

# HOUSE BILL REPORT

## HB 1916

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**Title:** An act relating to creating a business and occupation tax exemption for certain sales of commercial fertilizer, agricultural crop protection products, and seed.

**Brief Description:** Creating a business and occupation tax exemption for certain sales of commercial fertilizer, agricultural crop protection products, and seed.

**Sponsors:** Representatives Schmick, Blake, Nealey, Jenkin, Dye, Buys and Haler.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/15/17, 2/16/17 [DP].

**Brief Summary of Bill**

- Creates a business and occupation tax exemption for wholesale sales of agricultural crop protection products, seed, and fertilizer when there is specified common ownership of distributors and retailers.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 14 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Kretz, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer and J. Walsh.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Stanford.

**Staff:** Rebecca Lewis (786-7339).

**Background:**

Business and Occupation Tax.

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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.*

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. Major tax rates are 0.484 percent for manufacturing and wholesaling, 0.471 percent for retailing, and 1.8 percent for services. Several lower rates also apply to specific business activities. For example, interest income on loans is subject to the 1.8 percent B&O tax rate for services.

Generally, the B&O tax applies to any type of business activity, regardless of whether it is a private for-profit, nonprofit, or public entity performing the activity. However, state law does provide various exemptions. All new tax preference legislation is required to include a tax preference performance statement. The performance statement must clearly specify the public policy objectives 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. In addition, an automatic 10-year expiration date is applied to new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

#### Economic Nexus.

On June 1, 2010, Washington adopted an economic nexus standard for certain types of business activity. Effective September 1, 2015, the Department of Revenue adopted rules applying economic nexus standards to out-of-state wholesaling businesses. Under this standard, an out-of-state wholesaling business deriving income within Washington of more than \$267,000 of gross receipts during the prior calendar year is subject to Washington's B&O tax even though the business may not have a physical presence in the state.

#### Commercial Fertilizer, Agricultural Crop Protection Products, and Seed.

"Commercial fertilizer" means a substance containing one or more recognized plant nutrients that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth. Commercial fertilizers include limes, gypsum, and manipulated animal and vegetable manures. Unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the Department of Agriculture by rule are not considered commercial fertilizer.

"Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act when used to control weeds, diseases, or other pests.

"Seed" means seed potatoes, any kinds of crop seeds commonly recognized within Washington as agricultural seeds, lawn seeds, and combinations of such seeds that are conditioned for use in planting.

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#### **Summary of Bill:**

An exemption to the B&O tax is created for the sale of commercial fertilizer, agricultural crop protection products, and seed from an eligible distributor to an eligible retailer.

"Eligible distributors" are wholesalers who purchase commercial fertilizer, crop protection products, and seed and sell them to retailers who have at least a 50 percent ownership interest in the wholesaler.

An "eligible retailer" is a person who sells commercial fertilizers, agricultural crop protection products, and seed, who holds at least a 5 percent ownership interest in an entity that holds at least a 50 percent ownership interest in an eligible distributor.

The exemption is not subject to the 10-year expiration date nor the requirement to prepare a tax preference performance statement.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2017.

**Staff Summary of Public Testimony:**

(In support) Large national wholesaling companies pay the B&O tax on both the purchase and sale of products. There is a group of smaller companies, including two in Washington, who formed a wholesaling company to consolidate orders and receive quantity discounts they were not otherwise eligible for. The new Washington nexus rules require the companies to now pay the B&O tax on billing, in addition to purchase and sale because the wholesaling company formed is not located in Washington. Eliminating the requirement for the B&O tax to be paid on billing will allow the smaller companies to remain competitive with the larger companies. This bill will advance the conversation about how the nexus rules should apply. Companies are not going to go out of business if this bill is not passed, but they may move to Idaho or Oregon to conduct their warehousing activities.

(Opposed) None.

**Persons Testifying:** Representative Schmick, prime sponsor; and Jim Jesernig, Aligned Agriculture Distributors LLC and Two Rivers Terminal, LLC.

**Persons Signed In To Testify But Not Testifying:** None.