

SENATE BILL REPORT

SB 5309

As of January 23, 2023

Title: An act relating to eliminating the state public utility tax deduction for the instate portion of interstate transport of petroleum products and crude oil.

Brief Description: Eliminating the state public utility tax deduction for the instate portion of interstate transport of petroleum products and crude oil.

Sponsors: Senators Lovelett, Rolfes, Hasegawa, Hunt, Keiser, Nguyen and Nobles.

Brief History:

Committee Activity: Ways & Means: 1/24/23.

Brief Summary of Bill

- Eliminates Public Utility Tax deductions for the instate portion of the interstate transport of petroleum products and crude oil.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jeffrey Mitchell (786-7438)

Background: The Public Utility Tax (PUT) applies to the gross operating income of public service businesses, including businesses engaging in transportation. The PUT is in lieu of the business and occupation (B&O) Tax and, similar to the B&O tax, applies to the gross receipts of a business without deductions for the costs of doing business.

Six different rates apply, depending upon the specific utility activity. The rates, including permanent surtaxes, are:

- telegraph companies, distribution of natural gas, and collection of sewerage—3.852 percent;
- generation or distribution of electrical power—3.8734 percent;
- urban transportation and watercraft vessels under 65 feet in length—0.642 percent;

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- motor transportation, railroads, railroad car companies, and all other public service businesses—1.926 percent;
- distribution of water—5.029 percent; and
- log transportation—1.3696 percent.

Generally, wholly instate freight transport—trips from one point in Washington to another—are fully subject to PUT. However, current law provides a deduction from the PUT for instate portions of the interstate shipments of goods where the carrier authorizes the shipper to stop the shipment in Washington to store, manufacture, or process the goods, then continues to transport the same goods or their equivalent, in the same or a converted form, to the final destination noted under a through freight rate, also known as a through bill of lading. The preference applies to transportation of goods by truck, rail, and certain water transportation. Current law also provides a PUT deduction for the transportation of commodities from a point in Washington directly to an instate port, dock, wharf, export elevator, or shipside for direct shipment by a vessel outside the state.

The Joint Legislative Audit and Review Committee (JLARC), as part of its tax preference review process, reviewed these deductions in 2010. JLARC noted that the Legislature did not state its intent when these preferences were enacted in 1937. The implied intent appears to be based on the 1930s-era U.S. Supreme Court analysis and interpretation of federal Commerce Clause prohibitions. At the time, the U.S. Supreme Court interpreted the federal Commerce Clause in the U.S. Constitution to bar a direct tax on gross receipts from activities related to interstate transportation. These PUT deductions were consistent with the constitutional analysis of commerce clause prohibitions at the time. JLARC further noted that taxing the instate portion of interstate transportation activities is now recognized as constitutional as long as the tax satisfies a four-prong test promulgated by the U.S. Supreme Court in *Complete Auto Transit v. Brady* (1977), which held that a state tax does not violate the commerce clause when it is applied to interstate activity if:

- the taxpayer has a substantial nexus with the taxing state;
- the tax is fairly apportioned;
- the tax does not discriminate against interstate commerce; and
- the tax is fairly related to the services provided by the state.

Summary of Bill: The PUT deductions that wholly exempt the instate portion of income derived from interstate transportation activities related to goods and passengers transported by truck, rail, and some watercraft are narrowed to exclude the transport of petroleum products and crude oil. Beginning October 1, 2023, business income derived from the instate portion of interstate transport services related to petroleum and crude oil would be subject to the state PUT. Most of this activity is assumed to be subject to the 1.926 percent tax rate for motor and rail transportation.

"Petroleum product" means plant condensate; lubricating oil; gasoline; aviation fuel; kerosene; diesel motor fuel; benzol; fuel oil; residual oil; liquefied or liquefiable gases such as butane, ethane, and propane; and every other product derived from refining crude oil, but

the term does not include crude oil.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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