

HOUSE BILL REPORT

HB 1830

As Reported by House Committee On:
Finance

Title: An act relating to clarifying that certain reusable packing materials are exempt from sales and use tax.

Brief Description: Clarifying that certain reusable packing materials are exempt from sales and use tax.

Sponsors: Representatives Springer, Vick and Shewmake.

Brief History:

Committee Activity:

Finance: 1/17/22, 1/27/22 [DPS].

Brief Summary of Substitute Bill

- Provides reusable packing materials with a sales and use tax exemption.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Orcutt, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai, Vick, Wylie and Young.

Staff: Tracey Taylor (786-7152).

Background:

Retail Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property,

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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 tax applies to the value of the property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 4.0 percent, depending on the location.

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.

Packing Materials Exemption.

A retail sale does not include the purchase of tangible personal property for the purpose of resale in the regular course of business without an intervening use by such person. In addition, a retail sale does not include the renting or leasing of tangible personal property to consumers.

A recent Washington Court of Appeals decision determined that reusable wooden pallets utilized as part of a packing materials pool constituted a "retail sale" and was subject to retail sales and use taxes.

Summary of Substitute Bill:

The renting or leasing of packing material under a packing material sharing and reuse program is not a retail sale and is not subject to retail sales and use tax.

A "packing material sharing and reuse program" is defined as a system for sharing reusable packing materials involving more than one person. "Reusable packing materials" includes all boxes, crates, pallets, bottles, cans, drums, and cartons.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that a packing material sharing and reuse program is a system for sharing reusable packing materials involving more than one person. It no longer requires an agreement with an administrator or operator that pools the materials among multiple persons. In addition, the substitute narrows the qualifying packing materials to

"reusable packing materials" and removes some listed packing materials, including tape, wire, and wastepaper, from inclusion. The substitute bill clarifies that in addition to the sales tax exemption, a use tax exemption is available. An effective date of July 1, 2022, is provided.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2022.

Staff Summary of Public Testimony:

(In support) When applying sales and use tax, inputs used in a final product are not taxed, only the final finished good is subject to sales and use tax. In the past, packing materials were considered input; however, a court has determined otherwise. As a result, the sales tax is being pyramided. Additionally, this ruling discourages the reuse of packing materials and encourages sending usable packing materials to our landfills. Washington's fruit and vegetable farmers and packers utilize pallets and reusable containers in providing their products to consumers. Moreover, many of the retailers require the products to be packed utilizing reusable packing materials as part of their global environmental policies. By clarifying this sales and use tax, Washington will continue to provide an incentive for businesses to use environmentally friendly packing materials.

(Opposed) There are technical and prudential issues with this legislation. The bill needs to clarify that the exemption includes use tax. Another technical issue is that the effective date should be the beginning of a quarter. Among the prudential issues is that this bill is inconsistent with sound sales and use policy. The courts have agreed with the Department of Revenue that these are taxable transactions. In addition, it may result in other types of lease arrangements to pursue similar sales and use tax exemptions. This legislation is not a holistic method of addressing the issue.

Persons Testifying: (In support) Representative Larry Springer, prime sponsor; Miho Sugawara, Gilbert Orchards; Howard Jensen, Sunheaven Farms; Heather Trim, Zero Waste Washington; and David Ducharme, Washington State Tree Fruit Association.

(Opposed) Steve Ewing, Department of Revenue.

Persons Signed In To Testify But Not Testifying: None.