

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 5136 SB	<b>Title:</b> Sales and use tax exemptions
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## Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	(2,125,800,000)	(2,125,800,000)	(2,128,830,000)	(2,698,600,000)	(2,698,600,000)	(2,702,640,000)	(2,868,500,000)	(2,868,500,000)	(2,874,540,000)
<b>Total \$</b>	<b>(2,125,800,000)</b>	<b>(2,125,800,000)</b>	<b>(2,128,830,000)</b>	<b>(2,698,600,000)</b>	<b>(2,698,600,000)</b>	<b>(2,702,640,000)</b>	<b>(2,868,500,000)</b>	<b>(2,868,500,000)</b>	<b>(2,874,540,000)</b>

Agency Name	2023-25		2025-27		2027-29	
	GF- State	Total	GF- State	Total	GF- State	Total
Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other		(948,024,000)		(1,203,642,000)		(1,279,674,000)
Local Gov. Total		(948,024,000)		(1,203,642,000)		(1,279,674,000)

## Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Department of Revenue	9.5	2,091,000	2,091,000	2,091,000	7.8	1,569,600	1,569,600	1,569,600	7.6	1,532,000	1,532,000	1,532,000
<b>Total \$</b>	<b>9.5</b>	<b>2,091,000</b>	<b>2,091,000</b>	<b>2,091,000</b>	<b>7.8</b>	<b>1,569,600</b>	<b>1,569,600</b>	<b>1,569,600</b>	<b>7.6</b>	<b>1,532,000</b>	<b>1,532,000</b>	<b>1,532,000</b>

## Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
<b>Total \$</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>

## Estimated Capital Budget Breakout

<b>Prepared by:</b> Cheri Keller, OFM	<b>Phone:</b> (360) 584-2207	<b>Date Published:</b> Final
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# Department of Revenue Fiscal Note

<b>Bill Number:</b> 5136 SB	<b>Title:</b> Sales and use tax exemptions	<b>Agency:</b> 140-Department of Revenue
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## Part I: Estimates

**No Fiscal Impact**

### Estimated Cash Receipts to:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax	(835,600,000)	(1,290,200,000)	(2,125,800,000)	(2,698,600,000)	(2,868,500,000)
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax	(1,010,000)	(2,020,000)	(3,030,000)	(4,040,000)	(6,040,000)
<b>Total \$</b>	(836,610,000)	(1,292,220,000)	(2,128,830,000)	(2,702,640,000)	(2,874,540,000)

### Estimated Expenditures from:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	10.9	8.1	9.5	7.8	7.6
GF-STATE-State 001-1	1,277,500	813,500	2,091,000	1,569,600	1,532,000
<b>Total \$</b>	1,277,500	813,500	2,091,000	1,569,600	1,532,000

### 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.

Legislative Contact: Alia Kennedy	Phone: 60-786-7405	Date: 01/09/2023
Agency Preparation: Eric Skiff	Phone: 60-534-1506	Date: 01/22/2023
Agency Approval: Valerie Torres	Phone: 60-534-1521	Date: 01/22/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/23/2023

Request # 5136-1-1

## Part II: Narrative Explanation

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

*Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.*

#### CURRENT LAW:

Clothing and prepared foods are subject to retail sales and use tax. Products for young children are generally subject to retail sales and use tax.

The law defines prepared foods as any food where the seller:

- Combines two or more food ingredients and sells it as a single item,
- Sells the food in a heated state or heats the food, or
- Sells the food with eating utensils such as a plate, fork, knife, spoon, or glass/cup and straw.

Prepared foods are not:

- Food sold by a seller whose primary classification is manufacturing,
- Food sold in an unheated state as a single item, or
- Bakery items.

Food is "sold with eating utensils provided by the seller" if the seller makes utensils available, and the seller has more than 75% prepared food sales. This implies that a seller with less than 75% prepared food sales may be exempt from the retail sales tax on prepared foods, even if it provides utensils to its customers.

#### PROPOSAL:

Retail sales and use tax does not apply to the sales of clothing and footwear for human use, products for young children, nor prepared food.

"Clothing" means all human wearing apparel suitable for general use. "Clothing" also includes:

- Protective equipment necessary for the daily work of the user.
- Sewing equipment and supplies.

"Products for young children" means products specifically designed for the use by or care of infants and children under the age of five, as indicated by label on the product or product packaging, or other statement by the manufacturer of the product's intended use, or is a product commonly recognized by consumers as intended for use by infants and children under the age of five including, but not limited to:

- Diaper changing products
- Health and hygiene products
- Feeding products
- Sleep products
- Toys for young children

"Food and food ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" include "prepared food."

The department may adopt rules for the administration of this section, including emergency rules. These rules must be consistent with the streamlined sales and use tax agreement, to the extent the department considers advisable.

#### EFFECTIVE DATE:

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The bill takes effect 90 days after final adjournment of the session. However, due to the time it will take to program this bill's changes, the department is unable to implement the bill until October 1, 2023.

## II. B - Cash receipts Impact

*Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.*

### ASSUMPTIONS

- This estimate uses the definition of clothing which includes diapers.
- The average local sales tax rate is 2.92%.
- Sales will grow an average of 2.7% year over year for prepared foods and 3.9% year over year for clothing and products for young children.
- The department is including grooming and hygiene products and dietary supplements labeled and marketed for the care of a young child under the definition of baby products in this estimate; however, this introduces the risk of non-compliance with SSUTA.
- The department assumes this exemption will be product-based as a deduction. Otherwise, if this exemption is use-based, the department would not be able to implement the exemption requiring an exemption certificate to remain in compliance with SSUTA which states that for breast pumps in no case shall the administering agency require an exemption certificate. Therefore, if the department implemented the exemption as use-based, it would need to be in the form of a remittance which would require nine months for the department to implement.
- Revenues from food and non-alcoholic beverage sales are 70% of the total revenues in full-service restaurants, for caterers, and food service contractors.
- Revenues from food and non-alcoholic beverage sales are 85% of the total revenues in limited-service restaurants.
- Revenues from food and non-alcoholic beverage sales are 100% of the total revenues in cafeterias, grill buffets, buffets, snack and nonalcoholic beverage bars, and mobile food services.
- Revenues from food and non-alcoholic beverages sales are 11% of the total revenues in bars and taverns.
- Revenues from prepared food sales are 2% of the total revenues in grocery stores.
- Revenues from prepared food sales are 11% of the total revenues in convenience stores without gas stations and 5% in convenience stores with gas stations.
- Revenues as estimated assume passage of the proposal by April 23, 2023, and allow a minimum of 90 days to implement.
- Expenditures increase greatly with a split quarterly return thus this estimate assumes an effective date of October 1, 2023, resulting in 8 months of impacted cash collections in Fiscal Year 2024.

### DATA SOURCES

- Department of Revenue (department), retail sales tax data
- Washington State Economic and Revenue Forecast Council, November 2022 forecast
- National Restaurant Association
- Bureau of Economic Analysis for clothing data
- Bureau of Economic Analysis for population
- Statista.com, grocery store and convenience store sales data

### REVENUE ESTIMATES

This bill decreases state revenue by an estimated \$836.6 million in fiscal year 2024 and then by \$1.292 billion in fiscal year 2025, the first full year of impacted collections. This bill also decreases local revenues by an estimated \$377 million in fiscal year 2024, and then by \$580.6 million in fiscal year 2025, the first full year of impacted collections.

### TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):  
FY 2024 - (\$ 836,610)

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FY 2025 - (\$ 1,292,220)  
 FY 2026 - (\$ 1,330,620)  
 FY 2027 - (\$ 1,372,020)  
 FY 2028 - (\$ 1,415,520)  
 FY 2029 - (\$ 1,459,020)

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

FY 2024 - (\$ 377,000)  
 FY 2025 - (\$ 580,600)  
 FY 2026 - (\$ 597,800)  
 FY 2027 - (\$ 618,000)  
 FY 2028 - (\$ 636,200)  
 FY 2029 - (\$ 656,400)

**II. C - Expenditures**

*Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.*

**ASSUMPTIONS:**

This bill affects 115,000 taxpayers.

**FIRST YEAR COSTS:**

The department will incur total costs of \$1,277,500 in fiscal year 2024. These costs include:

Labor Costs – Time and effort equate to 10.91 FTEs.

- Amend and adopt nine administrative rules.
- Amend four excise tax advisories (ETA).
  - Set up, program and test computer system changes for a new deduction added to the combined excise tax return and e-file and an update to the Buyer's Sales and Use Tax Preference Addendum.
  - Hear additional administrative reviews that provide taxpayers with an informal, non-adversarial dispute resolution process for the review of a disputed action by the department, such as an assessment of taxes, notice of taxes due, denial of a refund request, or tax ruling.
  - Additional time required for routine field audits of retail sellers due to tax rule changes.
  - Gathering requirements, implementation meetings, documentation, and testing of system changes.
  - Process tax return work items, assist taxpayers with reporting questions and respond to inquiries via email and web message and paper correspondence.
  - Answer phone calls at the telephone information center on tax questions and tax return preparation from businesses, individuals, and accountants.
  - Create a Special Notice and update or create publications and information on the department’s website.
  - Respond to tax ruling requests and email inquiries.

Object Costs - \$69,600.

- Computer system changes, including contract programming.
- Print and mail a special notice to affected taxpayers who do not file tax returns electronically.
- Phone agent seat license.

**SECOND YEAR COSTS:**

The department will incur total costs of \$813,500 in fiscal year 2025. These costs include:

Labor Costs – Time and effort equate to 8.1 FTEs.

- Hear additional administrative reviews of disputed actions by the department.
- Examine accounts and make corrections as necessary.
- Collect an increased number of delinquent assessments because of tax return errors.
- Routine audits will require additional time to verify exemptions are valid.
  - Answer additional phone calls and counter inquiries on tax questions and tax return preparation from businesses, individuals, and accountants/CPAs.
- Update or create informational materials, publications, and online information.

**ONGOING COSTS:**

Ongoing costs for the 2026-27 biennium equal \$1,569,600 and include similar activities described in the second-year costs. Time and effort equate to 7.8 FTEs per year.

**Part III: Expenditure Detail**

**III. A - Expenditures by Object Or Purpose**

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	10.9	8.1	9.5	7.8	7.6
A-Salaries and Wages	701,800	513,900	1,215,700	991,200	967,600
B-Employee Benefits	231,600	169,600	401,200	327,000	319,200
C-Professional Service Contracts	61,600		61,600		
E-Goods and Other Services	181,100	87,400	268,500	168,000	163,200
G-Travel	17,500	17,500	35,000	35,000	35,000
J-Capital Outlays	83,900	25,100	109,000	48,400	47,000
<b>Total \$</b>	<b>\$1,277,500</b>	<b>\$813,500</b>	<b>\$2,091,000</b>	<b>\$1,569,600</b>	<b>\$1,532,000</b>

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

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
COMMUNICATIONS CNSLT 4	66,420	0.1		0.1		
EMS BAND 4	126,619	0.0		0.0		
EMS BAND 5	147,919	0.0		0.0		
EXCISE TAX EX 2	55,872	1.1	1.1	1.1	1.0	0.9
EXCISE TAX EX 3	61,632	0.6	0.6	0.6	0.5	0.4
IT SYS ADM-JOURNEY	92,844	0.1		0.1		
MGMT ANALYST4	73,260	0.7		0.3		
REVENUE AUDITOR 3	68,076	5.0	5.0	5.0	5.0	5.0
TAX INFO SPEC 1	44,808	2.0	1.0	1.5	1.0	1.0
TAX INFO SPEC 4	66,420	0.4	0.2	0.3	0.1	0.1
TAX POLICY SP 2	75,120	0.1		0.0		
TAX POLICY SP 3	85,020	0.7	0.2	0.5	0.2	0.2
TAX POLICY SP 4	91,524	0.1		0.1		
WMS BAND 3	107,685	0.0		0.0		
<b>Total FTEs</b>		<b>10.9</b>	<b>8.1</b>	<b>9.5</b>	<b>7.8</b>	<b>7.6</b>

**III. C - Expenditures By Program (optional)**

NONE

**Part IV: Capital Budget Impact**

**IV. A - Capital Budget Expenditures**

NONE

**IV. B - Expenditures by Object Or Purpose**

NONE

**IV. C - Capital Budget Breakout**

*Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.*

NONE

**Part V: New Rule Making Required**

*Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.*

Should this legislation become law, the department will use the standard process to amend the following rules:

WAC 458-20-119, titled: "Sales by caterers and food service contractors; Restaurants, cocktail bars, taverns and similar businesses"

WAC 458-20-124, titled: "Special stadium sales and use tax"

WAC 458-20-12401, titled: "Educational institutions, school districts, student organizations, and private schools"

WAC 458-20-167, titled: "Food and food ingredients"

WAC 458-20-New rule, titled: "New rule regarding clothing exemption"

The department will use the expedited process to amend the following rules:

WAC 458-20-153, titled: "Funeral establishments"

WAC 458-20-168, titled: "Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities"

WAC 458-20-168, titled: "Sales to or through a direct seller's representative"

Persons affected by this rulemaking will include businesses that sell and consumers that purchase clothing and prepared foods

# LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5136 SB

Title: Sales and use tax exemptions

## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

Cities: decrease in sales tax revenue

Counties: same as above

Special Districts: same as above

Specific jurisdictions only:

Variance occurs due to:

## Part II: Estimates

No fiscal impacts.

Expenditures represent one-time costs:

Legislation provides local option:

Key variables cannot be estimated with certainty at this time:

### Estimated revenue impacts to:

Jurisdiction	FY 2024	FY 2025	2023-25	2025-27	2027-29
City	(111,159,534)	(171,191,580)	(282,351,114)	(358,482,126)	(381,126,828)
County	(136,643,962)	(210,438,951)	(347,082,913)	(440,667,717)	(468,503,941)
Special District	(125,426,504)	(193,163,469)	(318,589,973)	(404,492,157)	(430,043,231)
<b>TOTAL \$</b>	<b>(373,230,000)</b>	<b>(574,794,000)</b>	<b>(948,024,000)</b>	<b>(1,203,642,000)</b>	<b>(1,279,674,000)</b>
<b>GRAND TOTAL \$</b>					<b>(3,431,340,000)</b>

### Estimated expenditure impacts to:

None

## Part III: Preparation and Approval

Fiscal Note Analyst: Tammi Alexander	Phone: 360-725-5038	Date: 01/23/2023
Leg. Committee Contact: Alia Kennedy	Phone: 360-786-7405	Date: 01/09/2023
Agency Approval: Allan Johnson	Phone: 360-725-5033	Date: 01/23/2023
OFM Review: Cheri Keller	Phone: (360) 584-2207	Date: 01/23/2023



## Part IV: Analysis

### A. SUMMARY OF BILL

*Description of the bill with an emphasis on how it impacts local government.*

This bill creates multiple sales and use tax exemptions for:

- clothing and footwear for human use, as defined in the bill
- products for young children, as defined in the bill
- prepared food, as defined in the bill

### B. SUMMARY OF EXPENDITURE IMPACTS

*Expenditure impacts of the legislation on local governments with the expenditure provisions identified by section number and when appropriate, the detail of expenditures. Delineated between city, county and special district impacts.*

This bill would not impact local government expenditures.

### C. SUMMARY OF REVENUE IMPACTS

*Revenue impacts of the legislation on local governments, with the revenue provisions identified by section number, and when appropriate, the detail of revenue sources. Delineated between city, county and special district impacts.*

This bill would significantly decrease sales and use tax revenue for local governments.

According to the Department of Revenue (DOR) this bill would decrease local revenues by an estimated \$377 million in fiscal year 2024, and then by \$580.6 million in fiscal year 2025, the first full year of impacted collections. Please see the DOR fiscal note for their assumptions and data sources.

#### LOCAL GOVERNMENT LOSS BREAKDOWN

##### Counties:

FY 2024	-\$136,643,962
FY 2025	-\$210,438,951
FY 2026	-\$216,673,105
FY 2027	-\$223,994,612
FY 2028	-\$230,591,217
FY 2029	-\$237,912,724

##### Cities:

FY 2024	-\$111,159,534
FY 2025	-\$171,191,580
FY 2026	-\$176,263,049
FY 2027	-\$182,219,077
FY 2028	-\$187,585,400
FY 2029	-\$193,541,428

##### Special Districts:

FY 2024	-\$125,426,504
FY 2025	-\$193,163,469
FY 2026	-\$198,885,846
FY 2027	-\$205,606,311
FY 2028	-\$211,661,383
FY 2029	-\$218,381,848

#### METHODOLOGY:

The distributions in this note for cities, counties, and special districts are based on DOR data for local sales and use tax

distributions from Calendar Year 2021. Mitigation payments and distributions to hospital benefit zones are not factored into this distribution. The result is a distribution of 36.61 percent to counties, 29.78 percent to cities, and 33.61 percent to special districts. The one percent DOR administrative fee has also been deducted.

**SOURCES:**

Department of Revenue Fiscal Note, SB 5136 (2023)

Department of Revenue Local Tax Distributions (2021)

Local Government Fiscal Note program, Local Sales Tax model 2023

Local Government Fiscal Note program, Sales and Use Tax Distribution model 2023