

FINAL BILL REPORT

ESSB 5814

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Synopsis as Enacted

Brief Description: Modifying the application and administration of certain excise taxes.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Frame, Trudeau, Alvarado, Nobles, Pedersen, Valdez and Wilson, C.).

Senate Committee on Ways & Means
House Committee on Finance

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. Revenues are deposited in the state general fund. There are several rate categories, and a business may be subject to more than one B&O tax rate, depending on the types of activities conducted. The general B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 or 1.75 percent for services and for activities not classified elsewhere—depending on taxable income. Current law authorizes multiple exemptions, deductions, and credits to reduce the B&O tax liability for specific taxpayers and business industries.

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 4.1 percent, depending on the location.

Retail Services. Businesses that sell intangible products to customers are generally subject to B&O tax under the services and other classification. Customers do not pay retail sales and use tax on most services. A select number of services are subject to retail sales and use

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tax, such as construction services, personal training at athletic and fitness facilities, extended warranties and maintenance agreements, alarm monitoring services, and vehicle towing, to name a few. If the service is taxable as a retail sale, then the business activity is subject to retailing B&O tax.

Information technology products and services sold as a non-itemized package are generally subject to retail sales and use tax. When the products and services are separately stated on a sales invoice or contract, charges for computer hardware and prewritten computer software are subject to retail sales and use tax. Separately stated charges for custom software and customization of prewritten software are not subject to retail sales and use tax.

Digital Products. Retail sales and use taxes apply to all digital products, regardless of how they are accessed. Digital products are digital goods and digital automated services (DAS). A DAS is any service transferred electronically that uses one or more software applications. A digital good is a sound, image, data, fact, or information, or any combination thereof, transferred or accessed electronically.

Some DAS exclusions exist that exempt specific DAS from the definition of retail sales. A few of those exclusions include, but are not limited to:

- any service that primarily involves the seller's application of human effort;
- live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment that allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;
- advertising services; and
- data processing services.

"Advertising services" is defined as services directly related to the creation, preparation, production, or the dissemination of advertisements, including layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration.

"Data processing service" is defined as a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

The above exclusions are exempt from retail sales and use tax and retailing B&O tax and are instead subject to the service and other activities B&O tax.

Digital goods concurrently available for use inside and outside Washington are not subject to retail sales or use taxes if the goods or services are not for personal use.

Other Tobacco Products Tax. Taxes are imposed on the sale, handling, or distribution of all tobacco products at the following rates:

- for cigars except little cigars, 95 percent of the taxable sales price of cigars, not to exceed \$0.65 per cigar;
- for little cigars, \$0.15125 per stick;
- for moist snuff:
 1. cans that weigh 1.2 ounces or less, \$2.526 per can; or
 2. cans that weigh more than 1.2 ounces, \$2.105 per ounce; and
- for all other tobacco products, 95 percent of the taxable sales price.

The other tobacco products (OTP) tax is deposited into the state general fund. The OTP tax is in addition to retail sales and use, B&O, and litter taxes that may apply.

The definition of tobacco products is made up of a list of forms of tobacco prepared for human consumption, and specifically excludes cigarettes.

Summary: Retail Services. The following select services are classified as retail services and subject to retail sales and use tax and retailing B&O tax:

- information technology training services and technical support;
- custom website development services;
- custom software and customization of prewritten computer software;
- investigation, security services, security monitoring services, and armored car services;
- temporary staffing services; and
- advertising services.

The following DAS are classified as retail services and subject to retail sales and use tax and retailing B&O tax:

- any service that primarily involves the application of human effort by the seller;
- live presentations;
- advertising services; and
- digital processing services.

The following services are excluded from retail sales and use tax and retailing B&O tax:

- temporary staffing services used by hospitals;
- telehealth and telemedicine services;

- certain advertising services, such as web hosting and domain name registration, newspapers, printing or publishing, certain radio and television broadcasting, out-of-home advertising, including billboards, street furniture, transit, or place-based advertising, naming rights, and fixed signage advertising; and
- the following services when the sale of such service is between members of an affiliated group:
 1. information technology consulting training, and support services;
 2. custom web design services;
 3. investigation, security, security monitoring, and armored car services;
 4. advertising services;
 5. any digital automated service that primarily involves the application of human effort by the seller;
 6. live presentations in which participants are connected via the internet or telecommunications equipment; and
 7. data processing services.

Taxation of Nicotine Products. The definition of tobacco products is expanded to include products that contain nicotine, whether derived from tobacco or created synthetically. Such products are subject to the OTP tax. The definition of tobacco products excludes drugs, devices, or combination products approved by the United States Food and Drug Administration.

Votes on Final Passage:

Senate	27	22
House	50	47 (House amended)
Senate	26	22 (Senate concurred)

Effective: July 27, 2025

October 1, 2025 (Sections 101 and 102)
 January 1, 2026 (Section 301)