

Proposed Substitute House Bill 2167 (H-3109.5)

By Rep. Tarleton

Brief Summary

- Imposes an additional 1.2 percent business and occupation tax on specified financial institutions.

Background

- Washington's major business tax is the business and occupation (B&O) tax.
- 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 for services and for activities not classified elsewhere.
- Financial institutions are subject to the 1.5 percent service and other B&O tax rate.

Summary of PSHB 2167

Beginning on January 1, 2020, an additional B&O tax is imposed on specified financial institutions.

- The tax is equal to the taxpayer's gross taxable service and other income multiplied by 1.2 percent.
- The effective B&O tax rate for specified financial institutions will be:
 - If 2SHB 2158 passes, 3 percent:
 - 1.5 percent service and other B&O tax rate;
 - 1.2 the additional B&O tax established in this bill; and
 - 0.3 percent Higher Education B&O tax.
 - If 2SHB 2158 does not pass, 2.7 percent:
 - 1.5 percent service and other B&O tax rate; and
 - 1.2 the additional B&O tax established in this bill.

A specified financial institution is a financial institution that is a member of a consolidated financial institution group that reported on its consolidated financial statement for the previous calendar year annual net income of at least one billion dollars, not including net income attributable to noncontrolling interests, as the terms "net income" and "noncontrolling interest" are used in the consolidated financial statement.

Revenue generated from the windfall profit tax must be deposited in the State General Fund.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3109.5/19 5th draft

ATTY/TYPIST: JA:lel

BRIEF DESCRIPTION: Concerning tax revenue.

1 AN ACT Relating to tax revenue; adding a new section to chapter
2 82.04 RCW; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that in the decade
5 since the great recession, some economic sectors have rebounded,
6 stronger than ever, while many Washington families struggle to afford
7 basic necessities, all while also carrying the burden of funding
8 schools and essential services. The wealth disparity in the country
9 between the wealthy few and the lowest income families is wider than
10 in any other developed nation and continues to grow. Additionally,
11 Washington's tax system disproportionately impacts those with the
12 least ability to pay. As a percentage of household income, middle-
13 income families in Washington pay two to four times the amount of
14 taxes as compared to top earners in the state. Low-income Washington
15 families pay six times more in taxes than the wealthiest residents.
16 The legislature concludes that those wealthy few who have profited
17 the most from the recent economic expansion can contribute to the
18 essential services and programs all Washington families need.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
20 RCW to read as follows:

1 (1) Beginning January 1, 2020, in addition to any other taxes
2 imposed under this chapter, an additional tax is imposed on specified
3 financial institutions. The additional tax is equal to the gross
4 income of the business taxable under RCW 82.04.290(2) multiplied by
5 the rate of 1.2 percent.

6 (2) The definitions in this subsection apply throughout this
7 section unless the context clearly requires otherwise.

8 (a) "Affiliated" means a person that directly or indirectly,
9 through one or more intermediaries, controls, is controlled by, or is
10 under common control with another person. For purposes of this
11 subsection (2)(a), "control" means the possession, directly or
12 indirectly, of more than fifty percent of the power to direct or
13 cause the direction of the management and policies of a person,
14 whether through the ownership of voting shares, by contract, or
15 otherwise.

16 (b) "Consolidated financial institution group" means all
17 financial institutions that are affiliated with each other.

18 (c) "Consolidated financial statement" means a consolidated
19 financial institution group's consolidated reports of condition and
20 income filed with the federal financial institutions examination
21 council, or successor agency.

22 (d) "Financial institution" means:

23 (i) Any corporation or other business entity chartered under
24 Titles 30A, 30B, 31, 32, and 33 RCW, or registered under the federal
25 bank holding company act of 1956, as amended, or registered as a
26 savings and loan holding company under the federal national housing
27 act, as amended;

28 (ii) A national bank organized and existing as a national bank
29 association pursuant to the provisions of the national bank act, 12
30 U.S.C. Sec. 21 et seq.;

31 (iii) A savings association or federal savings bank as defined in
32 the federal deposit insurance act, 12 U.S.C. Sec. 1813 (b)(1);

33 (iv) Any bank or thrift institution incorporated or organized
34 under the laws of any state;

35 (v) Any corporation organized under the provisions of 12 U.S.C.
36 Sec. 611 through 631;

37 (vi) Any agency or branch of a foreign depository as defined in
38 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

1 (vii) A production credit association organized under the federal
2 farm credit act of 1933, all of whose stock held by the federal
3 production credit corporation has been retired;

4 (viii) Any corporation or other business entity who receives
5 gross income taxable under RCW 82.04.290, and whose voting interests
6 are more than fifty percent owned, directly or indirectly, by any
7 person or business entity described in (d)(i) through (vii) of this
8 subsection other than an insurance company liable for the insurance
9 premiums tax under RCW 48.14.020 or any other company taxable under
10 chapter 48.14 RCW;

11 (ix) (A) A corporation or other business entity that receives more
12 than fifty percent of its total gross income for federal income tax
13 purposes from finance leases. For purposes of this subsection, a
14 "finance lease" means a lease that meets two requirements:

15 (I) It is the type of lease permitted to be made by national
16 banks (see 12 U.S.C. Sec. 24(7) and (10), comptroller of the currency
17 regulations, part 23, leasing (added by 56 C.F.R. Sec. 28314, June
18 20, 1991, effective July 22, 1991), and regulation Y of the federal
19 reserve system 12 C.F.R. Part 225.25, as amended); and

20 (II) It is the economic equivalent of an extension of credit,
21 i.e., the lease is treated by the lessor as a loan for federal income
22 tax purposes. In no event does a lease qualify as an extension of
23 credit where the lessor takes depreciation on such property for
24 federal income tax purposes.

25 (B) For this classification to apply, the average of the gross
26 income in the current tax year and immediately preceding two tax
27 years must satisfy the more than fifty percent requirement;

28 (x) Any other person or business entity, other than an insurance
29 general agent taxable under RCW 82.04.280(1)(e), an insurance
30 business exempt from the business and occupation tax under RCW
31 82.04.320, a real estate broker taxable under RCW 82.04.255, a
32 securities dealer or international investment management company
33 taxable under RCW 82.04.290(2), that receives more than fifty percent
34 of its gross receipts from activities that a person described in
35 (d)(ii) through (vii) and (ix) of this subsection is authorized to
36 transact.

37 (e) (i) "Specified financial institution" means a financial
38 institution that is a member of a consolidated financial institution
39 group that reported on its consolidated financial statement for the
40 previous calendar year annual net income of at least one billion

1 dollars, not including net income attributable to noncontrolling
2 interests, as the terms "net income" and "noncontrolling interest"
3 are used in the consolidated financial statement.

4 (ii) If financial institutions are no longer required to file
5 consolidated financial statements, "specified financial institution"
6 means any person that was subject to the additional tax in this
7 section in at least two of the previous four calendar years.

8 (3) The department must notify the fiscal committees of the
9 legislature if financial institutions are no longer required to file
10 consolidated financial statements.

11 (4) To aid in the effective administration of the additional tax
12 imposed in this section, the department may require a person believed
13 to be a specified financial institution to disclose whether it is a
14 member of a consolidated financial institution group and, if so, to
15 identify all other members of its consolidated financial institution
16 group. A person failing to comply with this subsection is deemed to
17 have intended to evade tax payable under this section and is subject
18 to the penalty in 82.32.090(7) on any tax due under this section by
19 the person and any financial institution affiliated with the person.

20 (5) Taxes collected under this section must be deposited into the
21 general fund.

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