

E2SHB 2158: Implementing Sec. 74

Senate Higher Education &
Workforce Development Committee

Thursday, November 21, 2019

David Duvall
Legislative & External Affairs Liaison
Department of Revenue

Summary of Sec. 74 of E2SHB 2158

E2SHB 2158 provides resources for a number of workforce investments by imposing several surcharges on certain businesses' B&O service and other income:

- A 20% surcharge on those businesses “primarily engaged” in one or more of 43 categories of business activities;
- A 33.33% surcharge on “advanced computing businesses” with yearly worldwide gross revenue of more than \$25 billion, but not more than \$100 billion (including all affiliates); and
- A 66.66% surcharge on “advanced computing businesses” with yearly worldwide gross revenue of more than \$100 billion (including all affiliates)
- Advanced computing businesses will pay at least \$4 million and no more than \$7 million in surcharge annually (including all affiliates).

Implementation of E2SHB 2158

- **Communications**
 - ✓ Created an agency communication plan, including outreach to those likely subject to surcharge
 - Drafting documents for taxpayer outreach, including guidance on how to determine “primarily engaged”
 - Developing training for frontline staff (phone center, field office front counters), examiners, auditors and compliance personnel
 - Added information to the Department’s website
- **Policy**
 - ✓ Interpreting tax provisions and providing guidance
- **Programming of Tax System**
 - ✓ The Department is on schedule – First returns are due on February 25, 2020
 - ✓ Began programming and testing of the Department’s tax and licensing system

E2SHB 2158's Objective in Jeopardy?

- E2SHB 2158 made appropriations of \$937,077,000 in the 4-year budget outlook.
- Revenue to fund E2SHB 2158's appropriations are estimated at \$773,100,000.
- The funding gap is due to a late amendment that changed the estimate.
- Significant volume of ambiguity in the bill jeopardizes the Department's ability to administer and taxpayer's ability to comply.

E2SHB 2158's Objective in Jeopardy? (Cont'd)

Answers are found within 4 of the 5 Principles of Sound Tax Policy

- **Simplicity**
 - ✓ Volume of ambiguities in the legislation's language – "Other" at least 27 times.
 - ✓ Multiple aggregated Service & Other B&O rates will increase taxpayer errors.
 - ✓ Providing predictable tax liability. An audit is required.
 - ✓ Two standards under which a taxpayer can seek to overturn a Department's tax determination related to a surcharge.
 - ✓ Expect a significant amount of disputes.
- **Economic Neutrality**
 - ✓ Different rates for businesses providing the same or similar services impacting profitability and providing an advantage/disadvantage to competitors.
- **Equity**
 - ✓ Inequities created between similarly-situated taxpayers.
 - ✓ Those not subject to the surcharge have employees with advanced degrees.
- **Reliability**
 - ✓ We do not know if revenues will come in as estimated.

What can be done?

The Director asked her Business Advisory Council for alternatives. They advised:

- Raise service rate on all.
- Raise service rate with exclusions.
- Raise royalties rate.
- Eliminate the advanced computing \$4 million floor.
- Put a ceiling on the 20% surcharge.
- Add an income threshold – if over, taxpayer pays surcharge.
- Eliminate broad rule of construction in favor of tax.
- Get rid of 43 categories.
- Raise Small Business Credit

What can be done? (Cont'd)

- Make changes revenue-neutral.
- Make changes retroactive.
- To impose the advanced computing surcharge, require the primary activity of the affiliate group to meet the definition instead of one entity within the affiliated group.
- Impose a surcharge on all B&O tax classifications.
- Change caps for advanced computing.
- Clarify whether calculating “primarily engaged” includes just Washington income or worldwide income.
- More precise definition of “advanced computing.”

Questions?

