SENATE BILL REPORT
SB 5748

As of March 8, 2023

Title: An act relating to clarifying the excise tax treatment of meals furnished to tenants of senior living communities as part of their rental agreement.

Brief Description: Clarifying the excise tax treatment of meals furnished to tenants of senior living communities as part of their rental agreement.

Sponsors: Senators Muzzall, Mullet and Shewmake.

Brief History:
Committee Activity: Ways & Means: 3/09/23.

Brief Summary of Bill

- Exempts meals furnished to tenants of senior living communities as part of their rental agreement from excise taxation.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jeffrey Mitchell (786-7438)

Background: Business and Occupation Tax. 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, without any deduction for the costs of doing business. Businesses must pay the 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; and depending on the size of the business as determined by gross income, either 1.5 or 1.75 percent for services and activities not classified elsewhere. Several preferential rates as well as increased rates or surcharges also apply to specific business activities.

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

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 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 apply to the value of property, digital products, or services 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 from 0.5 percent to over 3 percent, depending on the location.

The sale of meals to consumers is generally considered to be a retail sale subject to retail sales tax and B&O tax under the retailing classification. However, hospitals, nursing homes, assisted living facilities and similar health care facilities are not considered to be making retail sales of meals when furnishing meals as part of the health care services provided to their patients or residents.

In contrast, meals furnished to tenants living independently in a senior living facility and not paying for health-related services as part of their rent are retail sales of the meals. The facility must collect retail sales tax and pay retailing B&O tax on the fair selling price of the meals, even if the facility does not separately itemize the charge for the meals. If the facility does not keep records showing the fair selling price of the meals, the Department of Revenue (DOR) requires the tax to be calculated on double the cost of the meals served, including the cost of purchasing the food, preparing and serving the meals, and all other incidental costs, including overhead expenses.

Tax Preference Review Requirements. State law provides 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. 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 the Joint Legislative Audit and Review Committee (JLARC) can use to review the effectiveness of the preference in achieving its stated public policy objectives. Tax preferences must be reviewed by JLARC at least once every ten years, unless state statute requires otherwise. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided or the tax preference is exempt from expiration. To assist the Legislature in its evaluation of economic development-related tax preferences, taxpayer beneficiaries are required to file annual tax preference performance reports detailing wages and employment of the taxpayer as well as tax savings from the tax preference.

Summary of Bill: A retail sales and use tax exemption is created for meals furnished to those tenants of assisted living facilities and continuing care facilities that are living independently and not paying for health care services as part of their rental agreement.

Amounts received for food, drink, or meals furnished by a senior living community to tenants as part of a rental or residency agreement for which no separate charge is made are exempt from B&O tax.

The bill applies prospectively as well as retroactively to disputed assessments pending before DOR, the Board of Tax Appeals, or any court of law.

The bill is exempt from the automatic 10-year expiration date and JLARC 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.