Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 3176

Brief Description: Increasing state revenues to preserve funding for education, public safety, health care, and safety net services for elderly, disabled, and vulnerable people by preventing abusive tax avoidance transactions, narrowing or eliminating certain tax preferences, and providing equitable tax treatment.

Sponsors: Representatives Hunter, Hasegawa, Ericks, Conway, Springer, Hunt, Darneille, Williams, Upthegrove, White, Roberts, Appleton, Nelson, Carlyle and Ormsby.

Brief Summary of Bill

- Provides a statutory method for determining whether service businesses have substantial nexus for the purpose of imposing state business and occupation taxes.
- Establishes a gross receipts single-factor apportionment formula for allocating service and royalty income to Washington.
- Allows the Department of Revenue (DOR) to disregard abusive tax avoidance transactions.
- Closes loopholes used to avoid use taxes and real estate excise taxes.
- Repeals the business and occupation (B&O) tax and sales tax exemptions for precious metal bullion and monetized bullion.
- Eliminates sales tax exemption for nutrient management equipment, facilities and related services for beef cattle feeding operations between July 1, 2010 and July 1, 2013.
- Makes corporate board of directors fees subject to the B&O tax at the 1.5 percent tax rate.
- Eliminates the direct seller's representative (DSR) business and occupation (B&O) tax exemption on July 1, 2010.
- Retroactively narrows the DSR B&O tax exemption.
- Places an annual cap of thirty-five million dollars on the first mortgage B&O tax deduction.

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.

- Modifies the preferential B&O tax rate for manufacturing and wholesaling activities related to perishable meat products.
- Clarifies tax preferences for manufacturing and wholesaling activities related to fresh fruits and vegetables.
- Eliminates the nonresident sales tax exemption.
- Replaces the current aircraft excise tax, which imposes a fixed amount on aircraft, with a tax imposed on the fair market value of the aircraft.
- Replaces the complete public utility tax deduction for the interstate transport of goods or persons with a partial deduction based on the portion of activity occurring inside Washington.
- Narrows the real estate excise tax exemption for property transfers related to foreclosure sales.
- Eliminates the B&O tax credit for new employment for international service activities is repealed.
- Expands the authority of the DOR to pursue individuals for certain unpaid taxes of limited liability business entities.

Hearing Date:

Staff: Rick Peterson (786-7150).

Background:

<u>Nexus</u>.
Nexus is the level of connection with a state necessary under the U.S. Commerce Clause to permit a state to impose a tax or a sales tax collection duty on out-of-state businesses doing business in the state. A state tax is constitutional under the Commerce Clause if it is assessed against a taxpayer with whom the state has a substantial nexus, is fairly apportioned, is nondiscriminatory, and is fairly related to the services provided by the state. Of these requirements, the substantial nexus requirement is often the most difficult to determine. In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the Court held that out-of-state businesses must have a "physical presence" in the state for there to be "substantial nexus" sufficient under the Commerce Clause to impose a sales tax collection duty. However, the Court was less clear in indicating whether the physical presence standard extends to other taxes. The proper nexus standard for state taxation of out-of-state businesses has been a contentious issue since the *Quill* decision. Numerous state courts have since affirmed economic presence standards, holding that a state may tax businesses with no physical presence within its borders.

The state of Washington uses a physical presence standard to determine whether a business has nexus with Washington. A physical presence standard requires a business to own or use real or personal property in this state, employ employees in this state, or engage, directly or through an agent, in activities in this state significantly associated with the business' ability to establish or maintain a market for its products or services in this state. A few examples of nexus-creating activities include: soliciting sales in this state through employees or other representatives; installing or assembling goods in this state, either by employees or other representatives; maintaining a stock of goods in this state; renting or leasing tangible personal property in this state; or making repairs or providing maintenance or service to property sold in this state.

Apportionment.

Generally, a business performing service-taxable activities inside and outside the state must apportion to Washington the gross income derived from Washington activities as determined by a separate accounting method. However, if a separate accounting is impractical or inaccurate, Washington law provides an apportionment formula based on the cost of doing business in Washington versus the cost of doing business everywhere. More specifically, the apportionment formula is a fraction, the numerator of which is the cost of doing business in Washington, and the denominator is the total cost of doing business everywhere. A business' total income, earned inside and outside of Washington, is multiplied by the resulting fraction/percentage to determine the amount of service income subject to Washington's business and occupation (B&O) tax. Under Washington law, only service-taxable activities are subject to the apportionment formula.

Financial institutions are subject to a different formula for apportionment. State law requires that the rules for financial institutions be consistent with uniform rules for apportionment developed throughout the nation. The Department of Revenue has issued a rule that provides a standard three-factor formula for financial institutions. The apportionment percentage is the average of a receipts factor, payroll factor, and property factor. The financial institutions total gross income, earned inside and outside of Washington, is multiplied by the resulting percentage to determine the amount of income subject to Washington's B&O tax.

Royalty income is not apportioned in this state. Instead, royalties are allocated to the domicile of the business.

Economic Substance Doctrine.

The economic substance doctrine states that a transaction’s tax benefits will not be allowed if the transaction does not have economic substance. This common law doctrine is an effort by the courts to enforce legislative intent in situations in which a literal reading of statutory code would allow a taxpayer to circumvent this intent. The doctrine is used frequently at the federal level to determine whether tax shelters or strategies used to reduce tax liability are considered "abusive" by the Internal Revenue Service. Washington courts have not used the economic substance doctrine to interpret tax statutes, but instead have relied on traditional methods of statutory construction that include: (1) looking to the plain language of a statute to determine whether the language is ambiguous; (2) giving words their common and ordinary meaning if the words are not ambiguous; (3) evaluating other evidence if language is determined to be ambiguous to ascertain legislative intent; and (4) construing tax exemptions, credits, and deductions narrowly.

Use Tax.

The use tax applies to the acquisition of tangible personal property (TPP), digital products, and some services that were not subject to sales tax. The use tax statute is very specific as to which TPP acquisitions it applies to: any article of TPP purchased at retail, or TPP acquired by lease, gift, repossession, or bailment, or TPP extracted or produced by the person using the TPP. The tax is measured by the value of the item at the time of first use within the state. Use tax rates are equivalent to retail sales tax rates. The DOR rules state that "[a] transfer of capital assets to or by a business is deemed not taxable to the extent the transfer is accomplished through an adjustment of beneficial interest of the business."

Real Estate Excise Tax.

The sale of real estate is subject to the state real estate excise tax (REET). The tax is measured by the full selling price, including the amount of any liens, mortgages, or other debts multiplied by the rate of 1.28 percent. State law also authorizes several local REETs.

The REET also applies to transfers of controlling interests in entities that own property in the state. In order for the REET to apply to the sale of a controlling interest in an entity that owns real property, the following must have occurred: (1) the transfer or acquisition of the controlling interest occurred within a twelve-month period; (2) the controlling interest was transferred in a single transaction or series of transactions by a single person or acquired by a single person or a group of persons acting in concert; (3) the entity has an interest in real property located in this state; (4) the transfer is not otherwise exempt from tax under state law; and (5) the transfer was made for valuable consideration. A program established in 2005 requires transfers of controlling interests in an entity that owns real property to be reported to the Secretary of State. Failure to report a transfer of a controlling interest to the Secretary of State can result in interest and penalties, including a 50 percent tax evasion penalty.

The REET is a legal obligation of the seller. Additionally, a statutory lien is placed on the property until the tax is paid. If REET is not properly paid, the DOR may enforce the obligation in an action of debt against the seller, enforce the lien in the same manner as a mortgage foreclosure, or some combination of the two. A buyer may also be liable for the REET unless the buyer notifies the DOR in writing within 30 days following the sale.

First Mortgage Deduction.

Washington law provides a deduction for financial institutions for interest earnings on loans secured by first mortgages or deeds of trust on residential properties. The Washington Supreme Court, in *Homestreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444 (2009), held that a mortgage lender was entitled to the deduction for the portion of interest it retained for servicing loans and mortgage-backed securities that it sold on a service-retained basis on the secondary market. Put differently, the *Homestreet* decision allows an originating lender that sells mortgage loans onto the secondary market but continues to service the loans to deduct service fees.

Nonresident Sales Tax Exemption.

Persons who reside in a state, possession or Canadian province that imposes a sales tax of less than 3.0 percent are exempt from Washington retail sales tax on tangible personal property purchased for use outside of Washington (i.e., the exemption does not apply to lodging or meals). Sales to residents of other states may also be exempt if their state of residence allows similar exemption for Washington residents; however, no state currently qualifies under this provision of reciprocity.

Direct Seller Business and Occupation Tax Exemption.

A business and occupation (B&O) tax exemption is provided for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative (DSR). Broadly, a "DSR" is defined to mean a person who buys consumer products for resale in either the home or some other forum that does not constitute a permanent retail establishment. There is no explicit requirement in the statute that the seller make sales of only consumer products through the DSR nor an explicit requirement that prohibits downstream sales of consumer products from being sold at retail from a permanent retail establishment. Traditionally, the exemption has been used by out-of-state sellers engaged in sales of consumer products exclusively through in-home parties or door-to-door selling. A seller qualifying for the exemption does not owe B&O tax on wholesaling or retailing of the consumer products. (The representative owes B&O tax on the commission.) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2 (September 10, 2009), the Washington Supreme Court held that the exemption also applies to out-of-state businesses selling non-consumer products through its representative in addition to consumer products and to out-of-state businesses for consumer products ultimately sold at retail in permanent retail establishments. Many out-of-state businesses selling consumer products in this state could be eligible for the exemption under this expanded interpretation or could easily restructure their business operations to qualify for the exemption. The state has asked the Washington State Supreme Court to reconsider its decision.

<u>Tax Preferences for Manufacturers of Certain Agricultural Products</u>.
Washington law provides a preferential tax rate for the business of slaughtering, breaking, or processing of perishable meat products and the wholesaling of such perishable meat products. In *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392 (2005), the Supreme Court held that the preferential B&O tax rate applies to the processing of perishable meat products into nonperishable finished products, such as canned food. There had been a question as to whether the finished product had to also be a perishable meat product.

A business and occupation tax exemption is provided for manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. This exemption expires July 1, 2012, and is replaced by a preferential B&O tax rate.

<u>Tax Preferences for Bullion</u>.
Prior to 1985 sales of precious metal bullion and monetized bullion were subject to retail sales tax and state B&O tax. Retailers collected state sales tax, plus applicable local sales taxes, from purchasers while sellers were subject to B&O tax on the gross receipts of such transactions. However, in 1985, an exemption from the retail sales tax was created for the sale of precious metals and monetized bullion. The sellers of precious metals and monetized bullion are taxed at the 1.5 percent service rate on their commissions.

Precious metal bullion are metals refined or smelted into a form where the value is attributable to the content of the product rather than its form. Examples of metal bullion specified in the statute include gold, silver, platinum, rhodium, and palladium. Monetized bullion means coins and other metals used as a medium of exchange. The exemption does not apply to precious metal or monetized bullion that is used to produce jewelry or artwork, for which the value does depend upon the form of the product.

<u>Sales and Use Tax Exemption for Livestock Nutrient Management Equipment and Facilities</u>.
Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and some services. If retail sales taxes were not collected when the property or services were acquired by the user,

then use taxes are applied to the value of most tangible personal property and some services when used in this state. Use tax rates are the same as retail sales tax rates. The state tax rate is 6.5 percent, and depending on the location, local tax rates vary from 0.5 percent to 3.0 percent. The average local tax rate is 2.4, for an average combined state and local tax rate of 8.9 percent.

In 2001 the Legislature provided an exemption from sales and use taxes for dairy nutrient management equipment, facilities, and related services. To be eligible the person had to have a certified dairy nutrient management plan. In 2006 the sales and use tax exemption was broadened beyond dairy to other sectors of the livestock industry that had approved nutrient management plans. A sales and use tax exemption applies to the materials, machinery, equipment, and labor and services purchased or used in relation to the operation, repair, cleaning, alteration, or improvement of livestock nutrient management facilities and equipment. Livestock nutrient management facilities and equipment are machinery, equipment, and structures used in the handling and treatment of livestock manure, such as aerators, agitators, alley scrapers, and augers. The exemption includes repair and replacement parts. The exemption requires facilities and equipment to be used exclusively for activities necessary to maintain a livestock nutrient management plan.

<u>Preferential Business and Occupation Tax Rate for Board of Director Income</u>.
The wages of employees is exempt from the B&O tax. Members of corporate boards of directors receive fees for their services. Corporate directors are not employees of the corporation when they engage in their roles as corporate directors.

<u>Aircraft Excise Tax</u>.
All aircraft must be registered for each calendar year in which it is operated within the state. An excise tax, collected by the Aviation Division of the state Department of transportation, is imposed when an aircraft is first registered and the tax is subsequently paid annually during January of each year. The tax is a fixed charge that varies based on the type of aircraft. Annual charges range from $20 to $125. The tax is levied in lieu of the personal property tax. However, the law exempts several types of aircraft from the excise tax, which in turn subjects an aircraft to the personal property tax. Commercial aircraft principally used in interstate or foreign commerce are an example of aircraft exempt from the aircraft excise tax but subject to the personal property tax. Ninety percent of the receipts from the tax are deposited in the general fund with the remainder going to the aeronautics account.

<u>Public Utility Tax on Interstate Hauls</u>.
A state public utility tax is imposed on gross income derived from operation of public and privately owned utilities, including the general categories of transportation, communications, and the supply of energy and water. The public utility tax is in lieu of the B&O tax. However, other income of the utility business (e.g. retail sales of tangible personal property) is subject to B&O tax. Unlike the B&O tax which pyramids (i.e. different firms may be taxable on income derived from the same product), the public utility tax applies only on sales to consumers. When the public utility tax was enacted in 1935, the United States supreme court interpreted the commerce clause of the United States Constitution as barring a direct tax on gross receipts from interstate transportation, i.e., transportation of person or property from a point within this state to a point outside A complete tax deduction was provided for income from interstate transportation of persons or property that still exists today. The deduction applies to all gross income from the transportation activity, including any transportation activity occurring in the state of Washington.

Foreclosure Exemption.
The real estate excise tax does not apply to a non-judicial foreclosure sale of real property by a trustee under the terms of a deed of trust or a judicial foreclosure sale order by a court on any mortgage, lien, or deed of trust. This exemption applies regardless of whether the sale is to the lender or a third party.

Tax Debts.
Upon the termination, dissolution, or abandonment of a corporate or other limited liability business, an officer, member, manager, or other person having control and supervision of retail sales tax funds is personally liable for unpaid sales tax if the person willfully fails to pay the tax. Furthermore, personal liability will only apply in situations where the Department has determined that there is no reasonable means of collecting the retail sales tax funds directly from the business.

Business and Occupation Tax Credit for New Employment for International Service Activities.
Firms engaged in certain international services are entitled to a B&O tax credit of $3,000 for each new job a firm creates. Eligible activities are defined in the statute, which include services such as computer, legal, accounting, engineering, architectural, advertising, and financial services. To qualify, the firm must be located in a community empowerment zone or in a city or group of contiguous cities with a population of at least 80,000.

Summary of Bill:

Nexus.
For purposes of imposing the state business and occupation (B&O) tax on service activities and the activity of receiving royalty income, a business or individual will have substantial nexus with the state if the individual or business meets one of the following requirements: (1) An individual is a resident or domiciled in the state; (2) a business entity is organized or commercially domiciled in this state; or (3) the individual or business is organized or domiciled outside the state but has more than $50,000 of property in the state, more than $50,000 of payroll in the state, more than $500,000 of receipts from this state, or at least 25 percent of the individual's or business's total property, total payroll, or total receipts in this state. This nexus standard only applies to service activities and the activity of receiving royalty income. A business or individual with substantial nexus in any tax year is deemed to have substantial nexus with the state for the following four tax years.

Property counting toward the thresholds is the average value of the taxpayer's property owned or rented in the state during the tax year. Other than loans and credit card receivables, property is generally valued at its cost basis. Loans and credit card receivables are generally valued at their outstanding principal balance. Rented property is valued at eight times the annual rental rate, less any amounts received for subrentals. Receipts counting towards the thresholds are the amounts included in the numerator for purposes of apportioning income to the state as described below.

Payroll counting towards the thresholds is the total amount paid by the business for compensation in this state. Compensation is paid in this state if the compensation is reportable to this state for unemployment compensation tax purposes. The property, payroll, and receipts thresholds are adjusted annually for changes in the consumer price index (CPI) if the change in the CPI is 5 percent or more since the last adjustment. The Department of Revenue reviews the CPI every December, and an adjustment applies to any tax period that begins after the adjustment is made.

Apportionment.
Income derived from service activities and royalties is apportioned to Washington based on a receipts factor. The receipts factor is a fraction of which the numerator is the total gross income of the business attributable to this state for the activity and the denominator is the worldwide gross income of the business for the activity. The total worldwide gross income from the activity is multiplied by the receipts factor to determine the amount of income apportioned to Washington for purposes of the B&O tax. Apportionment using the receipts factor would replace the three-factor apportionment formula for financial institutions and the cost apportionment formula for other businesses providing services.

Except for financial institutions, gross income is attributable to this state based on the following series of hierarchical rules:

1. income is attributable to this state if the customer received the benefit of the service in this state or used the business's intangible property in this state;
2. if the customer received the benefit of the service or used the intangible property in more than one state, income is attributable to the state where the service was primarily received or where the intangible property is primarily used;
3. if income cannot be attributed under the foregoing, then the income is attributable to the state where the customer ordered the service or where the royalty agreement was negotiated;
4. if income cannot be attributed under the foregoing, then the income is attributable to the state to which the billing statements or invoices are sent to the customer;
5. if income cannot be attributed under the foregoing, then the income is attributable to the state from which the customer sends payment to the business;
6. if income cannot be attributed under the foregoing, then the income is attributable to the state where the customer is located; and
7. if income cannot be attributed under the foregoing, then the income is attributable to the state where the business is domiciled.

For financial institutions, gross income is attributable to this state as follows:

1. interest, fees, and penalties on credit card receivables, and net gains from the sale of credit card receivables, are attributable to this state if the billing address of the cardholder is in this state;
2. interest, fees, and penalties on secured loans are attributable to this state if the property securing the loan is located within this state;
3. interest, fees, and penalties on unsecured loans are attributable to this state if the borrower is located in the state;
4. net gains on the sale of loans and loan servicing fees are attributable to this state in the same manner as provided in two or three for secured and unsecured loans; and
5. interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities, are attributable to this state if the income is properly assigned to a regular place of business of the financial institution within this state. This

would apply to income from investment securities, trading account assets, federal funds, futures contracts, forward contracts, swaps, and foreign currency transactions.

<u>Economic Substance Doctrine</u>.
The economic substance doctrine is adopted. Accordingly, the Department of Revenue (DOR) may disregard abusive tax avoidance transactions for tax periods on or after January 1, 2006. An "abusive tax avoidance transaction" is defined to mean a transaction, plan, or arrangement that lacks economic substance. A transaction will be deemed to have economic substance only if: (1) the transaction changes the taxpayer's economic position in a meaningful way, apart from the transaction's tax effects; (2) the taxpayer has a substantial nontax purpose for entering into the transaction; and (3) the transaction is an objectively reasonable means of accomplishing the substantial nontax purpose.

The DOR has the burden of establishing that a transaction does not have economic substance.

If the DOR determines that a transaction lacks economic substance, the DOR may take reasonable steps necessary to deny the tax benefit resulting from the abusive tax avoidance transaction. These steps may include: re-characterizing the nature of income; disregarding the form of a corporate or other business entity; treating a transaction according to its underlying economic substance rather than form; treating a series of formally separate steps as a single transaction; and imputing income to a taxpayer who provides services to a related person and the consideration does not reflect the fair market value of the service.

If a tax deficiency is deemed to be a result of an abusive tax avoidance transaction, the DOR may assess a 35 percent penalty; however, the DOR may not assess the penalty if the taxpayer discloses its participation in an abusive tax avoidance transaction before the DOR discovers it.

<u>Use Tax</u>.
The statutory language describing how the acquisition of tangible personal property (TPP) occurs (lease, gift, bailment, etc.) is eliminated. Therefore, the acquisition of TPP in any manner is subject to use tax unless some other provision specifically exempts the transaction.

<u>Real Estate Excise Tax</u>.
For the purpose of determining whether the sale of a controlling interest has occurred within a 12 month period, an option to purchase real estate is also included in the determination. The date the option agreement is executed is used as the relevant date.

The DOR may, at its option, enforce the collection of real estate excise tax (REET) for the sale of a controlling interest in a business by pursuing the buyer of a controlling interest, seller of a controlling interest, or the business entity itself of which a controlling interest is transferred.

The law is clarified that a lien for payment of REET attaches to each parcel of property owned by an entity in which a controlling interest has been transferred.

A parent corporation of a wholly owned subsidiary is responsible for REET if the subsidiary transfers real property to a third party and then dissolves before payment of the tax.

Buyers are no longer absolved from REET liability by simply providing notice of a real estate sale to the DOR.

First Mortgage Deduction.
An annual thirty-five million dollar cap is placed on the deduction. Therefore, a financial business may not deduct more than thirty-five million dollars in any calendar year.

Nonresident Sales Tax Exemption.
The nonresident sales tax exemption is eliminated.

Direct Seller Business and Occupation Tax Exemption.
The direct seller's representative (DSR) B&O tax exemption is eliminated beginning July 1, 2010.

A retroactive change is made to the DSR B&O exemption that narrows the exemption by requiring the DSR to have purchased only consumer products to qualify for the exemption. This retroactive change will prevent companies that might have otherwise qualified for the exemption, absent the changes made in this bill, from seeking a refund. The retroactive change will not impact the taxpayer that prevailed in the *Dot Foods* decision, if there is a final judgment, not subject to appeal, entered by a court before April 1, 2010.

Tax Preferences for Manufacturers of Certain Agricultural Products.
The exemption for slaughtering, breaking, or processing perishable meat products or selling these perishable meat products at wholesale is modified by requiring that the end product be: a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product. The tax preference for fruit and vegetable manufacturers is modified by requiring that the end product be comprised either exclusively of fruits or vegetables, or any combination of fruits, vegetables, and certain other substances that, cumulatively, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

A number of conforming amendments are made to update statutory cross references that would become incorrect upon enactment of the bill.

Tax Preferences for Bullion.
The B&O tax exemption for sales of precious metal bullion and monetized bullion is repealed. Therefore, the retailing B&O tax rate will apply to the total gross receipts from sales of precious metal bullion and monetized bullion. (The sales and use tax exemptions are maintained.)

Sales and Use Tax Exemption for Livestock Nutrient Management Equipment and Facilities.
The sales and use tax exemption for livestock nutrient management equipment and facilities is repealed.

Preferential Business and Occupation Tax Rate for Board of Director Income.
The fees paid to members of corporate boards of directors are explicitly subject to tax under the service & other classification at the 1.5 percent tax rate. Therefore, fees paid to members of corporate boards of directors would not be exempt under the exemption for wages and salaries for employees.

Aircraft Excise Tax.
The existing aircraft excise tax, which imposes an annual fixed charge, is replaced with a tax assessed on the taxable value of the aircraft. The taxable value is the fair market value of the aircraft, which is the most recent purchase price of the aircraft depreciated based on a schedule prepared at least once a year by the Department of Revenue. The tax rate is 0.5 percent. The tax applies to the same aircraft subject to the current aircraft excise tax and is imposed annually. All of the revenue from the tax is deposited into the state general fund.

Public Utility Tax on Interstate Hauls.
The public utility tax deduction for transporting persons or property from this state into another state, into this state from another state, or through this state, is eliminated. Instead, interstate transportation will be taxed on an apportioned basis. Generally, gross income for a specific transportation activity is apportioned to this state based on the ratio of revenue miles in this state during the tax period for the activity and the total revenue miles for the taxpayer during the tax period for the activity. A "revenue mile" is defined as the transport of one net ton of property or people for one mile. For businesses transporting gas, oil, petroleum products, or any other products by pipeline, gross income is apportioned to this state based on the ratio of traffic units in this state and total traffic units. A "traffic unit" is defined as the movement of one unit of product for a distance of one mile.

Foreclosure Exemption.
The real estate excise tax (REET) foreclosure exemption is limited to only transfers made to a beneficiary under a non-judicial trustee's sale or a mortgagee, lien holder, or beneficiary under a court-ordered sale. In other words, the sale of property to third parties would be subject to REET even if the sale is pursuant to a foreclosure sale.

Tax Debts.
When the DOR issues a tax warrant for unpaid tax from a limited liability business entity (i.e., corporation, limited liability company, limited liability partnership, etc.) that has been terminated, dissolved, abandoned, or is otherwise insolvent, the DOR may pursue the collection of unpaid taxes from a responsible individual. A responsible individual means any current or former officer, manager, member, partner, or trustee of a limited liability business entity. Personal liability extends to unpaid state and local sales taxes, state B&O taxes, and any other state and local taxes collected by the DOR. Personal liability for unpaid taxes extends to current or former chief executive officers or chief financial officers regardless of fault or whether the individual was or should have been aware of the unpaid tax liability. For other individuals, personal liability applies only if the individual willfully failed to pay the tax.

Business and Occupation Tax Credit for New Employment for International Service Activities.
The B&O tax credit for new employment for international service activities is repealed.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect April 1, 2011, except for sections 501 and 502 relating to direct seller's representatives, section 606 relating to business and occupation tax rates, and section 1505 relating to retroactivity.