

Brad Flaherty New Department Director



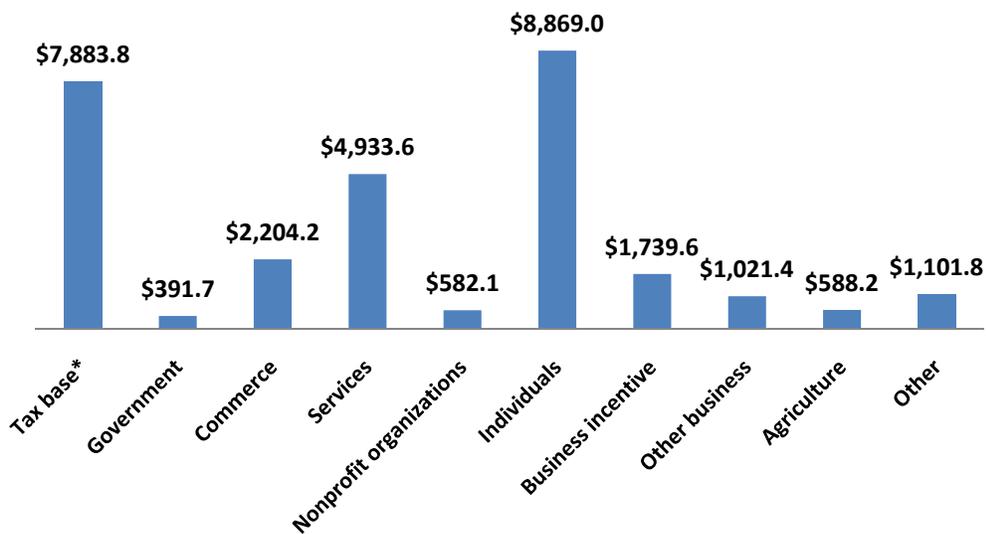
On Jan. 13, Governor Chris Gregoire appointed Brad Flaherty as director of the Department, replacing Suzan Delbene, who left to run for Congress. Flaherty started at DOR in 1979 as a revenue auditor, and continued to move up the ranks at the agency. In 2006, he was named assistant director of the agency’s property tax division, and was appointed deputy director in 2010. Flaherty is continuing the agency’s collaborative approach to tax policy as a way to promote fair and equitable tax administration.

Brad Flaherty

The 2012 Exemption Study is now available on the Department of Revenue’s website

This report presents a detailed listing of tax exemptions for the major Washington state and local taxes pursuant to RCW 43.06.400. This publication is always of interest to many stakeholders, and has already generated media attention given the state budget situation. The 2012 edition of the Exemption Study lists 640 different exemptions; however, the study focuses only on the 452 tax exemptions that would likely increase state revenues if eliminated. This was a result of an amendment to the authorizing statute adopted in 2011 as a part of ESHB 1346. In aggregate, the state and local impacts of the 452 tax exemptions combine for an estimated taxpayer savings of \$29.3 billion for the 2011-13 Biennium. The report is available at http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2012/Tax_Exemptions_2012/Default.aspx.

**Chart 3 -
TAX EXEMPTIONS BY CATEGORY -
Taxpayer Savings - State & Local \$29.3 billion -
2011-13 Biennium (\$ millions) -**



*Tax base includes B&O tax exemption for employee wages and salaries (\$3 billion)

Department implementing Liquor Privatization Initiative

The Department is working with the Liquor Control Board to implement Initiative 1183, the liquor privatization bill voters approved last November. The initiative transfers the tax collection duties to the Department. It also changes the way taxes will be collected. Under the current system, spirits taxes are built into the price of the products the Liquor Control Board sells in its stores. Under the new system that takes effect June 1, private companies will sell liquor and be required to collect tax at the time of sale. This poses a new compliance challenge and the Department is seeking legislation that would allow it to request that the Liquor Control Board revoke the liquor license of any businesses that fails to collect and remit the proper taxes.

Department prevails in court challenges:

Tesoro Refining and Marketing Company – The Washington Supreme Court issued an opinion reversing the Court of Appeals, unanimously holding that former RCW 82.04.433(1), the bunker fuel deduction enacted in 1985, did not apply to manufacturing B&O taxes. The Court relied on the statute’s plain language (“amounts derived from sales of fuel”) to conclude that the Legislature intended the former deduction to apply only to wholesaling and retailing B&O taxes. The decision prevented the state from having to make \$17.8 million in refunds.

Court of Appeals Decision in *Wells Fargo v. DOR* – The Court of Appeals issued a published opinion rejecting Wells Fargo’s claim for approximately \$1.2 million of interest in addition to nearly \$2 million it received under a closing agreement to resolve a series of tax refund requests that did not provide for interest. The Department had cross-appealed the trial court’s denial of a motion to dismiss the claim for lack of jurisdiction. The Court of Appeals agreed with the Department that Wells Fargo forfeited its right to judicial review by failing to file a timely petition under the Administrative Procedure Act (APA).

Although the Court of Appeals did not reach the merits, the court’s recitation of the facts suggests it took a dim view of Wells Fargo’s claim. For example, the court emphasized language from the closing agreement expressing the parties’ intent that the agreement would “resolve all issues” and “operate as a dismissal with prejudice” of Wells Fargo’s administrative appeal petitions. In addition to rejecting this refund claim, the Court’s decision supports the binding nature of the Department’s closing agreements with taxpayers and will discourage similar attempts to reopen agreements in the future.

New record for electronic filing set in January 2012

January is the busiest month of the year for the Department because all taxpayers (monthly, quarterly, and annual filers) are required to file a return. More than 250,000 of the 482,000 businesses reporting to the Department filed electronically during the month, bringing in over \$1.3 billion, or more than 96 percent of all excise taxes paid. Most of the businesses that continue to report by paper are very small businesses that are required to file only one tax return a year.

Department to adopt new B&O tax apportionment rules

The Department expects to adopt permanent rules soon that will complete implementation of the B&O tax apportionment methodology enacted in 2010. The 2010 legislation, part I of 2ESSB 6143, requires both in-state and out-of-state service businesses to apportion their taxable gross income based on where the benefit of the service is received. The effect of the legislation was to require many out-of-state businesses, including banks and credit card companies, to begin paying B&O tax on the gross income attributed to Washington. Conversely, many in-state businesses experienced tax reductions because they now pay B&O tax only on income attributed

to Washington. The adoption of the permanent rules follows earlier adoption of a related economic nexus standard that was also a part of the 2010 legislation and emergency rules while the Department consulted with stakeholders.

Washington seen as leader in representing the states on federal digital products tax legislation

Washington has drawn national attention for the digital products law passed by the Legislature in 2009, and the state's leadership in representing the states on federal digital products tax legislation. The 2009 digital products law followed a study in 2008 that recommended updates to state tax law to respond to the trend toward transferring goods electronically rather than in physical form. Recent trade articles have complimented Washington's innovative tax policy regarding "cloud computing" and digital products. The state also has been a leader in efforts under the Streamlined Sales Tax Agreement (SSUTA) to address digital products. The Department continues to develop rules to further clarify the taxation of digital products. Most recently, Vermont legislative committees solicited the Department's advice because the state was considering law changes to address the taxation of remote access software, digital products, and SSUTA compliance.