

# SENATE BILL REPORT

## SB 6096

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As Passed Senate, April 26, 2009

**Title:** An act relating to the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

**Brief Description:** Concerning the taxation of the manufacturing and selling of fuel for consumption outside the waters of the United States by vessels in foreign commerce.

**Sponsors:** Senator Tom.

**Brief History:**

**Committee Activity:** Ways & Means: 3/02/09 [DP, DNP, w/oRec].  
Passed Senate: 4/26/09, 29-19.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

**Minority Report:** Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt and Schoesler.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Parlette.

**Staff:** Dianne Criswell (786-7433)

**Background:** 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. In general, there are no deductions for the costs of doing business. Revenues are deposited in the state General Fund. A business may have more than one B&O tax rate, depending on the types of activities conducted. There are a number of different rates. The main rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for professional and personal services, and activities not classified elsewhere.

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*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.*

In 1985 the Legislature enacted a deduction for income derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce. This type of fuel is referred to as "bunker fuel."

Until 1987 businesses were taxable under the B&O tax only under a single classification under the multiple activities exemption, which exempted a firm's production activities if it also had selling activities. However, in the 1987 court decision *Tyler Pipe v. State of Washington*, the U.S. Supreme Court held that Washington's tax system discriminated against interstate commerce, because intrastate activities were taxed only once, whereas interstate activities could potentially be taxed twice: once in Washington and a second time on the same activity in another state. Therefore, in 1987, the Legislature enacted the Multiple Activities Tax Credit (MATC).

The MATC allows taxpayers who engage in more than one taxable activity under the B&O tax (e.g., manufacturing and retailing) to credit the tax due on one activity against the other. Also, this credit allows firms that are subject to state or local gross receipts taxes in other states to credit these taxes against the B&O tax liability on income derived from the same product or activity.

**Summary of Bill:** The Legislature finds that at the time the bunker fuel deduction was enacted, the deduction only applied to the wholesaling or retailing activities under the multiple activities exemption, and that the enactment of the MATC did not evince legislative intent to exempt bunker fuel manufacturing activities from the B&O tax. The bill clarifies that income from wholesaling and retailing of bunker fuel can be deducted from the B&O tax; however, manufacturing of bunker fuel is taxable under the B&O manufacturing classification, whether the value of the fuel is measured by the gross proceeds of the sale or otherwise under RCW 82.04.450.

The Department of Revenue (DOR) must take any actions that are necessary to ensure that its rules and other interpretive statements are consistent with this act.

The act applies prospectively and retroactively. The act includes a severability clause.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This clarifies that the bunker fuel deduction relates to wholesales and retail sales. Further, it clarifies a dispute which has arisen and is now being litigated in superior court over whether the deduction also applies to manufacturing of bunker fuel in Washington. The bill is consistent with DOR's interpretation of current law, and prevents potential refunds of more than \$17 million plus interest for past periods, as well as ongoing revenue losses.

CON: The taxpayer was working through this issue with DOR and believed refunds might be received. When the issue was not resolved on the administrative level, the taxpayer sought a judicial determination of the issue. The timing of the bill would prevent a judicial determination.

**Persons Testifying:** PRO: Dylan Waits, DOR.

CON: Greg Hanon, Western States Petroleum Association.