
SUBSTITUTE SENATE BILL 5949

State of Washington

69th Legislature

2026 Regular Session

By Senate Ways & Means (originally sponsored by Senators Robinson and Frame; by request of Department of Revenue)

READ FIRST TIME 02/23/26.

1 AN ACT Relating to taxes imposed on insurers operating within the
2 state; amending RCW 82.04.320; creating new sections; and repealing
3 RCW 82.04.322.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that unintended
6 tax loopholes adversely impact the state budget and reduce amounts
7 available to fund schools and other essential services.

8 (2) The legislature further finds that in 1935 the legislature
9 enacted as RCW 82.04.320 a business and occupation tax exemption that
10 applied to "any person in respect to insurance business upon which a
11 tax based on gross premiums is paid to the state." The Washington
12 supreme court, in *Armstrong v. State*, 61 Wn.2d 116 (1962),
13 unanimously held that the purpose of the exemption was to prevent
14 insurance businesses from paying two state taxes on the same income,
15 not to create a means for noninsurers to avoid paying any state tax.

16 (3) The business and occupation tax is a tax on the gross
17 receipts of most businesses in the state. Specific deductions and
18 exemptions may apply. The tax generally applies at each point of sale
19 in the process of providing a good or service and on sales between
20 affiliated businesses.

1 (4) In 2024, in *Envolve Pharmacy Solutions, Inc. v. Department of*
2 *Revenue*, 4 Wn.3d 142 (2024), a majority of the Washington supreme
3 court broadly construed the exemption in RCW 82.04.320 to permit
4 pharmacy benefit managers, and likely other businesses that do not
5 earn premium income and do not pay a premium tax, to avoid paying
6 business and occupation tax on amounts they receive from insurance
7 businesses that do pay premium tax, contrary to the purpose of the
8 exemption as construed in *Armstrong*. The court relied in large part
9 on the legislature's use of passive voice, rather than active voice,
10 when it enacted the exemption in 1935. If left unchecked, the
11 decision in *Envolve Pharmacy Solutions, Inc.* would create a large and
12 unintended drain on the state's budget.

13 (5) Therefore, the legislature finds that it is necessary to
14 restore parity between the language used in RCW 82.04.320 and the
15 intended purpose of that business and occupation tax exemption by
16 restating the exemption in active voice. To streamline the
17 administration of the tax as applied to insurers, the legislature
18 intends to consolidate the similar tax exemptions in RCW 82.04.320
19 and 82.04.322 into a single exemption. The legislature intends for
20 the clarification to the exemption in this act to have no impact on
21 income received by an insurer for the granting of annuity, in
22 accordance with RCW 48.14.020(1)(a), which states that such income is
23 not a premium.

24 (6) The legislature further finds that on October 2, 2019, the
25 department of revenue issued public guidance in the form of an
26 interim guidance statement that explained, in part, that a person
27 claiming the exemptions in RCW 82.04.320 must show proof that it paid
28 premium tax to the state with respect to the gross income it claims
29 as exempt from business and occupation tax. The supreme court's
30 decision in *Envolve Pharmacy Solutions, Inc.* forced the department to
31 rescind that guidance.

32 (7) The legislature intends for this act to apply both
33 prospectively and retroactively to tax periods beginning on or after
34 October 2, 2019, the date that the department of revenue issued the
35 interim guidance statement. By applying the act retroactively to
36 October 2, 2019, the legislature intends to treat businesses that did
37 not follow the department's guidance equally to those businesses that
38 followed the guidance. The legislature intends that enforcement
39 actions by the department of revenue against persons governed by the

1 exemption under RCW 82.04.322 before the effective date of this
2 section remain valid.

3 **Sec. 2.** RCW 82.04.320 and 2021 c 281 s 10 are each amended to
4 read as follows:

5 ~~(1) ((Except as otherwise provided in this section, this chapter~~
6 ~~does not apply to any person in respect to insurance business upon~~
7 ~~which a tax based on gross premiums is paid to the state.~~

8 ~~(2) The provisions of this section do not exempt any person~~
9 ~~engaging in the business of representing any insurance company,~~
10 ~~whether as general or local agent, or acting as broker for such~~
11 ~~companies.~~

12 ~~(3) The provisions of this section do not exempt any bonding~~
13 ~~company from tax with respect to gross income derived from the~~
14 ~~completion of any contract as to which it is a surety, or as to any~~
15 ~~liability as successor to the liability of the defaulting contractor.~~

16 (4)) This chapter does not apply to gross premiums and
17 prepayments received by a person upon which the same person paid
18 insurance premium taxes to the state pursuant to chapter 48.14,
19 48.15, or 48.201 RCW.

20 (2) This chapter does not apply to gross premiums and prepayments
21 received by a person that is exempt from premium taxes under RCW
22 48.14.0201(6).

23 (3) For purposes of this section, for periods preceding May 12,
24 2021, eligible captive insurers as defined in RCW 48.201.020 are
25 deemed, in respect to their insurance business, to have paid a tax
26 under RCW 48.14.020 or 48.201.040 on ((gross)) their receipt of
27 premiums ((to the state)).

28 ~~((+5))~~ (4) Eligible captive insurers affiliated with a public
29 institution of higher education that are exempt from paying a premium
30 tax under RCW 48.201.040 are exempt from the tax imposed by this
31 chapter in respect to their insurance business. For purposes of this
32 subsection ((+5)) (4), the definitions in RCW 48.201.020 apply.

33 (5) For the purposes of this section:

34 (a) "Person" includes a surplus line insurance broker who pays
35 premium taxes pursuant to chapter 48.15 RCW.

36 (b) "Premium" has the same meaning as in RCW 48.18.170.

1 NEW SECTION. **Sec. 3.** RCW 82.04.322 (Exemptions—Health
2 maintenance organization, health care service contractor, certified
3 health plan) and 1993 c 492 s 303 are each repealed.

4 NEW SECTION. **Sec. 4.** Section 2 of this act applies both
5 prospectively and retroactively to October 2, 2019.

6 NEW SECTION. **Sec. 5.** This act does not affect any final
7 judgment, no longer subject to appeal, entered by a court of
8 competent jurisdiction before the effective date of section 2 of this
9 act.

--- END ---