

# HOUSE BILL REPORT

## SHB 1431

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**As Passed House:**

March 16, 2023

**Title:** An act relating to clarifying that meals furnished to tenants of senior living communities as part of their rental agreement are not subject to sales and use tax.

**Brief Description:** Clarifying that meals furnished to tenants of senior living communities as part of their rental agreement are not subject to sales and use tax.

**Sponsors:** House Committee on Finance (originally sponsored by Representatives Timmons, Stokesbary, Springer, Corry, Stonier, Abbarno, Rule, Schmick, Street, Fitzgibbon, Jacobsen, Harris, Hutchins, Riccelli, McEntire, Maycumber, Bronoske, Ramel, Robertson, Taylor, Simmons, Tharinger, Berry, Caldier, Reeves, Ortiz-Self, Thai, Christian, Kloba, Bateman, Gregerson, Barnard, Pollet, Reed, Ormsby, Doglio and Cheney).

**Brief History:**

**Committee Activity:**

Finance: 2/2/23, 2/16/23 [DPS].

**Floor Activity:**

Passed House: 3/16/23, 95-0.

**Brief Summary of Substitute Bill**

- Excludes food, drink, or meals provided by a senior living community to tenants as part of a rental or residency agreement from the definition of sale for purposes of taxation.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Berg, Chair; Street, Vice Chair; Orcutt, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Barnard, Chopp, Ramel, Santos, Springer, Stokesbary, Thai, Walen and Wylie.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Kristina King (786-7190).

**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 defined as 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. Some other local government entities and special purpose districts also impose sales and use taxes for specific purposes. 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.

Business and 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; 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.

Meals Provided to Senior Residents.

Sales of a meal to a consumer is a retail sale subject to retail sales tax as well as the retailing classification for B&O tax. The taxability of meals provided to residents at a senior living community depends on whether the facility provides the meals as part of its healthcare services to its patients or residents.

Meals provided by hospitals, nursing homes, and assisted living facilities are not subject to retail sales tax. Meals provided by an independent senior living residence that does not provide healthcare services are subject to retail sales tax and the facility must also pay retailing B&O tax on the selling price of the meals.

**Summary of Substitute Bill:**

Food, drink, or meals provided by a senior living community, which includes assisted living facilities and continuing care retirement communities, are exempted from retail sales and use tax. For those facilities that do not provide meals as part of their healthcare services,

the B&O classification is changed from the retailing classification of 0.484 percent to the service and other activities classification, which is 1.5 or 1.75 percent, depending on the facility's annual taxable income. This is exempted from a tax preference performance statement and review by the Joint Legislative Audit and Review Committee (JLARC).

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains multiple effective dates. Please see the bill.

**Staff Summary of Public Testimony:**

(In support) This bill changes policy back to what the Department of Revenue (DOR) originally stated prior to their 2020 ruling that these meals are exempt from sales tax. There are challenges within assisted living facilities in terms of providing meals to all sorts of seniors living in these communities but for those that do not receive medical services, or who are living more independently, there are some challenges in how those foods are provided and it is something of concern. The main concern is seniors living on fixed incomes as the cost of living is going up and we know that it is a burden on many people living across the state. We are in a time when folks living on fixed incomes as costs go up deserve some relief and this is consistent with previous rulings from the DOR prior to 2020. The question is not necessarily what has happened in the past, but what we want to do moving forward. There has been a record of over 40 years of decisions on this. In 1982 the first directive that the state should not be collecting taxes on the food at that time was affirmed. It was reaffirmed in 1984, 1998, and 2005 through different administrative law judges. In 2015 there was a clarification document that came out from the DOR that made a distinction between independent living facilities and assisted living facilities and whose food they would tax which was based on whether the facility provided healthcare. However, it's not that simple: many of these are blended communities where the residents live in the same complex and eat in the same cafeteria. This will add costs to seniors on fixed incomes, approximately \$500-700 dollars a year for people living on social security. Washington's assisted living regulatory environment is among the absolute best at allowing seniors to live their elder years in a way that allows them to age with dignity, maximizing their choice and independence. Washington's standby bed system allows flexibility to activate assisted living services in an apartment and thereby for a resident as needed. This means that someone who moves into a community as an independent resident need not relocate if assisted living becomes necessary. Instead, the community turns on the license to the apartment and brings needed services to the resident. In these instances, the resident has access to the same amenities, services, transportation, and meals as they did before, including dining in the same dining room with their friends. It is important to understand who these residents are. More than 83 percent of residents in certain blended communities are over the age of 80 and half of them no longer drive. They make a move only when care and maintenance of their home becomes too much, when their health declines, or because

they need and want companionship and socialization. Meals are a huge component of that socialization and a retirement community's food service is more than just nutrition. Seniors balancing and managing their own nutrition is a challenge throughout this country. Meals are vital gathering times where our residents come together share stories and connect. Besides the staff, food and meals are rated as the most important element of these communities overall. As an 89-year-old that lives in a retirement community, mealtimes are the only times we get to visit with other residents. We get to share our thoughts. People who want to charge the tax to us must not have grandparents or elderly parents living in homes like these. They would not want to charge them and burden their family with taxation like this. Rent goes up 7-8 percent in March and that would be a 16 percent total increase. Most of us are on fixed incomes. As a resident of a retirement community, I am in support of this bill because it is a needed activity. It is a misnomer in discussions between independent care and assisted living. Both require care, just for different needs. One of the things we need are good solid meals as well as to be taken care of in an environment that is conducive to our care. These places are our home, this is where we choose to live because we must. The dining room is part of our home. This type of taxation will have a significant impact to residents all over the state. There are a lot of people that will lose the care they need because of this. It is an improper idea and is misapplied. This is age discrimination.

(Opposed) None.

(Other) The DOR is neutral on the bill but has some concerns. The DOR has no objection to the core concept of the bill. If the Legislature approves this legislation, the DOR will be able to administer it. It might be easier than current law. There are two technical concerns, the first being that the bill effectively exempts meals from sales tax but does apply an exemption for use tax so without a use tax exemption, use tax will still be owed on the meals in the same amount as the sales tax. Second and more crucially, section 3 applies the exemption retroactive and prospectively and the retroactive part of the exemption would result in an unconstitutional gifting of public funds. The state Supreme Court has held that any retroactive forgiveness of validly collected taxes violates the state Constitution. The DOR would be happy to assist with fixes to this bill. The DOR would also like to clarify that the way the law is written now has been in place since 2005 and the department has been constant and consistent on its interpretation of the law.

**Persons Testifying:** (In support) Representative Joe Timmons, prime sponsor; Roman Daniels-Brown, Washington Health Care Association; Breanne Grubs, Leisure Care; Lee Bravener; and Barbara Lane.

(Other) Steve Ewing, Department of Revenue.

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