

HOUSE BILL REPORT

HB 1758

As Reported by House Committee On:
Technology & Economic Development

Title: An act relating to extending the expiration date of tax preferences for biofuel, biomass, and energy conservation.

Brief Description: Extending the expiration date of tax preferences for biofuel, biomass, and energy conservation.

Sponsors: Representatives Tharinger, Wilcox, Van De Wege, Takko, Walkinshaw, Blake, Ryu, Orcutt, Fitzgibbon, Nealey, Smith, Moscoso, Fey, Jinkins and Goodman; by request of Office of Financial Management.

Brief History:

Committee Activity:

Technology & Economic Development: 2/10/15, 2/19/15 [DPS].

Brief Summary of Substitute Bill

- Extends the business and occupation (B&O) tax deduction for the retail sale or distribution of biodiesel fuel or E85 motor fuel until July 1, 2025.
- Extends the sales and the use tax exemption for the sale or use of machinery, equipment, structures, and certain fuel delivery vehicles used for the retail sale or distribution of a biodiesel blend or E85 motor fuel until July 1, 2025.
- Extends the B&O tax exemption for credits or funds provided by the Bonneville Power Administration for the purposes of implementing energy conservation programs or demand-side management programs until July 1, 2025.
- Extends the B&O tax credit per harvested green ton of forest derived biomass sold, transferred, or used for production of electricity, steam, heat, or biofuel until June 30, 2025.
- Extends the property tax exemption for buildings, machinery, equipment, and other personal property used to manufacture alcohol fuel, biodiesel fuel, and biodiesel feedstock until December 31, 2025.
- Extends the leasehold tax exemption for leasehold interests in buildings and other personal property used in new or expanded manufacturing facilities to

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manufacture wood biomass fuel and other alternative fuels until December 31, 2025.

- Establishes tax preference performance metrics.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fey, Harmsworth, Hudgins, Magendanz, Nealey, Ryu, Santos, Wylie and Young.

Staff: Nikkole Hughes (786-7156).

Background:

Ethanol.

Ethanol may be produced from a variety of feedstocks such as corn, wheat, and the cellulose of plants such as trees. In the United States (U.S.), the majority of ethanol is made from corn. The most common ethanol-gasoline blends available for retail sale are:

- "E10," a blend of 10 percent ethanol;
- "E15," a blend of 10 to 15 percent ethanol; and
- "E85," a blend of up to 85 percent ethanol.

E85 is further defined to mean an alternative fuel that is a blend of denatured ethanol and hydrocarbon, of which the ethanol portion is nominally 75 to 85 percent denatured fuel ethanol by volume, which complies with the most recent version of American Society of Testing and Materials specification D 5798.

E85 can only be used in Flexible Fuel Vehicles (FFV). The FFVs are designed to run on E85, gasoline, or any blend of the two. There are more than 17.4 million FFVs on the road in the U.S.

Sales and Use Tax.

Washington collects a retail sales tax equal to 6.5 percent of the cost of any tangible personal property that is sold in the state. The state also collects a use tax on tangible personal property, unless the retail sales tax was applied to the sale of the tangible personal property to the present user. The use tax is assessed at a rate equal to the applicable retail sales tax. Local authorities may impose additional sales or use taxes.

Until July 1, 2015, state law provides an exemption from the retail sales tax for the sale of machinery, equipment, structures, and certain fuel delivery vehicles used for the retail sale or distribution of a biodiesel blend or E85 motor fuel. Current law also provides a use tax exemption available until July 1, 2015, for the use of machinery, equipment, certain fuel delivery vehicles, and services related to biodiesel or E85 motor fuel.

Business and Occupation Tax and Public Utility Tax.

The state imposes a tax on public utility businesses for the privilege of operating a public utility business in the state. For gas distribution businesses, the tax is equal to 3.852 percent of the gross income of the business. Cities and towns may impose an additional tax on such businesses equal to a maximum of 6 percent. If an entity is taxed as a public utility, it is exempt from Washington's business and occupation (B&O) tax.

Washington imposes a B&O tax on certain business activities, including acting as a manufacturer, retailer, or wholesaler. A B&O tax is imposed on manufacturing businesses equal to 0.484 percent of the gross income of the business. A city may also impose a B&O tax, which is generally capped at 0.2 percent of gross income.

Current law provides the following B&O tax deductions, credits, or exemptions:

- until July 1, 2015, a deduction for the retail sale or distribution of biodiesel fuel or E85 motor fuel;
- until June 30, 2015, a credit per harvested green ton of forest derived biomass sold, transferred, or used for production of electricity, steam, heat, or biofuel; and
- an exemption for amounts received from the sale of natural or manufactured gas by a person in a calendar year, if the amount of gas sold within the U.S. by the person in that calendar year is no more than 20 percent of the amount of natural or manufactured gas that is consumed in the U.S. in the same calendar year.

Effective July 1, 2015, the B&O tax exemption provided for an entity taxed as a public utility does not apply to sales of natural gas, including compressed natural gas and liquefied natural gas, by a gas distribution business if the sales are exempt from the public utility tax.

Property Tax.

All real and personal property in Washington is subject each year to the state's property tax based on its value, unless a specific exemption is provided by law. The tax is determined by multiplying the assessed value of property by the tax rate for each taxing district in which the property is located.

A property tax exemption is provided for a six-year period for buildings, machinery, equipment, and other personal property used to manufacture alcohol fuel, biodiesel fuel, and biodiesel feedstock. Claims for the property tax exemption may be filed no later than December 31, 2015.

Leasehold Excise Tax.

Property owned by federal, state, or local governments is exempt from the property tax. However, private lessees of government property are subject to the leasehold excise tax, which imposes a tax burden on persons using publicly-owned, tax-exempt property, similar to the property tax that would be paid if the property were privately owned.

All leasehold interests in buildings and other personal property used in new or expanded manufacturing facilities to manufacture wood biomass fuel, biodiesel fuel, and alcohol fuel, or to operate an anaerobic digester, are exempt from leasehold taxes for a period of six years from the date on which the facility or expansion becomes operational. Claims for the leasehold tax exemption may be filed no later than December 31, 2015.

Bonneville Power Administration.

The Bonneville Power Administration (BPA) operates two programs that provide credits to utilities on their monthly purchases of power from BPA. The Conservation Rate Credit program and the Conservation Acquisition Agreement program provide financial incentives to industrial and large commercial customers of utilities that purchase power from BPA for the development and installation of energy efficiency measures.

Until June 30, 2015, credits or funds provided by the BPA for the purposes of implementing energy conservation programs or demand-side management programs are exempt from the state's B&O tax.

Tax Preference Performance Statement.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5882, which requires all new tax preference legislation to include a tax preference performance statement. New tax preference means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits.

The performance statement must clearly specify the public policy objective of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee (JLARC) to evaluate the efficacy of the tax preference.

Engrossed Substitute Senate Bill 5882 also establishes an automatic 10-year expiration date for new tax preference if an alternative expiration date is not provided in the new tax preference legislation.

Summary of Substitute Bill:

The following tax incentives are extended until July 1, 2025:

- the business and occupation (B&O) tax deduction for the retail sale or distribution of biodiesel fuel or E85 motor fuel;
- the sales tax exemption for the sale of machinery, equipment, structures, and certain fuel delivery vehicles used for the retail sale or distribution of a biodiesel blend or E85 motor fuel;
- the use tax exemption for the use of machinery, equipment, certain fuel delivery vehicles, and services related to biodiesel or E85 motor fuel; and
- the B&O tax exemption for credits or funds provided by the BPA for the purposes of implementing energy conservation programs or demand-side management programs.

The B&O tax credit per harvested green ton of forest derived biomass sold, transferred, or used for production of electricity, steam, heat, or biofuel is extended until June 30, 2025.

The property tax exemption for buildings, machinery, equipment, and other personal property used to manufacture alcohol fuel, biodiesel fuel, and biodiesel feedstock is extended until December 31, 2025.

The leasehold tax exemption for leasehold interests in buildings and other personal property used in new or expanded manufacturing facilities to manufacture wood biomass fuel and other alternative fuels is extended until December 31, 2025.

The types of feedstock materials for biodiesel fuel, biodiesel blends, E85 motor fuels, wood biomass fuel, and biofuels eligible for tax preferences are limited to materials sourced or harvested exclusively from North America.

Tax Preference Performance Statements.

Three tax preference performance statements provide performance metrics for tax preferences relating to biofuels and to credits or funds provided by the BPA. The JLARC is directed to measure the effectiveness of the tax preferences by evaluating changes in certain performance metrics. These metrics state that the effectiveness of the tax preferences will be based on the certain metrics, including but not limited to:

- the number of biofuels plants operating in Washington;
- the amount of forest derived biomass collected and utilized to produce energy between July 1, 2015, and June 30, 2024; and
- the amount of investment made by utilities in energy conservation and efficiency programs.

Substitute Bill Compared to Original Bill:

The substitute bill:

- limits the types of feedstock materials for biodiesel fuel, biodiesel blends, E85 motor fuels, wood biomass fuel, and biofuels eligible for certain tax preferences to materials sourced or harvested exclusively from North America;
- changes the definitions for "biodiesel fuel" and "E85 motor fuel" in current law to refer to fuel standards adopted under the state Motor Fuel Quality Act, rather than to standards promulgated by the American Society of Testing and Materials;
- unifies definitions across chapters of the Revised Code of Washington; and
- specifies that harvesters of forest derived biomass are allowed a business and occupation tax credit for material harvested after July 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 2015.

Staff Summary of Public Testimony:

(In support) From a forestry perspective, when we are trying to tackle the carbon problem we need to remember that trees may be the answer. If we utilize wood that is harvested, we have long term sequestration of carbon. Burning wood for energy is deemed carbon neutral if the wood comes from sustainably managed forests. This bill would help the state meet its greenhouse gas emission reduction targets and help reduce the threat of wildfire. One of the tax credits renewed by this bill allows harvesters of forest biomass to go a little further into the forest than they normally would in order to transport materials to biomass energy facilities. The tax preferences in this bill can help expand and build facilities to promote growth in the bioenergy industry. The exemption provided for credits from the BPA is really an extension of what the practice has been with the BPA and is a good investment for ratepayers.

(Opposed) None.

Persons Testifying: Representative Tharinger, prime sponsor; John Ehrenreich, Washington Forest Protection Association; Bill Hermonn, Hermonn Brothers; Amy Dougherty, Nippon Paper; Mary Beth Lang, Department of Agriculture; Dan Siemann, Department of Natural Resources; Brian Young, Department of Commerce; Trent House, Washington Public Utility Districts Association; Rose Feliciano, Seattle City Light; and Jennifer Ziegler, Imperium Renewables.

Persons Signed In To Testify But Not Testifying: None.