

HOUSE BILL REPORT

HB 1422

As Reported by House Committee On:
Finance

Title: An act relating to clarifying that certain reusable packing materials are exempt from sales and use tax.

Brief Description: Clarifying that certain reusable packing materials are exempt from sales and use tax.

Sponsors: Representatives Springer, Corry and Lekanoff.

Brief History:

Committee Activity:

Finance: 2/2/23, 2/21/23 [DP].

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides reusable packing materials with a sales and use tax exemption.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 12 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Chopp, Ramel, Santos, Springer, Stokesbary, Walen and Wylie.

Staff: Tracey Taylor (786-7152).

Background:

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

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user acquired the property, digital products, or services, then use tax applies to the value of the 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 4.0 percent, depending on the location.

Tax Preferences.

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 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.

Packing Materials Exemption.

A retail sale does not include the purchase of tangible personal property for the purpose of resale in the regular course of business without an intervening use by such person. In addition, a retail sale does not include the renting or leasing of tangible personal property to consumers.

A recent Washington Court of Appeals decision determined that reusable wooden pallets utilized as part of a packing materials pool constituted a "retail sale" and was subject to retail sales and use taxes.

Summary of Bill:

The renting or leasing of packing material under a packing material sharing and reuse program is not a retail sale and is not subject to retail sales and use tax.

A "packing material sharing and reuse program" is defined as a system for sharing reusable packing materials involving more than one person. The term "reusable packing materials" means all reusable boxes, crates, or pallets used to package or contain personal property.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2023.

Staff Summary of Public Testimony:

(In support) This bill recognizes that inputs to a retail sale or resale are generally not subject to sales tax, so the fact that we would impose a sales tax on a wooden pallet used to deliver produce does not make sense. In the past, the Department of Revenue (DOR) has raised concerns on how broadly the exemption could be applied, but this version attempts to address those concerns.

Washington does have a sales tax exemption for supplies used in packing fresh produce. This includes boxes, pallets, and similar items. Unfortunately, pallets that are exactly the same are taxed differently. If a wooden pallet used to deliver fresh produce is thrown away, sales tax is not paid, but if the pallet is reused the pallet is subject to sales tax. The produce industry in Washington is working hard to address sustainability on multiple fronts. However, the current interpretation of this law by the DOR does not make sense. We should incentivize multiple use products over single use products.

Inputs like packing materials for tree fruits are not taxed as they are reflected in the selling price of the fruit. As industry works to reduce waste, more companies are opting to use packing materials that can be used multiple times, like reusable pallets and plastic boxes in lieu of the cardboard boxes. Approximately 10 years ago, the DOR began taking position during audits that these materials did not qualify for the sales tax exemption. Shared use in a pool resource like a reusable pallet does not transfer ownership. This has resulted in disparate treatment of packing materials in the tax code. This bill eliminates a tax penalty for trying to be environmentally responsible.

(Opposed) This would be the rental of tangible personal property and as such is subject to sales tax. It is not sound tax policy to provide a limited tax exemption to one form of rentals while taxing other similar transactions. Disparate treatment is not favorable. It is hard to see why pallets and other packing materials warrant special treatment when compared to other items. This could lead to other taxpayers to seek tax exemptions for their business inputs. The state is best served by a tax code that is stable, equitable, and does not favor one business model over another.

Persons Testifying: (In support) Representative Larry Springer, prime sponsor; Mark Johnson, Washington Retail Association; Emily Shay, Association of Washington Business; Sam Sluys, Superfresh Growers; Jon DeVaney, Washington State Tree Fruit Association; and Heather Trim, Zero Waste Washington.

(Opposed) Steve Ewing, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.