

# SENATE BILL REPORT

## SB 6034

---

---

As of January 18, 2024

**Title:** An act relating to clarifying the excise tax treatment of document recording and filing fees received by title and escrow businesses from clients for remittance to county recording and filing offices.

**Brief Description:** Clarifying the excise tax treatment of document recording and filing fees received by title and escrow businesses from clients for remittance to county recording and filing offices.

**Sponsors:** Senators Schoesler and Dozier.

**Brief History:**

**Committee Activity:** Business, Financial Services, Gaming & Trade: 1/18/24.

**Brief Summary of Bill**

- Modifies the sales tax statutes to remove county filing or recording fees from being subject to sales tax.
- Modifies the business and occupation (B&O) tax statutes to provide an exemption for amounts paid to a county filing office for a filing or recording fee when calculating B&O revenues.
- Exempts these exemptions from expiration and performance statements.
- Applies the act prospectively and retroactively to disputed assessments pending before the Department of Revenue, Board of Tax Appeals, or any court of law.

---

**SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE**

**Staff:** Clint McCarthy (786-7319)

---

*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.*

**Background:** Document Recording. Document recording serves a public accessibility and preservation function. A wide range of documents can be publicly recorded and are potentially subject to document recording fees and surcharges. Many documents that are recorded are related to real estate, such as deeds, liens, deeds of trust, covenants, easements, leases, plats, and surveys. Other examples of the types of documents that may be recorded include community property agreements; certain notices; divorce decrees; and foreign birth, marriage, and death certificates. There is no comprehensive list of the types of documents that can be recorded.

Generally, the county auditor will accept a document for recording as long as the document meets the formatting requirements, and the appropriate fees and surcharges are paid. County auditors do not review recorded documents for content accuracy or legality.

Fees and Surcharges. Fees for recording a document are set by statute, collected by the county auditors, and distributed to certain funds and programs. There is a \$5 fee for recording the first page of a document and an additional \$1 fee for recording each additional page of a document.

In addition to the document recording fees, there are a number of document-recording surcharges created by statute, including surcharges to support preservation and accessibility of permanent documents, the State Library Operations, the State Library Archives Building, urban planning, and affordable housing. These surcharges generally apply to all documents recorded, although some surcharges include exceptions for certain types of documents.

County auditors collect and distribute the following housing surcharges:

- a \$13 Affordable Housing for All surcharge;
- a \$62 Local Homeless Housing and Assistance surcharge;
- an \$8 additional Local Homeless Housing and Assistance surcharge; and
- a \$100 housing surcharge enacted in 2021.

For standard documents with no applicable exemptions, the total document recording fee for the first page, including the surcharges, is around \$200.

Beginning January 1, 2024, the county auditor started collecting a Covenant Homeownership Program (CHP) assessment of \$100 for each document recorded, with certain exceptions. This assessment is in addition to any other charge, surcharge, or assessment allowed by law. The county auditor may retain up to 1 percent of the moneys for collection costs and must remit the remainder to the state treasurer to be deposited in the Covenant Homeownership Account (CHA).

The CHP assessment does not apply to assignments or substitutions of previously recorded deeds of trust; documents recording a birth, marriage, divorce, or death; any recorded documents otherwise exempted under state law; marriage licenses issued by the county auditor; documents recording a name change order; or documents recording a federal, state,

county, city, water-sewer district, or wage lien, or satisfaction of lien.

The statute related to county auditor's fees is amended to include a reference to the new CHP assessment.

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 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. The state sales and use tax rate is 6.5 percent.

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; and 1.5 percent for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities. A business does not have to file an annual B&O tax return if the business does not owe other taxes or fees to the Department of Revenue (DOR) and has annual gross proceeds of sales, gross income, or value of products for all B&O tax classifications of less than \$28,000 per year, or less than \$46,667 if at least 50 percent of its taxable income is from services or activities not classified elsewhere.

Tax Preference Performance Statements. State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Washington has over 650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics the Joint Legislative Audit and Review Committee can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after ten years unless an alternative expiration date is provided.

Expiration of Tax Preferences. If a new tax preference created after August 1, 2013, does not have an expiration date in the legislation, it will automatically expire ten years after the effective date.

**Summary of Bill:** The definition of the term "abstract, title insurance, and escrow services" is modified for the purpose of calculating sales tax to not include amounts received by a person for remittance to a county filing office as either a document filing or

recording fee. These same amounts for remittance to a county filing office are made to be not subject to the B&O tax. This tax preference is exempt from having to complete a tax preference performance statement. The tax preference is permanent and exempt from having to be reauthorized in ten years. The tax preference also applies prospectively and retroactively to disputed assessments pending before the DOR, Board of Tax Appeals, or any court of law.

**Appropriation:** None.

**Fiscal Note:** Requested on January 8, 2024.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: The filing fees have been increased multiple times. Pyramiding taxes on taxes on taxes does not seem to be an effective way of taxing people. This issue came about recently with a new policy that the Department of Revenue came up with. This is a deviation from how this was previously done. We are trying to clarify why this departure has happened. Several of the larger title companies has charged a customer a sales tax for recording fees. This bill clarifies what the industry's understanding has always been. Washington is one of the highest cost states for recording fees, and adding sales tax to the costs for customers just adds on top of this. Attorneys are exempt from having to pay taxes, so should Title and Escrow companies. There is likely a bill for the 2025 session with the support of industry on this topic.

**Persons Testifying:** PRO: Senator Mark Schoesler, Prime Sponsor; Jesse Hamilton, Pioneer Title Company; Sean Holland, Washington Land Title Association.

**Persons Signed In To Testify But Not Testifying:** No one.