



# TaxNewsFlash

## United States



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## Washington State: High court upholds B&O tax surcharge on banks

The Washington State Supreme Court today, September 30, 2021, upheld the constitutionality of the state's business and occupation (B&O) tax surcharge imposed on certain financial institutions.

The case is: *Washington Bankers Association v. Department of Revenue*. Read the high court's [decision](#) [PDF 562 KB]

### Background

Effective January 1, 2020, an additional B&O tax surcharge of 1.2% is imposed on specified financial institutions—defined as financial institutions that are members of a consolidated financial institution group that reported on its consolidated financial statement for the previous calendar year annual net income of at least \$1 billion.

After enactment of this new B&O tax surcharge, the Washington Bankers Association and the American Bankers Association challenged imposition of the surcharge on constitutional grounds.

A state superior court judge in May 2020 held in favor of the two banking associations. The trial court found that while the tax was not facially discriminatory, it did discriminate in its effect and its purpose. Read [TaxNewsFlash](#)

Shortly thereafter, the state requested direct review by the Washington State Supreme Court.

### Supreme Court's decision

In a lengthy opinion, the high court concluded that the surcharge was not discriminatory on its face or in effect. Further, the high court determined the surcharge was not enacted with discriminatory purpose. In the court's view, because the tax applied equally to in-state and out-of-state financial institutions and was limited to Washington-apportioned income, it did not discriminate against interstate commerce.

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