

FINAL BILL REPORT

EHB 2487

C 263 L 26

Synopsis as Enacted

Brief Description: Concerning taxes imposed on insurers operating within the state.

Sponsors: Representative Macri; by request of Department of Revenue.

House Committee on Finance

Senate Committee on Ways & Means

Background:

Insurance Premium Tax.

Washington imposes a tax on insurers equal to 2 percent of all premiums the insurer collects or receives, subject to certain exceptions. This premium tax is imposed in lieu of all other taxes, except as otherwise provided. Accordingly, Washington provides an exemption from its business and occupation (B&O) tax for any person, in respect to insurance business, upon which a tax based on gross premiums is paid to the state, subject to various exceptions.

In *Armstrong v. State* (1962), the Washington Supreme Court recognized the in-lieu-of nature of the state's insurance premium tax and noted it reflected a legislative decision to consider the gross premium tax as the exclusive tax on insurance company operations while exempting such entities from the B&O tax.

In *Envolve Pharmacy Solutions, Inc. v. Dept. of Revenue* (2024), the Washington Supreme Court held the insurance premium exemption from the B&O tax applied to a pharmacy benefit manager affiliated with an insurer. The Court reasoned that, while the pharmacy benefit manager did not directly earn premium income or pay a premium tax, the exemption's statutory text did not require the entity carrying out the insurance business activities at issue to directly pay a premium tax to qualify for the tax exemption. The Court emphasized the Legislature's use of the passive voice in the statutory text and concluded the tax exemption could be claimed by a pharmacy benefit manager when its affiliate had already paid the premium tax.

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.

Business and Occupation 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. There are many specialized B&O tax rates and preferential rates that apply to specific business activities. A taxpayer may have more than one B&O tax rate depending on the types of activities conducted.

Assigned Risk Plans.

An assigned risk plan is a type of insurance available to individuals who cannot purchase a standard policy due to factors such as high-risk employment or a history of significant insurance losses. Assigned risk plans are required to provide coverage for qualifying individuals who are denied insurance by standard insurance companies. Washington has two major assigned risk plans: one for auto insurance and one for longshore and harbor workers' compensation.

Workforce Education Investment Surcharge.

Beginning with business activities occurring on or after April 1, 2020, in addition to certain other taxes, a Workforce Education Investment Surcharge is imposed on select advanced computing businesses.

"Advanced computing" means designing or developing computer software or computer hardware, whether directly or contracting with another person, including modifications to computer software or computer hardware; cloud computing services; or operating as a marketplace facilitator, an online search engine, or online social networking platform.

The combined Workforce Education Investment Surcharge imposed on an affiliated group is subject to an annual maximum. The surcharge does not apply to qualifying hospitals and healthcare provider clinics.

Summary:

Insurance Premium Tax Exemption.

The insurance premium exemption to the B&O tax is modified such that the B&O tax does not apply to: (1) insurance business activity performed by an insurer that is directly subject to the payment of insurance premium taxes in Washington, subject to the rule that only the person who paid the insurance premium tax can claim this exemption; (2) gross premiums and prepayments received by a person that is exempt from premium taxes under state law; (3) consideration received by an insurer for annuities regulated under state law; or (4) gross premiums received by an assigned risk plan established by an act of the Legislature, either directly or indirectly, where premium taxes were paid by a servicing carrier for such assigned risk plan.

This change to the insurance premium exemption to the B&O tax applies both prospectively and retroactively to October 2, 2019.

The Department of Revenue (DOR) must consult with the Office of the Insurance Commissioner to adopt rules, and draft and issue tax guidance, to carry out the purpose and facilitate enforcement of this exemption.

Waiver of Interest and Penalties; Repayment Plans.

The DOR is directed to waive penalties and interest, and allow any person who owes delinquent taxes to enter into a three-year repayment schedule, for B&O taxes otherwise due as a result of a person taking an insurance premium exemption on gross income not subject to that exemption, but only if the taxes, penalties, and interest owed are for taxes due on gross income of the business between October 2, 2019, and March 31, 2026. Waiver under this provision is subject to various requirements and limitations. This provision expires on January 1, 2029.

Workforce Education Investment Surcharge Exemption.

A new exemption is added to the Workforce Education Investment Surcharge for qualifying insurers, health maintenance organizations, and health care service contractors required to report and pay insurance premium taxes to the state during the same reporting period, and persons exempt from premium taxes during the same reporting period.

The combined surcharge maximum of \$75 million for members of an affiliated group is reduced to \$25 million when 50 percent or more of the worldwide gross revenue of all members of an affiliated group is from the payment of insurance premiums during the immediately preceding calendar year.

This exemption and surcharge maximum applies both prospectively and retroactively to January 1, 2022.

Defined Terms.

"Insurance business" means activities performed by an insurer as defined by state law for which insurance premium taxes are paid.

"Insurer" means every person engaged in the business of making contracts of insurance, subject to certain inclusions and exclusions listed in statute, and also includes qualifying health maintenance organizations and health care service contractors regulated under state law.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. "Person" includes a surplus line broker who pays premium taxes pursuant to state law.

"Premium" means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof, excluding certain regulatory surcharges.

Additional Provisions.

The insurance premium exemptions to the B&O tax for qualifying insurers and health maintenance organizations are consolidated into a single section.

The act does not affect any final judgment that is no longer subject to appeal and entered by a court of competent jurisdiction before the act's effective date.

Votes on Final Passage:

House 51 44

Senate 27 22

Effective: June 11, 2026