

SENATE BILL REPORT

HB 1666

As Reported by Senate Committee On:
Ways & Means, February 28, 2022

Title: An act relating to clarifying the method for determining the value of specified tangible personal property incorporated as part of certain public infrastructure for the purposes of use tax and business and occupation tax.

Brief Description: Clarifying the method for determining the value of specified tangible personal property incorporated as part of certain public infrastructure for the purposes of use tax and business and occupation tax.

Sponsors: Representatives Wylie and Orcutt.

Brief History: Passed House: 2/14/22, 97-0.

Committee Activity: Ways & Means: 2/22/22, 2/28/22 [DP, DNP, w/oRec].

Brief Summary of Bill

- Allows the cost-basis method to be used to determine the value of certain tangible personal property used in public infrastructure projects in calculating use and business and occupation taxes.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Dhingra, Gildon, Hunt, Keiser, Mullet, Pedersen, Rivers, Van De Wege, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Rolfes, Chair; Braun and Hasegawa.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Carlyle, Conway, Muzzall and Wagoner.

Staff: Alia Kennedy (786-7405)

Background: Retail Sales and Use Tax. 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 4.0 percent, depending on the location.

When determining use tax on tangible personal property, the value of the article shall be determined based on the first act within the state by which the taxpayer takes or assumes dominion or control over the article. The value includes installation, storage, distribution, or any other act preparatory to subsequent use or consumption within the state. Tangible personal property incorporated as an ingredient or component of public road construction used by the taxpayer is subject to use tax. The method to determine the value of these components is the value of external sales. There are five factors used to determine if the value of these components can be determined by the proceeds from other sales by the taxpayer:

- sales at comparable locations;
- products of like quality and character;
- comparable conditions of sale;
- comparable purchasers; and
- similar quantities.

In the absence of sales of similar products as a guide to value, the value may be determined using a cost basis.

Business & Occupation Tax. 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.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent for businesses with taxable income of less than \$1 million or 1.75 percent for businesses with taxable income of \$1 million or more, for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

The value of products for the purposes of imposing the B&O tax is the gross proceeds from the sale received from the purchaser, except where the products are extracted or manufactured for commercial or industrial use, or where the products are transferred out of state. The value must correspond to the gross proceeds from sales of similar products of like quality and character by other taxpayers.

Consumer. To determine if a sale at retail or wholesale has occurred, it must be determined who is the consumer in the transaction. A consumer is any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business. A consumer also includes any person engaged in the business of contracting for the building, repairing, or improving of any street or similar public infrastructure which is owned by a government or municipal corporation and which is to be used for foot or vehicle traffic, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned public infrastructure by installing, placing, or spreading the property in or upon the site.

Tangible personal property is personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.

Summary of Bill: The method for calculating tangible personal property incorporated into public infrastructure projects is codified. When calculating use tax, the cost-basis method shall be used to determine the value of tangible personal property incorporated as an ingredient or component to a public infrastructure project by a person meeting the definition of consumer when there is no purchase price. The value will include all direct and indirect overhead costs. This applies to articles of tangible personal property incorporated as an ingredient or component of a publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing, or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle, or in or upon the site of such public mass transportation terminal or parking facility.

If the article of tangible personal property has a purchase price, the value of the article when the taxpayer takes control over the article will continue to be used to calculate use tax.

This also applies when determining the B&O taxes on the value of products used in public road construction for persons engaged in such public road construction.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill is narrowly focused and intended to only apply to a small number of businesses. The cost basis has been used by asphalt companies for decades. Allowing these companies to use the cost basis approach does not create a carve out or special treatment, but instead creates a valuation model for a unique situation. The bill is a clarification of provisions already allowed under administrative rule. The Department of Revenue's reinterpretation of the rule no longer allows asphalt companies to use the cost basis approach as an initial option. Challenging the Department of Revenue is complicated and expensive. Comparable sales are rare to find. Companies like these create thousands of jobs. Providing the Department of Revenue with the information they need for comparable sales is administratively difficult and expensive. The Department of Revenue would save time and money by reinstating the option to use the cost basis approach.

CON: This bill benefits a narrow special interest at the expense of good tax policy. The cost basis option for valuation is only allowable when comparable sales are not available. This approach advantages companies that make their own materials over those that do not. The comparable sales approach is less complex and more accurate. Comparable sales is a reasonable first approach to valuing these products.

Persons Testifying: PRO: Lisa Thatcher, Miles Resources; Dave Gent, Washington Asphalt Pavement Assoc.; Dax Woolston, Lakeside Industries; Wes Plummer, ICON Materials.

CON: Steve Ewing, Department of Revenue.

Persons Signed In To Testify But Not Testifying: No one.