

Multiple Agency Fiscal Note Summary

Bill Number: 5622 SB	Title: Streamlined sales & use tax
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Estimated Cash Receipts

Agency Name	2005-07		2007-09		2009-11	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	(3,136,000)	(3,136,000)	(245,000)	(245,000)	11,022,000	11,022,000
Total \$	(3,136,000)	(3,136,000)	(245,000)	(245,000)	11,022,000	11,022,000

Local Gov. Courts *						
Local Gov. Other **	Fiscal note not available					
Local Gov. Total						

Estimated Expenditures

Agency Name	2005-07			2007-09			2009-11		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	1.2	277,000	277,000	.7	157,000	157,000	.7	157,000	157,000
Total	1.2	\$277,000	\$277,000	0.7	\$157,000	\$157,000	0.7	\$157,000	\$157,000

Local Gov. Courts *									
Local Gov. Other **	Fiscal note not available								
Local Gov. Total									

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Prepared by: Doug Jenkins, OFM	Phone: 360-902-0563	Date Published: Preliminary 2/22/2005
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* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

Department of Revenue Fiscal Note

Bill Number: 5622 SB	Title: Streamlined sales & use tax	Agency: 140-Department of Revenue
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2006	FY 2007	2005-07	2007-09	2009-11
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax		(2,836,000)	(2,836,000)	355,000	11,622,000
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax		(300,000)	(300,000)	(600,000)	(600,000)
Total \$		(3,136,000)	(3,136,000)	(245,000)	11,022,000

Estimated Expenditures from:

	FY 2006	FY 2007	2005-07	2007-09	2009-11
FTE Staff Years	1.7	0.7	1.2	0.7	0.7
Fund					
GF-STATE-State 001-1	198,500	78,500	277,000	157,000	157,000
Total \$	198,500	78,500	277,000	157,000	157,000

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.

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Agency Preparation: Lorrie Brown	Phone: 360-570-6081	Date: 02/22/2005
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OFM Review: Doug Jenkins	Phone: 360-902-0563	Date: 02/22/2005

Part II: Narrative Explanation

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

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

Note: This fiscal note reflects a change to the revenue impacts.

Part I - Definitions

Section 101. This section adopts six Streamlined Sales and Use Tax Agreement (SSTA) definitions for terms that are used in the registration and monetary allowance provisions. The definitions are "Agreement," "Certified automated system," "Certified service provider," "Model 1 Seller," "Model 2 Seller," and "Model 3 Seller." It also defines "member states" and "source."

Part II - Registration

Section 201. This section allows sellers to appoint an agent to register the seller with the state. The seller or its agent must provide the state with a copy of the written agency agreement upon request.

Section 202. This section allows sellers who agree to collect and remit sales and use tax under the Agreement to register with the Department of Revenue through an on-line system authorized under the SSTA.

Part III - Monetary Allowance & Vendor Compensation

Section 301. This section requires the Department to adopt by rule monetary allowances for certified service providers, Model 2 sellers, Model 3 sellers, and all other sellers as compensation for their costs of collection. In adopting the monetary allowances, the Department may be guided by the provisions for monetary allowances adopted by the governing board of the SSTA to determine the amount of the allowances and the conditions under which they are allowed. The monetary allowances must be reasonable and provide adequate incentive for certified service providers and sellers to collect and remit under the Agreement. For Model 2 and 3 sellers, and other sellers that are not Model 1 or Model 2 sellers, the monetary allowance will be limited to twenty-four months following a seller's registration under the Agreement.

Section 302. This section allows the Department to adopt by rule vendor compensation for sellers collecting and remitting sales and use taxes to the state. Vendor compensation is a portion of the tax collected by a seller that may be retained in order to offset the seller's cost of collecting the tax. Vendor compensation may include a base rate or a percentage of tax revenue collected by the seller, and may vary by type of seller. The Department may be guided by studies and analyses of the cost of collection of sales and use taxes and by vendor compensation provided by other states. A seller shall not be entitled to vendor compensation while the seller or its agent receives a monetary allowance as described above. This section is effective when the United States Congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

Part IV - Amnesty

Section 401. This section provides that no assessment for past uncollected sales and use taxes, penalties, or interest due may be made by the Department against a formerly unregistered seller who, within twelve months of the effective date of this state's participation in the Agreement, registers under the Agreement, and collects and remits sales and use taxes to the state for a period of at least thirty-six months from the date of registration.

The provisions of this section do not apply to:

- a. Any seller who has received notice from the Department of the commencement of an audit.
- b. Sales and use tax collected by the seller, but not remitted to the Department.
- c. The seller's own liability for sales and use taxes in the seller's capacity as a buyer.

Part V - Sourcing

Sections 501 and 502. These sections adopt the SSTA uniform general sourcing rules effective July 1, 2006. Sourcing determines the place of sale, and therefore, what jurisdiction is entitled to the local sales tax generated from a particular transaction. These new sourcing rules will have minimal impact on the amount of revenue generated from sales and use taxes at the state level, but will create significant revenue shifts between local jurisdictions. The revenue shifts result from changes in the place of sale under the bill. Some transactions that are sourced to one jurisdiction under current law would be sourced to another jurisdiction under the bill. If any local jurisdiction has reduced collections during a fiscal year due to SSTA sourcing and the loss is not fully compensated or mitigated by the state as provided in Part IX, the current sourcing rules will go into effect the first day of the following quarter.

Under current law, local sales and use taxes are sourced according to the following rules:

- a. Sales tax from the sale of goods is sourced to the retail outlet at or from which delivery is made.
- b. Sales tax from the sale of a service, with or without a sale of goods, is sourced to the place where the service is primarily performed.
- c. Sales tax from the lease or rental of goods is sourced to the place of first use. In the case of short-term rentals, this is the place of business of the lessor. In the case of rentals or leases involving periodic payments, this is the primary place of use by the renter or lessee for each payment period.
- d. Use tax from any type of transaction is sourced to the place of first use.

The Agreement excludes purchases of motor vehicles, trailers, semitrailers, aircraft, watercraft, modular homes, and manufactured and mobile homes from the Agreement's sourcing rules. Accordingly, the bill does not change the sourcing of these purchases.

However, all other transactions are to be sourced under the Agreement in the following order:

- a. Rule #1 - If a good or service is received at the business location of the seller, the sales tax is sourced to that business location.
- b. Rule #2 - If the good or service is not received at the business location of the seller, the sales tax is sourced to the location where receipt occurs, if known by the seller.
- c. Rule #3 - If Rules 1 and 2 do not apply, the sales tax is sourced to the address indicated for the purchaser in records normally maintained by the seller, if use of this address by the seller does not constitute bad faith.
- d. Rule #4 - If Rules 1, 2, and 3 do not apply, the sales tax is sourced to the address for the purchaser obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if use of this address by the seller does not constitute bad faith.
- e. Rule #5 - If 1, 2, 3, and 4 do not apply, the sales tax is sourced to the address from which delivery was made.

Part VI. Confidentiality & Privacy Protections

Section 601. This section adopts the SSTA confidentiality and privacy protections for persons using certified service providers. With very limited exceptions, a certified service provider is required to perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers. The Department will provide public notification to consumers of its practices relating to the collection, use, and retention of personally identifiable information. Personally identifiable information will not be retained any longer than required to ensure the validity of exemptions. This section may be enforced by petitioning the superior court of Thurston County for injunctive relief.

Part VII. Taxability Matrix

Section 701. This section requires the Department to complete the taxability matrix under the SSTA and to provide notice of changes in the taxability of products or services listed in the matrix. Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the Department in the taxability matrix.

Part VIII. Delivery Charges

Sections 801 and 802. These sections allow sellers to apportion and apply retail sales or use tax to only that portion of delivery charges allocated to the sale of taxable tangible personal property when a shipment consists of both taxable and nontaxable tangible personal property. These sections provide two methods to allocate the delivery charges. One method is based on weight; the other method is based on selling price.

Part IX. Sourcing Mitigation

Section 901. This section states that participation in the national streamlined sales and use tax agreement benefits the state, all local taxing jurisdictions and its retailing industry by increasing state and local revenues, improving the state's business climate, and simplifying the state's tax structure. Participation is a matter of statewide concern and is in the best interests of the state, the general public and all local jurisdictions that impose a sales tax. Participation requires changes in sourcing and shifts in local revenues.

Changes in sourcing may have negative consequences for industry sectors such as warehousing and manufacturing, as well as for jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land-use policy decisions based on origin sourcing.

It is in the best interest of the state and local jurisdictions to fully mitigate adverse effects of sourcing changes.

The Legislature intends that the streamlined sales and use tax mitigation account established in section 902 replace the net local sales tax revenue reductions due to sourcing. The Department of Revenue would benefit from an oversight committee to provide assistance in assessing and evaluating mitigation formulae annually.

Section 902. The streamlined sales and use tax agreement mitigation account is created in the state treasury. Funds are used for mitigating financial impacts related to sourcing. The Treasurer transfers money from the general fund into the account as prescribed in section 903.

Starting July 1, 2006, the Treasurer, as directed by the Department of Revenue, distributes funds in the streamlined sales and use tax agreement mitigation account without appropriation to local jurisdictions in accordance with section 903.

"Net loss" is defined to mean the local sales and use tax revenue loss to taxing jurisdiction due to sourcing offset by gains resulting from Washington' membership in the Agreement.

Section 903. Starting July 1, 2006, the Treasurer transfers \$32 million from the general fund into the streamlined sales and use tax mitigation account. Each July 1st after that, the Treasurer transfers an amount equivalent to the Department of Revenue's estimate of cumulative net losses to local taxing jurisdictions.

Each fiscal year, the Department estimates the net loss for each local jurisdiction using data from tax return information and tax collections from fiscal years before and after July 1, 2006. Using the estimates, the Department develops formulae to make distributions from the mitigation account to mitigate the net loss to local jurisdictions resulting from this act. The Department evaluates and revises the formulae annually.

The Department convenes an oversight committee to assist in the development and revision of the formulae. The committee includes one representative from a positively impacted city, one from a negatively impacted city, one from a positively impacted county, one from a negatively impacted county, one from a positively impacted transportation

authority, and one from a negatively impacted transportation authority.

The Treasurer, at the direction of the Department, makes distributions from the mitigation account to negatively impacted jurisdictions in an amount representing their net loss as determined by the formulae developed by the Department. Distributions are made at the same time as regular sales tax distributions, which is monthly.

If a distribution exceeds the amount of actual loss, the excess shall be deducted from local sales and use tax collected and the deducted amount deposited in the mitigation account.

Administrative Procedure Act rulemaking does not apply to this section. Determinations by the Department of amounts to be distributed by the Treasurer are final and not appealable.

Section. 904. For purposes of gathering data to develop the formulae required by section 903, the Department may require retailers to report additional information. This may be required no more than once every six months. The report is due within thirty days from when transmitted to the taxpayer by the Department.

If the report is not received by the due date, the taxpayer is penalized \$500, for quarterly and annual filers, or the greater of \$500 or one percent of the sales tax reported on the taxpayer's return for the month the report is due for monthly filers.

If the report is received by the due date, the taxpayer receives a credit of \$500 against its business and occupation tax liability. This credit may not be carried over to subsequent calendar years and may not be paid as a refund.

The Department may waive this penalty if the failure to report by the due date resulted from circumstances beyond the control of the taxpayer.

Section. 905. RCW 82.32.330 is amended to permit the disclosure to local jurisdictions of tax information used to determine the increase or decrease in the distribution of local tax to that jurisdiction.

Part X. Miscellaneous Provisions

Sections 1001 through 1004. These sections provide that sourcing changes and sourcing mitigation are effective July 1, 2006. The amnesty provision is effective upon Washington's membership in the SSTA. The vendor compensation provision is effective when the United States Congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS/DATA SOURCES

Assumes the intent of the bill is to fully mitigate jurisdictions that would experience a net loss. The amount needed for this is estimated to be \$27.7 million instead of \$32 million specified in the section 903 of the bill. The \$27.7 million reflects 11 months of impact to jurisdictions due to the July 1, 2005 implementation date.

The bill is assumed to increase revenues because retailers that have nexus (i.e., taxable presence) in other member states and sales (but no nexus) in Washington state, would have multiple incentives to voluntarily register under the SSTA. Revenues in Washington State would increase because these firms would collect sales tax in all SSTA member states.

The incentives for multi-state retailers to voluntarily register under the SSTA include 1) the amnesty provision, 2) access to certified service providers or other technology models for simplified and combined multi-state filing and 3) monetary

allowances and vendor compensation to offset the cost of sales tax collection.

The group of firms that would have any incentive to voluntarily register under the SSTA consists of multi-channel (combination remote and storefront) firms that have either clear or uncertain nexus in at least one (but not all) of the states expected to become an initial member of the SSTA, but do not have nexus in Washington state. A percentage of this group is assumed to voluntarily register under the SSTA.

Uncollected Washington sales tax on sales by multi-state multi-channel remote sellers is estimated to be \$80 million in state tax in FY 2002. This estimate is based on data from Department of Commerce, the Sourcing Study survey, and industry data. A percentage of the \$80 million represents sales by firms with nexus in at least one of the member states.

This percentage is determined by taking a very large sample of retailers, estimating the number of states each retailer sells into, and then, given the number of states that they sell into, calculating the probability that they sell into one of the member states. Each firm's probability is multiplied by their sales, summed and divided by their total sales, to estimate the total percentage sold into the member states. This percentage is about 38 percent.

The data used is micro-data from an income tax state with which Washington shares data. It contains data on each multi-state retailer including the retailers' sales factors used for state income tax apportionment purposes. The sales factors are used to infer the number of states that they sell into. An underlying assumption is that retailers with a presence in the sample state are representative of firms with physical presences in all other states. Personal income in the sample state is about 2 percent of national income. The initial SSTA member states represent approximately 20 percent of national income. The probability of selling into at least one member state is calculated to be the probability of selling to the 20 percent of national personal income the member states represent. Therefore, an underlying assumption is that multi-state retail sales parallel personal income.

Actual participation in the SSTA is determined by measuring the probability of firms receiving the other benefits of participation in addition to amnesty. As indicated above, the major benefits of voluntary registration under SSTA are use of technology models for simplified consolidated filing, monetary allowances, and vendor compensation. The estimate assumes that participants would be firms that benefit from all of these major benefits. The pool of potential firms is reduced to firms that have clear nexus in at least two member states and would benefit from vendor compensation.

It is assumed that the approximately largest 20 percent of firms would have actual costs of collections lower than a weighted average monetary allowance rate (based on the findings from the Department of Revenue retailer cost of collections study). It is assumed that the monetary allowance rate would be the weighted average.

Growth rates to 2006 are based on Department of Commerce estimates of remote sales. According to Department of Commerce, remote sales have grown about 25 percent over the last few years. This growth rate is used between 2002 and 2006. In later years the growth rate is decreased to 10 percent, assuming a slowing of growth in remote sales.

Monetary allowance, assumed to be 1 percent, is netted from the estimate. Monetary allowance is assumed to apply only to new revenue from the amnesty provision.

Section 302 gives the Department of Revenue the option to provide vendor compensation to retailers. Section 1001 provides that the Department could exercise this option if Congress acted to require retailers to collect sales tax on remote sales. The state sales tax loss from sales by remote sellers into Washington is estimated to be \$607 million in FY 07. Most of the states that currently have vendor compensation have rates between 0.5 percent and 1 percent of sales tax collections. The Department of Revenue's retailer cost of collections study estimated that the average cost for Washington retailers was a little less than 1 percent of sales tax collections. Using the range of 0.5 percent to 1 percent of sales tax collections, vendor compensation in FY 2007 is estimated to be between \$44 and \$88 million.

It is assumed that 600 firms would need to supply additional information in order for the Department of Revenue to estimate mitigation needs.

CURRENTLY REPORTING TAXPAYERS (Impact for taxpayers who are known or estimated to be currently paying the tax in question)

Would decrease General fund revenues by an estimated \$3,136,000 in FY 07. The loss is the net of \$27.7 million that would be transferred from the general fund to the mitigation account in FY 07, a gain of \$25.2 million from the amnesty provision, and a B&O loss of \$300,000 from the B&O credit for taxpayers that provide additional information.

The amount transferred to the mitigation account would be dispersed annually to local jurisdictions that would experience a net negative loss in revenues due to the change in sourcing.

Local government would gain an additional estimated \$8 million in FY 07.

TOTAL REVENUE IMPACT:

New Fund, Mitigation Account

	Transfers in	Dispersals to Local Govts.
FY 2006 -	\$ 0	\$0
FY 2007 -	\$ 27,736	(27,736)
FY 2008 -	\$ 31,352	(31,352)
FY 2009 -	\$ 31,818	(31,818)
FY 2010 -	\$ 32,327	(32,327)
FY 2011 -	\$ 32,917	(32,917)

State Government (cash basis, \$000):

FY 2006 -	\$ 0
FY 2007 -	\$ (3,136)
FY 2008 -	\$ (1,402)
FY 2009 -	\$ 1,157
FY 2010 -	\$ 3,976
FY 2011 -	\$ 7,046

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

	From New Revenues	From Mitigation fund
FY 2006 -	\$ 0	\$0
FY 2007 -	\$ 8,000	27,736
FY 2008 -	\$ 9,000	31,352
FY 2009 -	\$ 10,000	31,818
FY 2010 -	\$ 11,000	32,327
FY 2011 -	\$ 12,000	32,917

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Should this legislation become law, the Department anticipates implementing the registration requirements of Sections 201 - 202 by shifting current resources to complete a one-time programming effort associated with scoping, planning, and writing computer programs. To accommodate the rule-making actions necessitated by this legislation, the Department will re-prioritize the rules agenda.

During FY 2006, the Department will incur costs of approximately \$198,500 to implement this legislation. Although the sourcing provisions of Sections 501 - 502 do not take effect until July 1, 2006, it will be necessary to provide information about sourcing changes to taxpayers before the effective date. \$80,000 represents printing and postage costs associated with

notifying taxpayers about the sourcing changes.

The Department would be required to do an annual study to determine the impact of the sourcing change on jurisdictions. It is assumed that the Department will get assistance as needed from jurisdictions. The Department will form an oversight committee to develop methodology and revise the formulae each year. Costs for development of the methodology to distribute the funds estimated to be \$118,500 in the first and \$40,000 each year thereafter to update data.

Assuming that Washington State will be a member state of the SSTA, the estimated annual share of the SSTA operating costs is \$38,500 beginning in FY 2007.

During the 2007-09 and 2009-11 Biennia, the Department will incur estimated ongoing costs of approximately \$157,000.

Without an appropriation to cover the expenditure impact, the Department may not be fully able to implement the legislation.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2006	FY 2007	2005-07	2007-09	2009-11
FTE Staff Years	1.7	0.7	1.2	0.7	0.7
A-	77.200	28,500	105,700	57,000	57,000
B-	19.300	7,100	26,400	14,200	14,200
E-	90.700	42,900	133,600	85,800	85,800
J-	11.300		11,300		
Total \$	\$198,500	\$78,500	\$277,000	\$157,000	\$157,000

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

Job Classification	Salary	FY 2006	FY 2007	2005-07	2007-09	2009-11
EXCISE TAX EXAMINER 3	41,520	0.4	0.4	0.4	0.4	0.4
INFO TECH APP SPEC 4	51,864	0.6		0.3		
OFFICE ASSISTANT SENIOR	26,988	0.1	0.1	0.1	0.1	0.1
RESEARCH ANALYST 2	34,932	0.3	0.2	0.2	0.2	0.2
TAX POLICY SPECIALIST 1	42,588	0.1	0.1	0.1	0.1	0.1
TAX POLICY SPECIALIST 3	58,656	0.3	0.1	0.2	0.1	0.1
Total FTE's		1.7	0.7	1.2	0.7	0.7

Part IV: Capital Budget Impact

NONE.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

To implement this legislation, it will be necessary to amend the following administrative rules:

WAC 458-20-101 (Tax registration and tax reporting)
WAC 458-20-141 (Duplicating industry and mailing bureaus)
WAC 458-20-145 (Local sales and use tax)
WAC 458-20-155 (Information and computer services)
WAC 458-20-158 (Florists and nurserymen)
WAC 458-20-17803 (Use tax on promotional material)
WAC 458-20-211 (Leases or rentals of tangible personal property, bailment's)
WAC 458-20-228 (Returns, remittances, extensions, interest, stay of collections)

The Department is currently in the process of either amending or initiating the rule-making process for Rules 155, 211, and 228 and will not incur additional costs for these rules. To the extent that Section 501 affects persons in the direct mail industry and consumers of promotional material, the Department will amend Rules 141 and 17803.

It will also be necessary to adopt a significant legislative rule addressing monetary allowances as provided by Section 301. If one of the two contingencies provided by Section 901(1) occurs and Section 302 takes effect, it will be necessary to amend the significant legislative rule to address vendor compensation.

Persons affected by the rule-making actions will include agents representing sellers, persons making sales at retail, and local governments.