

Multiple Agency Fiscal Note Summary

Bill Number: 2075 E S HB	Title: Excise taxation
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Estimated Cash Receipts

Agency Name	2009-11		2011-13		2013-15	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	(2,635,000)	(2,639,000)	(2,877,000)	(2,856,000)	(2,127,000)	(2,066,000)
Total \$	(2,635,000)	(2,639,000)	(2,877,000)	(2,856,000)	(2,127,000)	(2,066,000)

Local Gov. Courts *						
Local Gov. Other **		(50,491)		261,360		768,241
Local Gov. Total		(50,491)		261,360		768,241

Estimated Expenditures

Agency Name	2009-11			2011-13			2013-15		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	.5	92,000	92,000	.3	51,800	51,800	.3	51,800	51,800
Total	0.5	\$92,000	\$92,000	0.3	\$51,800	\$51,800	0.3	\$51,800	\$51,800

Local Gov. Courts *									
Local Gov. Other **									
Local Gov. Total									

Prepared by: Ryan Black, OFM	Phone: 360-902-0417	Date Published: Final
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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: 2075 E S HB	Title: Excise taxation	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

FUND	FY 2010	FY 2011	2009-11	2011-13	2013-15
GF-State-State 01 - Taxes 01 - Retail Sales Tax	(328,000)	169,000	(159,000)	826,000	2,425,000
GF-State-State 01 - Taxes 05 - Bus and Occup Tax	(925,000)	(1,551,000)	(2,476,000)	(3,703,000)	(4,552,000)
Performance Audit-State 01 - Taxes 01 - Retail Sales Tax	(8,000)	4,000	(4,000)	21,000	61,000
Total \$	(1,261,000)	(1,378,000)	(2,639,000)	(2,856,000)	(2,066,000)

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.7	0.3	0.5	0.3	0.3
Fund					
GF-STATE-State 001-1	66,100	25,900	92,000	51,800	51,800
Total \$	66,100	25,900	92,000	51,800	51,800

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.

Legislative Contact: Dean Carlson	Phone: (360)786-7305	Date: 04/15/2009
Agency Preparation: Steve Smith	Phone: 360-570-6080	Date: 04/15/2009
Agency Approval: Kim Davis	Phone: 360-570-6087	Date: 04/15/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 04/15/2009

Request # 2075-6-1

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 language in ESHB 2075, which removes the emergency clause and effective date of July 1, 2009. The engrossed bill provides a sales and use tax exemption for sales of audio and video programming by a cable company on a pay-per-program basis if the cable company is subject to a franchise fee on the revenue derived on the sales.

BACKGROUND:

Under current law, sales and use taxes apply to the sale and use of tangible personal property, including prewritten computer software; extended warranties; and certain enumerated services. The sales and use taxation of products furnished electronically (commonly referred to as "digital goods" or "digital products"), other than prewritten computer software, is not explicitly addressed in the statutes that impose sales and use taxes. The Department of Revenue (Department) takes the position that the sale or use of digital goods, where possession is transferred to the consumer, such as downloaded music, is subject to sales and use taxes under current law as tangible personal property.

Washington is a member of the Streamlined Sales and Use Tax Agreement (SSUTA). In September 2007, the SSUTA defined electronically delivered products as not being tangible personal property. As of January 1, 2010, to stay in compliance with the SSUTA, Washington may not continue to impose retail sales tax on the sale of certain specified digital products as the sale of tangible personal property. As of 2010, the SSUTA requires that retail sales and use taxes imposed on the purchase or use of specified digital products must be separately imposed from the general imposition of retail sales and use taxes on the purchase or use of tangible personal property. As of January 1, 2012, this requirement is extended to all other digital products.

SUMMARY OF THE BILL:

This bill imposes sales and use taxes on:

- 1) Digital goods, including the installing, repairing, altering, or improving of digital goods;
- 2) Digital codes;
- 3) Digital automated services; and
- 4) The service of furnishing access and use of prewritten computer software, where possession of the software is maintained by the seller or a third party.

For purposes of this fiscal note, digital goods, digital codes, and digital automated services will be collectively referred to as "digital products." In addition, the service of furnishing access and use of prewritten computer software, where possession of the software is maintained by the seller or a third party, will be referred to as "remote access software."

The bill defines "digital goods" to mean "sounds, images, data, facts, or information, or any combination thereof, transferred electronically." Examples include specified digital products, which are digital audio-visual works (movies), digital audio works (music), digital books, and other products transferred electronically. However, there are a number of products and services specifically excluded from this definition, including, but not limited to telecommunications services, computer software, internet access, and the representation of a personal service in electronic form.

"Digital automated services" are defined in the bill as "any service transferred electronically that uses one or more software applications." However, there are a number of services specifically excluded from this definition, including, but not limited to:

- a) Any service that primarily involves the application of human effort, and the human effort originated after the customer

requested the service;

- b) Telecommunications services;
- c) The internet and internet access;
- d) Remote access software;
- e) Certain financial services and transactions;
- f) Pari-mutuel wagering;
- g) Payment processing services;
- h) The dispensing of money or other physical items from a machine;
- i) Qualifying online educational programs;
- j) Travel agent services;
- k) Services that allow the person receiving the service to make online sales, but not the underlying sale of products and services; and
- l) Online classified advertising services.

A "digital code" is defined as "a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment." A digital code does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. A digital code also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value.

The taxes imposed in this bill on digital products apply regardless of the user rights granted by the seller, the method of obtaining the digital products, or whether the buyer is obligated to make continued payment as a condition of the sale.

The bill provides a number of exclusions and exemptions from the sales and use tax on digital products. The primary exclusions and exemptions are:

- 1) The sale or use of digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others (i.e., sales for resale);
- 2) The sale or use of digital products incorporated as an ingredient or component of a new product;
- 3) The sale or use of digital products or remote access software that will be made available free of charge for the use or enjoyment of others;
- 4) The sale or use of audio or video programming furnished by a radio or television broadcaster. This exemption does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service. However, the sale of such programming is exempt if the seller is subject to a franchise fee in this state under the authority of 47 U.S.C. § 542(a) on the gross revenue derived from the sale;
- 5) The sale or use by a business of standard digital information used solely for business purposes;
- 6) The use of digital products provided free of charge to the end user; and
- 7) The use of digital goods that are: (a) of a noncommercial nature, such as personal e-mail communications; (b) created solely for an internal audience; or (c) created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

The bill allows the apportioning of sales and use taxes on digital products and prewritten computer software, including remote access software, when these products and services are concurrently available for use by a business or other organization within and outside of this state. The amount of tax apportioned to this state is based on users in this state

compared to users everywhere. The Department may authorize or require an alternative method of apportionment.

This bill also provides that ownership of, or rights in, digital goods or digital codes residing on computer servers located in Washington does not establish substantial nexus for purposes of subjecting the owner to Washington State's taxing authority.

This bill also provides amnesty to taxpayers who did not collect or pay retail sales tax on digital goods before the effective date of the bill.

For purposes of business and occupation (B&O) tax, retail and wholesale sales of digital products and remote access software will be taxed at the same rate as the general wholesaling and retailing rates (0.471 percent for retail sales, and 0.484 percent for wholesale sales).

This bill has no effective date specified.

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

Data comes from a wide variety of sources including Department tax records, the Washington Input-Output model, the Implan Input-Output model for Washington, the U.S. Census Bureau's E-Stats and economic census, and data published by the following: eMarketer, iSupply, Internet Retailer, the International Federation of the Phonographic Industry (IFPI) the Online Publishers Association, Strategy Analytics, the International Digital Publishing Forum, and others.

There is much uncertainty concerning the magnitude and growth of commerce in goods and services that are delivered digitally or in electronic format. Estimates of future collections assume historical departmental enforcement practices and compliance factors.

It is assumed that this bill will take effect on July 25, 2009. This estimate reflects ten months of collections in Fiscal Year 2010.

REVENUE ESTIMATES

Under this bill, some services that are currently subject to B&O tax under the "service and other activities" classification at a rate of 1.5 percent will be taxed as retail or wholesale sales at a rate of 0.471 percent or 0.484 percent. As a result, B&O tax collections will decrease. However, this bill expands the tax base for sales and use tax purposes, which will offset part of the reduced B&O tax collections.

State general fund revenues will decline by \$1.3 million in Fiscal Year 2010.

Local sales tax receipts will decline by \$105,000 in Fiscal Year 2010.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):
FY 2010 - \$ (1,261)
FY 2011 - \$ (1,378)

FY 2012 - \$ (1,394)
 FY 2013 - \$ (1,462)
 FY 2014 - \$ (1,235)
 FY 2015 - \$ (831)

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

FY 2010 - \$(105)
 FY 2011 - \$ 54
 FY 2012 - \$ 110
 FY 2013 - \$ 154
 FY 2014 - \$ 291
 FY 2015 - \$ 485

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

To implement this legislation the Department will incur costs of \$66,100 in Fiscal Year 2010. These costs are for increased telephone calls from taxpayers, updating web and printed versions of materials dealing with sales and use tax to reflect what goods are subject to tax, and additional time required in audits of taxpayers selling digital products and remote access software. The Department will amend two administrative rules. Time and effort equates to 0.7 FTE.

The Department will incur ongoing costs of \$25,900 in Fiscal Year 2011 and \$51,800 in the 2011-2013 and 2013-2015 Biennia. These costs are for additional time required in audits of taxpayers selling digital products and remote access software. Time and effort equates to 0.33 FTE.

Due to the effective date of this legislation, the Department will incur costs of \$42,800 in Fiscal Year 2009. These costs are for the updating of web and printed information for taxpayers concerning the application of sales and use tax to digital products and remote access software. A special notice will be created and mailed to approximately 35,000 taxpayers identified as potential sellers of digital products or remote access software. The cost of printing and mailing the special notice is \$26,300. Time and effort equates to 0.2 FTE. These Fiscal Year 2009 costs are not reflected in this fiscal note.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.7	0.3	0.5	0.3	0.3
A-Salaries and Wages	37,500	15,900	53,400	31,800	31,800
B-Employee Benefits	9,400	4,000	13,400	8,000	8,000
E-Goods and Services	12,300	4,500	16,800	9,000	9,000
G-Travel	1,600	1,200	2,800	2,400	2,400
J-Capital Outlays	5,300	300	5,600	600	600
Total \$	\$66,100	\$25,900	\$92,000	\$51,800	\$51,800

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 2010	FY 2011	2009-11	2011-13	2013-15
HEARINGS SCHEDULER	32,688	0.0		0.0		
REVENUE AUDITOR 2	48,164	0.5	0.3	0.4	0.3	0.3
TAX INFO SPEC 4	54,505	0.1		0.1		
TAX POLICY SP 2	61,628	0.0		0.0		
TAX POLICY SP 3	69,756	0.1		0.1		
WMS BAND 3	88,546	0.0		0.0		
Total FTE's	355,287	0.7	0.3	0.6	0.3	0.3

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.

Should this legislation become law, the Department will use the standard process to amend WAC 458-20-155, titled: "Information and computer services" and WAC 458-20-15501, titled: "Computer hardware, computer software, information service, and computer services". Persons affected by this rule-making would include businesses that sell and businesses and individuals who purchase digital products and remote access software.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 2075 E S HB	Title: Excise taxation
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Sales and use tax revenue impacts to cities, counties and special districts.
- Counties: Same as above
- Special Districts: Same as above
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:

Estimated revenue impacts to:

Jurisdiction	FY 2010	FY 2011	2009-11	2011-13	2013-15
City	(40,052)	20,598	(19,454)	100,702	296,003
County	(34,324)	17,652	(16,672)	86,301	253,673
Special District	(29,574)	15,209	(14,365)	74,357	218,565
TOTAL \$	(103,950)	53,459	(50,491)	261,360	768,241
GRAND TOTAL \$					979,110

Estimated expenditure impacts to:

Jurisdiction	FY 2010	FY 2011	2009-11	2011-13	2013-15
City					
County					
Special District					
TOTAL \$					
GRAND TOTAL \$					0

Part III: Preparation and Approval

Fiscal Note Analyst: Jaime Kaszynski	Phone: 360-725-2717	Date: 04/16/2009
Leg. Committee Contact: Dean Carlson	Phone: (360)786-7305	Date: 04/15/2009
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 04/16/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 04/16/2009

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This bill revises the definition of products and services subject to sales and use, and state business and occupation taxes to include digital products that are electronically transferred to the customer.

Sec. 101 Declaration of legislative intent.

Sec. 201 Definitions including digital goods, digital products and electronically transferred.

Sec. 301 - 305 Adds to those goods subject to sales and use taxation of digital products.

Sec. 401 – 413 Amend statutes related to the state business and occupation (B&O) tax for businesses engaged in sales at retail or wholesale of digital goods, digital codes, digital automated services, or other services.

Sec. 501 – 515 Provides for sales tax exemptions for certain types of digital products such as digital code under specific circumstances, digital provision of audio or video programming by radio or television broadcasters, electronically conveyed public records of state or local agencies (Sec. 505), newspapers and magazines transmitted electronically under specific circumstances, transfers or sales of digital goods of a private or public utility.

Sec. 601 – 623 Exempts from use taxation certain types of use of digital code or digital products such as digital code used for products exempt other sales tax, digital services provided free of charge, personal property donated to local government, use of personal property and services of public corporations, commissions or authorities under RCW 35.21.660 or 730 to eligible entities under RCW 82.04.615.

Sec. 701 – 704 Revises sales and use tax source statutes to include digital products.

Sec. 1001 Provides an amnesty for the failure to collect sales and use taxes accrued before the effective date of the bill.

DIFFERENCES BETWEEN CURRENT AND PREVIOUS BILL VERSION

The current version removes the emergency clause and effective date of July 1, 2009, and provides a sales and use tax exemption for sales of audio and video programming by a cable company on a pay-per-program basis if the cable company is subject to a franchise fee on the revenue derived on the sales.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

Sales taxes are collected by the state so local governments would have no expenditures associated with implementation. Local governments collect local B&O taxes. Definitions are uniform statewide under a model act. Revisions in state statute definitions also impact local programs. The 40 cities that collect local B&O taxes may require some changes to public information and forms (primarily electronic) to incorporate changes in the definition of which businesses and products are taxed. These costs are assumed to be negligible.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

The bill would have a moderate (greater than \$50,000 per year) impact on local government revenue or revenue authority. Local government revenue from sales and use taxes would decrease by (\$105,000) in 2010, but increase in subsequent years, rising by \$54,000 in 2011 and eventually increasing by \$485,000 in 2015.

Forty cities collect local business and occupation taxes on gross receipts. Unlike state B&O taxes, those collected by cities would not be significantly impacted by this bill. Local B&O tax rates are established in sections of RCW that are not amended by this bill, and are already capped by statute at a lower rate than those provided in this bill.

ASSUMPTIONS AND METHODOLOGY

Department of Revenue fiscal note provides assumptions for sales and use tax impacts. The distributions in this note for cities, counties, and special districts are based on DOR data for local sales and use tax distributions from September to December 2008. Prior months were not

used because they represent tax receipts prior to the effective date of streamlined sales tax. In addition, mitigation payments are not factored into this distribution. This results in a distribution of 33.02 percent to counties, 38.53 percent to cities and 28.45 percent to special districts. The 1 percent DOR administrative fee has also been deducted.

SOURCES

Association of Washington Cities

Department of Revenue fiscal note

Department of Revenue, Tax Manual, January 2007

Joint Legislative Transportation Committee, Transportation Resource Manual, January 2007

State Auditor's Office, Local Government Financial Reporting System