

FINAL BILL REPORT

ESHB 1839

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Synopsis as Enacted

Brief Description: Requiring eligible arena projects to fully pay the state and local sales tax within ten years of commencing construction.

Sponsors: House Committee on Finance (originally sponsored by Representatives Sullivan, MacEwen, Pettigrew, Springer, Vick and Valdez).

House Committee on Finance
Senate Committee on Ways & Means

Background:

Retail Sales and Use Taxes.

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 user acquired the property, digital products, or services, then use tax applies to the value of property, digital product, or service when used in this state. The state, all counties, and all cities levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.9 percent, depending on the location.

Local Option Taxes for High Capacity Transportation.

Regional transit authorities (RTA), certain transit authorities, and high capacity transportation (HCT) corridor areas may enact certain local option taxes for the planning, constructing, and operating of HCT, commuter rail, and feeder transportation systems. These local option taxes must be approved by voters. The local taxes include a rental car tax of up to 2.172 percent, an employer tax of up to \$2 per employee per month, and a sales and use tax of up to 1 percent. If a county has imposed the 0.1 percent sales tax for criminal justice and in RTAs in which any member county has imposed the 0.1 percent sales tax for criminal justice, the local option sales and use tax for HCT may not exceed 0.9 percent. The maximum rate that may be imposed for an RTA that includes a county with a population of more than 1.5 million residents is 1.4 percent.

Interest Rates for Excise Tax Assessments.

The interest rate assessed on delinquent excise is calculated on an annual basis. The rate that must be charged must be an average of the federal short-term rate plus 2 percentage points.

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.

The rate must be calculated by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average must be calculated using rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

Since 1992 the interest rate on excise tax assessments has ranged from 2 to 9 percent. The interest rate for calendar year 2019 is 4 percent.

Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement (TPPS) that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary:

A qualifying business may apply to the Department of Revenue (DOR) for a tax deferral and payment plan for state and local sales and use taxes related to an eligible project. An eligible project is a project consisting of either or both a qualifying arena and an ice hockey practice facility.

A "qualifying arena" is defined as a multipurpose sports and entertainment facility owned by the largest city in a county with a population of at least 1.5 million persons that is being redeveloped to attract professional ice hockey and basketball league franchises. It includes the arena, associated parking structures, plazas, public spaces, and one or more tunnels connecting the parking structures to the arena.

An ice hockey practice facility means one or more contiguous structures of up to 200,000 feet located within 10 miles of the qualifying arena that contains at least three ice rinks and is being developed to attract a professional ice hockey franchise. It may include ice rinks, spectator viewing locations, locker rooms, strength and conditioning rooms, administrative offices, retail space, food service facilities, and other amenities related to the operation of a state-of-the-art ice hockey arena.

A "qualifying business" must be a business entity that exists for the primary purpose of engaging in commercial activity for profit and has entered into a lease or occupancy agreement with the fee owner of a qualifying arena and/or ice hockey practice facility to engage in the development of an eligible project.

The tax deferral and payment plan must be submitted by October 1, 2019. It must include information regarding the project location, estimated or actual costs of the project, time schedules for completion and operation of the project, and other required information. The

DOR must rule on the application within 60 days. The application and any other information received by the DOR for the administration of a deferral is not considered confidential.

Upon approval of a payment plan, the DOR must issue a sales and use tax certificate for state and local retail sales and use taxes as well as local option HCT sales taxes. The certificate may only be used for sales and use tax liability incurred after the date of issue and expires once the eligible project becomes operationally complete. The eligible project will be considered operationally complete if it is capable of being used for its intended purpose as described in the application submitted to the DOR. The certificate recipient must notify the DOR of operational completion and the DOR must review the qualifying business's records to ensure the correct amount of taxes has been reported and will be repaid.

The repayment of the deferred state sales and use tax, including interest, must be completed by June 30, 2023. The interest rate assessed must be the same as the interest rate assessed on delinquent taxes. Interest begins accruing on the date the eligible project is certified as operationally complete and accrues until deferred taxes are fully repaid.

The repayment of the deferred local sales and use taxes must begin in the first calendar year following the date the eligible project was certified as operationally complete. Repayments are due each January 1 for the next eight years; however, the qualifying business may request an accelerated repayment schedule. Each payment must be at least 12.5 percent of the tax due plus interest.

The repayment of the local deferred sales and use tax, including interest, must be deposited into the Local Sales and Use Tax Account. Half of the repayment of deferred sales and use taxes must be used for capital improvements of buildings used for educational programming related to discovery, experimentation, and critical thinking in the sciences if the building is located on the same premises as the qualifying arena.

The obligation to repay the deferred sales and use tax is not extinguished by the insolvency or other failure of the qualifying business. In addition, the transfer of ownership does not terminate the repayment plan if the transferee agrees in writing to be bound by the obligation and the DOR approves. If the approval is not unreasonably withheld, conditioned, or delayed, the transferee is solely liable for the repayment of the deferred taxes.

If the project is not operationally complete within three calendar years from the date the DOR issued the certificate, or if the DOR determines at any time that the project is no longer eligible for the deferral, the amount of taxes outstanding for the project become immediately due and payable. Interest, but not penalties, must be assessed on the amount of taxes outstanding and must accrue retroactively to the date the certificate was originally issued.

A "project" is defined as the construction of new improvements, the renovation of existing improvements, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those improvements, personal property, and site preparation. It includes materials used and labor services rendered in relation to the planning, site preparation, construction, renovation, and installation. Personal property means tangible personal property with a useful life of one year or more that is used in the operation of the

eligible project. Site preparation includes soil testing, site clearing and grading, demolition, or other related activities initiated prior to construction.

The Tax Preference Performance Statement indicates that this tax preference is intended to provide tax relief for certain businesses or individuals. The specific public policy objective is to increase the fiscal stability of multipurpose sports and entertainment arenas in Washington, thereby strengthening the economic vitality of the communities surrounding the arenas and practice facilities.

The act expires January 1, 2030.

Votes on Final Passage:

House	94	4	
Senate	38	10	(Senate amended)
House	77	21	(House concurred)

Effective: May 9, 2019