

# HOUSE BILL REPORT

## SSB 5484

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### As Reported by House Committee On:

Finance

**Title:** An act relating to taxation of businesses selling conifer seed or growing seedlings.

**Brief Description:** Providing a limited sales tax exemption for certain sales of conifer seed.

**Sponsors:** By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove and Rasmussen).

### Brief History:

#### Committee Activity:

Finance: 3/29/01 [DP].

#### Brief Summary of Substitute Bill

- A retail sales tax exemption is provided for sales of conifer tree seeds that are immediately placed into freezer storage by the seller and that are subsequently used to grow timber outside Washington State or, if sold to an Indian tribe, for growing timber in Indian country.
- A use tax exemption is provided for the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed and if the seedlings will be used to grow timber outside Washington State or, if the owner of the seed is an Indian tribe, in Indian country.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 9 members: Representatives Cairnes, Republican Co-Chair; Morris, Democratic Co-Chair; Berkey, Democratic Vice Chair; Roach, Republican Vice Chair; Carrell, Conway, Santos, Van Luven and Veloria.

**Staff:** Mark Matteson (786-7145).

### Background:

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. The tax base includes goods and certain services. The tax is

imposed at a 6.5 percent rate by the state. Cities and counties may impose a local tax at a rate up to a maximum of 3.1 percent; currently, local rates imposed range from 0.5 percent to 2.3 percent. Sales tax is paid by the purchaser and collected by the seller.

The use tax is imposed on items used in the state which were not subject to the retail sales tax, and includes purchases made in other states and purchases from sellers who do not collect Washington sales tax. The state and local rates are the same as those imposed under the retail sales tax. Use tax is paid directly to the Department of Revenue.

All items and services in the retail tax base are taxed unless specifically exempted in statute. One example is an exemption provided to farmers for the purchase or use of feed, seed, fertilizer, agents for enhanced pollination, spray materials, and chemical sprays for the purpose of preventing mold or fungus, if the purpose of the item purchased or used is to grow or raise an agricultural product for sale.

There is no specific exemption provided for the sale or use of conifer seed or seedlings for the purpose of growing timber outside the state or in Indian country.

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### **Summary of Bill:**

#### Retail Sales Tax Exemption/Deferral/Deduction

A retail sales tax exemption is provided for the purchase of conifer tree seeds that are immediately placed into freezer storage by the seller for the ultimate purpose of growing timber outside Washington or, if sold to an Indian tribe, of growing timber in Indian country. To receive the exemption, the buyer must present the seller with an exemption certificate.

If a buyer of conifer seed who normally grows timber both within and outside the state of Washington is unable to determine at the time of purchase where the timber will be ultimately grown, the buyer may defer payment of the sales tax until it is determined whether the seed (or seedlings grown from the seed) will be planted for growing timber in Washington. A buyer who defers payment of sales tax on the purchase of conifer seed and later determines that the sale did not qualify for the tax exemption must send the Department of Revenue the amount of sales tax that would have been paid at the time of purchase.

A buyer who pays sales tax on the purchase of conifer seeds, and subsequently determines that the sale qualifies for the tax exemption, may deduct from taxable retail sale income the cost to the buyer of the purchased seed. The deduction is only allowed if the buyer keeps and preserves records showing from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid.

## Use Tax Exemption/Deferral

A use tax exemption is provided for the use of conifer seed to grow seedlings cultivated by someone other than the owner. The exemption applies only if the seedlings will ultimately be used for growing timber outside Washington or, if owned by an Indian tribe, for growing timber in Indian country.

If the owner of the conifer seed is unable to determine at the time the seed is used in a growing process whether it is subject to the use tax, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington state.

### Applicability

The bill applies retroactively.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This tax has not been collected historically. When seed is sold to an out-of-state entity and is shipped right away, it is not taxed. In addition, if the seed were to be shipped immediately out-of-state and then right back for cold storage, there would be no tax. Because the seed is perishable and is not needed all at once, it is typically stored and shipped out to nurseries a little at a time, before it is sent out-of-state or to Indian reservations to the buyer. For years, the interpretation was that this activity was part of the non-taxable sale, but a recent audit found a technical problem with the interpretation of existing statute such that the tax was found to apply. In appeals, the administrative law judges felt that the taxpayer had a point but believed that a statutory change was necessary to resolve the problem.

**Testimony Against:** None.

**Testified:** Senator Jim Hargrove, prime sponsor.