

SENATE BILL REPORT

SHB 1431

As Passed Senate, April 19, 2023

Title: An act relating to clarifying that meals furnished to tenants of senior living communities as part of their rental agreement are not subject to sales and use tax.

Brief Description: Clarifying that meals furnished to tenants of senior living communities as part of their rental agreement are not subject to sales and use tax.

Sponsors: House Committee on Finance (originally sponsored by Representatives Timmons, Stokesbary, Springer, Corry, Stonier, Abbarno, Rule, Schmick, Street, Fitzgibbon, Jacobsen, Harris, Hutchins, Riccelli, McEntire, Maycumber, Bronoske, Ramel, Robertson, Taylor, Simmons, Tharinger, Berry, Caldier, Reeves, Ortiz-Self, Thai, Christian, Kloba, Bateman, Gregerson, Barnard, Pollet, Reed, Ormsby, Doglio and Cheney).

Brief History: Passed House: 3/16/23, 95-0.

Committee Activity: Ways & Means: 3/23/23, 4/04/23 [DP].

Floor Activity: Passed Senate: 4/19/23, 48-0.

Brief Summary of Bill

- Exempts food, drink, or meals provided by a senior living community to tenants as part of a rental or residency agreement from sales and use tax.
- Changes the Business and Occupation taxation of food, drink, or meals provided by a senior living community from a retailing activity to a service activity.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant

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Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Jeffrey Mitchell (786-7438)

Background: Retail 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 defined as 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 property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. Some other local government entities and special purpose districts also impose sales and use taxes for specific purposes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. 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. Businesses must pay B&O tax even though they may not have any profits or may be operating at a loss.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; 1.5 percent for businesses with taxable income of less than \$1 million; or 1.75 percent for businesses with taxable income of \$1 million or more for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

Meals Provided to Senior Residents. Sales of a meal to a consumer is a retail sale subject to retail sales tax as well as the retailing classification for B&O tax. The taxability of meals provided to residents at a senior living community depends on whether the facility provides the meals as part of its healthcare services to its patients or residents.

Meals provided by hospitals, nursing homes, and assisted living facilities are not subject to retail sales tax. Meals provided by an independent senior living residence that does not provide healthcare services are subject to retail sales tax and the facility must also pay retailing B&O tax on the selling price of the meals.

Summary of Bill: Food, drink, or meals provided by a senior living community, which includes assisted living facilities and continuing care retirement communities, are exempt from retail sales and use tax.

The sale of food, drink, or meals by a senior living community is changed from the B&O retailing classification, which is subject to a tax rate of 0.484 percent, to the B&O service and other activities classification, which is subject to either a 1.5 or 1.75 percent tax rate.

This bill is exempt from the automatic ten-year expiration date and the Joint Legislative Audit and Review Committee's review.

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: The title of the bill is too narrow to address the business and occupation tax issue. This bill addresses that sales tax issue; however, the senate bill also addresses the business and occupation tax issue. The provision of meals is often combined with rent and not separately stated. The meals are also often provided in the same dining room that serves the assisted living residents and there is no way to distinguish between residents. It makes it very difficult to determine the amount of sales tax that should be collected. For consistency, the independent living residents should be treated the same way as the assisted living residents. This tax obligation is also fairly significant for many residents in these communities.

Persons Testifying: PRO: Roman Daniels-Brown, Washington Health Care Association; Alyssa Odegaard, LeadingAge Washington.

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