

SENATE BILL REPORT

ESSB 5459

As Passed Senate, March 4, 2022

Title: An act relating to creating a business and occupation tax deduction for persons conducting payment card processing activity.

Brief Description: Creating a business and occupation tax deduction for persons conducting payment card processing activity.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Mullet and Wilson, L.).

Brief History:

Committee Activity: Ways & Means: 2/22/22, 2/24/22 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 3/4/22, 38-10.

Brief Summary of Engrossed First Substitute Bill

- Creates a business and occupation tax deduction for amounts received by a payment card processing company in the form of interchange fees or network fees.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5459 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Frockt, Vice Chair, Capital.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Hasegawa.

Staff: Alia Kennedy (786-7405)

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 B&O tax even though they may not have any profits or may be operating at a loss. A business may have more than one B&O tax rate, depending on the types of activities conducted. Major tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for services, and activities not classified elsewhere.

Tax Preference Performance Statement. State law provides 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 700 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 that 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.

Summary of Engrossed First Substitute Bill: A B&O tax deduction is allowed for amounts received by payment card processing companies in the form of interchange fees or network fees.

The tax deduction for payment card processing companies is subject to tax preference performance review or automatic expiration.

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 on July 1, 2022.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The business and occupation tax is currently being assessed on fees that credit card processing companies are not retaining. Forcing small businesses to go to an all cash model means they are likely to go out of business. Continuing to double tax credit card processing companies will harm businesses

when those costs are inevitably passed down to the merchant. Businesses have no choice but to rely on credit card processing companies. There are three types of fees that are collected by credit card processors, for which the processors only keep one fee but are unfairly taxed on all three. Small businesses are still struggling to recover from impacts caused by the pandemic and cannot afford an increase in credit card processing costs.

CON: The Department of Revenue (DOR) is opposed to the version of the bill heard by the committee. DOR believes in a fair, simple, and administrable tax code that does not favor one taxpayer over another. The current tax treatment of credit card processing companies is fair and equitable. This bill creates a slippery slope that undermines the state's tax code.

Persons Testifying: PRO: Senator Mark Mullet, Prime Sponsor; Kim Ford, Fiserv; Samantha Weigand.

CON: Steve Ewing, Department of Revenue; Steve Lee, Department of Revenue.

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