

SENATE BILL REPORT

SB 5501

As Reported by Senate Committee On:
Ways & Means, February 21, 2011

Title: An act relating to the taxation of employee meals provided without specific charge.

Brief Description: Concerning the taxation of employee meals provided without specific charge.

Sponsors: Senators Murray, Kilmer, Schoesler, Conway, Honeyford, Kohl-Welles, Keiser, Shin, Holmquist Newbry and White.

Brief History:

Committee Activity: Ways & Means: 2/10/11, 2/21/11 [DP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Kastama, Keiser, Kohl-Welles, Pridemore, Regala, Rockefeller, Schoesler and Tom.

Staff: Dean Carlson (786-7305)

Background: Retail sales and use taxes are imposed by the state, most cities, and all counties. 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 property, digital products, or services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in this state. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3.0 percent, depending on the location.

Food and food ingredients purchased for human consumption are exempt from sales and use tax. However, prepared meals are generally subject to the retail sales or use tax. Prepared meals are meals that are:

- sold in a heated state or heated by the seller;
- sold with eating utensils provided by the seller; and

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- food in which two or more food ingredients are mixed or combined by the seller for sale as a single item.

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. 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 1.8 percent for professional and personal services, and activities not classified elsewhere.

Meals provided to employees free of charge are considered to be in exchange for services received from the employee and thus are subject to the sales tax and retailing classification of the B&O tax.

Summary of Bill: A B&O tax and a sales and use tax exemption are provided to restaurants for meals provided to employees without a specific charge to the employee.

Restaurant is defined to be any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption. The term restaurant excludes grocery stores, mini-markets, and convenience stores.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2011.

Staff Summary of Public Testimony: PRO: There are different levels of understanding about this law among restaurants. The sales tax is detracting the ability for restaurants to provide meals to employees. Our company has made a commitment to our employees in many areas including employee meals. We will pay over \$10,000 in taxes this year for giving away employee meals. Many restaurants don't provide meals anymore because of this tax. Having to take away a benefit like an employee meal because of taxes is nonsensical.

Persons Testifying: PRO: Bruce Beckett, Washington Restaurant Association; Joe Fugere, Tutta Bella.