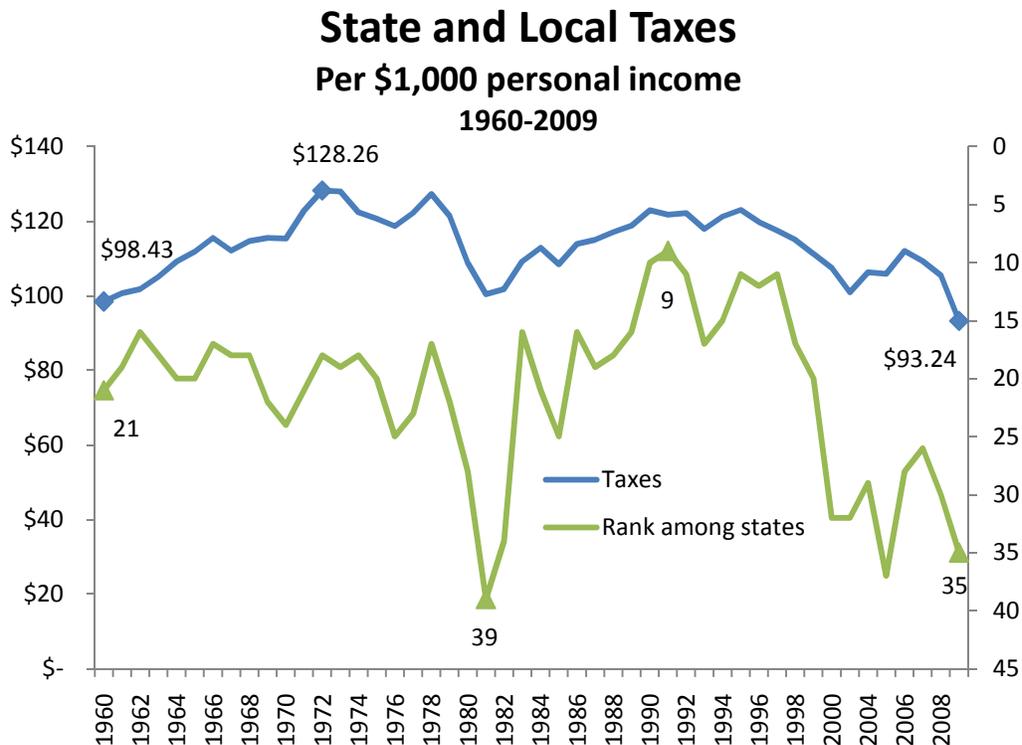


State and local taxes drop to lowest level in 50 years

Washington's state and local taxes (as a percent of personal income) dropped to their lowest level in 50 years in Fiscal Year 2009, according to new figures released by the U.S. Census Bureau.

Washington taxes dropped to \$93.24 per \$1,000 personal income from \$105.49 in Fiscal Year 2008. While many states experienced declines in taxes relative to personal income during that period, Washington's decline was steep enough to change its national ranking to 35th highest among the states in 2009 from 30th highest in 2008. The national average for Fiscal Year 2009 was \$102.10, down from \$111.99 the prior year. The \$93.24 figure, comprising \$56.70 in state taxes and \$36.54 in local taxes, is the lowest since the Department of Revenue began tracking this statistic in 1960, when the rate was the second lowest at \$98.43. Taxes per capita also declined to \$4,049 in 2009 from \$4,354 in 2008, dropping Washington's per capita ranking nationally to 21st lowest from 16th. The national average in 2009 was \$4,141. More information on changes in rankings over the years and the factors involved is available in *Comparative State and Local Taxes 2009*, published online at <http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2009/Compare09/default.aspx>.



Marketplace Fairness Act Introduced in the U.S. Senate

On November 9, U.S. Senators Mike Enzi (WY), Dick Durbin (ILL), and Lamar Alexander (TN) introduced the Marketplace Fairness Act. Since the 1992 Supreme Court decision in *Quill Corp. v. North Dakota*, states have been unable to enforce their sales and use tax laws with respect to catalog and online sellers that lack physical presence (remote sellers). The Marketplace Fairness Act would end this tax loophole, generating an estimated \$483 million for state and local governments during the 2013-15 biennium. The bill represents the collective efforts of a bipartisan group of ten U.S. senators. While it is uncertain whether this bill will ultimately be enacted, the bipartisan nature of the bill and the high visibility of its sponsors make this bill the most serious attempt to grant states remote seller collection authority to date. To date, seven daily newspapers in Washington have editorialized in favor of the proposal after the Department issued a news release highlighting the positive fiscal impact of the legislation.

Nonprofit hospital property tax exemption expansion generates refund requests

Many Washington nonprofit hospitals are requesting and receiving substantial property tax refunds as a result of changes in state property tax rules that now allow outpatient clinics and other facilities connected to hospitals to be exempt from property taxes.

The issue arose in 2007 after several hospitals won cases before the Board of Tax Appeals and the courts challenging the Department's rule that the property tax exemption only applied to medical facilities that offered 24-hour inpatient care. The hospitals paid property taxes on most clinics and other buildings. Hospitals argued that the nature of the hospital business had changed over the years and the exemption should be extended to clinics run by the hospitals.

As a result of the challenges, the Department revised its rule to allow outpatient clinics to qualify for the exemption as long as they are covered by the hospital's medical license. The Department expected this expansion to be prospective but several hospitals subsequently requested refunds of property taxes paid back to as early as 2007, and the Department's attorneys concluded that the state would have to provide refunds. This unexpected outcome resulted in some local taxing districts, including counties, cities and school districts, having to pay part of the refunds because the tax burden shifted to them. However, they can recoup the payments in future levies.

Spokane to join Business Licensing Service in fall 2012

The Department is moving forward with improvements to the former Master License Service after assuming administration from the Department of Licensing on July 1, per legislation. The Department renamed it the Business Licensing Service (BLS) and has been working with local governments to encourage more of them to use the system to license businesses within their jurisdictions. Most recently, the Spokane City Council approved partnering with the state BLS in late 2012. BLS works with

nearly 50 city partners that use a “flat” fee schedule for business licenses. Like more than 40 other cities statewide, Spokane uses a licensing fee schedule based on the number of employees. As BLS adapts programming to meet Spokane’s needs, other so-called “employee fee” cities could more easily partner with BLS in the future.

U.S. Supreme Court denies review of Lamtec decision

On October 3, The United States Supreme Court denied a petition by Lamtec Corp. for review of a January 2011 Washington State Supreme Court decision that sending sales representatives into Washington several times a year was sufficient to require that the New Jersey insulation manufacturer pay business and occupation tax on its sales to Washington customers. The decision was an important verification of the Department’s longstanding position that nexus is established when companies send representatives to the state to maintain their markets even though they have no permanent offices or employees here.

U.S. Court of Appeals upholds District Court decision on Yakama cigarette tax issue

The Ninth Circuit Court of Appeals has upheld a U.S. District Court ruling that the state has the authority to require tribal retailers to collect state cigarette taxes from purchasers who are not tribal members. The Yakama Nation had sued the state, arguing that Washington’s cigarette tax impermissibly subjected tribal retailers to the tax. The court concluded that the current cigarette tax scheme in RCW 82.24 is not materially different than the one in place in 1980 that the United States Supreme Court upheld in *Washington v. Confederated Tribes of the Colville Indian Reservation* in 1980. This decision allows the state to continue requiring tribal retailers to collect cigarette taxes through the purchase of stamped cigarettes from licensed wholesalers. The Department currently is in consultation with the Liquor Control Board, which enforces cigarette taxes, on how to proceed barring an appeal by the Tribe to the U.S. Supreme Court.

Interagency cooperation – Department provides training for parks staff

The Department of Revenue provided training at the recent 2011 Marine Law Enforcement Conference organized by the Parks Department. Marine Law Enforcement staff was provided information on how to identify vessels on which the owners have not paid Use Tax, Water Excise Tax and/or avoided registration requirements. The training also provided the attendees information on how they can work with DOR to ensure compliance in these areas. We are looking forward to furthering this partnership and identifying vessel owners that are avoiding or unaware of their tax and registration obligations.

DOR to bill taxpayers who did not file annual survey

The Department of Revenue will begin assessing taxpayers who failed to file the required annual survey for certain business and occupation tax credits and incentives taken in 2010. The survey was due on April 30, 2011. Forty-six businesses that utilized various tax incentives (e.g. the High Technology Credit, Newspaper Industry tax incentive, and Help Desk Services Credit) did not file the survey. An estimated \$204,495 will be assessed against the taxpayers who failed to meet the reporting requirement.