

HOUSE BILL REPORT

SB 6096

As Passed House:

April 26, 2009

Title: An act relating to the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

Brief Description: Concerning the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

Sponsors: Senator Tom.

Brief History:

Committee Activity:

None.

Floor Activity

Passed House: 4/26/09, 50-46.

Passed House: 4/26/09, 51-45.

Brief Summary of Bill

- Clarifies that the business and occupation tax deduction for vessel fuel sold for use outside the waters of the United States in foreign commerce only applies to retailing and wholesaling activity and not to manufacturing activity.

Staff: Rick Peterson (786-7150)

Background:

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state. In general, there are no deductions for the costs of doing business. Revenues are deposited in the state general fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. There are a number of different rates. The main rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for professional and personal services, and activities not classified elsewhere.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1985 the Legislature enacted a deduction for income derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce. This type of fuel is referred to as "bunker fuel."

Until 1987 businesses were taxable under the B&O tax only under a single classification under the multiple activities exemption, which exempted a firm's production activities if it also had selling activities. However, in the 1987 court decision *Tyler Pipe v. State of Washington*, the U.S. Supreme Court held that Washington's tax system discriminated against interstate commerce, because intrastate activities were taxed only once, whereas interstate activities could potentially be taxed twice: once in Washington and a second time on the same activity in another state. In 1987, the Legislature enacted the Multiple Activities Tax Credit (MATC) to address the concern of the court case.

The MATC allows taxpayers who engage in more than one taxable activity under the B&O tax (e.g., manufacturing and retailing) to credit the tax due on one activity against the other. Also, this credit allows firms that are subject to state or local gross receipts taxes in other states to credit these taxes against the B&O tax liability on income derived from the same product or activity. Restructuring the B&O tax to implement the MATC resulted in a change in tax treatment for some manufacturing activity, including manufacturing of bunker fuel.

Summary of Bill:

The Legislature finds that at the time the bunker fuel deduction was enacted, the deduction was intended to only apply to the wholesaling or retailing activities under the multiple activities exemption, and that the adoption of the MATC resulted in a change in tax liability for some taxpayers, including manufacturing of bunker fuel.

The bill clarifies that income from wholesaling and retailing of bunker fuel can be deducted from the B&O tax base; however, manufacturing of bunker fuel is taxable under the B&O manufacturing classification.

The act applies prospectively and retroactively. The act includes a severability clause.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.