

SENATE BILL REPORT

SB 5786

As Reported by Senate Committee On:
Ways & Means, April 3, 2017

Title: An act relating to creating a business and occupation tax exemption for certain sales of commercial fertilizer, agricultural crop protection products, and seed.

Brief Description: Creating a business and occupation tax exemption for certain sales of commercial fertilizer, agricultural crop protection products, and seed.

Sponsors: Senators Walsh, Takko, Warnick, Hobbs and Schoesler.

Brief History:

Committee Activity: Ways & Means: 3/30/17, 4/03/17 [DP, DNP, w/oRec].

Brief Summary of Bill

- Creates a business and occupation tax exemption for wholesale sales of agricultural crop protection products, seed, and fertilizer when there is specified common ownership of distributors and retailers.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget ; Ranker, Ranking Minority Member; Bailey, Becker, Billig, Fain, Miloscia, Padden, Rivers, Schoesler, Warnick and Zeiger.

Minority Report: Do not pass.

Signed by Senators Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Carlyle, Darneille, Hasegawa and Pedersen.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser.

Staff: Dean Carlson (786-7305)

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.

Background: Business and Occupation (B&O) Tax. Washington's major business tax is the 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. Major tax rates are 0.484 percent for manufacturing and wholesaling, 0.471 percent for retailing, and 1.5 percent for services. Several lower rates also apply to specific business activities.

Economic Nexus. On June 1, 2010, Washington adopted an economic nexus standard for certain types of business activity. Effective September 1, 2015, the Department of Revenue adopted rules applying economic nexus standards to out-of-state wholesaling businesses. Under this standard, an out-of-state wholesaling business deriving income within Washington of more than \$267,000 of gross receipts during the prior calendar year is subject to Washington's B&O tax even though the business may not have a physical presence in the state.

Commercial Fertilizer, Agricultural Crop Protection Products, and Seed. Commercial fertilizer means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth. Commercial fertilizers include limes, gypsum, and manipulated animal and vegetable manures. Unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the Department of Agriculture by rule are not considered commercial fertilizer.

Agricultural crop protection product means a chemical regulated under the federal insecticide, fungicide, and rodenticide act when used to control weeds, diseases, or other pests.

Seed means seed potatoes, any kinds of crop seeds commonly recognized within Washington as agricultural seeds, lawn seeds, and combinations of such seeds that are conditioned for use in planting.

Summary of Bill: An exemption to the B&O tax is created for the sale of commercial fertilizer, agricultural crop protection products, and seed from an eligible distributor to an eligible retailer.

Eligible distributors are wholesalers who purchase commercial fertilizer, crop protection products, and seed and sell them to retailers who have at least a 50 percent ownership interest in the wholesaler.

An eligible retailer is a person who sells commercial fertilizers, agricultural crop protection products, and seed, who holds at least a 5 percent ownership interest in an entity that holds at least a 50 percent ownership interest in an eligible distributor.

The exemption is not subject to the ten-year expiration date nor the requirement to prepare a tax preference performance statement.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017

Staff Summary of Public Testimony: PRO: The focus on this bill is on two family owned Washington businesses. These businesses are not large enough to buy enough to receive quantity discounts. So they formed Aligned Ag to be able to purchase enough products to receive quantity discounts. The sales of products to the Washington businesses get hit with the B&O tax three times instead of two. This almost takes out the whole value of the quantity discount. Not passing this bill will not be Armageddon, but the companies will restructure their warehousing to be located outside of Washington.

Persons Testifying: PRO: Jim Jesernig, Aligned Ag.

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