

SENATE BILL REPORT

SB 5779

As of February 15, 2005

Title: An act relating to the business and occupation taxation of slaughtering, breaking and/or processing perishable meat products.

Brief Description: Modifying the business and occupation taxation of slaughtering, breaking, and/or processing perishable meat products.

Sponsors: Senators Prentice, Rasmussen, Doumit and Kohl-Welles.

Brief History:

Committee Activity: Ways & Means: 2/15/05.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Terry Wilson (786-7433)

Background: The business & occupation (B&O) tax is levied for the privilege of doing business in the state. The tax is levied on the gross receipts of all business activities conducted within the state without deductions for the costs of doing business. Currently, there are seven different B&O tax rates. The three principal rates are:

Manufacturing/ wholesaling 0.484%
Retailing 0.471%
Services 1.5%

In 1967, the legislature authorized a preferential B&O tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The tax rate currently is 0.138 percent rather than the general manufacturing rate of 0.484 percent. Since its enactment, the Department of Revenue has allowed this preferential tax rate to be taken only if the finished product was a perishable meat product. On January 13, 2005, in *AgriLink Foods, Inc. v. Department of Revenue*, Docket No. 74478-5, the state supreme court held that the preferential B&O tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable meat products, such as canned food.

Summary of Substitute Bill: The legislature declares that the sole purpose of the 1967 act was to create a preferential B&O tax rate for the slaughtering, breaking, or processing of perishable meat products and/or selling the finished perishable meat products at wholesale. The intent was not to allow the preferential tax rate for the processing of perishable meat products into nonperishable meat products or selling the nonperishable meat products at wholesale.

The preferential rate provision is amended to apply to the slaughtering, breaking, and/or manufacturing perishable meat products and/or selling the perishable meat products at wholesale.

The act applies retroactively.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The Legislature can enact retroactive legislation and has in the past. The \$38.6 million in refunds reflects the law the day before the court case. Although the legislation is technically retroactive to 1967, tax assessments and refunds only go back four years. No business that is currently paying at the preferential rate will pay a higher rate after the bill, unless the rate is currently in dispute. The court case affects 4,000 taxpayers, 40 percent of whom are outside the state. The bill does not change activities that the department has said are perishable before the decision. The litigation on the chile con carne resulted because the department did not consider canned chile perishable.

Testimony Against: This bill will undermine voluntary compliance. It triples the tax rate on businesses. The retroactivity provision is unconstitutional. The department has consistently applied the tax to processors that produced nonperishable end products. This will produce a significant competitive disadvantage. These processors are struggling to compete in a global market. The bill creates uncertainty and unpredictability.

Who Testified: PRO: Leslie Cushman, Alan Lynn, Department of Revenue.

CON: Pamela Charles Brown, WA State Bar Assn.; Scott Edwards, Perkins Coie/Agrilink; Tom Campanile, Oberto; Ken Yates, NWFPA; Tom McBride, AWB.