

# HOUSE BILL REPORT

## ESB 5220

---

---

### As Passed House:

April 9, 2021

**Title:** An act relating to the taxation of salmon recovery grants by updating the state business and occupation tax deduction for these grants, creating a sales and use tax exemption for grant proceeds received by recipients of these grants, and clarifying the sales and use tax obligations for goods and services purchased by recipients of these grants.

**Brief Description:** Concerning the taxation of salmon recovery grants by updating the state business and occupation tax deduction for these grants, creating a sales and use tax exemption for grant proceeds received by recipients of these grants, and clarifying the sales and use tax obligations for goods and services purchased by recipients of these grants.

**Sponsors:** Senators Van De Wege and Rolfes; by request of Department of Revenue.

### Brief History:

#### Committee Activity:

Finance: 3/16/21, 3/25/21 [DP].

#### Floor Activity:

Passed House: 4/9/21, 97-0.

### Brief Summary of Engrossed Bill

- Exempts salmon recovery grants provided to nonprofit organizations from retail sales and use tax.
- Expands the business and occupation tax deduction for salmon recovery grants to nonprofit organizations to include grants from tribal governments.

---

## HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 17 members: Representatives Frame, Chair; Berg,

---

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

Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai, Vick, Wylie and Young.

**Staff:** Tracey O'Brien (786-7152).

**Background:**

Business and Occupation Tax.

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, without any deduction for the costs of doing business. Businesses must pay the B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent (businesses with taxable income of less than \$1 million) or 1.75 percent (businesses with taxable income of \$1 million or more) for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

In addition, a taxpayer may be eligible to utilize other tax preferences, including credits and deductions, to reduce their tax liability. For example, a taxpayer engaging in activities subject to different B&O tax rates may be eligible for a Multiple Activities Tax Credit. A taxpayer may also be eligible for a small business credit that will either eliminate or reduce their B&O tax liability. In general, the credit is \$70 per month for service businesses and \$35 per month for all other businesses, multiplied by the number of months in the reporting period. The amount of the credit available phases out based on the business's gross receipts.

A business does not have to file an annual B&O tax return if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has annual gross proceeds of sales, gross income, or value of products for all B&O tax classifications of less than \$28,000 per year, or less than \$46,667 if at least 50 percent of its taxable income is from services or activities not classified elsewhere.

Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

### Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

### **Summary of Bill:**

A retail sales tax exemption is provided for a qualifying grant made by federal, state, tribal, and local governments for salmon habitat restoration. The existing B&O tax exemption is expanded to include grants received by a nonprofit organization from tribal governments.

A salmon recovery grant is defined as financial assistance provided to primarily benefit the public as a whole by renewing, restoring, or protecting salmon ecosystems or habitats by human intervention.

The exemptions authorized by this act are exempt from the requirements of a tax preference performance statement, a JLARC review, and the automatic 10-year expiration.

**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) This is a critical clarification of current law. Salmon habitat restoration and enhancement government grants are awarded to nonprofits. The DOR has recently interpreted these funds to be gross income that is subject to B&O or sales and use taxes. This means the grant funds could be subject to the B&O service rate of 1.5 percent. This bill provides clarity regarding application of sales and use tax exemption for the grant funds and updates the B&O tax exemption. Nonprofits leverage federal funds with a number of state grants from a variety of sources to finance salmon habitat restoration and enhancements. The projects being funded now are more complex and expensive requiring multiple partners, including the tribes. Even though the fiscal note shows revenue loss, it is not currently being collected. In fact, the Senate budget does not assume the revenue loss.

(Opposed) None.

**Persons Testifying:** Senator Van De Wege, prime sponsor; Nicholas Norton, Washington Association of Land Trusts; Michael Bailey, Department of Revenue; Brynn Brady, Regional Fisheries Coalition; Brian Burns, Tri-State Steelheaders; and Mendy Harlow, Hood Canal Salmon Enhancement Group.

**Persons Signed In To Testify But Not Testifying:** None.