

# HOUSE BILL REPORT

## SSB 5358

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### As Reported by House Committee On: Finance

**Title:** An act relating to improving tax and licensing laws administered by the department of revenue, but not including changes to tax laws that are estimated to affect state or local tax collections as reflected in any fiscal note prepared and approved under the process established in chapter 43.88A RCW.

**Brief Description:** Improving tax and licensing laws administered by the department of revenue, but not including changes to tax laws that are estimated to affect state or local tax collections as reflected in any fiscal note prepared and approved under the process established in chapter 43.88A RCW.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Schoesler and Ranker).

#### Brief History:

##### Committee Activity:

Finance: 3/17/17, 3/30/17 [DPA].

#### Brief Summary of Substitute Bill (As Amended by Committee)

- Makes revenue neutral technical and administrative changes to Washington's tax code.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Dolan, Pollet, Springer, Stokesbary, Wilcox and Wylie.

**Staff:** Tracey O'Brien (786-7152).

#### Background:

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

Often when legislation is enacted, it contains references to other statutes. During a legislative session, the Legislature could amend the same statute without reference in multiple pieces of legislation. As a result, the statutes can have incorrect cross-references that may cause confusion or differing versions of statute with a code revisers note. In addition, some legislation contain provisions that are valid for a more limited duration and become obsolete over time, despite still being contained in the Revised Code of Washington (RCW).

As the Department of Revenue (DOR) implements the various tax programs, they may discover the need for additional clarity, or possible administrative improvements. As a result, the DOR may make revenue neutral suggestions for improvements to the Legislature.

#### Public Utilities District Tax.

Municipalities may tax public utilities district (PUD) facilities located within a city. The tax is based on the gross revenues from the sale of electricity to consumers within a city. The tax is administered by the DOR, and each PUD is required to file an annual report with the DOR by March 15th of each year. The report must provide the income cost of all generating facilities and production data on power generated or sold by the district during the previous calendar year.

Prior to May 1, the DOR must calculate the amount of tax due and notify the PUD of its liability. Payment of the tax is due by June 1, and penalties and interest apply if tax is not paid. Upon the receipt of the tax, the DOR instructs the Treasurer to disburse the proper funds to the local jurisdictions.

#### General Administrative Provisions.

In order to administer tax programs, the DOR has been given certain administrative powers. These include the ability to both impose, and waive interest and penalties for delinquent taxes; provide filing schedules and deadlines; prescribe the manner in which payment may be rendered; the filing of a tax warrant; and the ability to examine a taxpayer's books and records.

#### Automated Sales Suppression Devices.

Electronic sales suppression devices, commonly known as "zappers," facilitate tax evasion and result in significant loss of tax revenue for jurisdictions that impose a retail sales tax. Zapper software is usually stored on a portable USB device that can be linked with the computerized cash register system. At the end of the day, the zapper systematically modifies the machine's records to reduce the value of the day's sale. For every dollar deleted from the sales record, the owner gets to retain the money that would otherwise be sent to the state and local governments. Although, each transaction might yield only a few cents, with enough transactions being altered by the zapper, the money adds up.

Phantom-ware and zappers seized by the DOR or law enforcement may be destroyed, retained for training purposes or other official purposes, or loaned to law enforcement or tax administration agency for training or other official purposes.

#### Annual Reports and Surveys for Tax Preferences.

The first annual report was required as part of the 2003 aerospace preference package. The annual report was to help inform the public and legislators about the impact of the tax preferences. During the following session, the Legislature required an annual survey as part of an extension of high technology tax preferences. Both collected a variety of information on employment, salary and benefits. Unlike the annual report, the annual survey was limited to the amount of information that could be publicly disclosed.

#### Estate Tax Return Filing.

The estate tax is a tax on the right to transfer property at the time of death. A Washington decedent or nonresident decedent who owns property in Washington State may owe estate tax depending on the value of the estate. The filing threshold for deaths occurring in 2014 or later is adjusted annually based on the Consumer Price Index (CPI). After subtracting all allowable deductions, the remaining Washington taxable estate is subject to a graduated rate schedule that ranges from 10 to 20 percent.

#### Licensing.

The DOR maintains a portal to the state's business licensing program. The system allows a business customer to file an annual renewal, file a business license application, check on the status of a business account, view and pay any outstanding fees, and update account information.

#### Background Investigations.

Federal law prohibits the disclosure of federal returns or return information. This applies to not only federal employees, but also state employees engaged in tax administration. Since the Internal Revenue Service (IRS) and the state are involved in cooperative tax administration efforts, federal tax information (FTI) is often shared with a state tax agency. Federal tax information includes information extracted from a return, a taxpayer's name, address and identification number, and whether a tax return was filed. There are both criminal and civil penalties that apply for the authorized disclosure of, or access to, FTI. The IRS requires that certain safeguards are initiated by a state agency in order to protect FTI, including criminal background checks of employees and prospective employees.

There are many jobs in the Washington state government that require some sort of criminal background check, including long-term care workers, child care workers, and other persons dealing with vulnerable populations or persons that may have access to confidential information.

#### Timber Excise Tax.

The DOR is required to provide an annual estimate of the number of acres of public forestland available for timber harvesting. The estimates shall be for each county and for each taxing district within a county. However, at the county's request, the DOR may grant the authority for the estimate to a county. The DOR must provide this estimate by August 30 of each year.

In order to phase-in the county excise tax, the DOR was required to reduce its estimate by certain percentages from 2005 through 2013. The DOR has not been reducing its estimate since 2014.

The tax base is the stumpage value of timber harvested for sale or use in a commercial or industrial manner. If the harvested timber is from public lands, the tax is based on the contact purchase price for stumpage, including cash and other considerations. The total tax imposed is 5 percent—4 percent for the county where the timber is harvested, and 1 percent for the state.

Tax Information is Confidential.

Although all the records and information maintained by the DOR are considered public information under the state's Public Records Act (PRA), not all records are disclosable to the public. If not associated with tax information, under the PRA the DOR may disclose: a tax registration number or unified business identifier number; name of owner and business; address; type of ownership; North American Industry Classification System code; or Standard Industrial Classification code. Tax information associated with a specific taxpayer may not be disclosed.

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**Summary of Amended Bill:**

Part I: Providing Reasonable Tools for Effective Administration of the Public Utilities District Privilege Tax.

Many of the current administrative provisions that are applied to other tax programs are applied to the public utilities district (PUD) privilege tax. The provisions include:

- assessments and refunds authority;
- electronic filing and payment requirements;
- internal review of assessment and other department actions;
- contesting of taxes in court;
- confidentiality of PUD privilege tax information;
- closing agreement authority;
- annual reporting requirements;
- apportionment and distribution of revenue to local governments; and
- PUD to report tax liability due.

Part II: Pet Adoption Fees.

Pet adoption fees paid to a local government, humane society or nonprofit animal rescue organization are exempt from retail sales. As a result, the Business and Occupation (B&O) tax rate will be the service rate, not the retailer rate.

Part III: Technical Corrections to 2105 Legislation.

Conflicting expiration dates are harmonized in order to allow nonresident entities to obtain nonresident vessel permits.

The characterization of the property tax exemptions in the performance statement as an expansion, not a preference, is corrected. The property tax exemption provided to senior citizens, persons with disabilities, and veterans is a tax preference.

Nexus changes made in 2015 are further clarified. They do not affect apportionable activities that already had established nexus prior to the effective date of the nexus change on September 1, 2015. This clarification for calendar year 2015 is retroactive.

The application of retail sales tax at indoor and outdoor playgrounds is clarified. It is limited to charges for drop-in play or group events by a business that offers at least one of the following attractions: inflatables, trampolines, laser tag, soft dart tag, or human gyroscope rides. The type of group events covered by this include birthday parties, family gatherings, and employee outings.

#### Part IV: Automated Sales Suppression Devices and Phantom-Ware.

The ability for the DOR to destroy automated sales suppression devices and phantom-ware, use it for training or other official purposes, or to loan it to a law enforcement or tax administration agency for training or other official purposes, is extended to such contraband that is voluntarily surrendered to the DOR.

#### Part V: Annual Surveys and Reports for Tax Preferences.

Both the annual survey and report requirements are changed in the following ways:

- The requirement to file annual reports for taxpayers that are not required to register with the DOR is eliminated; however, if the annual reports are for property tax preferences, the taxpayer must still file an annual report.
- Tax preferences may be claimed on an amended tax return after the due date of the annual report in certain circumstances.
- Reporting requirements pertaining to the quantity of product produced within Washington are eliminated.
- If a taxpayer fails to file an annual report for a property tax preference, the penalty is changed from repaying the amount due, to the ineligibility to claim the tax preference in the calendar year immediately following the year in which the report was due.
- The DOR must notify the county assessor when a taxpayer is ineligible to claim a property tax preference due to a failure to file an annual report.
- The county assessor must provide the DOR with written notice that a property tax preference has been claimed that requires the filing of an annual report, unless the taxpayer is required to claim the property tax preference with the the DOR.

#### Part VI: Miscellaneous Technical Corrections.

Internal references within statutes are corrected.

The B&O tax credit for a person engaged in the business of manufacturing computer software or programming in a rural county is repealed. The opportunity to earn this credit expired on January 1, 2011.

The term "master license" is replaced with "business license" to reflect the change made by the DOR when the business licensing program was transferred to the DOR from the Department of Licensing.

A duplicate version of RCW 84.34.108 is eliminated. This current use statute was amended twice, without reference to each other, during the 2014 Legislative Session, but has since been harmonized.

The county assessor must, during the intervals between the physical inspection of real property, adjust the true and fair value of the property annually based on statistical data.

A duplicate version of RCW 82.04.280 is eliminated. This B&O tax statute had two versions in the RCW due to the Legislature amending the section multiple times in one legislative session. Subsequent amendments have harmonized the two versions.

The DOR is given explicit authority to revise the assessment roll of centrally assessed utilities. The initial assessment must be prepared between March 15 and July 1 each year, with the final assessment due by August 20 each year. Similar changes are made for centrally assessed private car companies.

Part VII: Estate Tax Return Filing Relief.

Estates are relieved from the requirement to file a Washington estate tax return if the gross estate value is less than the applicable exclusion amount. For the estates of decedents dying in 2017, the estate filing threshold is \$2.219 million.

Part VIII: Clarifying that Licensing Information May not be Disclosed for Commercial Purposes.

The confidentiality and disclosure requirements for licensing information are amended to be the same as those for excise taxes.

Part IX: Background Investigations.

The Director of the DOR must establish background investigation policies that apply to both current and prospective employees and contractors that are or may be authorized to access federal tax information. The policies must include a criminal history record check through the Washington State Patrol criminal identification system, and the Federal Bureau of Investigation.

Part X: Revising the Date by which the Department of Revenue is Required to Provide Estimates of the Amount of Public Forestland that is Available for Timber Harvesting.

The due date for the DOR's estimate for the amount of public forestland available for harvesting is moved from August 30 to October 1.

Part XI: Electronic Communication of Confidential Property Tax Information.

The DOR is authorized to provide confidential property tax information electronically, provided that the DOR uses methods reasonably designed to protect such information from unauthorized disclosure, such as a secure messaging program, or by using encrypted electronic mail. A taxpayer may opt to allow the DOR to provide confidential property tax via less protected means, such as regular electronic mail.

Part XII: Miscellaneous.

The tax transparency statutes do not apply to this act.

**Amended Bill Compared to Substitute Bill:**

The substitute removes the changes to the retail sales tax related to drop-in play, or group events at indoor playgrounds. In addition, the substitute removes the provisions making administrative and technical changes to the annual reports and surveys for tax preferences.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 101 and 103–109, relating to the administration of the public utilities district privilege tax, and sections 501 and 502, relating to technical corrections, which take effect January 1, 2018, and section 102, relating to public utilities district report to DOR, which takes effect April 1, 2018.

**Staff Summary of Public Testimony:**

(In support) This bill is designed to be noncontroversial, and the Department of Revenue (DOR) is amenable to the removal of any sections not meeting this standard. Some of the parts will look familiar, as they were administrative changes proposed in the past. This includes modernizing the public utilities district tax administration. In addition, relieving the DOR of being guilty of a class C felony for the possession of zappers that are surrendered by taxpayers would assist in the efforts to combat sales tax suppression and noncompliance. One more element of the bill the DOR would like to highlight is clarifying that business licensing information held by the DOR will get the same confidentiality protections as the tax information it keeps. Finally, the DOR is cognizant that Part V of the bill amends the same statute as House Bill 1296, and the DOR is fine with removing that section.

(Opposed) None.

**Persons Testifying:** David Duvall, Department of Revenue.

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