

SENATE BILL REPORT

SB 5647

As of February 26, 2013

Title: An act relating to requiring the department of revenue to publish their determinations.

Brief Description: Requiring the department of revenue to publish their determinations.

Sponsors: Senators Braun, Kline, Carrell, Keiser, Dammeier, Rivers, Ericksen, Hobbs and Frockt.

Brief History:

Committee Activity: Trade & Economic Development: 2/12/13, 2/19/13 [DP-WM].
Ways & Means: 2/26/13.

SENATE COMMITTEE ON TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Braun, Chair; Smith, Vice Chair; Chase, Ranking Member; Holmquist Newbry, Schlicher and Shin.

Staff: Jack Brummel (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Juliana Roe (786-7438)

Background: The Department of Revenue (DOR) collects the majority of general fund taxes. DOR must keep tax returns and other information confidential, except in certain circumstances. DOR releases sanitized versions of determinations, in which information that would identify the taxpayer has been deleted, to notify taxpayers of administrative law changes. The Director of DOR may designate certain written determinations as precedents and must adopt by rule, criteria to decide which determinations are precedential. These written determinations designated as precedents must be published and made available for public inspection.

Summary of Bill: Code provisions relating to designation of written determinations as precedent, and the establishment of criteria for such designation, are removed. The Director must publish all determinations within 90 days of finalization. DOR must establish a stakeholder process to review determinations and make recommendations regarding technical

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clarity to assist taxpayers. The stakeholder process must also be used to develop recommendations for improving the redaction process while ensuring confidentiality and efficiency in implementation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Trade & Economic Development): PRO: This will provide greater transparency. The Washington State Bar's tax section supports this bill. DOR's current program releasing determinations is practically meaningless because DOR publishes only 1 percent of decisions. We are back to a nearly opaque system. The bill will inspire taxpayer confidence and provide clarity and greater efficiency in resolving disputes. Washington is one of seven states that does not publish all of its tax rulings. DOR provides precedents but with only one set of facts so this will be helpful to prevent disputes. Small businesses have difficulty navigating the system because of a lack of transparency. This allows DOR to focus on the redaction process rather than on determining which determinations to publish.

OTHER: Transparency is important to DOR but they must maintain confidentiality. The bill could have a chilling effect on taxpayers seeking review of taxability. Simple redaction could expose information allowing identification of businesses. The bill does not allow updates of published decisions. This could lead to confusion.

Persons Testifying (Trade & Economic Development): PRO: Amber Carter, Assn. of WA Business; Norman Bruns, Michelle DeLappe, Gerald Swanson, WA State Bar Assn. Tax Section.

OTHER: Drew Shirk, DOR.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill provides a reasonable solution for taxpayers and auditors as it provides more information publicly in the field. Taxpayers and practitioners want to know about big changes in taxes before DOR starts imposing taxes. The fiscal impact of this bill can be removed by asking taxpayers to fill out an addendum to the determination that contains the taxpayers' confidential information so that it is not included in the determination itself.

OTHER: Transparency is equally as important to DOR as is taxpayer confidentiality. Therefore, DOR has some concerns about this bill. The bill may undermine important protections provided for taxpayer confidentiality and proprietary tax information. Currently, there are about 500 individual reviews of DOR actions. Of these reviews, about 25 are published per year. This bill would require all 500 decisions to be published every year. That would change our process to redaction.

The bill provides no exceptions for those situations where DOR cannot sufficiently sanitize a determination. It eliminates DOR's ability to designate precedential determinations.

Current law provides a balanced approach to publication and the necessary flexibility for the agency to do so in a way that provides important and accurate information to the taxpaying public.

Persons Testifying (Ways & Means): PRO: Amber Carter, Assn. of WA Business.

OTHER: Drew Shirk, DOR.