

# Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 3176 HB	<b>Title:</b> Increasing state revenues
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## Estimated Cash Receipts

Agency Name	2009-11		2011-13		2013-15	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	404,444,000	405,888,000	932,551,000	935,435,000	1,174,166,000	1,177,345,000
Department of Transportation	9,432,000	9,406,000	19,442,000	19,388,000	20,241,000	20,187,000
<b>Total \$</b>	<b>413,876,000</b>	<b>415,294,000</b>	<b>951,993,000</b>	<b>954,823,000</b>	<b>1,194,407,000</b>	<b>1,197,532,000</b>

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 the Secretary of State	.0	0	0	.0	0	0	.0	0	0
Department of Revenue	13.3	2,902,500	2,902,500	17.7	3,007,600	3,007,600	14.5	2,359,000	2,359,000
Department of Transportation	1.8	1,260,000	1,260,000	3.5	707,000	707,000	3.5	706,000	706,000
<b>Total</b>	<b>15.1</b>	<b>\$4,162,500</b>	<b>\$4,162,500</b>	<b>21.2</b>	<b>\$3,714,600</b>	<b>\$3,714,600</b>	<b>18.0</b>	<b>\$3,065,000</b>	<b>\$3,065,000</b>

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

## Estimated Capital Budget Impact

Agency Name	2009-11		2011-13		2013-15	
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Department of Transportation						
Acquisition	0	0	0	0	0	0
Construction	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>Total \$</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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.

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

\*\* See local government fiscal note

FNPID 26320

FNS029 Multi Agency rollup

<b>Prepared by:</b> Ryan Black, OFM	<b>Phone:</b> 360-902-0417	<b>Date Published:</b> Preliminary
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\* See Office of the Administrator for the Courts judicial fiscal note

\*\* See local government fiscal note

FNPID 26320

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 3176 HB	<b>Title:</b> Increasing state revenues	<b>Agency:</b> 085-Office of the Secretary of State
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## Part I: Estimates

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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: Rick Peterson	Phone: 360-786-7150	Date: 02/04/2010
Agency Preparation: Dalene Conant	Phone: 360-236-5046	Date: 02/08/2010
Agency Approval: Dan Speigle	Phone: 360-236-5050	Date: 02/08/2010
OFM Review: Mike Steenhout	Phone: 360-902-0554	Date: 02/08/2010

Request # 2010-31-1

## 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.*

Sections 211 and 212 impose penalties on organizations that fail to disclose to the Secretary of State if the organization has granted an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2). The disclosure requirement only applies to entities owning an interest in real property located in this state.

The Department of Licensing generates the annual renewal notice for the profit and limited liability entities, so it is assumed that the Secretary of State would only be responsible for adding new language to the nonprofit and limited partnership renewal forms (online and paper). The necessary changes will involve minimal costs to OSOS and would be absorbed.

### 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.*

# Department of Revenue Fiscal Note

<b>Bill Number:</b> 3176 HB	<b>Title:</b> Increasing state revenues	<b>Agency:</b> 140-Department of Revenue
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## Part I: Estimates



No Fiscal Impact

### Estimated Cash Receipts to:

Account	FY 2010	FY 2011	2009-11	2011-13	2013-15
GF-State-State 00 - 00 -	898,000	5,389,000	6,287,000	10,778,000	10,778,000
GF-State-State 01 - Taxes 01 - Retail Sales Tax	7,506,000	49,465,000	56,971,000	117,983,000	141,648,000
GF-State-State 01 - Taxes 05 - Bus and Occup Tax	45,910,000	278,549,000	324,459,000	767,722,000	981,796,000
GF-State-State 01 - Taxes 35 - Public Utilities Tax	848,000	5,248,000	6,096,000	13,451,000	14,270,000
GF-State-State 01 - Taxes 57 - Real Estate Excise	785,000	9,846,000	10,631,000	22,617,000	25,674,000
Publ Works Assist-State 01 - Taxes 57 - Real Estate Excise	52,000	651,000	703,000	1,496,000	1,699,000
City County Asst-State 01 - Taxes 57 - Real Estate Excise	14,000	183,000	197,000	423,000	477,000
Performance Audit-State 01 - Taxes 01 - Retail Sales Tax	77,000	467,000	544,000	965,000	1,003,000
<b>Total \$</b>	56,090,000	349,798,000	405,888,000	935,435,000	1,177,345,000

### Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	4.0	22.6	13.3	17.8	14.5
<b>Account</b>					
GF-STATE-State 001-1	856,600	2,045,900	2,902,500	3,007,600	2,359,000
<b>Total \$</b>	856,600	2,045,900	2,902,500	3,007,600	2,359,000

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:	Rick Peterson	Phone: 360-786-7150	Date: 02/04/2010
Agency Preparation:	Diana Tibbetts	Phone: 360-570-6085	Date: 02/12/2010
Agency Approval:	Don Gutmann	Phone: 360-570-6073	Date: 02/12/2010
OFM Review:	Ryan Black	Phone: 360-902-0417	Date: 02/12/2010

Request # 3176-1-1

## 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.*

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; and (6) expanding the Department of Revenue's ability to collect unpaid tax debts from defunct corporations and other artificial entities.

#### 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.

Even though a business may have nexus by having more than \$500,000 of receipts from this state or at least 25 percent of its total receipts from this state, the business will not be required to pay B&O taxes on certain activities unless it has a physical presence. 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 unconstitutional or otherwise invalid, Part I is null and void in its entirety. Part I takes effect July 1, 2010, and applies to gross income generated on and after July 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 - Abusive Tax 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 and 202 of this bill provide the Department of Revenue (Department) with tools to invalidate abusive tax avoidance transactions and assess a 35 percent penalty when the taxpayer engages in an abusive tax avoidance transaction. An abusive tax avoidance transaction means the avoidance of any tax collected by the Department under chapter 82.32 RCW by means of a transaction, plan, or arrangement that lacks economic substance.

A transaction, plan, or arrangement (transaction) has economic substance if:

- the transaction changes a taxpayer's economic position in a meaningful way, aside from its tax effects;
- the taxpayer has a substantial non-tax purpose for entering into the transaction; and
- the transaction is an objectively reasonable way of accomplishing the non-tax purpose.

The tools provided the Department allow:

- The nature of income to be re-characterized,
- The ability to disregard the form of an entity when the entity is used as part of an abusive tax avoidance transaction (even when the entity observes legal formalities),
- The ability to treat a series of formally separate steps as a single transaction,
- The ability to treat the effects of a transaction according to its substance rather than its form,
- The ability to take any other reasonable steps to deny the tax benefit that arises from an abusive tax avoidance transaction.

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 - 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). This bill limits the amount that may be deducted by any business to \$35 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 exemption from the B&O tax for sales by certain out-of-state-persons to or through seller's representatives. The Department' position had been that the "direct seller" exemption was limited to those businesses who sell their products exclusively through "door to door" type sellers, and not 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 - Eliminating Tax Preferences for Bullion

The bill eliminates the B&O tax exemption on the sale of precious metal bullion and monetized bullion. However, the bill also provides a retail sales and use tax exemption for precious metal bullion and monetized bullion.

#### Part VIII - Repealing 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 repeals this exemption.

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

Beginning July 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 July 1, 2010.

#### Part X - 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 value of the non-commercial aircraft.

#### Part XI - Public Utility Tax on Interstate Hauls

The transportation of persons or property is generally subject to the state public utility tax (PUT). However, the Department of Revenue and its predecessor, the Tax Commission, have always treated the transportation of persons or property across the state's borders as exempt from tax. This tax treatment originally reflected the United States Supreme Court's interpretation of Commerce Clause of the United States Constitution, at the time the PUT was established, as barring a direct tax on gross receipts from interstate transportation. However, the Supreme Court's current Commerce Clause jurisprudence does allow the taxation of interstate business activity as long as the tax is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the state.

Part XI of this bill establishes a policy of taxing interstate transportation on an apportioned basis effective July 1, 2010. The bill also prevents the retroactive assessment of PUT on interstate transportation on an apportioned basis for periods prior to July 1, 2010, by providing a statutory deduction for income received from interstate transportation for periods before July 1, 2010.

Persons taxable both within and without the state in the business of transporting persons or property for hire by vehicle must apportion gross income based on the ratio that revenue miles instate bear to the revenue miles of the person everywhere.

during the tax period.

For persons that transport gas, oil, petroleum products, or other products by pipeline, gross income must be apportioned based on the ratio that the total number of traffic units in state during the tax period bear to the total number of traffic units everywhere during the tax period.

Sec. 1104 of the bill restricts the use tax exemption in RCW 82.12.0254 for motor vehicles or trailers and parts used in interstate commerce. This section requires that motor vehicles and trailers be "primarily" used (more than 50%) in interstate commerce to qualify for the exemption. The exemption currently requires that the motor vehicle or trailer be 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.

#### Part XII - 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 XII 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 lienholder 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 XIII - 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 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 XIV - 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 XV - 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.*

#### ASSUMPTIONS/DATA SOURCES

## Part I: Minimum Nexus Standards

### Data Sources:

Data is from Department of Revenue excise tax data and the state 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 \$73 million in Fiscal Year 2011 and \$163 million in Fiscal Year 2012. There is no local impact.

## Part II - Abusive Tax Transactions

### Data Sources:

Department of Revenue excise tax data were used for this estimate. Other data sources include the Employment Security Department and Statistics of Income for corporations.

### Assumptions:

For abusive 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 abusive 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 abusive 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 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 in Fiscal Year 2011.

### Part III - Placing a Cap On the First Mortgage Deduction

#### Data Sources and assumptions:

Estimates are based on the Department's 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 for the November 2009 forecast.

The proposal would be effective on April 1, 2010.

#### Revenue Impact:

This part will result in a state revenue increase of an estimated \$67.6 million for Fiscal Year 2011, the first full fiscal year of 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 estimated using 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 government 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 data were used for this estimate.

Assumptions:

The Washington Supreme Court decision regarding sales by certain out-of-state-persons to or through 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 after 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 government would gain \$122.1 million in Fiscal Year 2011.

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 revenues will increase by over \$4 million per fiscal year due to this legislation. Approximately \$4.1 million will be realized during Fiscal Year 2011, the first full fiscal year of impact.

Part VII - Eliminating Tax Preferences for Bullion

Data Sources:

Estimates are based on Department of Revenue data from Fiscal Year 2009 combined excise tax returns and the Economic and Revenue Forecast Council's November 2009 forecast.

Assumptions:

Fiscal Year 2008 represents a typical growth rate, which was used for Fiscal Years 2012 through 2019 due to current economic conditions for the B&O tax estimate.

Revenue Impact:

State government will gain an estimated \$222,000 in Fiscal Year 2011, the first full fiscal year.



## Part VIII Repealing the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

### Revenue Impact:

The repeal of this exemption will generate \$1.4 million per fiscal year for state government. Local governments will gain approximately \$390,000 per fiscal year.

## Part IX - 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 government will gain approximately \$2.1 million in Fiscal Year 2011.

## Part X - Airplane Excise Tax

### Data Sources:

Data provided by Washington State Department of Transportation.

### Assumptions:

The estimate will remain constant due to newer aircraft replacing old aircraft and keeping the tax base constant. No annual depreciation is accounted for in this estimate.

### Revenue Impact:

In Fiscal Year 2011, state government will gain an estimated \$5.4 million from this new aircraft excise tax.

## Part XI - Public Utility Tax on Interstate Hauls

Data Sources:

Department of Licensing data were used for this part.

Revenue Impact:

In Fiscal Year 2011, this part would generate approximately \$12.9 million for state government and \$2.4 million for local governments.

Part XII - Foreclosure Exemption

Data Sources:

The REET 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 through the forecast period (Economic and Revenue Forecast Council November Forecast).

Base for estimate comes from exemption application data for RCW 458-61A-208(4). The set includes data for King, Franklin, and Mason counties, which compose approximately 41% of state real estate excise tax dollars.

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

Revenue Impact:

In Fiscal Year 2011, state government will gain approximately \$6.3 million and local governments will gain \$2.3 million.

Part XIII Tax Debts

Data Sources:

Department of Revenue data were used.

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 government will gain an estimated \$5.3 million in Fiscal Year 2011.

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

Data Sources:

Department of Revenue data were used.

#### 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.

#### REVENUE ESTIMATES

Overall, state government would gain \$349.8 million in the first full fiscal year, Fiscal Year 2011. Local governments would gain \$19.5 million in Fiscal Year 2011.

#### 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 -	\$ 56,090
FY 2011 -	\$ 349,798
FY 2012 -	\$ 432,363
FY 2013 -	\$ 503,072
FY 2014 -	\$ 572,495
FY 2015 -	\$ 604,850

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 -	\$ 2,913
FY 2011 -	\$ 19,542
FY 2012 -	\$ 21,952
FY 2013 -	\$ 24,556
FY 2014 -	\$ 27,336
FY 2015 -	\$ 28,497

#### 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 will not incur any costs in the implementation of airplane excise tax, foreclosure exemption or repeal of the B&O credit for new employment for international service activities.

To implement this legislation, the Department will incur costs of approximately \$856,600 in Fiscal Year 2010. The Department will identify businesses affected by the legislation, including those located out of state, to provide them with information on the changes. This will include creating and mailing a special notice to businesses and tax practitioners, additional updating of online web information, printed guides, and other information for taxpayers. Additional staff will be needed to handle these increases in telephone, written, and email inquiries Part II requires the creation and testing of a new tax avoidance penalty, and Part III a new deduction code on tax returns to track the cap on interest deductions. Both will need programming to setup, test, and verify the computer systems. Part XI changes how interstate transportation is reported for public utility tax and is expected to increase the number of error and out of balance returns, resulting in additional amended returns, credits, tax assessments, refunds, and telephone calls concerning returns filed. The cost of printing and mailing special notices to taxpayers and practitioners is approximately \$509,600. Time and effort equates to approximately 4.0 FTEs.

The Department will incur costs of approximately \$2,045,900 in Fiscal Year 2011. The Department will create and conduct

workshops in several places around the state to assist taxpayers with the new nexus standard for service income. Updates to computer systems will continue for implementation of the tax avoidance penalty in Part II. Taxpayer questions are expected to generate additional calls from taxpayers to the Telephone Information Center, as well as additional email questions and requests for letter rulings. Part I, 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. These additional new taxpayers will require an increase in staff to locate, explain, examine, audit, assess taxes due, and verify compliance. Part I is expected to increase the number of appeals the Department must respond to. Parts IX and XI will increase the number of error and out of balance returns requiring adjustments as noted for Part IX in Fiscal Year 2010. The Department will amend 17 administrative rules and create three new administrative rules.

Part I non-labor cost for informational workshops is approximately \$12,000, printing and mailing additional tax returns for new taxpayers is approximately \$29,000, and the non-labor cost of setting up new taxpayers with electronic payment is approximately \$12,000. The cost of printing and mailing reporting addendums required for Part XI is approximately \$1,000. Time and effort in Fiscal Year 2011 equates to approximately 22.6 FTEs.

The Department will incur ongoing costs of \$3,007,600 in the 2011-2013 Biennium, and \$2,359,000 in the 2013-2015 Biennium. Activities and costs, as described in Fiscal Year 2011 for Part IX continue through the 2011-2013 Biennium, and those for Parts I and XI continue through the 2013-2015 Biennium. The cost of printing and mailing additional tax returns for Part I is approximately \$29,000 each fiscal year. The cost of printing and mailing Part XI reporting addendums is approximately \$1,000 each fiscal year. Time and effort equates to approximately 17.9 FTEs in Fiscal Year 2012, 17.6 FTEs in Fiscal Year 2013, and 14.5 FTEs in the 2013-2015 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	4.0	22.6	13.3	17.8	14.5
A-Salaries and Wages	200,500	1,170,800	1,371,300	1,901,600	1,456,200
B-Employee Benefits	50,100	292,700	342,800	475,500	364,000
E-Goods and Services	572,600	395,500	968,100	526,500	441,400
G-Travel	5,300	34,200	39,500	68,400	68,400
J-Capital Outlays	28,100	152,700	180,800	35,600	29,000
<b>Total \$</b>	<b>\$856,600</b>	<b>\$2,045,900</b>	<b>\$2,902,500</b>	<b>\$3,007,600</b>	<b>\$2,359,000</b>

#### 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 3	47,014	0.1		0.1		
EXCISE TAX EX 2	42,583	1.6	4.9	3.3	4.9	4.7
EXCISE TAX EX 3	50,563	0.1	0.3	0.2	0.3	0.3
EXCISE TAX EX 4	55,839	0.3		0.1		
HEARINGS SCHEDULER	32,688		0.1	0.0		
IT SPEC 4	63,195	0.9	0.5	0.7		
OFF ASST 3	29,780		2.4	1.2	0.2	0.2
REVENUE AGENT 2	47,014		1.8	0.9	1.8	1.8
REVENUE AUDITOR 3	54,505		6.0	3.0	6.0	6.0
TAX INFO SPEC 1	36,757	0.2	0.5	0.4		
TAX INFO SPEC 4	54,505	0.7	1.0	0.8	0.6	0.5
TAX POLICY SP 2	61,628		0.1	0.1		
TAX POLICY SP 3	69,756		5.0	2.5	4.0	1.0
WMS BAND 3	88,546		0.1	0.1		
<b>Total FTE's</b>	<b>734,373</b>	<b>4.0</b>	<b>22.6</b>	<b>13.3</b>	<b>17.8</b>	<b>14.5</b>

## Part IV: Capital Budget Impact

NONE.

## Part V: New Rule Making Required

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

Should this legislation become law, the Department will take the following rule actions:

### (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 businesses engaged in what are deemed abusive tax avoidance transactions.

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 selling 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 those making transfers of real estate.

### (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 expedited process to amend WAC 458-20-193, titled: "Inbound and outbound interstate sales of tangible personal property". The expedited process will also be used to amend WAC 458-20-178, titled: "Use tax". The Department will not incur an additional cost because it is currently amending this rule and will incorporate this legislation as necessary. Persons affected by this rule-making include 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 standard process to amend WAC 458-20-248, titled: "Sales of precious metal bullion and monetized bullion". Persons affected by this rule-making include those who sell bullion, coin, and other precious metals.

(Part VIII)

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 persons operating livestock nutrient management facilities.

(Part IX)

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 standard process to amend WAC 458-20-175, titled: "Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce" and WAC 458-20-193D, titled: "Transportation, communication, public utility activities, or other services in interstate or foreign commerce". The standard process will also be used to adopt one new rule under chapter 458-20 WAC. The Department will use the expedited process to amend WAC 458-20-17401, titled: "Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce". Persons affected by this rule-making would include those business transporting persons or property for hire within and without the state.

(Part XII)

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, acquired through foreclosure, to 3rd parties.

# Individual State Agency Fiscal Note

Revised

<b>Bill Number:</b> 3176 HB	<b>Title:</b> Increasing state revenues	<b>Agency:</b> 405-Department of Transportation
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## Part I: Estimates



No Fiscal Impact

### Estimated Cash Receipts to:

ACCOUNT	FY 2010	FY 2011	2009-11	2011-13	2013-15
General Fund-State 001-1		9,432,000	9,432,000	19,442,000	20,241,000
Aeronautics Account-State 039-1		(26,000)	(26,000)	(54,000)	(54,000)
<b>Total \$</b>		9,406,000	9,406,000	19,388,000	20,187,000

### Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.0	3.5	1.8	3.5	3.5
<b>Account</b>					
General Fund-State 001-1	0	1,260,000	1,260,000	707,000	706,000
<b>Total \$</b>	0	1,260,000	1,260,000	707,000	706,000

### Estimated Capital Budget Impact:

	2009-11		2011-13		2013-15	
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Acquisition	0	0	0	0	0	0
Construction	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>Total \$</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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:	Rick Peterson	Phone: 360-786-7150	Date: 02/04/2010
Agency Preparation:	Krishan Aggarwal	Phone: 360-651-6309	Date: 02/12/2010
Agency Approval:	Steve Reinmuth	Phone: 360-705-7022	Date: 02/12/2010
OFM Review:	Ron Lorentson	Phone: (360) 902-9822	Date: 02/12/2010



## 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.*

Increases state revenues to preserve funding for education, public safety, health care, and safety net services for elderly, disabled, and vulnerable people by preventing abusive tax avoidance transactions, narrowing or eliminating certain tax preferences, and providing equitable tax treatment.

Section 1002 amends RCW 82.48.020 imposing an annual excise tax for the privilege of using any aircraft in the state. The amount of the tax is five-tenths of one percent of the taxable value of the aircraft. The Secretary of Transportation will collect the tax annually or under a staggered collection schedule, and must provide a receipt to each person paying the excise tax. The Department of Transportation must prepare a depreciation schedule for use in the determination of fair market value of aircraft at least once a year.

### 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 legislation imposes a new, annual airplane excise tax of 5/10 of 1% of the fair market value of the aircraft. There are nearly 6,000 aircraft in Washington assumed to be paying this airplane excise tax. Current information on Washington's fleet of aircraft in 2009 was merged with current listed sales of aircraft by model, year and type of aircraft. The estimated fair market value is based on adjusting the listed sales price for that make, year and model of aircraft by 5% to reflect the actual fair market value. If current listed sales values were not identified, then the average for that type of aircraft in that year was used to estimate the sales value. It is assumed that the annual growth rate in the aircraft excise tax will be 2%.

### 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 1002 amends RCW 82.48.020 directing the department to collect the imposed tax annually or under a staggered collection schedule, to provide a receipt to each person paying the excise tax, and to prepare a depreciation schedule for use in the determination of fair market value of aircraft at least once a year. Receipts from the excise tax will be deposited into the General Fund. It is assumed that the expenditure authority necessary to support the collection of the airplane excise tax will be provided through the General Fund.

This replaces the current aircraft excise tax, which is a flat rate per aircraft based on a rate schedule in statute. The current, flat rate tax is collected by the department through a customer service specialist. The new excise tax based on the value of the aircraft will create additional responsibilities for the department, such as establishing the fair market value and depreciation schedules for this new tax structure.

In order to meet the new responsibilities, 3.5 full time equivalent (FTEs) positions would be added to the department: Revenue Agent 2, Revenue Agent 3, Fiscal Technician, and a half-time Information Technology Specialist 3 (ITS3) position. In addition, two positions would have additional responsibilities and would be upgraded (Customer Services

Specialist from 2 to 4 and a Fiscal Analyst 3 to 5). Responsibilities performed by the Revenue Agents would include registering, assessing and collecting excise tax, and inputting aircraft valuations for 6,000 aircrafts. The Fiscal Analysts would perform accounting, calculate depreciation, provide training, and monitor the new program. The one-half FTE ITS3 position would be required for the maintenance of the new software. The staffing additions and position upgrades would start July 2010 (FY2011) and continue in future years.

One-time costs are assumed for outreach and education activities in fiscal year 2011, including a \$100,000 Personal Service Contract to assist with outreach, production of materials, and facilitation of public meetings.

New rules will need to be established. One-time costs of \$50,000 are assumed for fiscal year 2011 to develop the administrative rules, including coordination with the Attorney General's Office.

The existing aircraft registration system has limited capabilities. Also assumed is \$600,000 for new software development (one-time cost in FY11). The ITS3 position mentioned above would be responsible for the development of a database and assessment tool to store aircraft inventory data, evaluate and monitor aircraft fees, calculate depreciation annually, and for the maintenance of the software.

Other costs would include computers, telephones, cubicles, printing, and mailing, aircraft stickers (tabs), and public outreach and education materials. Additional office space of 1000 sq feet would also be required. Aviation is currently leasing office space from the city of Arlington. To accommodate the 3.5 new staff, the program would have to lease the additional office space from the city of Arlington or nearby (\$25,000 one-time cost for tenant improvement - Object J).

### Part III: Expenditure Detail

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

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years		3.5	1.8	3.5	3.5
A-Salaries and Wages		193,000	193,000	386,000	386,000
B-Employee Benefits		66,000	66,000	132,000	132,000
C-Personal Service Contracts		100,000	100,000		
E-Goods and Services		184,000	184,000	164,000	162,000
G-Travel		24,000	24,000	25,000	26,000
J-Capital Outlays		693,000	693,000		
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services					
P-Debt Service					
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements					
9-					
<b>Total:</b>	\$0	\$1,260,000	\$1,260,000	\$707,000	\$706,000

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

Job Classification	Salary	FY 2010	FY 2011	2009-11	2011-13	2013-15
Fiscal Technician 1	31,956		1.0	0.5	1.0	1.0
Information Technology Specialist 3	64,740		0.5	0.3	0.5	0.5
Revenue agent 2	53,148		1.0	0.5	1.0	1.0
Revenue agent 3	58,656		1.0	0.5	1.0	1.0
<b>Total FTE's</b>	208,500		3.5	1.8	3.5	3.5

**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.*

New WAC’s would have to be written. A memorandum of understanding with Department of Revenue may be needed to formalize enforcement action.