FINAL BILL REPORT
SB 6096

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Synopsis as Enacted

Brief Description: Concerning the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

Sponsors: Senator Tom.

Senate Committee on Ways & Means

Background: 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. In general, there are no deductions for the costs of doing business. Revenues are deposited in the state General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. There are a number of different rates. The main rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for professional and personal services, and activities not classified elsewhere.

In 1985 the Legislature enacted a deduction for income derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce. This type of fuel is referred to as "bunker fuel."

Until 1987 businesses were taxable under the B&O tax only under a single classification under the multiple activities exemption, which exempted a firm's production activities if it also had selling activities. However, in the 1987 court decision *Tyler Pipe v. State of Washington*, the U.S. Supreme Court held that Washington's tax system discriminated against interstate commerce, because intrastate activities were taxed only once, whereas interstate activities could potentially be taxed twice: once in Washington and a second time on the same activity in another state. Therefore, in 1987, the Legislature enacted the Multiple Activities Tax Credit (MATC).

The MATC allows taxpayers who engage in more than one taxable activity under the B&O tax (e.g., manufacturing and retailing) to credit the tax due on one activity against the other. Also, this credit allows firms that are subject to state or local gross receipts taxes in other states to credit these taxes against the B&O tax liability on income derived from the same product or activity.

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

Summary: The Legislature finds that at the time the bunker fuel deduction was enacted, the deduction only applied to the wholesaling or retailing activities under the multiple activities exemption, and that the enactment of the MATC did not evince legislative intent to exempt bunker fuel manufacturing activities from the B&O tax. The act clarifies that income from wholesaling and retailing of bunker fuel can be deducted from the B&O tax; however, manufacturing of bunker fuel is taxable under the B&O manufacturing classification, whether the value of the fuel is measured by the gross proceeds of the sale or otherwise under RCW 82.04.450.

The Department of Revenue (DOR) must take any actions that are necessary to ensure that its rules and other interpretive statements are consistent with this act.

The act applies prospectively and retroactively. The act includes a severability clause.

Votes on Final Passage:

Senate	29	19
House	50	46
House	51	45

Effective: May 14, 2009