



Department prevails in three court rulings

The Department has prevailed in three recent court rulings, including two unanimous Washington Supreme Court rulings:

Washington Imaging Services

This case concerned a medical imaging business attempting to exclude from its taxable gross income amounts it paid to an independent contractor whose radiologists interpreted the medical images. In a unanimous decision, the Washington Supreme Court held that payments made by Washington Imaging Services (WIS) to Overlake Imaging Associates, the independent contractor, do not qualify for nontaxable pass-through treatment. Thus, all of the money WIS received from patients and insurance companies constitutes gross income to WIS and is subject to B&O tax. The Court reiterated that to qualify for pass-through treatment a taxpayer must act solely as the agent of its customers in making payments to a third party. Several recent opinions by Division II of the Court of Appeals, including this case, had held that payments made by the taxpayers to independent contractors did not constitute gross income to the taxpayers because the independent contractors, and not the taxpayers, were providing the subject services. If WIS had prevailed, the state would have lost millions of dollars in B&O taxes.

Olympic Barge and Tug

The Court of Appeals issued a decision affirming the Department's assessment of public utility tax on Olympic Tug & Barge's bunkering service, which transports bunker fuel from refineries and pumps it into a ship's fuel tank offshore. Olympic argued that the bunkering service qualified for the deduction in RCW 82.16.050(9) for amounts received for transporting commodities that are forwarded outside the state. The Court of Appeals rejected Olympic's argument that the fuel loaded into the ship's fuel tanks was being forwarded to the location on the high seas outside of Washington where the fuel is burned. The Court of Appeals agreed with the Department that the destination of the fuel was the ship at anchor in Washington waters.

Flight Options

Flight Options, an Ohio-based company, operates a fractional aircraft ownership program that provides customers access to a fleet of private aircraft, similar to a timeshare program. DOR determined that Flight Options was an "airplane company" under chapter 84.12 RCW and assessed property tax against its operating property based on the percentage of Flight Options' landings in Washington compared to total number of landings. Flight Options argued that it was not an "airplane company" under the statute

and that the planes could not be taxed in Washington under the Due Process Clause because they were not operated on fixed routes and regular schedules.

In a case of first impression nationally, a unanimous Washington Supreme Court rejected all of Flight Options' arguments. The court held that Flight Options was an "airplane company" under the statute because it received compensation for transporting the fractional owners and the Due Process Clause did not require aircraft to be used on fixed routes and regular schedules before Washington could impose an apportioned property tax. The court also held that Flight Options' average of two landings a day provided sufficient contact with Washington for the Department to impose the apportioned property tax.

Sales tax on cover charges for dancing

The media recently reported that the Department has begun enforcing a "dance tax" in Seattle. This story broke after the Department audited bars and taverns for use tax and incidentally found that some were not collecting sales tax on cover charges on dancing venues. Cover charges imposed on patrons to attend events where they had an "opportunity to dance" have been subject to retail sales tax since 1961. Most of the clubs in question promote multiple shows, some of which are clearly intended to be dances and some of which are more like concerts where an occasional patron may dance, but the primary activity is not the opportunity to dance. Differences between how the state and City of Seattle apply B&O tax appear to have contributed to confusion on the part of businesses. The Department currently is working with affected businesses through the Washington Restaurant Association to help its members determine when sales tax on cover charges applies and how to document instances when it doesn't.

Tax burdens decline during recession

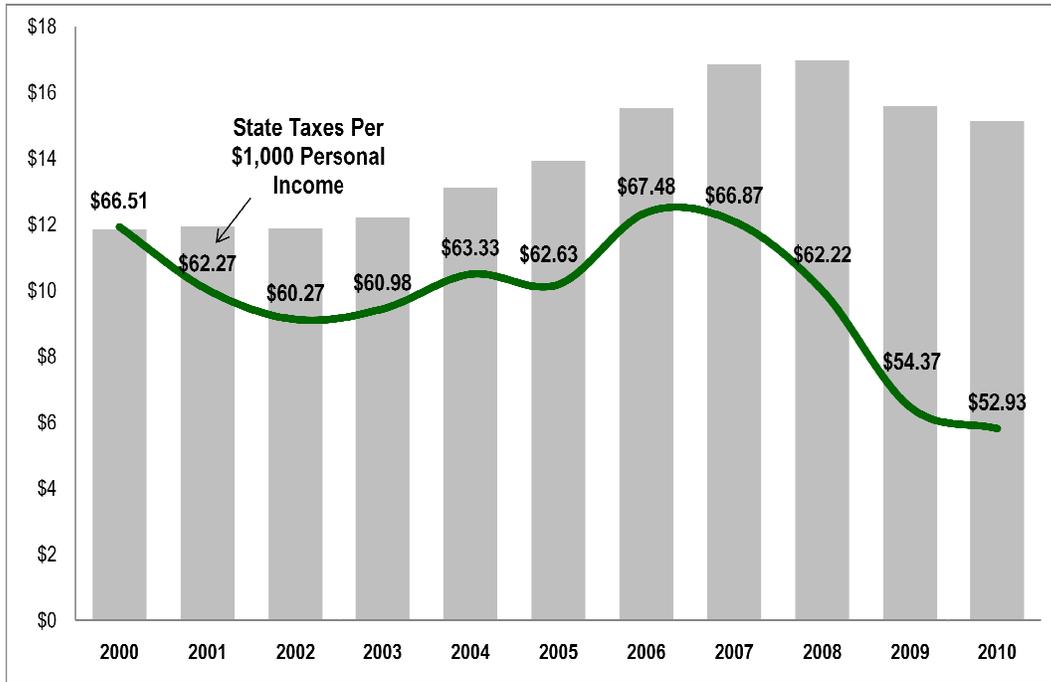
State taxes as a percentage of personal income and per capita have declined steeply over the past three years, according to the latest data:

- State taxes per \$1,000 personal income declined 21.6 percent from a high of \$67.48 in Fiscal Year 2006 to \$52.93 in Fiscal Year 2010 and may drop further in Fiscal Year 2011 once final tax revenue figures are in.
- State tax collections in Fiscal Year 2010 are now 10.8 percent below their peak in Fiscal Year 2008.
- Washington state taxes per capita have declined for the past three years. The Fiscal Year 2010 figure is 14 percent below the peak in Fiscal Year 2007, \$2,242 vs. \$2,608.

The decline is due primarily to incomes increasing relative to tax collections, in large part because of a pullback in consumer spending and housing construction and purchases.

STATE TAX BURDENS HAVE DECLINED SIGNIFICANTLY

Collections in billions



Source: Department of Revenue

Cigarette tax collections dip below estimates

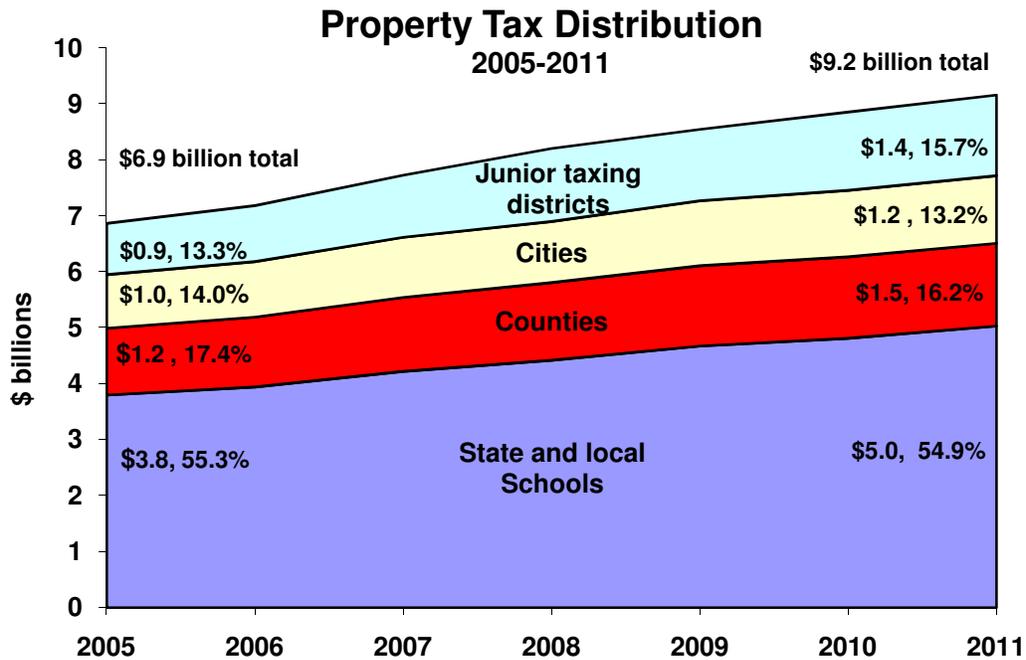
After tracking estimates for several months, cigarette tax collections dipped significantly toward the end of Fiscal Year 2011, possibly as a result of less smoking and more sales of untaxed contraband cigarettes.

The Department estimated that EHB 2493, which increased the tax on a pack of cigarettes by \$1 to \$3.025, would generate \$88.4 million in Fiscal Year 2011 despite a projected decline in consumption. Actual collections were \$73.8 million. Cigarette tax collections tend to be volatile due to the way stamps are sold to wholesalers, so collections could move upwards in future months. Collections for July 2011, in fact, bounced back to more normal levels at \$38.9 million compared to a monthly average of \$36 million for Fiscal Year 2011.

Property tax revenues up 4 percent in 2011 -

Property tax revenue increased 4 percent to \$9.2 billion in 2011, with some of the increase stemming from new construction and higher voter-approved levies, according to a recent Department report. Voters approved 39.7 percent of property taxes through school levies and bonds, levy lid lifts for fire districts and other junior taxing districts, and funding for emergency medical services. This was up 1.1 percent from 38.6 percent of property taxes due in 2010. The compilation of property tax information is available in Property Tax Statistics 2011, an annual report. Other findings in the report:

- K-12 schools receive 54.9 percent of property taxes – \$5 billion – through the state school levy and voter-approved local levies and bonds.
- Counties receive 16.2 percent or \$1.5 billion of the total.
- Cities get 13.2 percent or \$1.2 billion.
- Junior taxing districts such as hospitals, fire districts, ports, and libraries share 15.7 percent or \$1.4 billion.
- Single family residences comprised 69.4 percent of a total \$780.1 billion in assessed valuation in - 2010. -
- The average single family residence was valued at \$243,998 in 2010 for taxes due in 2011. The - average tax statewide was \$2,718, up \$101 from 2010. -



Good Morning America to broadcast segment on Unclaimed Property program

ABC's Good Morning America is planning to broadcast a segment about Frank Marshall, who locates owners of significant amounts of unclaimed property. The story was the latest in a series of "Show Me the Money" segments about unclaimed property available to claimants around the country. The show asked to interview Marshall after seeing the August 10 Seattle Times story on his efforts to reunite residents with their forgotten cash. The story is expected to appear soon.