Multiple Agency Fiscal Note Summary

Bill Number: 3191 S HB	Title: Excise tax laws

Estimated Cash Receipts

Agency Name	2009-11		2011-13		2013-15	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	783,426,000	784,991,000	1,649,752,000	1,653,696,000	1,975,185,000	1,979,863,000
Department of Licensing	Non-zero but indeterminate cost. Please see discussion."					
Department of Transportation	0	(26,000)	0	(54,000)	0	(54,000)
Total $	**783,426,000**	**784,965,000**	**1,649,752,000**	**1,653,642,000**	**1,975,185,000**	**1,979,809,000**

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

Estimated Expenditures

Agency Name	2009-11			2011-13			2013-15		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Office of Financial Management	.1	28,849	28,849	.0	0	0	.0	0	0
Department of Revenue	20.9	4,445,400	4,445,400	23.0	3,789,700	3,789,700	18.1	2,919,500	2,919,500
Department of Licensing	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Health	.0	0	0	.0	0	0	.0	0	0
Department of Transportation	.0	0	0	.0	0	0	.0	0	0
Total	**21.0**	**$4,474,249**	**$4,474,249**	**23.0**	**$3,789,700**	**$3,789,700**	**18.1**	**$2,919,500**	**$2,919,500**

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

Estimated Capital Budget Impact

Agency Name						
Total $						

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projeciton showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

FNPID 26882

Prepared by: Ryan Black, OFM	**Phone:** 360-902-0417	**Date Published:** Preliminary

* See Office of the Administrator for the Courts judicial fiscal note

** See local government fiscal note

FNPID 26882

Individual State Agency Fiscal Note

Bill Number: 3191 S HB	Title: Excise tax laws	Agency: 105-Office of Financial Management

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

ACCOUNT					
Total $					

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.0	0.2	0.1	0.0	0.0
Account					
General Fund-State 001-1	0	28,849	28,849	0	0
Total $	0	28,849	28,849	0	0

Estimated Capital Budget Impact:

Total $						

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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.
- [X] 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:		Phone:	Date: 03/04/2010
Agency Preparation:	Stephanie Lidren	Phone: 360-902-3056	Date: 03/05/2010
Agency Approval:	Aaron Butcher	Phone: 360-902-0406	Date: 03/05/2010
OFM Review:	Cheri Keller	Phone: 360-902-0563	Date: 03/05/2010

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.

Section 1608 of the bill directs the department of health, with the assistance of the department of revenue and the office of financial management, to study this issue by examining the historic, current, and future trends and data, including but not limited to which products are consumed, by which age group, and how the products were acquired, beginning with the year 2000. A report shall be submitted to the house of representatives and senate fiscal and health care committees by December 1, 2010.

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.

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.

.25 FTE-Senior Forecaster, $96,000/yr to (a) participate fully in the study; (b) help analyze the data and the historic, current, and future trends; and (c) help prepare the written report due to the legislature on December 1, 2010. The funding would likely be necessary through the 2011 legislative session so that the person that worked on the study would be available during the session to answer questions about the study.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years		0.2	0.1		
A-Salaries and Wages		18,000	18,000		
B-Employee Benefits		4,149	4,149		
C-Personal Service Contracts					
E-Goods and Services		4,500	4,500		
G-Travel		450	450		
J-Capital Outlays		1,750	1,750		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
Total:	$0	$28,849	$28,849	$0	$0

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
Forecast Analyst	96,000		0.2	0.1		
Total FTE's	96,000		0.2	0.1		0.0

Part IV: Capital Budget Impact

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.

Department of Revenue Fiscal Note

Bill Number: 3191 S HB	Title: Excise tax laws	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2010	FY 2011	2009-11	2011-13	2013-15
GF-State-State 01 - Taxes 01 - Retail Sales Tax	37,832,000	246,369,000	284,201,000	553,290,000	649,306,000
GF-State-State 01 - Taxes 05 - Bus and Occup Tax	46,749,000	329,189,000	375,938,000	872,043,000	1,099,083,000
GF-State-State 01 - Taxes 25 - Cigarette Tax	14,737,000	88,423,000	103,160,000	172,853,000	171,970,000
GF-State-State 01 - Taxes 26 - Other Tobacco Tax	97,000	8,028,000	8,125,000	26,985,000	27,518,000
GF-State-State 01 - Taxes 36 - PUD Privilege Tax	182,000	1,091,000	1,273,000	2,248,000	2,339,000
GF-State-State 01 - Taxes 57 - Real Estate Excise	767,000	9,962,000	10,729,000	22,333,000	24,969,000
Publ Works Assist-State 01 - Taxes 57 - Real Estate Excise	51,000	659,000	710,000	1,477,000	1,653,000
Educ Legacy Trust-State 01 - Taxes 25 - Cigarette Tax	24,000	140,000	164,000	1,096,000	1,452,000
City County Asst-State 01 - Taxes 57 - Real Estate Excise	13,000	185,000	198,000	418,000	466,000
Performance Audit-State 01 - Taxes 01 - Retail Sales Tax	66,000	427,000	493,000	953,000	1,107,000
Total $	100,518,000	684,473,000	784,991,000	1,653,696,000	1,979,863,000

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	9.0	32.7	20.9	23.0	18.1
Account					
GF-STATE-State 001-1	1,547,300	2,898,100	4,445,400	3,789,700	2,919,500
Total $	1,547,300	2,898,100	4,445,400	3,789,700	2,919,500

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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:

- [X] 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.
- [X] Requires new rule making, complete Part V.

Legislative Contact:		Phone:	Date: 03/04/2010
Agency Preparation:	Valerie Torres	Phone: 360-570-6084	Date: 03/06/2010
Agency Approval:	Don Gutmann	Phone: 360-570-6073	Date: 03/06/2010
OFM Review:	Ryan Black	Phone: 360-902-0417	Date: 03/06/2010

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.

This bill generates additional state revenues by: (1) expanding the nexus standards for the state business and occupation (B&O) tax; (2) strengthening the Department of Revenue's ability to challenge abusive tax avoidance transactions; (3) closing loopholes; (4) narrowing and eliminating certain tax preferences and preferential tax treatment; (5) replacing the existing aircraft excise tax with a new tax based on value; (6) expanding the Department of Revenue's ability to collect unpaid tax debts from defunct corporations and other artificial entities; and (7) increasing tax on cigarettes, tobacco products, and selected services.

Part I - Minimum Nexus Standards

Part I of this bill would establish, for B&O tax purposes, nexus standards in statute and a single sales factor apportionment method for many service businesses and businesses receiving royalty income from the use of intangible property in this state.

BACKGROUND:

A tax on businesses engaging in interstate commerce is valid under the Commerce Clause of the United States Constitution as long as it:

(1) Is applied to an activity with a substantial nexus with the taxing state;
(2) Is fairly apportioned;
(3) Does not discriminate against interstate commerce; and
(4) Is fairly related to the services provided by the state.

This part relates to the nexus and apportionment requirements.

With respect to nexus, Washington does not at present impose B&O tax on businesses that conduct business in this state unless they have a physical presence in the state, such as tangible personal property or real property, or have either employees or non-employee representatives enter the state for business reasons. However, a number of states have successfully asserted that nexus is established by intentionally entering the state's marketplace to engage in business without physically entering the state. This is sometimes referred to as "economic nexus."

At least thirty states currently apply some form of economic nexus, and case law trends have shown a strong move toward judicial approval of economic nexus standards for the imposition of taxes on business income. It is important to note that the constitutionality of economic nexus is not definitively settled. Some tax practitioners argue that physical presence is required by the U.S. Constitution for all state taxes, but the vast majority of state case law upholds economic nexus for business activity taxes. The federal courts have not ruled directly on the issue, but the U.S. Supreme Court has refused on at least six occasions to review state court rulings sustaining economic nexus.

With respect to apportionment, most service businesses that engage in business both within and without Washington are eligible to use a cost apportionment method. The cost apportionment method assigns a portion of worldwide service income to Washington based on a ratio of the cost of doing business in Washington as compared to the total cost of doing business worldwide. Financial institutions use a three-factor apportionment formula, which is the average of three ratios: (1) property in Washington compared to property everywhere, (2) payroll in Washington compared to payroll everywhere, and (3) receipts sourced to Washington compared to worldwide receipts. Royalty income is not apportioned in this state. Rather, royalties are allocated to the domicile of the taxpayer. Businesses that are domiciled outside of Washington, but authorize the use of their intangible property in Washington, do not pay any B&O taxes in Washington on royalties received from the use of their intangible property in this state. This has led some Washington-domiciled taxpayers to transfer their intangible assets to wholly-owned subsidiaries whose sole place of business is outside of Washington. Sometimes these subsidiaries are domiciled in states, such as Nevada, that do not tax income from the use of intangibles.

Many states have been moving to a sales-only formula for apportioning income. In general, a sales-only apportionment formula would reduce taxes for in-state businesses that sell mostly to out-of-state customers.

SUMMARY OF PART I:

This proposal establishes nexus standards in statute for the B&O tax. Under the bill, a person has nexus if:
- The person is an individual who is a resident or domiciliary of this state,
- The person is a business entity that is organized or commercially domiciled in this state, or
- The person is a nonresident individual or a business entity that is organized or commercially domiciled outside of this state and in any tax year the business has:
  - More than $50,000 dollars of property in this state,
  - More than $50,000 of payroll in this state,
  - More than $500,000 of receipts from this state, or
  - At least 25 percent of the business's total property, total payroll, or total receipts are in this state.

The dollar thresholds above will be adjusted by the consumer price index (CPI) whenever the cumulative change in the CPI reaches five percent. A person who has nexus with this state in any tax year will be deemed to have nexus with this state for the following four tax years.

The nexus standards described above only apply to persons subject to B&O tax under a service classification or the royalties classification. For all other B&O tax classifications, the bill provides that a person has a substantial nexus with this state if the person has a physical presence in this state. Those activities for which a physical presence is required for B&O tax purposes include: retail sales, wholesale sales, manufacturing, processing for hire, extracting, extracting for hire, printing, public road construction and other construction activities that are not considered retail or wholesale sales, certain warehousing activities, radio and television broadcasting, day care providers, and chemical dependency services.

This part also establishes a single factor apportionment method based on receipts. Under this apportionment method, a business determines the portion of its income taxable in this state by multiplying its taxable income by a fraction. The numerator of the fraction is gross income assigned to Washington, and the denominator is the business's total gross income. In general, gross income is assigned to Washington if the benefit of the service or, in the case of royalties, the intangible property is located in this state. If a business is unable to assign gross income using this method, the bill provides other methods for determining the location of gross income. The bill also provides very detailed provisions governing how financial institutions determine the location of their gross income.

The apportionment method provided in this bill is available primarily for businesses that report under the service and other activities B&O tax classification or the royalties B&O tax classification. It also applies to several other tax classifications including real estate brokers, insurance agents, travel agents and tour operators, and the printing and publishing classification-but only to the extent of income that would otherwise be apportionable if the printing and publishing classification did not exist (advertising income, for example).

This part also amends RCW 82.04.2907, the statute imposing B&O tax on royalties. The amendments: (1) make technical changes, and (2) extend royalty tax treatment to compensation received for the licensing of digital goods, digital codes, or digital automated services (digital products) to a person who is not the end user of the digital product.

If a court holds the nexus provisions based on the property, payroll, or receipts factors unconstitutional or otherwise invalid, Part I is null and void in its entirety. Part I takes effect April 1, 2010, and applies to gross income generated on and after April 1, 2010. However, for purposes of determining nexus under the property, payroll, and receipts factors for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

Part II - Tax Avoidance Transactions

Part II addresses provisions or ambiguities in current law, which taxpayers use to avoid paying B&O tax, sales and use taxes, and real estate excise taxes (REET).

Sections 201 through 203 of this bill provide the Department of Revenue (Department) with tools to invalidate tax avoidance transactions and assess a 35 percent penalty when the taxpayer engages in a tax avoidance transaction. A tax avoidance transaction means a transaction or series of transactions adopted for the purpose of:
- Disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer;
- Disguising the purchase or sale of property or services from or to a person that is not affiliated with the taxpayer; or
- Avoiding use tax on the use of property in this state that is owned by an entity organized outside of Washington.

Affiliated means under common control. Control means the possession of more than 50 percent of the power to direct or cause the direction of the management of a person.

As resources allow, the Department must adopt rules to assist in determining when to disregard a tax avoidance transaction. In adopting rules, the Department may consider several judicial doctrines, including the sham transaction, economic substance, business purpose, and substance over form doctrines.

The bill also requires the Department to conduct a review of the state's tax policy with respect to the taxation of transactions between affiliated entities.

Section 205 of the bill imposes use tax on the use of tangible personal property acquired by the user in any manner, including through a step transaction. Under current law, use tax on tangible personal property applies only when tangible personal property is acquired through a purchase at retail, lease, gift, repossession, bailment, or is extracted or manufactured by the user, or is furnished to a person engaged in any business taxable under RCW 82.04.280(2) or (7) (certain public road and government construction activities). Use tax does not apply to the use of tangible personal property acquired in a step transaction. An example of a step transaction involves a business creating a subsidiary entity, transferring tangible assets to the subsidiary, transferring ownership of the subsidiary to another business (the acquiring business), followed by a merger of the acquired subsidiary into the acquiring business.

Part II of the bill also closes loopholes and clarifies ambiguities related to REET. Currently, payment of the REET may be avoided on the transfer of a controlling interest (at least a 50 percent interest) in an entity that owns real property where it takes longer than 12 months to transfer the controlling interest. This can be done by transferring a less than 50 percent ownership interest plus an option to acquire the remaining interest in the entity more than 12 months after the option was granted. Another way to avoid REET is to create a wholly-owned subsidiary, transfer real property to that subsidiary, and the subsidiary transfers real property followed by the dissolution of the subsidiary before the REET is paid. If the buyer has provided written notice of the sale within 30 days of the sale, the buyer is not liable for the tax. And the Department cannot pursue the seller for the tax, because the seller does not exist anymore.

In the case of the transfer or acquisition of publicly traded corporations, it could be argued that the "seller" liable for REET is the individual shareholders of the corporation in which a controlling interest was transferred.

The bill provides that, for the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a 12-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. However, REET is due on the transfer or acquisition of a controlling interest pursuant to the exercise of an option on the date the option is exercised.

When there is a taxable sale resulting from the transfer or acquisition of a controlling interest in an entity, this bill allows the Department to enforce the obligation of the seller for payment of REET as follows:

- When the transfer or acquisition is of a corporation, the Department may collect the tax from either the corporation in which the controlling interest was transferred, the person or persons who acquired the controlling interest, or, except when the corporation is a publicly traded corporation, the person or persons who transferred the controlling interest.
- When the seller is a partnership, association, trust, or other entity, the Department may collect the tax from either the entity in which the controlling interest is transferred or acquired or the person or persons who transferred or acquired the controlling interest in the entity.

Part II of the bill establishes that the seller liable for REET is the parent of a wholly owned subsidiary when the subsidiary is the transferor to a third party transferee and the subsidiary dissolves before REET is paid on the transfer.

In addition, Part II clarifies that when there is a sale by reason of the transfer or acquisition of a controlling interest in an entity owning real property in this state, the REET is a lien on the real property in this state owned by the entity in which a controlling interest has been transferred or acquired from the date of sale until the tax is paid.

This part of the bill will take effect April 1, 2010. Section 201 of this bill applies to tax periods beginning January 1, 2006.

Part III - Modifying and Placing a Cap on the First Mortgage Deduction

Currently, financial businesses are allowed to deduct from their B&O tax amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties (RCW 82.04.4292). Recently the Washington Supreme Court held that the deduction includes amounts retained as servicing fees by lenders after the loan is sold on the secondary market.

This bill restores the Department's interpretation of the first mortgage interest deduction by providing a nonexclusive list of items that are not deductable. The bill also limits the amount that may be deducted by any business to no more than $100 million per calendar year.

Part IV - Repealing the Nonresident Sales Tax Exemption

This part repeals the nonresident sales tax exemption in RCW 82.08.0273. This exemption currently applies to sales of tangible personal property and digital products for use outside the state to qualified nonresidents. The nonresident must be a resident of a state or possession or Province of Canada that does not impose a sales or use tax of three percent or more or, if imposing a sales or use tax of three percent or more, exempts Washington residents from its tax.

Part V - Direct Seller Business and Occupation Tax Exemption

Current law (RCW 82.04.423) provides an exemption from the B&O tax for sales by certain out-of-state-persons to or through seller's representatives. The Department's position had been that the "direct seller" exemption was limited to those businesses that only sold consumer products through a direct seller's representative in the home or otherwise than in permanent retail establishments (stores). A recent Washington Supreme Court decision expands the exemption to businesses whose products are sold in stores.

This bill proposes to:
1) Eliminate the exemption in its entirety effective April 1, 2010; and
2) Revise the definition of "direct seller's representative" to conform to the Department's interpretation of the exemption as noted above. This change applies retroactively to tax periods before April 1, 2010.

Part VI - Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

Part VI of the bill changes the application of the B&O tax to manufacturers and wholesalers of certain meat products, meat byproducts, or fruit and vegetable products by clarifying and narrowing the definitions of activities that are subject to the preferential tax treatment.

Currently, processors of perishable meat products receive a reduced B&O tax rate of 0.138 percent. A 2005 decision by the Washington Supreme Court held that this reduced B&O tax rate applied to the processing of perishable meat into a nonperishable finished product.

Current law also provides a B&O tax exemption for canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables. Beginning July 1, 2012, this exemption is replaced with a reduced B&O tax rate for these activities.

This legislation modifies the activities eligible for the reduced B&O tax rate for processing perishable meat products by requiring that the end product be: a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product manufactured in a rendering plant.

This legislation also modifies the B&O tax preferences for canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables by requiring the end product to be:
- Comprised exclusively of fruits, vegetables, or both fruits and vegetables, or
- Comprised of fruits, vegetables, or both fruits and vegetables, where the amount of all ingredients contained in

the product, other than fruits, vegetables, and water, does not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

Part VII - Suspending the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

Current law provides a retail sales and use tax exemption for the purchase and use of certain equipment and services related to the management of livestock nutrients. Eligible operations include licensed dairies with a certified dairy nutrient plan, animal feeding operations that have a waste disposal permit issued under RCW 90.48, and animal feeding operations that have a nutrient management plan approved by a conservation district meeting certain requirements. This part of the bill disallows the exemption from April 1, 2010, through June 30, 2015, and creates a sunset date for the exemption of July 1,2020.

Part VIII - Ending the Preferential Business and Occupational Tax Treatment Received by Directors of Corporations

Beginning April 1, 2010, compensation received by members of corporate boards of directors is taxed under the service and other activities B&O tax classification at a rate of 1.5 percent. An exemption is provided retroactively for director compensation received before April 1, 2010.

Part IX - Airplane Excise Tax

This part of the bill replaces the existing aircraft excise tax, which is a flat amount depending on the type of aircraft, with an excise tax of 0.5 percent of the taxable value of the non-commercial aircraft. The taxable value is the fair market value of the aircraft, which in most cases will be based on the most recent purchase price of the aircraft, less an allowance for depreciation based on a depreciation schedule that the Department is required to prepare.

Part X - Use Tax on Motor Vehicles and Trailers Used in Interstate Commerce

Currently, the use of motor vehicles or trailers used in "substantial part" for transportation of persons or property for hire across the boundaries of this state, which the Department interprets as at least 25 percent of the time for interstate transportation, is exempt from the state and local use tax This bill restricts the use tax exemption to the use of motor vehicles or trailers and parts "primarily" (more than 50%) in interstate commerce.

Part XI - Foreclosure Exemption

Under current law, a judicial or nonjudicial foreclosure of a deed of trust is not considered a "sale" for REET purposes. This "foreclosure exemption" also applies to a transfer or conveyance of real estate pursuant to a deed in lieu of foreclosure or an order of sale by a court in any lien foreclosure proceeding or upon execution of a judgment.

Part XI of this bill would limit the foreclosure exemption to the following transfers or conveyances: (1) to the beneficiary of a deed of trust in a nonjudicial foreclosure; (2) to the mortgagee, beneficiary of a deed of trust, or lien holder pursuant to an order of sale by the court in the judicial foreclosure of any mortgage, deed of trust, or lien; (3) to the mortgagee by the mortgagor or to the beneficiary of a deed of trust by the grantor pursuant to a deed in lieu of foreclosure; or (4) to the judgment creditor pursuant to a writ of execution.

Thus, for example, the transfer of real property under a foreclosure sale to a third party, such as an investor who will resell the property or a person who will reside in the property, would become taxable under this proposal.

Part XII - Tax Debts

Currently, business owners can be held personally liable for collected but unremitted sales tax when a corporation or limited liability company goes out of business. This part of the bill would extend the same personal liability to B&O tax, use tax, and any other state or local excise tax collected by the Department. In addition, personal liability would apply to the chief executive and chief financial officer regardless of fault or whether those individuals were aware of the unpaid tax liability.

Part XIII - Repealing the Business and Occupation Tax Credit for New Employment for International Service Activities

This part repeals the $3,000 B&O tax credit provided for hiring new employees performing international service activities in eligible areas.

Part XIV - Repealing the Sales and Use Tax Exemptions for Candy and Bottled Water

Currently candy and most other food is exempt from the state and local sales and use taxes. This bill extends the sales and use taxes to candy and bottled water. "Candy" is defined as a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. However, candy does not include any preparation containing flour, nor any products that require refrigeration.

Part XV - Imposing Sales and Use Tax on Cosmetic Surgery, Custom Software, and Janitorial Services

Currently, cosmetic medical services, custom software, and janitorial services are subject to the service and other activities classification of the B&O tax and not subject to the retail sales and use tax. This bill imposes the retail sales and use tax on the sale of these services. The B&O tax on these sales are reduced from the 1.5 percent service tax to 0.471 percent retail tax.

Cosmetic medical services include any medical procedures performed on an individual by a person licensed or regulated in a health profession as described in RCW 18.120.020. The services must improve the individual's appearance and must not be medically necessary. Cosmetic medical services includes, but is not limited to, cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peel, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic dentistry.

Any medical procedure performed on abnormal structures caused by or related to congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including procedures to improve function or give a more normal appearance, is medically necessary. Services covered by the individual's medical or dental insurance or that are deductible by the individual as medical expenses for purposes of federal income tax are presumed to be medically necessary services.

Custom software includes the customization of prewritten computer software. The sale includes the charge for the software and the customization of the prewritten software regardless of the method of delivery to the customer. It also includes any charges for the right to access and use the software where possession of the software is maintained by the seller or a third party.

Janitorial services include those cleaning and caretaking services ordinarily performed by commercial janitor service business. This includes, but is not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes, and upholstery. Janitorial services do not include painting, papering, repairing, furnace or septic tank cleaning, snow removal, or sandblasting.

Part XVI - Increasing Tobacco Taxes

The current combined state cigarette tax is rate is $0.10125 per cigarette or $2.025 per pack of 20 cigarettes. This bill increases the tax on a pack of 20 cigarettes to $3.025.

Three cents (per cigarette) of the cigarette tax is levied in RCW 82.24.026. The distribution of these revenues is revised with the state general fund dropping from 28.5 percent to 14 percent and the education legacy trust account share increasing from 71.5 percent to 86 percent.

Currently, tobacco products other than cigarettes are taxed at 75 percent of the taxable sales price, which is generally the price the taxpayer paid for the tobacco products. The tax on cigars is capped at 50 cents per cigar.

Under this bill the tax will be as follows:

1. For cigars except little cigars: 95 percent of the taxable sales price, not to exceed sixty-five cents per cigar.

2. For moist snuff (computed on the net weight listed by the manufacturer):
(a) On each single unit consumer-sized can or package whose net weight is 1.2 ounces or less, a rate per single unit that is equal to the cigarette tax under chapter 82.24 RCW multiplied by 20 ($3.025 per can or package.); or
(b) On each single unit consumer-sized can or package whose net weight is more than 1.2 ounces, a proportionate tax, on each ounce or fractional part of an ounce, at the rate established for moist snuff weighing 1.2 ounces or less.

3. For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW.

4. For all other tobacco products, 95 percent of the taxable sales price.

The moist snuff components of this bill are effective October 1, 2010, and the components affecting cigarettes, cigars, little cigars, and all other tobacco products are effective April 1, 2010.

Part XVII - Rural County Incentive Programs

The rural county sales/use tax deferral program provides a deferral of sales/use tax on qualified construction and equipment costs for manufacturing, and computer-related businesses, research and development laboratories, and commercial testing facilities (excluding light and power businesses) locating or expanding in rural counties, and in Community Empowerment Zones (CEZ) or a county containing a CEZ when certain employment requirements are met (Chapter 82.60 RCW).

The rural county B&O tax credit for new employees provides a credit against the B&O tax for each new employment position filled and maintained by qualified businesses in rural counties and in CEZs.

This part of the bill amends the definition of "manufacturing" for both of these programs in two ways. First, the bill clarifies that prior to July 1, 2010, the activities of "computer programming, the production of computer software, and other computer-related services" must be performed by a manufacturer and contribute to the production of a product for sale to qualify as manufacturing. Second, effective July 1, 2010, the bill removes "computer programming, the production of computer software, and other computer-related services" from the definition of "manufacturing." Therefore, even if those activities are performed by a manufacturer and contribute to the manufacturing of a product for sale, they will no longer qualify for the for the rural county sales/use tax deferral and the rural county B&O tax credit for new employees.

This bill also clarifies the meaning of "research and development" for both programs.

The amendments to the definitions of "manufacturing" and "research and development" apply retroactively as well as prospectively.

Part XVIII - Sales and Use Tax Exemptions for Data Centers

This part of the bill provides a retail sales tax and use tax exemption for:
- New server equipment to be installed on or after April 1, 2010, in an eligible computer data center, including charges for installation;
- Server equipment that replaces existing server equipment that qualified for the exemption, provided it is installed and put into regular use before April 1, 2018; and
- Power infrastructure required to operate the qualifying server equipment, including charges for construction, installation, repair, alteration, and improvement.

An "eligible computer data center," means a facility comprised of one or more buildings constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics:
- Uninterruptible power supplies, generator backup power, or both;
- Sophisticated fire suppression and prevention systems; and
- Enhanced physical security.

The facility must be located in a rural county as defined in RCW 82.14.370. The facility must have at least 20,000 sq. ft. dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers; and for which the commencement of construction, including renovation or expansion of existing facilities, occurs after March 31, 2010, and before July 1, 2011.

Eligible sever equipment includes the server chassis and all computer hardware and software contained within the server chassis of blade or rack-mount server computers used exclusively to provide electronic data storage and data management services. Eligible server equipment does not include the racks upon which the server chassis is installed, personal computers, and computer peripherals such as keyboards, monitors, printers, mice, other devices that work outside of the computer.

This sales and use tax exemption does not apply to those that received a rural county sales and use tax deferral for construction of a computer data center or for machinery and equipment used in a computer data center.

This part of the legislation would be effective April 1, 2010. The exemption expires April 1, 2018.

Part XIX - PUD Privilege Tax Clarification

The public utility district (PUD) privilege tax, imposed in chapter 54.28 RCW, compensates for PUDs' exemption from property tax as public entities. The measure of the tax is "gross revenue," which is defined as "the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070."

This bill amends the definition of gross revenue to include all amounts received from the sale of electric energy, including any regularly recurring charge to customers as a condition of receiving electric energy, and excluding any tax levied by cities under the authority of RCW 54.28.070.

Part XX - Business and Occupation Surtax on Certain Services

The bill imposes an additional 0.5 percent B&O surtax on the following services:
- Accounting, tax preparation, bookkeeping, and payroll, services.
- Agent and management services for artists, athletes, entertainers, and other public figures.
- Attorney and paralegal services.
- Management, scientific, and technical consulting services including but not limited to administrative management services, human resource consulting services, marketing consulting services, logistic consulting services, and environmental consulting services.
- Marketing research and public opinion polling services.
- Promoting services for performing arts, sporting, and similar events.

The surtax is effective from July 1, 2010 through June 30, 2015.

Part XXI - Limiting B&O Exemption on Investment Earnings for Nonfinancial Firms

Under current law, income from investments, dividends or distributions received by a parent from its subsidiary entities, and certain interest on loans can be deducted from gross income for businesses that are not financial businesses   This bill limits the amount of the B&O deduction for investments, distributions and dividends, and interest on loans to $250,000 per calendar year.

Part XXII - Sales and Use Tax Exemptions for Machinery and Equipment Used in Renewable Energy Generation

Currently, machinery and equipment used to generate electricity from certain renewable sources is exempt from sales and use taxes. The tax must be paid to the seller, and the buyer must apply to the Department for a remittance of the tax.

This bill provides that beginning July 1, 2010, for energy generated from wind, the exemption only applies to a local electric utility or to a person contracting with a local electric utility for the sale of electric power generated by a facility containing the exempt machinery and equipment. Until July 1, 2011, the exemption is 100 percent of the state and local sales or use tax paid on machinery and equipment used directly in generating electricity using the wind. For the period July 1, 2011, through June 30, 2013, the exemption is equal to seventy-five percent of the state and local sales or use tax paid on machinery and equipment used directly in generating electricity using the wind.

"Local electric utility" means an electrical company whose rates are regulated by the Washington Utilities and Transportation Commission under chapter 80.28 RCW; a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, or a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state; and a joint operating agency formed under chapter 43.52 RCW.

Part XXIII - Miscellaneous provisions

This section contains miscellaneous provisions such as effective dates.

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.

REVENUE ESTIMATES

Part I: Minimum Nexus Standards

Data Sources:
Data is from Department of Revenue; Department of Financial Institutions; the U.S. Census Bureau; the Bureau of Economic Analysis; The Federal Reserve Board; the Securities and Exchange Commission; Price, Waterhouse, Coopers; the Nielson Company; the Washington Implan Model; the Washington Input-Output Model; and other sources.

Assumptions:
A compliance rate of about 100 percent is assumed in the first year for businesses currently registered with the Department. For businesses not registered with the Department, it's assumed that compliance rates for large, nationwide franchise businesses will be 90 percent. Compliance rates for credit card issuers are assumed to be 50 percent the first year, 75 percent the second, 90 percent the third, and about 100 percent in the fourth year. Compliance rates for other financial institutions are assumed to be 25 percent the first year, 50 percent the second, 75 percent the third, and about 100 percent in the fourth year. Compliance rates for small, out of state businesses are assumed to be 13 percent the first year, 26 percent the second, 39 percent the third, and 52 percent in the fourth year and thereafter. It is assumed that 90 percent of the non-franchise, royalty receipts from the out of state affiliates of Washington domiciled businesses will be apportioned outside of Washington.

Revenue Impact:
General fund revenues are estimated to rise by $77 million in Fiscal Year 2011 and $166 million in Fiscal Year 2012. There is no local impact.

Part II - Tax Avoidance Transactions

Data Sources:
Department of Revenue, Employment Security Department, and the Internal Revenue Service's Statistics of Income for corporations

Assumptions:
For tax avoidance transactions, the types of transactions that are provided as examples are not easily estimated with available data because many transactions involve businesses that aren't registered with the Employment Security Department or the Secretary of State's Office and an affiliate relationship with a registered business is not known. Businesses that appear to be underreporting revenue based on wages paid in the state and those not reporting any revenue to the Department were selected.

For the tax avoidance transaction provisions, this estimate uses a compliance adjustment of 13 percent for 2011, 26 percent for 2012, 39 percent for 2013, and 52 percent for 2014.

The tax avoidance transaction provisions impact about 600 firms in Fiscal Year 2011.

For the provision extending use tax to tangible personal property acquired through a step transaction, multiple successorship information from the Employment Security Department was used to determine the level of assets transferred from businesses with no assets in their final year of liquidation. This estimate also uses a compliance adjustment of 13 percent for 2011, 26 percent for 2012, 39 percent for 2013, and 52 percent for 2014.

This estimate assumes three taxpayers avoided REET in Fiscal Year 2009 through the means noted above in the bill description, increasing to between 5 to 12 taxpayers by Fiscal Year 2015.

This estimate assumes taxpayers avoiding REET by transferring an ownership interest of less than 50 percent, but including a binding option to purchase an additional ownership interest that would result in a transfer of more than a 50 percent interest, to be exercised more than 12 months after the option was granted, would be avoiding the average amount of REET paid on controlling interest transfers from Fiscal Years 2005, 2006, 2008, and 2009.

This estimate assumes taxpayers avoiding REET through the use of a subsidiary in the manner described above in the bill description would owe REET of over $1 million.

This estimate assumes that each year, the amount of REET avoided through the use of a subsidiary must increase by about four percent in order for it to be worth the taxpayer's time and effort to transfer the property in the manner described.

Revenue Impact:
This proposal will result in a state general fund revenue increase of an estimated $12.3 million for Fiscal Year 2011, the first full fiscal year of impact. Local governments will see an estimated $1.5 million increase in Fiscal Year 2011.

Part III - Placing a Cap on the First Mortgage Deduction

Data Sources and assumptions:
Estimates are based on Department of Revenue tax reporting information, information from financial institutions as reported in their Report of Condition and Income (Call Report) to federal agencies, and forecasts of mortgage activity derived from data provided by the Economic and Revenue Forecast Council.

Revenue Impact:
This part will result in a state general fund revenue increase of an estimated $56.3 million for Fiscal Year 2011. There is no

local impact.

Part IV - Repealing the Nonresident Sales Tax Exemption

Data Sources:
Estimates are based on Department of Revenue deduction data for qualified nonresident sales and the 1990 Border Study. Growth rates were based on Washington State Economic and Revenue Forecast Council data.

Assumptions:
This fiscal note assumes that there will be fewer retail sales made in this state to nonresidents after the nonresident sales tax exemption is repealed. The percent of lost sales to nonresidents was calculated by dividing counties into border counties (along Canada, Oregon and Idaho borders) and non-border counties. Boats and automobiles were excluded since this proposal does not eliminate the specific sales tax exemptions available to nonresidents for these items.

Revenue Impact:
In Fiscal Year 2011, state general fund revenue will gain over $36.1 million and local governments will gain approximately $13.3 million.

Part V - Direct Seller Business and Occupation Tax Exemption

Data Sources:
Department of Revenue.

Assumptions:
The Washington Supreme Court decision regarding sales by certain out-of-state-persons to or through direct seller's representatives is final, and the state general fund revenue forecast has been adjusted downward for the effect of this court decision. For periods beginning April 1, 2010, the exemption is eliminated. The revenue gain from the elimination of this exemption is included in the amounts shown on the front page of this fiscal note.

Revenue Impact:
State general fund revenue would gain $122.1 million in Fiscal Year 2011. There is no local impact.

Part VI - Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

Assumptions:
The effect of the perishable meat processing court case is reversed effective April 1, 2010.

The changes to the tax preferences for processors of fresh fruits or vegetables would cause about ten percent of the amount currently exempted to become taxable.

Revenue Impact:
State general fund revenue will increase by over $4 million per fiscal year due to this legislation. Approximately $4.1 million will be realized during Fiscal Year 2011. There is no local impact.

Part VII - Suspending the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

Revenue Impact:
Suspending this exemption will generate $1.4 million per fiscal year for the state general fund. Local governments will gain approximately $431,000 per fiscal year.

Part VIII - Ending the Preferential Business and Occupational Tax Treatment Received by Directors of Corporations

Data Sources:
Data used for the estimates are from the Washington Secretary of State's Office and Department of Revenue data from Fiscal Year 2008 combined excise tax returns.

Assumptions:
The tax will be on directors' fees of corporations based or headquartered in Washington. The majority of these firms are publicly traded. There are approximately 200 Washington-based firms that are publicly traded.

It is assumed that the 100 highest grossing firms that are not publicly traded have boards of directors that are also compensated. Based on a sampling of the top 30 of these firms, it is assumed that half of them (50 firms) have directors in Washington.

The average annual compensation for a director is estimated to be $61,000 per year. It is assumed that all the director activities will be in Washington, therefore, no apportionment will apply. The average number of directors is 10 members per firm.

The amount of directors' fees paid is assumed to be constant through Fiscal Year 2015. A large portion of director compensation is based upon stock options and cannot be estimated due to market volatility.

Revenue Impact:
State general fund revenue will gain approximately $2.3 million in Fiscal Year 2011. There is no local impact.

Part IX - Airplane Excise Tax

The current tax is administered by the Department of Transportation, and this bill changes the administration to the Department of Licensing. The impact of this proposal is not shown in the Department's fiscal note.

Part X - Use Tax on Motor Vehicles and Trailers Used in Interstate Commerce

Data Sources:
Department of Licensing data were used for this part.

Revenue Impact:
In Fiscal Year 2011, this part would generate approximately $7.7 million for the state general fund and $2.4 million for local governments.

Part XI - Foreclosure Exemption

Data Sources:
Real estate excise tax affidavits in which the foreclosure exemption was claimed were used to prepare these estimates

Assumptions:
It is assumed that real estate excise tax collections on the sale of foreclosed properties to third parties relative to total collections will remain constant thought the forecast period (Economic and Revenue Forecast Council data).

The estimates are based on foreclosure exemptions claimed in King, Franklin, and Mason counties, which compose approximately 41percent of state real estate excise tax dollars.

Local collections of real estate excise tax are roughly equal to 37 percent of state collections.

Revenue Impact:
In Fiscal Year 2011, the state general fund will gain approximately $6.0 million and local governments will gain $2.4 million.

Part XII - Tax Debts

Data Sources:
Department of Revenue

Assumptions:
It is estimated the Department will collect 22 percent of outstanding non-sales tax debt of defunct corporations and other artificial entities. This is based on the Department's experience in collecting the sales tax debts of defunct corporations and limited liability companies from responsible individuals under the authority of RCW 82.32.145. A 20 percent compliance factor is included in the estimates.

Revenue Impact:
State general fund revenue will gain an estimated $5.3 million in Fiscal Year 2011. There is no local impact.

Part XIII - Repealing the Business and Occupation Tax Credit for New Employment for International Service Activities

Data Sources:
Department of Revenue

Revenue Impact:
Fewer than three firms have actually claimed this credit. Due to confidentiality requirements, the impact of this part cannot be shown on this fiscal note.

Part XIV - Repealing the Sales and Use Tax Exemptions for Candy and Bottled Water

Data sources:

2008 Beverage Digest Fact Book, the National Confectioners Association, the Office of Financial Management, the U.S. Department of Commerce, and the Department of Revenue

Assumptions:
Bottled water that contains vitamins and minerals, but no sweeteners, is considered subject to sales and use tax under this section. However, products that are traditionally thought of as "vitamin water," including drinks with sweeteners and/or calories, are considered soft drinks and are not subject to sales and use tax under this section. Bottled water containing flavoring elements, such as fruit essences, but not sweeteners and/or calories, would be subject to sales and use tax under this bill.

The per capita consumption of candy is relatively consistent over time, so this estimate assumes candy consumption growth follows population growth.

The overall price elasticity of demand for bottled water and candy is assumed to equal 0.9.

This part of the legislation would be effective April 1, 2010.

Revenue Impact:
In Fiscal Year 2011, state general fund revenue will gain approximately $63.4 million and local governments will gain $24.0 million.

Part XV - Imposing Sales and Use Tax on Cosmetic Surgery, Custom Software, and Janitorial Services

Data Sources:
The estimate for cosmetic surgery was based on data collected from New Jersey's Department of the Treasury, Division of Taxation's 2007 Annual Report. Washington State's estimated sales tax revenue from cosmetic surgery was based on New Jersey's sales tax revenue but was adjusted for the differences in population and median household income. Population and household income data was collected from the U.S. Census Bureau. Growth rates were based on data collected from the American Society of Plastic Surgeons report, Plastic Surgery Procedural Statistics.

The estimate for custom software is based on data collected from Department of Revenue's tax returns and the Washington Implan Model, because approximately one-third of the businesses customizing computer software are not in the specific business classification of custom computer programming services.

The estimate for janitorial services is based on data collected from Department of Revenue's tax returns. Growth rates were collected from data provided by the Economic and Revenue Forecast Council.

For all of these sales and use tax revenues, there is a loss in revenue to the B&O tax, as the income previously taxed at the 1.5 percent service rate will be taxed at the retail rate of 0.471 percent.

Revenue Impact:
In Fiscal Year 2011, state general fund revenue will gain approximately $102.9 million and local governments will gain $47 million.

Part XVI - Increasing Tobacco Taxes

Data Sources:
The cigarette tax impact of this bill was estimated using the Washington Economic and Revenue Forecast Council's data on cigarette consumption and other Department of Revenue sources. Under this bill, taxable consumption is expected to decline by about 17 percent.

Assumptions:
It is assumed that the sale of taxed moist snuff will decline by more than 40 percent and the sale of taxed little cigars by more than 35 percent as a result of this bill. The number of cigars taxed under the new sixty-five cent cap will be about the same as the number taxed under the existing fifty cent cap. It is also assumed that the remainder of the other tobacco products market represents about 6 percent of the taxable value under the current rate of 75 percent.

Revenue Impact:
In Fiscal Year 2011, state general fund revenue will increase by $94.2 million and local governments will lose $538,000.

Part XVII - Rural County Incentive Programs

Recently, the Superior Court for Thurston County held that Yahoo!'s data center in Quincy qualifies for the rural county sales and use tax deferral. The Court's ruling may extend eligibility for this deferral to many other computer-related activities that the Department does not currently consider eligible such as call centers, internet access providers, telecommunications companies and software training firms. A final court decision would result in a revenue loss of approximately $27 million per year for the next five years. This potential loss is not included in the estimated fiscal impact of this proposal.

Computer programming and other computer-related service businesses currently qualifying under the rural county B&O tax credit could also qualify under the B&O credit for programming or manufacturing software in rural counties (RCW 82.04.4483) until it expires January 1, 2011. This estimate assumes businesses would choose to take the B&O credit for programming or manufacturing software in rural counties, when the rural county B&O tax credit became unavailable.

This part has an April 1, 2010, effective date; however, because businesses would use the B&O credit under RCW 82.04.4483 for programming or manufacturing software in rural counties, there is no impact in Fiscal Year 2010 and only 6 months of revenue impact to Fiscal Year 2011.

Revenue Impact:
For the rural county sales and use tax deferral, the Department of Revenue's ability to issue sales and use tax deferral certificates expires July 1, 2010. Therefore this estimate assumes the changes to the definitions have no revenue impact.

For the rural county B&O tax credit, the changes to the definitions would result in an estimated $5,000 less in B&O tax credits for Fiscal Year 2011, and an estimated $10,000 less in B&O tax credits for Fiscal Year 2012, the first full fiscal year.

Part XVIII - Sales and Use Tax Exemptions for Data Centers

Data Sources:
It is assumed that no data center projects will be constructed in Washington between April 1, 2010, and July 1, 2011, based on information that is available at this time.

The estimated revenue impact of these exemptions for a 525,000 square foot data center facility is $28,000,000 during the course of construction and an additional reduction of approximately $27,000,000 for equipment replacement every 3 years.

Revenue Impact:
There is no revenue impact as a result of this part of the bill.

Part XIX - PUD Privilege Tax Clarification

The Washington Court of Appeals, Division II, recently affirmed a decision of the Thurston County Superior Court invalidating the Department of Revenue's interpretation of "gross revenue" for PUD privilege tax purposes. According to these court decisions, the correct measure of the PUD privilege tax is the revenue from charges for kilowatt-hours used (i.e., revenues from the sale of electricity) and does not include revenue from other separately-stated charges or fees. The two PUDs that filed the suit separate their kilowatt-hour charges from other charges (e.g., charges to recoup fixed operating costs).

Data Sources:
This fiscal note assumes that all PUDs will likely separate their kilowatt-hour charges from other charges and pay the privilege tax on only the kilowatt-hour charges.

Revenue Impact:
This legislation modifies the definition of gross revenue for the PUD privilege tax and results in a gain in general fund revenue of $1.1 million in Fiscal Year 2011 and local governments will gain approximately $1.3 million.

Part XX - Business and Occupation Surtax on Certain Services

Data Sources:
Department of Revenue and the Washington State Economic and Revenue Forecast Council

Revenue Impact:
In Fiscal Year 2011, state government will gain over $25.2 million. There is no local impact.

Part XXI - Limiting B&O Exemption on Investment Earnings for Nonfinancial Firms

Data Sources and assumptions:
The revenue impact of limiting the financial income deduction to $250,000 per year is primarily based on IRS Sourcebook income data from 2004 for corporations. It is believed that the types of income covered by this source by size of firm are representative for other organization types. The types of income included in the estimates are non-government interest, domestic corporate dividends and net capital gains from investments (not-non-capital assets). These types of income are highly dependent on the size of firms, whether the company is headquartered in this state, and the apportionment of activity to the state.

The statutory language includes income received from affiliates from distributions from capital accounts. The analyst does not have information concerning this type of income, which is believed to be highly correlated with large firms headquartered in this state. While income ratios from IRS data were used, the tax base for the estimate is derived from Department reported data, but because many industries have substantial exemptions from tax and this deduction is largely unreported, the reported amounts are not representative of actual activity. Examples of these industries are agriculture, interstate trucking, and real estate management. The effect of this proposal is also likely to be effected by other provisions in this bill related to nexus and apportionment. Therefore the estimate should be considered to have a higher level of variability than normal.

Part XXI is not limited to any particular type of business and does not impact B&O tax rates. Based on the current assumptions, about 700 firms would be impacted.

Revenue Impact:
State general fund revenue will gain approximately $58 million in Fiscal Year 2011. There is no local impact.

Part XXII - Sales and Use Tax Exemptions for Machinery and Equipment Used in Renewable Energy Generation

Data Sources:
The U.S. Department of Energy, National Renewable Energy Laboratory; the Northwest Power and Conservation Council; and the Washington Department of Commerce.

Assumptions:
Forty percent of new wind power projects will be built by businesses that are not "local utilities" as defined in the legislation.
Wind power builders will not change their business form or business practices.

Estimated wind power spending in Washington:
FY 2011 $299,000,000
FY 2012 $308,000,000
FY 2013 $318,000,000

Revenue Impact:
By restricting the sales and use tax exemptions for machinery and equipment used in the generation wind power to local electric utilities or persons contracting with local electric utilities, state government will gain $7.8 million in Fiscal Year 2011.
The gain in local tax revenue is $2.7 million.

REVENUE ESTIMATES

Overall, state government would gain $684.5 million in the first full fiscal year, Fiscal Year 2011. State general fund revenues would increase by $683.1 million.

Local governments would gain $94.5 million in Fiscal Year 2011, the first full fiscal year.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000): The impact in FY 2010 is due to April 1, 2010, effective date on some parts of this legislation.

FY 2010 -	$ 100,518
FY 2011 -	$ 684,473
FY 2012 -	$ 779,360
FY 2013 -	$ 874,336
FY 2014 -	$ 962,245
FY 2015 -	$ 1,017,618

Local Government, if applicable (cash basis, $000): The impact in FY 2010 is due to April 1, 2010, effective date on some parts of this legislation.

FY 2010 -	$ 12,449
FY 2011 -	$ 94,494
FY 2012 -	$ 101,133
FY 2013 -	$ 110,832
FY 2014 -	$ 119,184
FY 2015 -	$ 128,936

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

The expenditure estimate assumes that the Department of Revenue (Department) will not incur any costs in the implementation of the new airplane excise tax (Part IX), use tax on motor vehicles and trailers used in interstate commerce (Part X), tax debts (Part XII), repealing the business and occupation tax credit for new employment for international service activities (Part XIII), and the PUD privilege tax clarification (Part XIX).

To implement this legislation the Department will incur costs of $1,547,300 in Fiscal Year 2010. Time and effort equates to nine FTE's.

The Department will incur costs of $2,898,100 in Fiscal Year 2011. Time and effort equates to 32.6 FTE's.

The Department will incur ongoing costs of $3,789,700 in the 2011-2013 Biennium and $2,919,500 in the 2013-2015 Biennium. Time and effort equates to 23.6 FTE's in Fiscal Year 2012, 22.3 FTE's in Fiscal Year 2013, and 18.1 FTE's in Fiscal Years 2014 and 2015.

Individual parts are grouped where similar activities occur. Parts with larger costs are described separately. Costs and FTEs shown for these are included in the yearly or biennial totals above.

Minimum nexus standards (Part I)

To implement this part of the legislation, the Department will incur costs of $507,900 in Fiscal Year 2010. The Department will identify impacted businesses, including those located out of state, to provide them with information on the change in how the state determines nexus for out-of-state based businesses conducting operations in Washington. This will include creating and mailing a special notice to impacted businesses and tax practitioners, both within Washington and out of state, and updating online and printed information. Additional staff will be needed to handle an expected increase in telephone inquiries. The cost of printing and mailing special notices to taxpayers and practitioners is $321,000. Time and effort equates to 2.3 FTEs.

The Department will incur costs of $1,834,200 in Fiscal Year 2011. The Department will create and conduct workshops to assist taxpayers with reporting questions in several places around the state. Additional calls from taxpayers to the Telephone Information Center are also expected, as well as additional email questions and requests for letter rulings. Adopting a new nexus standard for service income will increase the number of taxpayers filing returns, creating additional error and out of balance returns, amended returns, requests for penalty waivers, and telephone questions. Additional staff time will be needed to perform these tasks and to assist taxpayers.

Additional new taxpayers will require an increase in the staff to locate, explain, examine, assess taxes due, and verify compliance. A change in the nexus standard is also expected to increase the number of appeals. The Department will amend two administrative rules and create one new administrative rule.

Time and effort in Fiscal Year 2011 equates to 20.3 FTEs. The non-labor cost of informational workshops is $12,000, printing and mailing additional tax returns is $29,000, and the non-labor cost of setting up new taxpayers with electronic payment is $12,000.

The Department will incur ongoing costs of $2,971,000 in the 2011-2013 Biennium and $2,343,200 in the 2013-2015 Biennium. Time and effort equates to 17.6 FTEs in Fiscal Year 2012, 17.4 FTEs in Fiscal Year 2013, and 14.4 FTEs in the 2013-2015 Biennium. The cost of printing and mailing additional tax returns is $29,000 each fiscal year.

Tax avoidance transactions (Part II)

To implement this part of the legislation, the Department will incur costs of $49,000 in Fiscal Year 2010. These are start up costs are for programming costs to set up, test, and verify the systems to handle the new tax avoidance penalty. These costs also include $10,600 in mailing costs for a special notice. Time and effort equates to 0.4 FTE's.

Fiscal Year 2011 costs are $87,200. These are costs to finish the programming, testing, and verifying the systems to handle the new tax avoidance penalty and adopting one new administrative rule and amending three administrative rules. Time and effort equates to 0.8 FTE.

Modifying and placing a cap on the first mortgage deduction (Part III)

To implement this part of the legislation the Department will incur costs of $92,000 in Fiscal Year 2010. These are programming costs to develop a new deduction code to track the cap on the first mortgage interest deduction and to test and verify the new code. These costs also include $4,100 for mailing a special notice. Time and effort equates to 0.9 FTE.

Fiscal Year 2011 costs are $5,000. These are costs to amend one administrative rule.

Repealing the nonresident sales tax exemption (Part IV)

To implement this part of the legislation the Department will incur costs of $169,900 in Fiscal Year 2010. These are costs to answer questions about the law change and $153,000 for mailing a special notice to retailers. Time and effort equates to 0.2 FTE.

Fiscal Year 2011 costs are $19,800. These are costs to answer questions and to amend one administrative rule. Time and effort equates to 0.3 FTE.

Direct seller B&O tax exemption (Part V), B&O tax preferences for manufacturers of products derived from certain agricultural products (Part VI), suspending the sales and use tax exemption for livestock nutrient equipment and facilities (Part VII), foreclosure exemption (Part XI), rural county tax incentive programs (Part XVII), and sales and use tax exemptions for machinery and equipment used in renewable energy generation (Part XXII)

To implement these parts of the legislation the Department will incur costs of $11,300 in Fiscal Year 2010. These are costs for mailing a special notice.

Fiscal Year 2011 costs are $40,900. These are costs for amending seven administrative rules.

Ending the preferential B&O tax treatment received by directors of corporations (Part VIII)

To implement this part of the legislation the Department will incur costs of $1,900 in Fiscal Year 2010. These are costs for mailing a special notice.

Fiscal Year 2011 costs are $20,000. These are ongoing costs for answering questions about reporting and filling out the tax returns. Time and effort equates to 0.2 FTE.

The Department will incur ongoing costs of $20,300 in the 2011-2013 Biennium, and $13,800 in the 2013-2015 Biennium. These are costs for answering questions about reporting and filling out the tax returns. Time and effort equates to 0.2 FTE in the 2011-2013 Biennium and 0.1 FTE in the 2013-2015 Biennium.

Repealing the sales and use tax exemptions for candy and bottled water (Part XIV)

To implement this part of the legislation the Department will incur costs of $186,600 in Fiscal Year 2010. These are costs for answering questions about the tax change and $153,000 for mailing a special notice to retailers. Time and effort equates to 0.4 FTE.

Fiscal Year 2011 costs are $44,700. These are costs for answering questions, handling taxpayer questions, and working out-of-balance returns. Time and effort equates to 0.6 FTE.

The Department will incur costs of $20,300 in the 2011-2013 Biennium and $6,900 in the 2013-2015 Biennium. These are costs for handling questions and out-of-balance returns. Time and effort equates to 0.2 FTE in the 2011-2013 Biennium and 0.1 FTE in the 2013-2015 Biennium.

Imposing sales and use tax on cosmetic surgery, custom software, and janitorial services (Part XV)

To implement this part of the legislation the Department will incur costs of $163,500 in Fiscal Year 2010. These costs are for handling questions about the tax, processing additional returns being filed due to collection of sales tax, and sending a special notice. Special notice costs are $47,000. Time and effort equates to 1.6 FTE's.

Fiscal Year 2011 costs are $257,500. These are ongoing costs for handling questions about the tax, processing additional returns being filed, and collection efforts. These costs also include onetime costs of $23,200 for amending four administrative rules and $5,600 in printing and postage costs for the additional returns. Time and effort equates to 3.1 FTE's.

The Department will incur ongoing costs of $257,300 in the 2011-2013 Biennium and $110,000 in the 2013-2015 Biennium. Time and effort equates to 2.1 FTE's in Fiscal Year 2012, 1.4 FTE's in Fiscal Year 2013, and 0.7 FTE in the 2013-2015 Biennium. The cost of printing and mailing additional tax returns is $5,600 each fiscal year.

Increasing tobacco taxes (Part XVI)

To implement this part of the legislation the Department will incur costs of $280,900 in Fiscal Year 2010. These are programming costs to set up, test, and verify the systems to handle the tax and costs for sending floor stock tax returns and a special notice. Printing and mailing costs are $28,000. Time and effort equates to 2.6 FTE's.

Fiscal Year 2011 costs are $284,000. These are ongoing costs for processing tax and floor stock returns, answering questions about the other tobacco products taxes, handling errors and out of balances on returns, and the printing of a new addendum form. These costs also include onetime costs of amending one administrative rule. Time and effort equates to 3.2 FTE's.

The Department will incur ongoing costs of $314,400 in the 2011-2013 Biennium and $388,400 in the 2013-2015 Biennium. These are costs noted above plus additional audit effort needed to insure proper payment of the tax. Time and effort equates to 1.5 FTE's in Fiscal Year 2012, 2.5 FTE's in Fiscal Year 2013, and 2.5 FTE's in the 2013-2015 Biennium.

Sales and use tax exemption for data centers (Part XVIII)

To implement this part of the legislation the Department will incur costs of $27,700 in Fiscal Year 2011. These are programming costs to set up, test, and verify the systems to handle the exemption and costs to answer questions about the exemption. Time and effort equates to 0.3 FTE.

The Department will incur ongoing costs of $17,600 in the 2011-2013 and 2013-2015 Biennia. These are ongoing costs to answer questions about the exemption.

Business and occupation surtax on certain services (Part XX)

To implement this part of the legislation the Department will incur costs of $72,200 in Fiscal Year 2010. These are programming costs to set up, test, and verify the systems to handle the surtax, costs to answer questions about the tax, and mailing a special notice. Special notice costs are $28,700. Time and effort equates to 0.5 FTE.

Fiscal Year 2011 costs are $251,900. These are costs to answer questions, handle reporting errors, collection costs, and amending one administrative rule. Time and effort equates to 3.1 FTE's.

The Department will incur ongoing costs of $177,200 in the 2011-2013 Biennium and $29,000 in the 2013-2015 Biennium. Time and effort equates to 1.2 FTE's in 2011-2013 Biennium and 0.2 FTE in the 2013-2015 Biennium. Costs are reduced as taxpayers become more educated.

Limiting B&O exemption on investment earnings for nonfinancial firms (Part XXI)

To implement this part of the legislation the Department will incur costs of $12,300 in Fiscal Year 2010. These are costs to set up a new line code for the tax deduction. Time and effort would equate to 0.1 FTE.

Fiscal Year 2011 costs are $8,000. These are ongoing costs to handle questions about the deduction and handle reporting errors. Time and effort would equate to 0.1 FTE.

The Department will incur ongoing costs of $14,400 in each of the 2011-2013 and 2013-2015 Biennia. Costs are noted above. Time and effort would equate to 0.1 FTE in each biennium.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	9.0	32.7	20.9	23.0	18.1
A-Salaries and Wages	465,700	1,670,100	2,135,800	2,393,400	1,814,400
B-Employee Benefits	116,400	417,600	534,000	598,400	453,500
E-Goods and Services	898,900	556,600	1,455,500	674,200	545,700
G-Travel	5,300	37,800	43,100	72,200	69,600
J-Capital Outlays	61,000	216,000	277,000	51,500	36,300
Total $	$1,547,300	$2,898,100	$4,445,400	$3,789,700	$2,919,500

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
COMMUNICATIONS CNSLT 4	53,146	0.1		0.1		
EXCISE TAX EX 2	42,583	1.5	8.3	4.9	6.8	5.6
EXCISE TAX EX 3	50,563	0.5	2.1	1.3	1.5	1.3
EXCISE TAX EX 4	55,839	1.3	0.2	0.8		
HEARINGS SCHEDULER	32,688		0.1	0.1		
INFO TECH S/A S 6	76,990		0.3	0.1		
IT SPEC 4	63,195	1.4	1.1	1.3		
IT SPEC 5	69,756	0.9	0.5	0.7	0.1	0.1
OFF ASST 3	29,780	0.8	2.6	1.7	0.4	0.4
REVENUE AGENT 2	47,014		4.2	2.1	3.1	2.2
REVENUE AGENT 3	51,861	0.1		0.1		
REVENUE AUDITOR 3	54,505		6.0	3.0	6.5	7.0
TAX INFO SPEC 1	36,757	0.9	0.8	0.8		
TAX INFO SPEC 4	54,505	1.5	1.1	1.3	0.7	0.6
TAX POLICY SP 2	61,628		0.1	0.1		
TAX POLICY SP 3	69,756		5.3	2.6	4.0	1.0
WMS BAND 3	88,546		0.1	0.1		
Total FTE's	939,112	9.0	32.7	20.9	23.0	18.1

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.

(Part I)
The Department will use the standard process to amend WAC 458-20-14601, titled: "Financial institutions - Income apportionment" and WAC 458-20-194, titled: "Doing business inside and outside the state". The standard process will also be used to adopt one new rule under chapter 458-20 WAC. Persons affected by this rule-making would include financial and other service businesses and businesses earning royalty income.

(Part II)
The Department will use the significant legislative process to adopt one new administrative rule under 458-20 WAC. The expedited process will be used to amend WAC 458-20-228, titled: "Returns, payments, penalties, extensions, interest, stay of collection". Persons affected by this rule-making would include tax practitioners and businesses that use potentially abusive techniques to avoid excise taxes administered by the Department.

The Department will use the standard process to amend WAC 458-20-106, titled: "Casual or isolated sales - Business reorganizations". Persons affected by this rule-making would include businesses transferring capital assets using step transactions to avoid retail sales and use taxes.

The Department will use the standard process to amend WAC 458-61A-101, titled: "Taxability of the transfer or acquisition of the controlling interest of an entity with an interest in real property located in this state". Persons affected by this rule-making would include business entities owning real estate in this state.

(Part III)
The Department will use the expedited process to amend WAC 458-20-146, titled: "National and state banks, mutual savings banks, savings and loan associations and other financial institutions". Persons affected by this rule-making include those businesses who receive interest from investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(Part IV)
The Department will use the standard process to amend WAC 458-20-193, titled: "Inbound and outbound interstate sales of tangible personal property". Persons affected by this rule-making include non-residents and businesses making sales to nonresidents.

(Part V)
The Department will use the expedited process to amend WAC 458-20-246, titled: "Sales to or through a direct seller's representative". Persons affected by this rule-making would include businesses making sales to or through direct seller's representatives.

(Part VI)
The Department will use the expedited process to amend WAC 458-20-136, titled: "Manufacturing, processing for hire, fabricating". Persons affected by this rule-making include those businesses that use meat, vegetables, or fruit in manufactured products.

(Part VII)
The Department will use the expedited process to amend WAC 458-20-210, titled: "Sales of tangible personal property for farming - Sales of agricultural products by farmers". Persons affected by this rule-making would include those owning livestock nutrient management equipment or facilities.

(Part VIII)
The Department will use the expedited process to amend WAC 458-20-105, titled: "Employees distinguished from persons engaging in business". Persons affected by this rule-making would include those individuals who are receiving compensation as a corporate director.

(Part XI)
The Department will use the expedited process to amend WAC 458-61A-208, titled: "Foreclosure - Deeds in lieu of foreclosure - Sales pursuant to court order". Persons affected by this rule-making would include those who sell real property, through foreclosure, to third parties.

(Part XIV)
The Department will use the standard process to adopt one new rule under chapter 458-20 WAC. Persons affected by this rule-making would include those who sell candy and bottled water.

(Part XV)
The Department will use the expedited 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 and individuals purchasing and selling custom software.

The Department will use the expedited process to amend WAC 458-20-172, titled: "Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial services". Persons affected by this rule-making would be those providing janitorial services.

The Department will use the standard process to amend WAC 458-20-168, titled: "Hospitals, nursing homes, boarding homes, adult family homes and similar health care facilities". Persons affected by this rule-making would be those providing elective cosmetic surgery.

(Part XVI)
The Department will use the standard process to amend WAC 458-20-185, titled: "Tax on tobacco products". Persons affected by this rule-making would be those selling tobacco products.

(Part XVII)
The Department will use the standard process to amend WAC 458-20-240, titled: "Manufacturer's new employee tax credits" and WAC 458-20-24001, titled: "Sales and use tax deferral - Manufacturing and research / development activities in rural counties - Applications filed after March 31, 2004". Persons affected by this rule-making would include businesses that have an eligible investment project in a rural county.

(Part XX)
The Department will use the expedited process to amend WAC 458-20-138, titled: "Personal services rendered to others", WAC 458-20-207, titled: "Legal, arbitration, and mediation services", and WAC 458-20-224, titled: "Service and other business activities". Persons affected by this rule-making would include those providing services described in Sec. 2002 of this legislation.

(Part XXII)
The Department will use the expedited process to amend WAC 458-20-263, titled: "Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption". Persons affected by this rule-making would include persons generating electricity from the wind.

Individual State Agency Fiscal Note

Bill Number: 3191 S HB	Title: Excise tax laws	Agency: 240-Department of Licensing

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Non-zero but indeterminate cost. Please see discussion.

Estimated Expenditures from:

Non-zero but indeterminate cost. Please see discussion.

Estimated Capital Budget Impact:

Total $						

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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:

[X] 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:		Phone:	Date: 03/04/2010
Agency Preparation:	Sally McVaugh	Phone: (360) 902-3642	Date: 03/08/2010
Agency Approval:	Sam Knutson	Phone: (360) 902-3644	Date: 03/08/2010
OFM Review:	Alyson Cummings	Phone: 360-902-0576	Date: 03/08/2010

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.

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.

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.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

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.

Part II: Explanation

This bill revises RCW 84.48 and directs the Department of Licensing (DOL) to collect an excise tax in the amount of five-tenths of one percent of the taxable value of the aircraft used in the state. It revises RCW 82.12.020 to make vehicle and vessel transactions obtained by lease, gift, repossession, and homemade vehicles/vessels subject to use tax. RCW 43.07.390 is revised to require legal entities regulated by the Secretary of State to disclose information regarding their holdings and transfers of real property located in Washington State.

II. A – Brief Description of What the Measure Does that Has Fiscal Impact

Section 205 revises RCW 82.12.020 and would make vehicle and vessel transactions obtained by lease, gift, repossession, and homemade vehicles and vessels subject to use tax.

Section 212 revises RCW 43.07.390 and requires entities to disclose any transfer of controlling interest in the entity and the granting of any option to acquire an interest in the entity if the exercise of the option would result in a sale as defined in RCW 82.45.010. The disclosure requirement applies to entities owning an interest in real property located in this state.

Section 901 amends RCW 82.48.010 by defining “department” as the Department of Licensing for purposes of excise tax assessment and collection required later in the bill and removes the Department of Transportation from this function.

Section 902 establishes a five-tenths of one percent aircraft excise tax on the taxable value of the aircraft and permits DOL to establish by rule a staggered collection system.

Section 903 creates a new section in chapter 82.48 RCW which requires the Department of Revenue to create a depreciation schedule for aircraft excise tax which will be considered the taxable value of an aircraft.

Section 904 amends RCW 82.48.030 by removing the flat-rate aircraft excise tax currently imposed.

Section 905 requires DOL to give a receipt to each person paying the aircraft excise tax.

Section 906 requires DOL to regularly pay aircraft excise taxes to the state treasurer and to deposit them in the general fund.

Section 907 exempts aircraft from personal property taxes if an aircraft excise tax has been assessed and requires assessment of personal property tax if the aircraft excise tax has not been assessed.

Section 2214 makes April 1, 2010, the effective date for Sections 205, 212, and 901-907.

II. B – Cash Receipt Impact

The cash receipt impact is indeterminate. The excise tax imposed in Section 902 is different from the existing excise tax which is a fixed dollar amount by type of aircraft. The proposed excise tax will be based on the fair market value of each aircraft. There is no information on the fair market value of aircraft currently registered in Washington as the Washington State Department of Transportation registration data does not contain fair market value of aircraft.

Section 903 stipulates that the Department of Revenue (DOR) must develop a depreciation schedule for use in determining fair market value. DOR will develop a depreciation schedule if this legislation passes.

Thus, until the fair market value of each aircraft is established and a depreciation schedule is established by DOR to estimate future values, the Department of Licensing cannot determine how much excise tax to impose.

II. C – Expenditures

The expenditures for sections 901-907 are indeterminate. The department cannot implement this bill as it is currently written. Currently this bill has an effective date of April 1, 2010. The agency is not able to complete necessary information systems programming to collect the aircraft excise tax by that date.

The tax in Section 205 is reported by the Department of Revenue. The Department of Licensing would have to make modifications to the Vehicle Field System to correctly collect the tax and to submit correct information to the Department of Revenue. The costs for this are minimal.

Some of the information required by the Secretary of State to implement Section 212 is provided by the Department of Licensing's Master License Service (MLS). MLS currently maintains two questions on the corporation and limited liability renewals processed on behalf of the Secretary of State regarding the legal entity's real estate holdings and transfers. It is assumed that Section 212 will require removing one of those questions and therefore the renewal forms will need to be reprinted. The online renewal process will need to be changed to capture the question changes and also to collect the information from both the paper and internet renewal transactions. The costs for reprinting renewal forms will be minimal. The programming changes will require a temporary employee during fiscal year 2010 for three months at $9,284 per month for a total cost of $27,852. This employee will do the analysis, coding, testing, and implementation needed for the changes to the internet renewal process.

Part IV: Capital Budget Impact

None

Part V: New Rule Making Required

Section 902 requires DOL to establish by rule a staggered aircraft excise tax collection schedule.

Individual State Agency Fiscal Note

Bill Number: 3191 S HB	Title: Excise tax laws	Agency: 303-Department of Health

Part I: Estimates

☒ **No Fiscal Impact**

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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:		Phone:	Date: 03/04/2010
Agency Preparation:	Catherine Suter	Phone: 360-236-4544	Date: 03/05/2010
Agency Approval:	Catherine Suter	Phone: 360-236-4544	Date: 03/05/2010
OFM Review:	Nick Lutes	Phone: 360-902-0570	Date: 03/06/2010

Request # 10-134-2

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.

Section 1608: Directs the Department of Health (DOH) to study youth access to and consumption of moist snuff with the assistance of the Department of Revenue (DOH) and the Office of Financial Management (OFM). The study must address historic, current, and future trends and data, preferably dating back to 2000, as well as which products are consumed by which age group. DOH must report to the legislature by December 1, 2010.

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.

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.

Section 1608: DOH currently has data on youth prevalence rates of moist snuff for grades sixth, eighth, tenth, twelfth grade male and females. This indicates the total number of users of moist snuff in those age groups at any given time. There is no known information available on types of products used by what age group and how these different age groups acquired the product.

Due to the data currently available and the timeline to submit a report by December 1, 2010, DOH will only be able to provide information on the total number of users of moist snuff for the mentioned grades. There is no fiscal impact to the department as this information is already collected and the development of the report would be minimal.

In order to collect, analyze, and report on the data requested in this bill, DOH would need to establish a contract, which will provide research analysis and evaluation support for the agency. The contractor would seek the data required by the report and complete the study. In addition, the contractor would provide the data analysis plan, completed analysis, and prepare the report for review by DOH, DOR, and OFM prior to providing the report to the legislature. Based on previous contracting for data collection, review, analysis, and report development, DOH would require $50,000 and until December 1, 2011, to complete this work, aligning with the agency's fiscal estimates for 2382 PSHB H-4196.1, Concerning the taxation of moist snuff, from earlier this session.

Part III: Expenditure Detail

Part IV: Capital Budget Impact

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.

Individual State Agency Fiscal Note

Bill Number: 3191 S HB	Title: Excise tax laws	Agency: 405-Department of Transportation

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

ACCOUNT		FY 2010	FY 2011	2009-11	2011-13	2013-15
Aeronautics Account-State	039-1		(26,000)	(26,000)	(54,000)	(54,000)
	Total $		(26,000)	(26,000)	(54,000)	(54,000)

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
Account					
Total $					

Estimated Capital Budget Impact:

Total $						

This bill was identified as a proposal governed by the requirements of RCW 43.135.031 (Initiative 960). Therefore, this fiscal analysis includes a projection showing the ten-year cost to tax or fee payers of the proposed taxes or fees.

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:		Phone:	Date: 03/04/2010
Agency Preparation:	Joe Patterson	Phone: 360-705-7545	Date: 03/05/2010
Agency Approval:	Doug Vaughn	Phone: 306-705-7500	Date: 03/05/2010
OFM Review:	Ron Lorentson	Phone: (360) 902-9822	Date: 03/09/2010

Request # 10-105-1

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.

Section 902 amends RCW 82.48.020 imposing an annual excise tax for the privilege of using any aircraft in the state and transfers the responsibility of collecting the excise tax to the Department of Licensing (DOL). The amount of the tax is five-tenths of one percent of the taxable value of the aircraft.

Section 906 amends RCW 82.48.080 and removes the provision that ten percent of the tax collections be deposited into the aeronautics account for administrative expense.

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.

The cash receipts reflect the reduction to the aeronautics account directed in section 906. Instead, all aircraft excise tax collections will be deposited into the general fund. Those amounts will be reflected in the DOL fiscal note.

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.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years					
Total:					

Part IV: Capital Budget Impact

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.

Multiple Agency Ten-Year Analysis Summary

Bill Number	Title
3191 S HB	Excise tax laws

This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

Estimated Cash Receipts (Dollars in Thousands)

Agency Name	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	2010-19 TOTAL
Office of Financial Management	0	0	0	0	0	0	0	0	0	0	0
Department of Revenue	100,518,000	684,473,000	779,360,000	874,336,000	962,245,000	1,017,618,000	1,047,504,000	1,113,554,000	1,187,810,000	1,267,474,000	9,034,892,000
Department of Licensing	Non-zero but indeterminate impact										
Department of Health	0	0	0	0	0	0	0	0	0	0	0
Department of Transportation	0	0	0	0	0	0	0	0	0	0	0
Total	**100,518,000**	**684,473,000**	**779,360,000**	**874,336,000**	**962,245,000**	**1,017,618,000**	**1,047,504,000**	**1,113,554,000**	**1,187,810,000**	**1,267,474,000**	**9,034,892,000**

Ten-Year Analysis

Bill Number	Title	Agency
3191 S HB	Excise tax laws	105 Office of Financial Management

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

X **No Cash Receipts**

☐ **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code										

Agency Preparation:	Stephanie Lidren	Phone:	360-902-3056	Date:	3/5/2010 9:17:08 am
Agency Approval:	Aaron Butcher	Phone:	360-902-0406	Date:	3/5/2010 9:17:08 am
OFM Review:	Ryan Black	Phone:	360-902-0417	Date:	3/6/2010 2:17:43 pm

Ten-Year Analysis

Bill Number	Title	Agency
3191 S HB	Excise tax laws	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

☐ **No Cash Receipts**

☐ **Indeterminate Cash Receipts**

Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017	Fiscal Year 2018	Fiscal Year 2019	2010-19 TOTAL
B&O Tax	001	46,749,000	329,189,000	401,747,000	470,296,000	535,247,000	563,836,000	563,067,000	593,062,000	627,234,000	661,866,000	4,792,293,000
Cigarette Tax	001	14,737,000	88,423,000	86,868,000	85,985,000	85,985,000	85,985,000	85,985,000	85,985,000	85,985,000	85,985,000	791,923,000
Cigarette Tax	08a	24,000	140,000	370,000	726,000	726,000	726,000	726,000	726,000	726,000	726,000	5,616,000
Total Cigarette Tax		**14,761,000**	**88,563,000**	**87,238,000**	**86,711,000**	**86,711,000**	**86,711,000**	**86,711,000**	**86,711,000**	**86,711,000**	**86,711,000**	**797,539,000**
Other Tobacco Products Tax	001	97,000	8,028,000	13,371,000	13,614,000	13,749,000	13,769,000	15,267,000	16,961,000	18,735,000	20,697,000	134,288,000
Public Utilities District Tax	001	182,000	1,091,000	1,113,000	1,135,000	1,158,000	1,181,000	1,205,000	1,229,000	1,254,000	1,279,000	10,827,000
Real Estate Excise Tax	001	767,000	9,962,000	10,890,000	11,443,000	12,159,000	12,810,000	13,492,000	14,201,000	14,943,000	15,720,000	116,387,000
Real Estate Excise Tax	058	51,000	659,000	721,000	756,000	805,000	848,000	892,000	940,000	989,000	1,040,000	7,701,000
Real Estate Excise Tax	09p	13,000	185,000	203,000	215,000	227,000	239,000	252,000	265,000	278,000	292,000	2,169,000
Total Real Estate Excise Tax		**831,000**	**10,806,000**	**11,814,000**	**12,414,000**	**13,191,000**	**13,897,000**	**14,636,000**	**15,406,000**	**16,210,000**	**17,052,000**	**126,257,000**
Retail Sales Tax	001	37,832,000	246,369,000	263,623,000	289,667,000	311,656,000	337,650,000	366,032,000	399,545,000	436,966,000	479,099,000	3,168,439,000
Retail Sales Tax	553	66,000	427,000	454,000	499,000	533,000	574,000	586,000	640,000	700,000	770,000	5,249,000
Total Retail Sales Tax		**37,898,000**	**246,796,000**	**264,077,000**	**290,166,000**	**312,189,000**	**338,224,000**	**366,618,000**	**400,185,000**	**437,666,000**	**479,869,000**	**3,173,688,000**
Total		**100,518,000**	**684,473,000**	**779,360,000**	**874,336,000**	**962,245,000**	**1,017,618,000**	**1,047,504,000**	**1,113,554,000**	**1,187,810,000**	**1,267,474,000**	**9,034,892,000**
Biennial Totals			**784,991,000**		**1,653,696,000**		**1,979,863,000**		**2,161,058,000**		**2,455,284,000**	**9,034,892,000**

Ten-Year Analysis

Revised

Bill Number	Title	Agency
3191 S HB	Excise tax laws	140 Department of Revenue

Agency Preparation:	Valerie Torres	Phone:	360-570-6084	Date:	3/6/2010 2:11:46 pm
Agency Approval:	Don Gutmann	Phone:	360-570-6073	Date:	3/6/2010 2:11:46 pm
OFM Review:	Ryan Black	Phone:	360-902-0417	Date:	3/6/2010 2:17:43 pm

Ten-Year Analysis

Bill Number	Title	Agency
3191 S HB	Excise tax laws	240 Department of Licensing

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

☐ **No Cash Receipts**

☒ **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Narrative Explanation (Required for Indeterminate Cash Receipts)

Fiscal impact regarding SHB 3191 as written is INDETERMINATE. The following is DOL's revenue analysis:

- RCW 47.68.250 is not amended by this bill, registration of aircraft would remain with the Washington Department of Transportation (WADOT). Thus, WADOT should have revenue estimates for aircraft registrations.

- The excise tax imposed (Section 902) is different from the existing excise tax, which is a fixed dollar amount by type of aircraft. The proposed excise tax will be based on fair market value of each aircraft. There is no information on the fair market value of aircraft currently registered in Washington (WADOT registration data does not contain fair market value of aircraft).

- Section 903 stipulates that the Department of Revenue (DOR) must develop a depreciation schedule for use in determining fair market value. DOR will develop a depreciation schedule IF the legislation passes.

- Thus, until the fair market value of each aircraft is established AND a depreciation schedule is established by DOR to estimate future values, the Department of Licensing cannot determine how much excise tax to impose.

Agency Preparation:	Sally McVaugh	Phone:	(360) 902-3642	Date:	3/8/2010 4:00:35 pm
Agency Approval:	Sam Knutson	Phone:	(360) 902-3644	Date:	3/8/2010 4:00:35 pm
OFM Review:	Ryan Black	Phone:	360-902-0417	Date:	3/6/2010 2:17:43 pm

Ten-Year Analysis

Bill Number	Title	Agency
3191 S HB	Excise tax laws	303 Department of Health

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

X **No Cash Receipts** ☐ **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code										

Narrative Explanation (Required for Indeterminate Cash Receipts)

Of the excise taxes addressed in this bill, SHB 3191, the Department of Health does not collect any. Therefore, the department has no cashe receipts impact.

Agency Preparation:	Catherine Suter	Phone:	360-236-4544	Date:	3/5/2010 2:14:18 pm
Agency Approval:	Catherine Suter	Phone:	360-236-4544	Date:	3/5/2010 2:14:18 pm
OFM Review:	Ryan Black	Phone:	360-902-0417	Date:	3/6/2010 2:17:43 pm

Ten-Year Analysis

Bill Number	Title	Agency
3191 S HB	Excise tax laws	405 Department of Transportation

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts** [ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code										

Agency Preparation:	Joe Patterson	Phone:	360-705-7545	Date:	3/5/2010 3:04:57 pm
Agency Approval:	Doug Vaughn	Phone:	306-705-7500	Date:	3/5/2010 3:04:57 pm
OFM Review:	Ryan Black	Phone:	360-902-0417	Date:	3/6/2010 2:17:43 pm