



Legislative Tax Update

MAY 2010

The 2010 Legislature made a number of changes to taxes and programs administered by the Department of Revenue. This publication provides a brief summary of some of the bills that were signed into law.

To see a comprehensive list of changes to tax law, with links to each bill, visit our website at dor.wa.gov/NewLegislation.

Important tax changes coming soon

Temporary B&O tax increase

2ESSB 6143 (Section 1101) Most business activities under the Service & Other Activities, and Gambling Contests of Chance (greater than \$50,000) B&O tax classifications are subject to a temporary B&O tax increase of 0.3 percent bringing the rate to 1.8 percent and 1.93 percent respectively. An exemption is provided for hospitals and scientific research and development activities. Businesses subject to this increased rate may be entitled to a small business credit not to exceed \$70 per month. *Effective May 1, 2010.*

Cigarette and other tobacco products increase

HB 2493 increases the cigarette tax by \$1.00 to \$3.025 on a package of 20 cigarettes. The tax on Other Tobacco Products (OTP) (except little cigars and moist snuff) increases from 75 to 95 percent of taxable sales price, with the cap per cigar increasing from 50 to 65 cents. Little cigars become a separate category of OTP, taxed at the same rate as cigarettes. Moist snuff also becomes a separate category of OTP but continues to be taxed at 75 percent until October 1, 2010, when it will be taxed at the greater of \$2.526 or 83.5 percent of the cigarette tax on each single unit of 1.2 ounces or less and proportionately on larger units. *Cigarette and OTP tax increase effective May 1, 2010. Moist snuff increase effective October 1, 2010.*

Bottled water exemption repealed

2ESSB 6143 (Section 901) Sales of bottled water are subject to the retail sales tax. Includes bottled water that is delivered to the buyer in a reusable container. Sales of bottled water for medical reasons or where consumers lack a potable source are exempt from the sales and use tax. *Effective June 1, 2010.*

Candy and gum sales tax exemption repealed; B&O jobs credit

2ESSB 6143 (Section 901) Sales of candy and gum are subject to the retail sales tax. Candy manufacturers may receive a B&O tax credit of \$1,000 for each employment position maintained for a calendar year. To find out whether a product is taxable, the Department will make available a downloadable list of over 3000 products. The list will be on our website at dor.wa.gov/NewLegislation. *Effective June 1, 2010.*

Carbonated beverage tax temporarily imposed

2ESSB 6143 (Section 1401) temporarily imposes a tax of \$.02 per 12 ounces on sellers of bottled carbonated beverages. The tax is imposed on every person for the privilege of selling carbonated beverages in Washington. The tax does not apply to successive sales of previously taxed carbonated beverages. The tax increase is scheduled to expire on June 30, 2013. *Effective July 1, 2010.*

Contents

- Retail sales tax2
- Business and occupation tax ..2
- Deductions, exemptions and incentives2
- Miscellaneous3

Retail sales tax

CEO and CFO strictly liable for tax debts

2ESSB 6143 (Section 801) imposes strict liability on a chief executive and chief financial officer for collected but unremitted sales tax regardless of fault or whether or not they were aware of the unpaid tax liability. *Effective May 1, 2010.*

Livestock nutrient management equipment sales tax exemption suspended

2ESSB 6143 (Section 601) temporarily suspends the sales and use tax exemption on purchases of qualifying nutrient management equipment and labor service of repairing such qualifying equipment by eligible persons (RCW 82.08.890 & RCW 82.12.890). The suspension of the exemption is scheduled to expire on June 30, 2013. *Effective July 1, 2010.*

Sales tax exemption for materials used in the investment castings process

SSB 6339 (Chapter 225, Laws of 2010) provides a sales and use tax exemption for wax and ceramic materials used by foundries to create investment molds. The exemption also applies to labor and services used to create the molds. *Effective July 1, 2010.*

Business and occupation tax

Direct seller's B&O tax exemption

2ESSB 6143 (Section 401) clarifies that the direct seller's B&O tax exemption is limited to out-of-state businesses that do not own or lease real property in the state, are not incorporated in the state, do not maintain inventory in this state, and make sales in this state exclusively to or through a direct seller's representative. Applies retroactively for tax reporting periods prior to May 1, 2010. Also, repeals the direct seller's business and occupation (B&O) tax exemption. *Effective May 1, 2010.*

Economic nexus

2ESSB 6143 (Section 101) defines economic nexus standards. Out-of-state businesses that currently do not pay any Washington taxes, may have nexus with the State of Washington and therefore have a tax reporting obligation. The legislation also changes how income is apportioned for the B&O tax on services and royalties for both in-state and out-of-state businesses. *Effective June 1, 2010.*

B&O tax preferences for processing perishable meats, fruits, or vegetables

2ESSB 6143 (Section 501) limits the preferential rate (RCW 82.04.260) (0.138 percent) for slaughtering, breaking or processing meat to finished meat products that are perishable and not canned. Also, this bill narrows the end product that processors of fruits and vegetables must produce to qualify for the B&O tax exemption provided in RCW 82.04.4266. *Effective July 1, 2010.*

Director fees

2ESSB 6143 (Section 701) clarifies that amounts received by an individual from a corporation as director fees are subject to the B&O tax. The bill also provides limited relief against the retroactive assessment of B&O tax on director's fees. *Effective July 1, 2010.*

FAR part 145 repair stations

SSB 6712 (Chapter 11, Laws of 2010) extends the preferential B&O tax rate for FAR Part 145 certificated repair stations to July 1, 2024. *Effective July 13, 2010.*

Deductions, exemptions and incentives

Data center equipment and infrastructure

ESSB 6789 (Chapter 1, Laws of 2010) provides a sales and use tax exemption to eligible businesses on purchases of eligible server equipment and power infrastructure for use in eligible computer data centers. *Effective April 1, 2010.*

Interest deduction for first mortgages limited

2ESSB 6143 (Section 301) modifies and limits the deduction that can be taken by financial institutions (RCW 82.04.4292) for interest received on home loans secured by first mortgages or trust deeds on non-transient residential properties. *Effective June 1, 2010.*

Property management B&O tax exemption limited

2ESSB 6143 (Section 1201) limits the B&O tax exemption under RCW 82.04.394 to nonprofit property management companies and to property management companies paid by housing authorities. *Effective June 1, 2010.*

Renewable energy system cost recovery incentive program

ESSB 6658 (Chapter 202, Laws of 2010) expands the definition of community solar project, limits the capacity of eligible community solar projects to 75 kilowatts, clarifies that eligible renewable energy systems must be located in Washington, allows owners of community solar projects to appoint an administrator, reduces the public utility tax credit, requires persons receiving incentive payments to keep proper records, and creates a hold harmless provision for utilities and their employees. *Effective June 10, 2010.*

Bad debt deduction limited

2ESSB 6143 (Section 1501) modifies and limits the bad debt deduction (RCW 82.08.037 & RCW 82.12.037) by providing that a person's right to take a bad debt deduction or credit is not assignable. No person other than the original seller in the transaction that generated the bad debt is entitled to claim a bad debt credit or refund. *Effective July 1, 2010.*

Alternative fuel vehicles

SSB 6712 (Chapter 11, Laws of 2010) extends the sales tax and use tax exemptions allowed for the purchase of qualifying new vehicles that exclusively use clean alternative fuels, such as natural gas, propane, hydrogen or electricity. It also expands the exemption to include certain converted clean alternative fuel vehicles. *Effective July 13, 2010 expires July 1, 2015.*

Nonprofit air ambulances

ESSB 6737 (Chapter 12, Laws of 2010) provides an aircraft excise tax and property tax exemption for airplanes owned by nonprofit entities and used exclusively to provide emergency medical transportation services. *Effective July 13, 2010.*

Aluminum smelters

EHB 2672 (Chapter 2, Laws of 2010) extends the expiration date for tax incentives provided to aluminum smelters in Washington state from January 1, 2012, until January 1, 2017. *Effective July 13, 2010.*

Miscellaneous

Public utility district privilege tax, "gross revenue" definition

2ESSB 6143 (Section 1001) clarifies that the PUD Privilege Tax applies to all charges to consumers for receiving electric energy, including any regularly occurring charge as a condition of receiving electric energy. *Effective May 1, 2010.*

Tax avoidance

2ESSB 6143 (Section 201) authorizes the Department to impose tax on specific transactions where taxpayers have tried to avoid taxes by elevating the form of the transaction over the substance. Addresses loopholes in current law that have been used to avoid paying sales tax, use tax and real estate excise tax. *Effective May 1, 2010.*

Reseller permit changes

SHB 2758 (Chapter 112, Laws of 2010) incorporates stakeholder suggestions and other changes into the new reseller permit law (SB 6173–Chapter 563, Laws of 2009) including automatic issuance of permits for some contractors, 24-month contractor permits beginning in 2013, and allowing electronic verification of the permit by sellers. *Effective July 1, 2010* but some provisions apply retroactively to January 1, 2010.

Brokered natural gas

ESHB 3179 (Chapter 127, Laws of 2010) clarifies that natural and manufactured gases subject to use tax are sourced to the location where the taxpayer burns or stores the gas. *Effective June 10, 2010.*

Fish tax rate extended on sea urchins and sea cucumbers

Extends the current 4.92 percent tax rate on sea urchins and sea cucumbers until Dec 31, 2013 or until the number of either license falls to 20, whichever occurs first. Once the number of licenses is reduced to 20, the tax rate for that license will decline to 2.25 percent. *Effective June 10, 2010.*

Digital products

SHB 2620 (Chapter 111, Laws of 2010) clarifies the definitions of digital automated services and digital goods. Includes any digital good used solely for business purposes in the standard digital information sales and use tax exemption. Corrects unintended consequences of the original digital products legislation, ESHB 2075 effective July 26, 2009, and conforms the law to the original intent of the legislature. *Effective July 1, 2010* but most of the bill is retroactive to July 26, 2009.

Distressed county sales and use tax deferral program

ESHB 3014 (Chapter 16, Laws of 2010 First Special Session) amends the rural county deferral program. The location of a project qualifying for the program changes from one located in a "rural county" to one located in a county with an unemployment rate of at least 20 percent above the state average for three years. Community empowerment zones are still eligible. The bill extends the program to July 1, 2020. *Effective July 1, 2010.*

Enhanced 911 tax extended

SSB 6846 (Chapter 19, Laws of 2010) extends the state and county enhanced 911 excise taxes to the use of interconnected Voice over Internet Protocol (VoIP) service lines and increases the state enhanced 911 excise tax to 25 cents per switched access line, radio access line, and interconnected VoIP service lines. This bill also provides that the county E911 tax will be paid to and administered by the Department of Revenue. *Effective January 1, 2011.*



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