

AN ACT Relating to taxes imposed on insurers operating within the state; amending RCW 82.04.320; repealing RCW 82.04.322; providing an effective date; and declaring an emergency.

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

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

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

(3) In 2024, a majority of the Washington supreme court broadly construed the exemption to permit pharmacy benefit managers -- and likely other businesses that do not earn premium income and do not pay a premiums tax -- to avoid paying B&O tax on amounts they receive from insurance businesses that do pay premiums tax, contrary to the purpose of the exemption as construed in *Armstrong. Envolve Pharmacy Solutions, Inc. v. Department of Revenue*, 4 Wn.3d 142 (2024). The court relied in large part on the Legislature's use of passive voice, rather than active voice, when it enacted the exemption in 1935. If left unchecked, the decision in *Envolve Pharmacy Solutions*,

Inc., would create a large and unintended drain on the state's budget.

(4) Therefore, the legislature finds that it is necessary to restore parity between the language used in RCW 82.04.320 and the intended purpose of that B&O tax exemption by restating the exemption in active voice. Through this act, the legislature intends to consolidate the similar B&O tax exemptions in RCW 82.04.320 and RCW 82.04.322 into a single exemption.

(5) The legislature further finds that on October 2, 2019, the department of revenue issued public guidance in the form of an interim guidance statement that explained in part that a person claiming the benefit of RCW 82.04.320 must show proof that it paid premium tax to the state with respect to the gross income it claims as exempt from B&O tax. The Supreme Court's decision in *Envolve Pharmacy Solutions, Inc.*, forced the Department to rescind that guidance.

(6) The legislature intends for this act to apply both prospectively and retroactively to tax periods beginning on or after October 2, 2019, the date that the department of revenue issued the interim guidance statement. By applying the act retroactively to October 2, 2019, the legislature intends to treat businesses that did not follow the department's guidance equally to those businesses that followed the guidance. Any enforcement action by the department of revenue is, and remains, subject to the applicable limitation periods related to assessing additional tax.

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

(1) ~~Except as otherwise provided in this section, this chapter does not apply to any person in respect to insurance~~

~~business upon which a tax based on gross premiums is paid to the state. This chapter does not apply to gross premiums received by an authorized insurer upon which the same insurer paid insurance premium taxes to the state pursuant to RCW Chapter 48.14.~~

~~(2) The provisions of this section do not exempt any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies. The exemption in subsection (1) also applies to gross premiums received by an authorized insurer that is exempt from premium taxes under RCW Chapter 48.14.0201(6).~~

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

~~(4)~~ (3) For purposes of this section, for periods preceding May 12, 2021, eligible captive insurers as defined in RCW 48.201.020 are deemed, in respect to their insurance business, to have paid a tax under RCW 48.14.020 or RCW 48.201.040 on gross their receipt of premiums. ~~to the state.~~

~~(5)~~ (4) Eligible captive insurers affiliated with a public institution of higher education that are exempt from paying a premium tax under RCW 48.201.040 are exempt from the tax imposed by this chapter in respect to their insurance business. For purposes of this subsection ~~(54)~~, the definitions in RCW 48.201.020 apply.

(5) The term "authorized insurer" as used in this act means a person that lawfully transacts insurance business in this state pursuant to a certificate of authority issued by the insurance commissioner under RCW 48.05.030 or qualifies as a

"taxpayer" under RCW 48.14.0201. The term "registered eligible captive insurer" as used in this act has the same meaning as in RCW 48.201.040. The term "insurance business" as used in this act means activity performed by an insurer as defined in RCW 48.01.050 upon which it earns or receives premiums. The term "premium" or "premiums" as used in this act has the same meaning as in RCW 48.18.170.

NEW SECTION **Sec. 3.** RCW 82.04.322 and 1993 c 492 s 303 are each repealed:

~~This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.~~

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

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

NEW SECTION. **Sec. 6.** This act is necessary for the immediate preservation of the public peace, health, safety, or support of the state government and its existing public institutions, and takes effect immediately.