

SENATE BILL REPORT

HB 2358

As Reported by Senate Committee On:
Ways & Means, February 26, 2018

Title: An act relating to clarifying marijuana-related definitions.

Brief Description: Clarifying marijuana-related definitions.

Sponsors: Representatives Sawyer, Lytton and Appleton.

Brief History: Passed House: 2/13/18, 97-1.

Committee Activity: Ways & Means: 2/24/18, 2/26/18 [DP].

Brief Summary of Bill

- Clarifies that marijuana, usable marijuana, and marijuana-infused products do not qualify as agricultural products for the purposes of tax treatment and tax preferences.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Frockt, Vice Chair; Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Alia Kennedy (786-7405)

Background: Business and Occupation (B&O) Tax. Washington's B&O tax is imposed on the gross receipts of all in-state business activities, except utility activities, on every person who has a substantial nexus to the state for the act or privilege of doing business. The B&O tax does not apply to farmers—persons producing agricultural products for sale—selling agricultural products at wholesale or growing agricultural products owned by others.

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 taxes

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apply to the value when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent. Local sales and use tax rates vary by location, ranging from 0.5 percent to 3.0 percent.

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, deferrals, credits, and preferential tax rates. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Marijuana Regulation. In 2012, Washington voters approved Initiative 502, which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for recreational use. Under this system, the Liquor Control Board issues licenses to marijuana producers, processors, and retailers, and adopts standards for the regulation of these operations. Persons over 21 years of age may purchase and possess up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, and 7 grams of marijuana concentrates.

Marijuana Taxes. Marijuana sales are subject to an excise tax of 37 percent at the retail level; the excise tax is in addition to the B&O tax and state and local retail sales tax. Sales to qualifying patients from a retailer with a medical endorsement are exempt from sales tax. The B&O tax definition of agricultural product does not include marijuana, useable marijuana, or marijuana-infused products. For purposes of both B&O and sales and use taxes, the terms agriculture, farming, horticulture, horticultural, and horticultural product may not be construed to include marijuana, usable marijuana, or marijuana-infused products unless explicitly stated otherwise. Marijuana-related activity and sales are excluded from existing state tax preferences.

Summary of Bill: Definitions for agricultural product in the B&O and sales and use tax statutes are further clarified such that, for purposes of tax treatment and tax preferences, marijuana, usable marijuana, and marijuana-infused products are excluded. It is further clarified that, for purposes of tax treatment and tax preferences, the terms agriculture, farming, horticulture, horticultural, and horticultural product may not be construed to include marijuana, usable marijuana, or marijuana-infused products unless explicitly stated otherwise.

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.

Staff Summary of Public Testimony: PRO: In 2014, the Legislature restructured the excise and operating revenues for the cannabis industry and classified them as non-agricultural. Since that time, the language has created a number of unintended consequences not envisioned by the sponsors or its supporters. This is a technical cleanup with nearly no

opposition throughout the legislative process and has no fiscal impact. This bill is a high priority for cannabis businesses.

Persons Testifying: PRO: Mary Catherine McAleer, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: No one.