

Sales/Use/Indirect:

Washington Supreme Court Upholds Constitutionality of Added 1.2% B&O Tax on Some Banks

Case No. 98760-2, Wash. (9/30/21). In a case challenging the validity of Washington's additional 1.2% business and occupation (B&O) tax on certain "specified financial institutions" under legislation enacted in 2019 [see *SHB 2167 (2019)* for more details on this law], the Washington Supreme Court (Court) reversed the trial court to hold that the added 1.2% tax does *not* discriminate against interstate commerce in effect or in purpose but rather "applies equally to all financial institutions meeting the \$1 billion income threshold, irrespective of whether they are based inside or outside of Washington." The Court additionally reasoned that the 1.2% tax is apportioned such that affected institutions remit taxes only on income generated in Washington; and because the imposition is not discriminatory, "the dormant commerce clause is not implicated" but "in any event, the statute satisfies the Pike balancing test." In 2020, a state superior court judge had granted summary judgment in favor of the two bank association challengers, holding that such taxation discriminates against interstate commerce in violation of the Commerce Clause in applying exclusively to select out-of-state financial institutions. Please contact us with any questions.

URL: <https://www.courts.wa.gov/opinions/pdf/987602.pdf>

URL: <https://app.leg.wa.gov/billssummary?BillNumber=2167&Initiative=false&Year=2019>

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