

Department of Revenue Fiscal Note

Bill Number: 6492 E S SB	Title: B&O tax/workforce education	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2020	FY 2021	2019-21	2021-23	2023-25
Workforce Educationa Investment Account-State 01 - Taxes 05 - Bus and Occup Tax	(68,000,000)	38,400,000	(29,600,000)	234,300,000	216,000,000
Total \$	(68,000,000)	38,400,000	(29,600,000)	234,300,000	216,000,000

Estimated Expenditures from:

Account	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	3.6	2.8	3.2		
GF-STATE-State 001-1	467,800	313,300	781,100		
Total \$	467,800	313,300	781,100		

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

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Part II: Narrative Explanation

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

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

Note: This fiscal note reflects a revision to the expenditures, and supersedes fiscal note number 6492-3.

CURRENT LAW:

The service and other activities business and occupation (B&O) tax rate is 1.5 percent.

E2SHB 2158, passed during the 2019 Legislative Session, imposes tiered surcharges based on a percentage of the service and other activities B&O tax payable by a business as follows:

- A 20 percent surcharge on “specified persons” primarily engaged in one or more of the enumerated categories of activities described in the bill.
- A 33.33 percent surcharge on affiliated groups of “select advanced computing businesses” with combined worldwide gross revenue of more than \$25 billion but not more than \$100 billion.
- A 66.66 percent surcharge on affiliated groups of select advanced computing businesses with combined worldwide gross revenue of more than \$100 billion.
- Affiliated groups of select advanced computing businesses must pay a combined minimum surcharge amount ("floor") of \$4 million and a maximum ("cap") of \$7 million annually.
- The advanced computing surcharge does not apply to:
 - Businesses primarily engaged in commercial mobile services; or
 - Businesses primarily engaged in operation and provision of access to transmission facilities and infrastructure

The tiered surcharges are codified in RCW 82.04.299 and are effective January 1, 2020.

PROPOSAL:

This bill eliminates the 20 percent Workforce Education Investment Surcharge on specified persons under RCW 82.04.299, both prospectively and retroactively to January 1, 2020.

This bill delays the effective date of the surcharge on select advanced computing businesses to April 1, 2020, and simplifies this surcharge as follows:

- Replaces the two-tier surcharge with a single surcharge equal to 1.22 percent of the business’s gross income taxable under the service and other activities B&O tax classification.
- Eliminates the \$4 million floor.
- Increases the annual cap to \$9 million.
- Select advanced computing businesses will pay the surcharge quarterly but will continue to report and pay the rest of their excise tax liability as required by RCW 82.32.045.
- The advanced computing surcharge does not apply to businesses primarily engaged in business as a “financial institution” as defined in RCW 82.04.29004.
- If the Department of Revenue (Department) establishes, by clear, cogent, and convincing evidence that a business, and/or members of the business’s affiliated group, intended to evade the surcharge, the Department must assess a penalty equal to fifty percent of the amount of the total surcharge payable by all members of that affiliated group for the calendar year during which the person or affiliated group failed to fully comply. The penalty is in lieu of the evasion penalty under RCW 82.32.090(7).

Effective April 1, 2020, this bill increases the service and other activities B&O tax rate under RCW 82.04.290(2) from 1.5 percent to 1.75 percent. The increase in the service and other activities B&O tax rate does not apply to:

- Businesses subject to the advanced computing surcharge;
- Any business whose gross income of the business subject service and other activities B&O tax was below \$1,000,000,

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including any such income of the business's affiliates; and
- Hospitals.

All new revenue from the additional 0.25 percent service and other activities B&O tax rate will be deposited into the Workforce Education Investment Account. This is equivalent to 14.3 percent of service and other activities B&O tax collections at the 1.75 percent tax rate.

EFFECTIVE DATE:

The elimination of the 20 percent surcharge on specified persons is effective retroactively to January 1, 2020.

The elimination of the original advanced computing surcharge is effective retroactively to January 1, 2020. The simplified surcharge on select advanced computing businesses is effective April 1, 2020, with the first quarterly payments due July 31, 2020.

The increased service and other activities B&O tax rate is effective April 1, 2020, with the first monthly tax return due May 25, 2020.

II. B - Cash receipts Impact

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

ASSUMPTIONS:

This bill will be passed by the Legislature by February 10, 2020.

The surcharges in E2SHB 2158 will be eliminated retroactively to January 1, 2020, resulting in 5 months of impact for Fiscal Year 2020 and 12 months of impact thereafter.

The increased service and other activities B&O tax rate is effective April 1, 2020, resulting in 2 months of impact for Fiscal Year 2020 and 12 months of impact thereafter.

The simplified advanced computing surcharge is effective April 1, 2020, with the first quarterly payment due July 31, 2020, resulting in no revenue impact for Fiscal Year 2020 and 12 months of impact thereafter.

For affiliated groups that are known to the Department, this estimate assumes the affiliated groups may engage in some level of restructuring that may decrease their service and other activities B&O taxable income. This estimate assumes that 90 percent of estimated taxable revenue will be maintained.

Currently, it is estimated that there will be at least 89,100 taxpayers subject to the higher education surcharges provided for in E2SHB 2158.

This bill will impact approximately 14,800 taxpayers.

- Of the estimated 14,800 taxpayers, approximately 10,400 taxpayers will pay a lower rate than they would have under E2SHB 2158 (1.75 percent vs 1.8 percent).
- A small number of taxpayers will be subject to the simplified advanced computing surcharge and will pay a higher rate than under E2SHB 2158.
- The remaining 4,400 are not subject to the surcharges created in E2SHB 2158, but will pay the higher service and other activities B&O tax rate in this bill.

DATA SOURCES:

Department of Revenue excise tax returns for Fiscal Year 2019
Washington State Economic and Revenue Forecast Council November 2019 forecast

REVENUE ESTIMATES

This bill decreases state revenues by an estimated \$68.0 million in Fiscal Year 2020, and increases state revenues by \$38.4 million in Fiscal Year 2021.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

- FY 2020 - (\$ 68,000)
- FY 2021 - \$ 38,400
- FY 2022 - \$ 115,300
- FY 2023 - \$ 119,000
- FY 2024 - \$ 117,800
- FY 2025 - \$ 98,200

LOCAL GOVERNMENT IMPACT: none

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.

ASSUMPTIONS:

- This legislation affects 14,800 taxpayers.
- This legislation will be passed by the Legislature by February 10, 2020.
- This legislation repeals the surcharges in E2SHB 2158, 2019 legislative session, retroactively to January 1, 2020.
- Much of the implementation work for E2SHB 2158 has already been completed due to the January 1, 2020, effective date.
- The Department did not receive funding sufficient to implement and administer E2SHB 2158.

FIRST YEAR COSTS:

The Department will incur total costs of \$467,800 in Fiscal Year 2020. These costs include:

Labor Costs - Time and effort equates to 3.63 FTEs.

- Amend two administrative rules, and adopt two new complex rules.
- Respond to additional telephone questions, email and written correspondence.
- Create a special notice; identify publications and information that need to be created or updated; and update web content.
- Set up, program and test computer system changes.
- Resolve additional error and out of balance returns; answer telephone questions; issue assessments; respond to web messages and paper correspondence; monitor reports; prepare refunds and assessments; conduct account examinations; supervise implementation; and oversee system testing.
- Increased interpretation and analysis of new laws.
- Conduct additional administrative reviews of notices and assessments.

Object Costs - \$85,700.

- Print and mail a special notice to affected taxpayers who do not file tax returns electronically.
- Print and mail additional reporting forms.
- Contract computer system programming.

SECOND YEAR COSTS:

The Department will incur total costs of \$313,300 in Fiscal Year 2021. These costs include:

Labor Costs - Time and effort equates to 2.8 FTEs.

- Resolve additional error and out of balance returns; answer telephone questions; issue assessments; respond to web messages and paper correspondence; monitor reports; prepare refunds and assessments; conduct account examinations; supervise implementation; and oversee system testing.
- Respond to additional telephone questions, email and written correspondence.
- Test computer system changes.
- Increased interpretation and analysis of new laws.
- Conduct additional administrative reviews of notices and assessments.

ONGOING COSTS:

The ongoing costs to administer ESSB 6492 are significantly lower than what was estimated for E2SHB 2158, 2019 legislative session, due to the simplifications provided for in this legislation. Costs for the 2021-23 Biennium are estimated at \$494,600 and 2.2 FTEs for continued education and taxpayer assistance with reporting requirements. Costs for the 2023-25 Biennium are estimated at \$163,800 and 0.8 FTEs.

The ongoing costs to administer E2SHB 2158 were estimated at \$2,789,700 and 14.1 FTEs for the 2021-23 Biennium and \$2,509,600 and 12.7 FTEs for the 2023-25 Biennium.

The net difference in costs for ongoing administration between E2SHB 2158 and ESSB 6492 equal \$2,295,100 and 11.9 FTEs for the 2021-23 Biennium and \$2,345,800 and 11.9 FTEs for the 2023-25 Biennium. However, this is not shown as cost savings on this fiscal note as the Department was not fully funded to implement and administer E2SHB 2158.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	3.6	2.8	3.2		
A-Salaries and Wages	243,600	208,500	452,100		
B-Employee Benefits	73,000	62,600	135,600		
C-Professional Service Contracts	70,400		70,400		
E-Goods and Other Services	57,200	30,900	88,100		
J-Capital Outlays	23,600	11,300	34,900		
Total \$	\$467,800	\$313,300	\$781,100		

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 2020	FY 2021	2019-21	2021-23	2023-25
EMS BAND 4	119,061	0.0		0.0		
EMS BAND 5	139,090	0.0		0.0		
EXCISE TAX EX 2	52,536	0.5	0.2	0.4		
EXCISE TAX EX 3	57,948	0.3	0.2	0.3		
IT QA-JOURNEY	83,148	0.1		0.1		
MGMT ANALYST3	59,436	0.0		0.0		
MGMT ANALYST4	68,892	1.0	0.5	0.8		
RECORDS MGMT SUPV	65,592	0.1		0.1		
TAX INFO SPEC 1	42,132	0.3		0.2		
TAX INFO SPEC 4	62,460	0.2	0.1	0.2		
TAX POLICY SP 2	70,632	0.0		0.0		
TAX POLICY SP 3	79,944	0.9	1.5	1.2		
TAX POLICY SP 4	86,064	0.2	0.3	0.2		
WMS BAND 3	101,257	0.0		0.0		
Total FTEs		3.6	2.8	3.2		

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

NONE

None.

Part V: New Rule Making Required

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

Should this legislation become law, the Department will use the expedited process to amend WAC 458-20-224, titled: "Service and other business activities", and WAC 458-20-1004, titled: "Small business tax relief based on income of businesses". The Department will also use the standard process to adopt two new complex rules for advanced computing and service and other activities B&O tax.

Persons affected by this rule making would include certain businesses filing under the service and other B&O tax classification and advanced computing businesses.