

New Washington law revises Workforce Education Surcharge and increases the business and occupation tax rate for service and other activities

Overview

On February 10, 2020, the governor of Washington state signed into law Senate Bill 6492 (S.B. 6492)¹, which modifies the Washington business and occupation (B&O) tax workforce education investment surcharge.²

The new legislation includes the following modifications to Washington law:

- Increases the business and occupation (B&O) tax rate from 1.5% to 1.75% for certain taxpayers; and
- Eliminates the Workforce Education Investment Surcharge for most taxpayers except for certain advanced computing businesses.

This alert summarizes these law changes.

Increases the B&O Tax Rate for Certain Taxpayers

The Washington B&O tax is calculated on gross income from business activities and is reported and paid on the excise tax return. The filing frequency is either monthly, quarterly, or annually, depending on a taxpayer's yearly business income. For business activities beginning on or after April 1, 2020, the B&O tax rate will change from 1.5% to 1.75% on gross income from Service and Other Activities.³ In general, taxpayers and their affiliates with at least \$1 million in combined gross income that was subject to the Service and Other Activities B&O tax during the prior calendar year will be impacted by this tax rate increase.⁴ However, the following taxpayers will continue to be subject to the 1.5% rate:

- Hospitals;⁵ and
- Persons subject to the Workforce Education Investment Surcharge (*i.e.*, select advanced computing businesses).⁶

Eliminates the Workforce Education Investment Surcharge for Most Taxpayers Except Certain Advanced Computing Businesses

S.B. 6492 imposes the Workforce Education Investment Surcharge on select advanced computing businesses.⁷ S.B. 6492 defines "advanced computing" as "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 an online marketplace, an online search engine, or online social networking platform."⁸ A "select advanced computing business" means a person who is a member of an affiliated group with at least one member engaged in the business of advanced computing and the affiliated group has worldwide gross revenue of more than \$25 billion during the immediately preceding calendar year.⁹

¹ Laws 2020, ch. 2, Regular Session (S.B. 6492). A copy of the adopted law is accessible [here](#).

² See Laws 2019, ch. 406, Regular Session (H.B. 2158). The workforce education investment surcharge was formerly adopted in House Bill 2158, which is accessible [here](#).

³ S.B. 6492, Sec. 2(a).

⁴ S.B. 6492, Sec. 3(2)(a)(ii)(B); (f)(i), (ii). "'Affiliate' means a person that directly or indirectly controls, is controlled by, or is under common control with another person." "'Control' means the direct or indirect possession of more than 80% of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise."

⁵ S.B. 6492, Sec. 3(2)(a)(ii)(C).

⁶ S.B. 6492, Sec. 3(2)(a)(ii)(A).

⁷ S.B. 6492, Sec. 4(1)(a).

⁸ S.B. 6492, Sec. 4(1)(f)(i).

⁹ S.B. 6492, Sec. 4(1)(f)(vi). "'Affiliate' means a person that directly or indirectly controls, is controlled by, or is under common control

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The surcharge is equal to the gross income of the business that is subject to the Service and Other Activities B&O tax, multiplied by a rate of 1.22%.¹⁰ Because companies subject to the surcharge also remain subject to the 1.5% tax on receipts from Service and Other Activities, affected taxpayers will be subject to an effective tax rate of 2.72%. The maximum amount of the surcharge paid by all members of an affiliated group is \$9 million annually.¹¹

Considerations

Businesses that have historically reported gross receipts under the Service and Other Activities classification and have gross income in excess of \$1 million in 2019 should be aware that they may be subject to the increased tax rate of 1.75%. Also, affiliated businesses with members engaging in advanced computing activities should consider whether they are subject to the Workforce Education Investment Surcharge of 1.22% if they have more than \$25 billion in worldwide gross revenue.

The Workforce Education Investment Surcharge must be reported and paid on a quarterly basis.¹² The first quarterly return is due on July 31, 2020.¹³ Failure to report or pay the tax or surcharge may result in the assessment of a late payment penalty of up to 29% and a substantial underpayment penalty of 5%.¹⁴ Additionally, if the Washington State Department of Revenue establishes by clear, cogent, and convincing evidence that one or more members of the affiliated group intended to evade the surcharge, it has the right to assess against that member or all members of that affiliated group a penalty equal to 50% of the amount of the total surcharge payable.¹⁵

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with another person." "Control" means the direct or indirect possession of more than 50% of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise." Furthermore, the definition excludes entities that are primarily engaged in: the provision of commercial mobile services; the operation and provision of access to transmission facilities and infrastructure that the person owns or leases for the transmission of voice, data, text, sound, and video using wired telecommunications networks; or business as financial institutions.

¹⁰ S.B. 6492, Sec. 4(1)(a).

¹¹ S.B. 6492, Sec. 4(1)(b).

¹² S.B. 6492, Sec. 4(1)(d).

¹³ The Washington State Department of Revenue will work with businesses that cannot file or pay their taxes on time due to the COVID-19 outbreak. More information is available [here](#).

¹⁴ WA Admin. Code § 458-20-228(5).

¹⁵ S.B. 6492, Sec. 4(1)(e)(ii).