax liability. For example, a taxpayer engaging in activities subject to different B&O tax rates may be eligible for a Multiple Activities Tax Credit. A taxpayer may also be eligible for a small business credit that will either eliminate or reduce their B&O tax liability. In general, the credit is \$70 per month for service businesses and \$35 per month for all other businesses, multiplied by the number of months in the reporting period. The amount of the credit available phases out based on the business's gross receipts.

A business does not have to file an annual B&O tax return if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has annual gross proceeds of sales, gross income, or value of products for all B&O tax classifications of less than \$28,000 per year, or less than \$46,667 if at least 50 percent of its taxable income is from services or activities not classified elsewhere.

Public Utility Tax. The gross income derived from the operation of publicly and privately owned utilities is subject to the public utility tax (PUT), unless otherwise exempt. The tax is imposed in lieu of the B&O tax and is applied only on sales to consumers. Other income of the utility, such as retail sale of tangible personal property, is subject to the B&O tax. There are six different PUT rates, depending on the specific utility activity. The rates are:

- 3.852 percent on telegraph companies, distribution of natural gas, and the collection of sewage;

- 3.8734 percent on the generation or distribution of electrical power;
- 0.642 percent on urban transportation and watercraft vessels under 65 feet in length;
- 1.926 percent on motor transportation, railroads, railroad car companies, and all other public service businesses;
- 5.029 percent on the distribution of water; and
- 1.3696 percent on log transportation.

A taxpayer who engages in one or more businesses subject to the PUT is fully exempt from the tax if their total gross income is \$2,000 or less per a month. Any taxpayer that has a total gross income greater than \$2,000 per month does not receive an exemption or deduction under this provision.

A business does not have to file an excise tax return for the PUT if the business does not owe other taxes or fees to DOR and has annual gross proceeds of less than \$24,000.

Retail Sales and Use Tax. Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Tax Preference Performance Statement. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Emergency Proclamations. The Governor may proclaim a state of emergency in any area of the state affected by public disorder, disaster, energy emergency, or riot. Under a state of emergency proclamation, the Governor may issue an order prohibiting such things as the gathering of persons in public or private places; the manufacture, transfer, possession, or use of explosive devices; transporting, possessing, or using combustible materials; possession of firearms or other deadly weapons; the sale and purchase of alcoholic beverages; and the use of certain streets or highways. Powers granted to the Governor under a declared emergency are effective only within the area described in and during the time of the proclamation.

The National Emergencies Act (act) formalizes the President's emergency powers. The act authorizes the President to activate emergency provisions of law via an emergency declaration on the condition that the President specifies the provisions so activated and notifies Congress.

Coronavirus Disease 2019. COVID-19 is an infectious disease that came to the attention of the World Health Organization (WHO) at the end of 2019. By March 11, 2020, the Director-General of WHO declared COVID-19 a pandemic.

The first identified case of COVID-19 in the United States was found in Snohomish County, Washington, in January 2020. On February 29, 2020, Governor Inslee declared a state of emergency in response to newly discovered cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak. Additional emergency proclamations have been issued by the Governor in response to COVID-19.

On March 13, 2020, President Trump issued a proclamation declaring a "National Emergency Concerning the Novel Coronavirus Disease Outbreak," that expanded upon the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020.

Coronavirus Aid, Relief, and Economic Security Act. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is a \$2.2 trillion economic stimulus bill passed by the United States Congress and signed into law by President Trump on March 27, 2020, in response to the economic impact of the COVID-19 pandemic.

The economic assistance in the CARES Act included several small business assistance programs such as the Paycheck Protection Program, Economic Injury Disaster Loans, the Small Business Debt Relief Program, and the Small Business Express Bridge Loan Program.

Summary of Bill: A B&O tax, a PUT, and a retail sales tax exemption is authorized for the value proceeding or accruing from a qualifying grant received on or after February 29, 2020. The exemption only applies if the legislation authorizing the grant or associated legislative history, public records created by the grantor, or the terms underlying the grant agreement clearly indicate the grant was established to address the impact of conditions arising from the national or state emergency.

"Qualifying grant" is defined as an amount received, or relief from debt or other legal obligation received that is received under a government-funded program to address the impacts of conditions giving rise to an official proclamation of a state of emergency by the President or by the Governor.

The qualifying grant may be received directly from a government entity or through

nongovernmental third-party entity authorized by the government to distribute the program funds. It may also occur when a private entity provides relief from debt or legal obligation to a person and as a result receives some form of direct financial benefit from a government entity.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Many businesses in Washington are receiving governmental assistance funding to address the financial impacts of the pandemic. Businesses are generally required to remit B&O tax on gross income unless a specific exemption applies. Because government grant funds are generally considered gross income, they would be subject to taxation current law. In 2020, DOR notified taxpayers they should refrain from paying tax on these funds until the Legislature has had an opportunity to take action. The bill before you today would guarantee governmental funds can flow to a business without state taxation. This bill passed unanimously out of the House of Representatives. These governmental assistance funds have been the lifeline for thousands of businesses. Over 100,000 businesses in Washington took a federal Paycheck Protection Program (PPP) loan or received a state grant of some kind. These funds were available for a limited period of time. Most businesses had about eight weeks to spend the PPP loans. To try to retroactively tax these employers would be very difficult on those employers. Those dollars are not there to pay a retroactive tax. At least 5000 businesses have closed in the state due to the pandemic. This bill will help protect remaining businesses. This legislation just makes good sense. As CPAs, we have been working with our small business clients as they have been struggling to navigate the daily economics of the pandemic. Many are literally hanging on day by day. This legislation helps businesses by taking an administrative and financial burden off their plate and allows the funds to be used exactly as intended to keep people employed and keep Washington business doors open.

Persons Testifying: PRO: Patrick Connor, National Federation of Independent Business; Michael Bailey, Department of Revenue; Julia Gorton, Washington Hospitality Association; Bea Nahon, Washington Society of CPAs.

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