

# HOUSE BILL REPORT

## 2EHB 1757

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**As Passed House:**

January 11, 2024

**Title:** An act relating to providing a sales and use tax remittance to qualified farmers.

**Brief Description:** Providing a sales and use tax remittance to qualified farmers.

**Sponsors:** Representatives Corry, Springer, Chapman, Dent and Schmidt.

**Brief History:**

**Committee Activity:**

Finance: 2/20/23, 3/9/23 [DP].

**Floor Activity:**

Passed House: 4/20/23, 97-1.

**Floor Activity:**

Passed House: 1/11/24, 96-1.

**Brief Summary of Second Engrossed Bill**

- Provides a sales and use tax exemption in the form of a remittance of up to \$10,000 to eligible farmers who paid business and occupation tax on activities that would have been exempt if the custom farming and farm management services exemption had not lapsed.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 13 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Chopp, Ramel, Santos, Springer, Stokesbary, Thai, Walen and Wylie.

**Staff:** Tracey Taylor (786-7152).

**Background:**

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*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.*

### 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 or 1.75 percent for services and for activities not classified elsewhere, depending on the size of the business. Several preferential rates also apply to specific business activities.

### 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 (TPPS) 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.

### Custom Farming and Hauling Farm Products Tax Preferences.

In 2007 the Legislature enacted two tax preferences for farms: a B&O tax exemption for farmers who provide custom farming services and farm management services to other farmers; and a public utility tax exemption for those who haul farm machinery, equipment, or agricultural products for a related farmer or person performing custom farming services. Both preferences expired December 31, 2020. The Legislature permanently reauthorized the tax preferences beginning July 1, 2022.

### **Summary of Second Engrossed Bill:**

An eligible farmer may claim a sales and use tax exemption on goods and services purchased. The exemption is in the form of a remittance of up to \$10,000 and the eligible farmer must pay all applicable sales and use taxes on items that are considered goods and services. The amount of the exemption is equal to the amount of B&O taxes paid on custom farming and farm management services activities between December 31, 2020, and July 1, 2022. The remittance must be claimed before January 1, 2030.

An "eligible farmer" has the same meaning as in the B&O tax exemption for the custom farming statute.

This act is exempt from the TPPS, JLARC review and automatic 10-year expiration.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 13, 2024.

**Effective Date:** The bill takes effect on July 1, 2024.

**Staff Summary of Public Testimony:**

(In support) Due to laws unrelated to payroll, a farm may actually be made up of multiple but separate entities. There was a gap of 18 months where the custom farming B&O tax exemption was not in place. As a result, any intercompany transfer of funds for payroll between farm entities with a common owner are subject to B&O taxes. This bill would provide relief in the form of a sales and use tax exemption to help the farmers who were impacted during the lapse of the exemption.

(Opposed) This bill benefits a closed class of taxpayers. Although this bill does a better job than other attempts, the granting of the sales and use tax exemption in the amount of B&O taxes that were paid as a result of the lapse in the exemption is still problematic. The Department of Revenue has received informal guidance from its Assistant Attorney General that this bill still results in an unconstitutional gift of public funds and poses a significant litigation risk.

**Persons Testifying:** (In support) Representative Chris Corry, prime sponsor; and Travis Lorton, BM Administrative Services, Incorporated.

(Opposed) Ian Doyle, Department of Revenue.

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