

Multiple Agency Fiscal Note Summary

Bill Number: 1431 HB	Title: Senior living meals/tax
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Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	(3,170,000)	(3,054,000)	(3,059,000)	(3,464,000)	(3,341,000)	(3,347,000)	(3,440,000)	(3,313,000)	(3,319,000)
Total \$	(3,170,000)	(3,054,000)	(3,059,000)	(3,464,000)	(3,341,000)	(3,347,000)	(3,440,000)	(3,313,000)	(3,319,000)

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other		(1,691,910)		(1,871,100)		(1,881,000)
Local Gov. Total		(1,691,910)		(1,871,100)		(1,881,000)

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Department of Revenue	.9	186,600	186,600	186,600	.4	72,000	72,000	72,000	.0	0	0	0
Total \$	0.9	186,600	186,600	186,600	0.4	72,000	72,000	72,000	0.0	0	0	0

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

Prepared by: Cheri Keller, OFM	Phone: (360) 584-2207	Date Published: Revised
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Department of Revenue Fiscal Note

Bill Number: 1431 HB	Title: Senior living meals/tax	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax	(1,863,000)	(1,900,000)	(3,763,000)	(4,100,000)	(4,100,000)
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax	290,000	303,000	593,000	636,000	660,000
Workforce Education Investment Account-State 01 - Taxes 05 - Bus and Occup Tax	57,000	59,000	116,000	123,000	127,000
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax	(2,000)	(3,000)	(5,000)	(6,000)	(6,000)
Total \$	(1,518,000)	(1,541,000)	(3,059,000)	(3,347,000)	(3,319,000)

Estimated Expenditures from:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	1.7	0.9	0.4	
GF-STATE-State 001-1	15,500	171,100	186,600	72,000	
Total \$	15,500	171,100	186,600	72,000	

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Kristina King	Phone: 60-786-7190	Date: 01/20/2023
Agency Preparation: Erin Valz	Phone: 60-534-1522	Date: 02/02/2023
Agency Approval: Valerie Torres	Phone: 60-534-1521	Date: 02/02/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/02/2023

Request # 1431-2-2

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Note: This fiscal note reflects a revision to the revenue impact, and replaces fiscal note number 1431-1.

CURRENT LAW:

The sale of meals to consumers is generally considered to be a retail sale subject to retail sales tax and business and occupation (B&O) tax under the retailing classification. However, hospitals, nursing homes, assisted living facilities and similar health care facilities are not considered to be making retail sales of meals when furnishing meals as part of the health care services provided to their patients or residents.

In contrast, meals furnished to tenants living independently in a senior living facility and not paying for health-related services as part of their rent are retail sales of the meals. The facility must collect retail sales tax and pay retailing B&O tax on the fair selling price of the meals, even if the facility does not separately itemize the charge for the meals. If the facility does not keep records showing the fair selling price of the meals, the Department of Revenue (department) requires the tax to be calculated on double the cost of the meals served, including the cost of purchasing the food, preparing and serving the meals, and all other incidental costs, including overhead expenses.

Use tax complements the retail sales tax and generally applies to a consumer's use of tangible personal property or certain services acquired by the consumer without the payment of retail sales tax.

The law provides the following retail sales and use tax exemptions for meals sold to senior citizens:

- Those provided under a state-administered nutrition program for the aged as provided under federal and state law.
- Those provided by nonprofits organized under specified state laws.
- Those provided by a qualified low-income senior housing facility to residents 62 years of age or older.

PROPOSAL:

This bill exempts the following from the definition of "sale": Food, drink, or meals furnished by a senior living community to tenants as part of a rental or residency agreement for which the community makes no separate charge, regardless of whether the tenant is a resident of an assisted living facility (under chapter 18.20 RCW) or a continuing care retirement community (under chapter 18.390 RCW).

"Senior living community" means any facility or campus operated by a person licensed or registered as an assisted living facility (under chapter 18.20 RCW) or a continuing care retirement community (under chapter 18.390 RCW).

EFFECT OF THIS PROPOSAL:

This bill effectively provides a retail sales tax exemption for meals furnished to those tenants of assisted living facilities and continuing care facilities that are living independently and not paying for health care services as part of their rental agreement. However, while the title of the bill indicates an intent to address use tax on meals furnished to tenants of senior living facilities, the bill does not actually affect the use tax on such meals.

This bill also effectively modifies the B&O taxation of income received by affected facilities from providing meals to tenants living independently and not paying for health care services as part of their rental agreement. This bill would reclassify this income from the retailing classification (0.484% tax rate) to the catchall service and other activities classification (1.5% or 1.75% tax rate).

EFFECTIVE DATE:

Request # 1431-2-2

The bill takes effect 90 days after final adjournment of the session and applies both retroactively and prospectively.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS:

- Article VIII, section 5 of the Washington constitution does not allow a gift of public funds. The prohibition on the gifting of public funds prevents the department from granting refunds to those taxpayers that have validly paid sales or use taxes on the sale of food, drinks, or meals by tenants at a senior living community prior to the effective date of this bill.
- There will be minimal reporting of use tax by residents of senior living communities on the sales tax-exempt purchase of meals from senior living communities.
- Currently, one-third of senior living communities bundle charges for rent and meals to residents such that retail sales tax applies to the sale of meals. As a result, this bill impacts one-third of senior living communities' charges for meals.
- The retroactive language in this legislation impacts a small group of taxpayers with outstanding and pending audit assessments that are assumed to be paid in future years under current law. The resulting negative revenue impacts from retroactive application of this legislation are spread between fiscal years 2024 through 2027. The negative revenue impacts due to the retroactive language may be larger if other taxpayers that owe sales tax on resident meals under current law have not reported and paid this tax.
- Local revenue estimates use the statewide average local sales and use tax rate of 2.9231%.
- Currently, tribes with compacts receive a share of state sales and use tax and certain B&O taxes (RCW 43.06.523). Additionally, local governments may also receive a portion of state sales and use tax. Under this proposal the amount of state sales and use tax revenue shared with tribes and local governments may decrease.

DATA SOURCES:

- Economic and Revenue Forecast Council, November 2022 forecast.
- Department of Revenue, audit data.
- Data provided by Washington State Department of Social and Health Services.
- Food Service Director. "2014 LTC/Senior Living Census: Ancillary foodservice locations gain in popularity"

REVENUE ESTIMATES:

This bill decreases state revenues by an estimated \$1.5 million in the 10 months of impacted collections in fiscal year 2024, and by \$1.5 million in fiscal year 2025, the first full year of impacted collections. This bill also decreases local revenues by an estimated \$864,000 in the 10 months of impacted collections in fiscal year 2024, and by \$845,000 in fiscal year 2025, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2024 - (\$ 1,518)
FY 2025 - (\$ 1,541)
FY 2026 - (\$ 1,629)
FY 2027 - (\$ 1,718)
FY 2028 - (\$ 1,621)
FY 2029 - (\$ 1,698)

Local Government, if applicable (cash basis, \$000):

FY 2024 - (\$ 864)
FY 2025 - (\$ 845)
FY 2026 - (\$ 945)

FY 2027 - (\$ 945)
 FY 2028 - (\$ 900)
 FY 2029 - (\$ 1,000)

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS:

This bill affects 3,900 taxpayers.

FIRST YEAR COSTS:

The department will incur total costs of \$15,500 in fiscal year 2024. These costs include:

Labor Costs – Time and effort equate to 0.13 FTE.
 - Amend four administrative rules.

Object Costs - \$200.
 - Print and mail special notice to affected taxpayers who do not file tax returns electronically.

SECOND YEAR COSTS:

The department will incur total costs of \$171,100 in fiscal year 2025. These costs include:

Labor Costs – Time and effort equate to 1.7 FTEs.
 - Process tax return work items, assist taxpayers with reporting questions and respond to inquiries via email, web messages, and paper correspondence.
 - Hear additional administrative reviews that provide taxpayers with an informal, non-adversarial dispute resolution process for the review of a disputed action by the department, such as an assessment of taxes, notice of taxes due, denial of a refund request, or tax ruling.

ONGOING COSTS:

Ongoing costs for the 2026-27 biennium equal \$72,000 and include similar activities described in the second-year costs. Time and effort equate to 0.4 FTE.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	0.1	1.7	0.9	0.4	
A-Salaries and Wages	9,600	100,200	109,800	45,800	
B-Employee Benefits	3,200	33,100	36,300	15,200	
E-Goods and Other Services	1,900	25,900	27,800	8,600	
J-Capital Outlays	800	11,900	12,700	2,400	
Total \$	\$15,500	\$171,100	\$186,600	\$72,000	

III. B - Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
EMS BAND 4	126,619	0.0		0.0		
EXCISE TAX EX 2	55,872		1.2	0.6	0.3	
EXCISE TAX EX 3	61,632		0.4	0.2	0.1	
MGMT ANALYST4	73,260	0.0		0.0		
TAX POLICY SP 2	75,120	0.0		0.0		
TAX POLICY SP 3	85,020	0.1	0.1	0.1		
TAX POLICY SP 4	91,524	0.0		0.0		
WMS BAND 3	107,685	0.0		0.0		
Total FTEs		0.1	1.7	0.9	0.4	

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the department will use the expedited process to amend the following rules:

WAC 458-20-119, titled: "Sales by caterers and food service contractors"

WAC 458-20-124, titled: "Restaurants, cocktail bars, taverns and similar businesses"

WAC 458-20-168, titled: "Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities"

WAC 458-20-244, titled: "Food and food ingredients"

Persons affected by this rulemaking would include certain senior living facilities.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 1431 HB	Title: Senior living meals/tax
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: decrease in sales tax revenue
- Counties: same as above
- Special Districts: same as above
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:

Estimated revenue impacts to:

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
City	(254,753)	(249,151)	(503,904)	(557,272)	(560,220)
County	(313,157)	(306,271)	(619,428)	(685,032)	(688,657)
Special District	(287,450)	(281,128)	(568,578)	(628,796)	(632,123)
TOTAL \$	(855,360)	(836,550)	(1,691,910)	(1,871,100)	(1,881,000)
GRAND TOTAL \$					(5,444,010)

Estimated expenditure impacts to:

None

Part III: Preparation and Approval

Fiscal Note Analyst: Tammi Alexander	Phone: 360-725-5038	Date: 02/02/2023
Leg. Committee Contact: Kristina King	Phone: 360-786-7190	Date: 01/20/2023
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 02/02/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 02/02/2023

Part IV: Analysis

A. SUMMARY OF BILL

Description of the bill with an emphasis on how it impacts local government.

This bill would exempt food, drink, or meals furnished by a senior living community to tenants as part of a rental or residency agreement for which the community makes no separate charge from the definition of “sale.” This would effectively create a tax exemption for meals furnished to tenants of assisted living facilities and continuing care facilities that are living independently and not paying for health care services as part of their rental agreement.

This bill also effectively modifies the B&O taxation of income received by affected facilities from providing meals to tenants living independently and not paying for health care services as part of their rental agreement. This bill would reclassify this income from the retailing classification (0.484% tax rate) to the catchall service and other activities classification (1.5% or 1.75% tax rate).

B. SUMMARY OF EXPENDITURE IMPACTS

Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.

This bill would not impact local government expenditures because no action is required.

C. SUMMARY OF REVENUE IMPACTS

Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.

This bill would decrease local government sales and use tax revenue.

According to the Department of Revenue (DOR) this bill decreases local revenues by an estimated \$864,000 in the 10 months of impacted collections in fiscal year 2024, and by \$845,000 in fiscal year 2025, the first full year of impacted collections. Please see the DOR fiscal note for their assumptions and data sources. Local tax revenue impacts for FY2029 were not listed in the original DOR fiscal note, but were provided upon my request.

LOCAL GOVERNMENT IMPACT

Counties:

FY 2024	-\$313,157
FY 2025	-\$306,271
FY 2026	-\$342,516
FY 2027	-\$342,516
FY 2028	-\$326,206
FY 2029	-\$362,451

Cities:

FY 2024	-\$254,753
FY 2025	-\$249,151
FY 2026	-\$278,636
FY 2027	-\$278,636
FY 2028	-\$265,367
FY 2029	-\$294,853

Special Districts:

FY 2024	-\$287,450
FY 2025	-\$281,128
FY 2026	-\$314,398
FY 2027	-\$314,398

FY 2028 -\$299,427
FY 2029 -\$332,696

METHODOLOGY:

The distributions in this note for cities, counties, and special districts are based on DOR data for local sales and use tax distributions from Calendar Year 2021. Mitigation payments and distributions to hospital benefit zones are not factored into this distribution. The result is a distribution of 36.61 percent to counties, 29.78 percent to cities, and 33.61 percent to special districts. The one percent DOR administrative fee has also been deducted.

SOURCES:

Department of Revenue fiscal note, HB 1431 (2023)
Department of Revenue Local Tax Distributions (2021)
House Bill Analysis, Finance Committee, HB 1431 (2023)
Local Government Fiscal Note program, Local Sales Tax model 2023
Local Government Fiscal Note program, Sales and Use Tax Distribution model 2023