



STATE OF WASHINGTON  
DEPARTMENT OF REVENUE

**SUMMARY OF 2011 TAX LEGISLATION**

**Washington Department of Revenue  
Research and Legislative Analysis Division  
June 2011**

This report summarizes significant revenue and tax legislation in Washington that was approved during the regular and first special session of the 2011 Legislature. The material was compiled from information developed by the Research and Legislative Analysis Division. The summary is not intended to cover technical details or provide a legal interpretation of the bills. Instead, its primary purposes are to alert agency personnel of the changes, to assist in developing implementation programs, and to serve as a resource for historical tax research.

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**STATE REVENUE IMPACT OF MAJOR 2011 TAX LEGISLATION - Sources Impacting Dept. of Revenue Only**

State General Fund							
Bill Num	Bill Description	FY 2012	FY 2013	2011-13 Bien	FY 2014	FY 2015	2013-15 Bien
2ESHB 1087	Fiscal matters <sup>1</sup>						
SHB 1211	Utility donations to hunger programs <sup>1</sup>						
2ESHB 1224	B&O tax deduction/mental health services	(\$620,000)	(\$795,000)	(\$1,415,000)	(\$704,000)	(\$747,000)	(\$1,451,000)
HB 1239	Delinquent excise taxes/lien	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1332	Utility services joint management	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1346	Tax law changes	\$0	\$0	\$0	\$0	\$0	\$0
HB 1347	Sales & use tax exemptions	(\$63,000)	(\$66,000)	(\$129,000)	(\$70,000)	(\$73,000)	(\$143,000)
EHB 1357	Taxes/electronic means	\$0	\$0	\$0	\$0	\$0	\$0
2SHB 1362	Protect and assist homeowners from foreclosures <sup>1</sup>						
SHB 1384	Public improvement contracts	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1478	City & county fiscal relief	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1731	Fire protection authorities	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1826	Taxpayer appeal protections	\$0	\$0	\$0	\$0	\$0	\$0
SHB 1854	Fire protection authorities	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 1902	B&O tax deduction/child welfare services	(\$722,000)	(\$1,149,000)	(\$1,871,000)	(\$974,000)	(\$958,000)	(\$1,932,000)
HB 1953	City & county real estate excise taxes	\$0	\$0	\$0	\$0	\$0	\$0
EHB 1969	Flood control zone districts	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2017	Master service license program	\$0	\$0	\$0	\$0	\$0	\$0
HB 2019	Deposit of additional cigarette tax	\$73,400,000	\$72,300,000	\$145,700,000	\$72,300,000	\$72,300,000	\$144,600,000
ESHB 2088	Opportunity scholarship board	Indeterminate	Indeterminate		Indeterminate	Indeterminate	
SB 5044	Tax preference review process <sup>1</sup>						
SB 5083	Real estate firms B&O tax	(\$863,000)	(\$910,000)	(\$1,773,000)	(\$775,000)	(\$793,000)	(\$1,568,000)
SSB 5167	Tax statute clarifications	\$0	\$0	\$0	\$0	\$0	\$0
ESSB 5253	Landscape conservation	\$0	\$0	\$0	\$0	\$0	\$0
SB 5289	B&O tax deduction/property management	(\$258,000)	(\$324,000)	(\$582,000)	(\$289,000)	(\$303,000)	(\$592,000)
SSB 5359	Contiguous land/property tax	\$0	\$0	\$0	\$0	\$0	\$0
SB 5501	Taxation of employee meals	(\$307,000)	(\$359,000)	(\$666,000)	(\$372,000)	(\$385,000)	(\$757,000)
SSB 5525	Hospital benefit zones	\$0	\$0	\$0	\$0	\$0	\$0
SB 5526	Stirling converters	\$0	\$0	\$0	\$0	\$0	\$0
2SSB 5595	PUD privilege tax	\$0	\$0	\$0	\$0	\$0	\$0
SB 5628	Emergency medical services levy	\$0	\$0	\$0	\$0	\$0	\$0
SB 5633	Unclaimed property act exemption for agricultural fairs <sup>1</sup>						
2ESB 5638	Taxing district exemptions	\$0	\$0	\$0	\$0	\$0	\$0
2ESSB 5742	State ferry system	\$0	\$0	\$0	(\$3,879,000)	(\$4,290,000)	(\$8,169,000)
SB 5763	Nonresident sales tax exemption narrowed	Indeterminate	Indeterminate	\$0	Indeterminate	Indeterminate	\$0
ESSB 5834	Lodging tax/arts & heritage	\$0	\$0	\$0	\$0	\$0	\$0
SB 5849	Taxation of estates and trusts for 2010	Indeterminate	Indeterminate	\$0	Indeterminate	Indeterminate	\$0
<b>NET GENERAL FUND IMPACT</b>		<b>\$70,567,000</b>	<b>\$68,697,000</b>	<b>\$139,264,000</b>	<b>\$65,237,000</b>	<b>\$64,751,000</b>	<b>\$129,988,000</b>

**State Funds other than General Fund**

Bill Num	Bill Description (Fund)	FY 2012	FY 2013	2011-13 Bien	FY 2014	FY 2015	2013-15 Bien
SHB 2017	Master service license program - MLS Account	\$6,430,000	\$6,722,000	\$13,152,000	\$6,885,000	\$7,057,000	\$13,942,000
HB 2019	Additional cigarette tax - Educ Legacy Trust Account	(\$73,400,000)	(\$72,300,000)	(\$145,700,000)	(\$72,300,000)	(\$72,300,000)	(\$144,600,000)
SB 5501	Taxation of employee meals - Perf Audit Account	\$0	(\$1,000)	(\$1,000)	(\$1,000)	(\$1,000)	(\$2,000)
2ESSB 5742	State ferry system - Perf Audit Account	\$0	\$0	\$0	(\$6,000)	(\$7,000)	(\$13,000)

<sup>1</sup> A fiscal note was not requested for this bill, revenue impact is not available.

## INITIATIVES

**Initiative 1053      Relating to tax and fee increases by state government**  
(Chapter 1, Laws of 2011)

This initiative to the people was approved by the voters in the November 2010 general election. It restores the requirement that any tax increase be approved by a two-thirds vote of the Legislature or by a vote of the people. It also reiterates that fees may be imposed or increased only with majority legislative approval. These requirements were originally approved by the voters in November 2007 (Initiative 960). During the 2010 regular session, the Legislature suspended I-960's super-majority voting requirement until after July 1, 2011 (ESSB 6130).

I-1053 was effective December 2, 2010.

**Initiative 1107      Relating to repealing tax increases on certain processed foods, bottled water, candy, and carbonated beverages enacted by the 2010 legislature**  
(Chapter 2, Laws of 2011)

This initiative to the people was approved by the voters in the November 2010 general election. It repeals the following four tax increases that were passed during the first special session of the 2010 Legislature (2ESSB 6143):

- Increased business and occupation taxes for certain food processors,
- The sales and use tax on candy,
- The temporary sales and use tax on bottled water, and
- The temporary tax on canned/bottled carbonated beverages (two cents per 12-ounce container).

I-1107 was effective December 2, 2010.

## HOUSE BILLS

**2ESHB 1087 Relating to fiscal matters**  
(Chapter 50, Laws of 2011 1st Special Session (partial veto))

This bill makes biennial operating appropriations for the 2011-13 Biennium and supplemental operating appropriations for the 2009-11 Biennium.

This bill affects the amount of funds provided to qualifying local jurisdictions to mitigate the impacts of:

- The change to destination-based sourcing of local sales taxes, and
- The loss of funds due to the repeal of the Motor Vehicle Excise Tax (MVET).

To conform to the national Streamlined Sales and Use Tax Agreement, effective July 1, 2008, Washington changed from an origin-based to destination-based system for sourcing local sales tax for sales of delivered products. This change caused some jurisdictions to gain revenues while others lost revenues. To ease the hardship on negatively impacted jurisdictions, the law provides mechanisms to mitigate the net losses in revenue to eligible local jurisdictions. Money for mitigation is appropriated by the Legislature and is transferred from the State General Fund to a special mitigation account. Public facilities districts (PFDs) incurring net losses of sales and use taxes authorized by RCW 82.14.390 of at least 0.50 percent due to destination-based sourcing do not receive mitigation funds but are instead authorized to increase their tax rate from 0.033 percent to a maximum rate of 0.037 percent to mitigate their net losses.

For the 2009-11 Biennium, 2ESHB 1087 increases the amount transferred to the mitigation account so that sufficient funds are in the account to make the final mitigation payment for Fiscal Year 2011. But the bill reduces the amount of money that would otherwise have been transferred from the State General Fund to the mitigation account by 3.4 percent during the 2011-13 Biennium. The estimated amount required to mitigate net losses to eligible jurisdictions as a result of the change to destination-based sales tax sourcing is \$51,380,000 for the 2011-13 Biennium. However, only \$49,635,000 is appropriated for mitigation payments for that biennium.

In addition, for the 2011-13 Biennium, the bill reduces by 3.4 percent the distributions of the portion of an eligible PFD's local sales and use tax authorized by RCW 82.14.390 that mitigates PFDs for their net losses due to destination-based sourcing.

In 2005, the Legislature established the City-County Assistance Account (CCAA), which provides funds to cities and counties that were most severely impacted by the repeal of the MVET. The CCAA is funded by a portion of state Real Estate Excise Tax (REET) revenues. Distributions from the CCAA are made quarterly based on amounts certified by the Department of Revenue. Formulas are used to determine eligibility for CCAA distributions and in what amounts.

Second Engrossed Substitute House Bill 1087 also reduces the portion of REET revenues that go into the CCAA from 1.6 percent to 1.546 percent (a 3.4 percent reduction) during the 2011-13 Biennium.

The provisions of the bill vetoed by the Governor do not affect the reductions to the CCAA and destination-based sourcing mitigation funding.

Except for one section unrelated to the summary of this bill, the bill is effective June 15, 2011.

**SHB 1211     Relating to utility donations to hunger programs**  
(Chapter 226, Laws of 2011)

This bill allows public utility districts, municipal utilities, and code cities providing utility services to request voluntary donations from their customers to support hunger programs. The

bill clarifies that these donations do not contribute to the gross income of the utility and are therefore not subject to the state public utility tax.

The bill takes effect July 22, 2011.

**2ESHB 1224 Relating to a business and occupation tax deduction for amounts received with respect to mental health services**  
(Chapter 19, Laws of 2011 1st Special Session)

This bill provides a business and occupation (B&O) tax deduction for amounts received from the state by a regional support network (RSN) for distribution to a health or social welfare organization for mental health services provided under a government-funded program. The Department of Social and Health Services (DSHS) contracts with RSNs to oversee the delivery of mental health services. RSNs may be counties, nonprofits, or for-profit organizations.

The bill also provides a B&O tax deduction for health or social welfare organizations for amounts received as compensation for mental health services provided under a government-funded program.

Taxpayers claiming either of these deductions must file an annual report with the Department of Revenue detailing employment, wage, and benefit information for the taxpayer's employees in this state.

Although this bill takes effect August 24, 2011, the deductions provided in this bill apply to amounts received on or after August 1, 2011. The deductions expire August 1, 2016.

**HB 1239 Relating to allowing the Department of Revenue to issue a notice of lien to secure payment of delinquent taxes in lieu of a warrant**  
(Chapter 131, Laws of 2011)

This bill provides that, in lieu of filing a tax warrant with a superior court, the Department of Revenue may issue a notice of lien against any real property in which the taxpayer has any ownership interest, if the total amount of the warrant exceeds \$25,000 and the Department determines that issuing the notice of lien would best protect the state's interest in collecting the amount due on the warrant.

A tax warrant is a document issued by the Department to collect taxes that are generally at least 15 days delinquent. When a tax warrant is filed with the superior court of the county in which the taxpayer owns real or personal property, a lien is created on all such property. This bill provides the Department with the ability to lien a specific parcel or parcels of real property owned by a taxpayer instead of encumbering all of the taxpayer's real and personal property with a lien.

The bill takes effect January 1, 2012.

**ESHB 1332 Relating to the joint provision and management of municipal water, wastewater, storm and flood water, and related utility services**  
(Chapter 258, Laws of 2011)

This bill authorizes two or more jurisdictions, including local governments both within and outside Washington and federally recognized Indian tribes, to form a joint municipal utility services authority. The authority is a municipal corporation formed to provide joint municipal utility services and any or all of the utility services that all of its members, other than tribal government members, perform or provide under applicable law.

As a municipal corporation, the property of the authority is exempt from property taxation. Payments between, or transfers of assets to or from, a joint utility services authority and its members are not subject to the business and occupation tax or the public utility tax. Retail sales and use taxes do not apply to sales or transfers to or from a joint municipal utility services authority and its members. Additionally, a joint municipal utility services authority is entitled to all tax exemptions and preferences that are available to any or all of its members, other than a tribal member, in connection with the provision or management of utility services.

Joint municipal utility services authorities are not authorized to levy taxes. The authority to levy taxes remains with the individual members.

The bill takes effect July 22, 2011.

**ESHB 1346 Relating to making changes to laws administered by the Department of Revenue that do not create any new or broaden any tax preference as defined in RCW 43.136.021 or increase any person's tax burden**  
(Chapter 20, Laws of 2011 1st Special Session)

This bill, requested by the Department of Revenue, makes technical changes to statutes intended to correct errors and clarify tax statutes administered by the Department. It clarifies that for business and occupation tax purposes, a business having a “substantial nexus” with Washington under the applicable statutory guidelines (RCW 82.04.067) is deemed to have a substantial nexus with this state through the following tax year. It also clarifies in statute that a seller is not required to collect use tax if the state is prohibited under the Constitution or laws of the United States from requiring the seller to collect use tax.

This bill also repeals the statutes that mandate a study of the Renewable Energy System Investment Cost Recovery Incentive Program and the filing of accountability reports by businesses claiming certain aluminum smelter tax incentives. These statutes were repealed last year but remain codified in the Revised Code of Washington because they were also amended by separate legislation without cognizance of their repeal.

Lastly, this bill temporarily narrows the scope of the Tax Exemption Study conducted by the Department every four years as required by RCW 43.06.400. For the study due in January 2012,

the Department does not have to include any tax exemption that would not be likely to increase state revenue if the exemption was eliminated.

The bill takes effect August 24, 2011.

**HB 1347      Relating to sales and use tax exemptions for certain property and services used in manufacturing, research and development, or testing operations, not including changes to RCW 82.08.02565 and 82.12.02565 that reduce state revenue**  
(Chapter 23, Laws of 2011)

This bill, requested by the Department of Revenue, clarifies that the existing manufacturing machinery and equipment (M&E) sales and use tax exemption (RCW 82.08.02565 and 82.12.02565) only applies to M&E used in activities that are taxed as manufacturing for business and occupation tax purposes. This proposal also clarifies that the state and its departments and institutions are not eligible as manufacturers for the M&E exemption.

The bill also creates a sales and use tax exemption for public research institutions for M&E used primarily in a technological research and development (R&D) operation. Public research institutions are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College.

Public research institutions using the new sales and use tax exemption must complete an annual survey under RCW 82.32.585. In addition to employment, wage, and benefit information, the annual survey must include the amount of tax exempted in the prior calendar year for each general area or category of R&D.

The amendments to the existing M&E exemption apply both prospectively and retroactively to any tax period open for assessment or refund of taxes.

The bill takes effect April 11, 2011.

**EHB 1357      Relating to providing the Department of Revenue with additional flexibility to achieve operational efficiencies through the expanded use of electronic means to remit and report taxes**  
(Chapter 24, Laws of 2011)

This bill, requested by the Department of Revenue, expands to all taxpayers the mandatory requirements for reporting and paying taxes electronically that currently apply only to taxpayers that file tax returns monthly. These requirements apply to taxes reported on the Department's Combined Excise Tax Return, which include the business and occupation tax, state public utility tax, and sales and use taxes. The Department is authorized to waive these requirements for



taxpayers that are assigned to report and pay their taxes annually or otherwise less frequently than quarterly. The Department may also waive these requirements for good cause.

This bill also extends the existing 10 percent penalty for disregarding specific written instructions to those taxpayers who are required but refuse to file their returns or remit payment of their taxes electronically.

The bill applies only to tax returns and payments originally due after July 22, 2011, the effective date of this bill.

**2SHB 1362 Relating to protecting and assisting homeowners from unnecessary foreclosures**  
(Chapter 58, Laws of 2011)

This bill, referred to as the foreclosure fairness act, makes numerous changes to the foreclosure process. In addition, the bill provides that when a transfer or conveyance of real property is made by deed in lieu of foreclosure to satisfy a deed of trust, the amount of any relocation assistance provided to the transferor is not subject to REET.

The majority of this bill, including the REET provision, takes effect July 22, 2011.

**SHB 1384 Relating to public improvement contracts involving certain federally funded transportation projects**  
(Chapter 231, Laws of 2011)

This bill exempts public improvement contracts for highway, road, and street projects funded in whole or in part by federal transportation funds from the requirement that the public entity letting the contract retain up to 5 percent of the contract amount to provide a fund for unpaid taxes or claims arising under the contract. Instead, any person making claims arising from the contract and the state with respect to taxes owing must rely on the contract bond required by chapter 39.08 RCW. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

The Washington State Department of Transportation requested this legislation in order to comply with federal regulations that require that disadvantaged business enterprises working on projects funded by federal highway funds be paid in full within 30 days of completing their portion of the work.

The bill takes effect July 22, 2011.

**ESHB 1478 Relating to fiscal relief for cities and counties during periods of economic downturn by delaying or modifying certain regulatory and statutory requirements**

(Chapter 353, Laws of 2011)

To help mitigate revenue shortfalls at a time of an increasing demand for social services due to the economic downturn, this bill provides local governments with more time to meet certain statutory requirements. The bill also amends the annexation services sales and use tax in the following two ways:

- The population threshold for an annexation area for cities to impose the 0.85 percent maximum tax rate is reduced from greater than 18,000 to greater than 16,000.
- The resident population of an annexed area must be determined as prescribed in the annexation statutes.

***Background***

Under current law, certain cities annexing qualifying areas can impose a local sales and use tax that is credited against the state sales and use tax. This tax is commonly referred to as "the annexation services tax." A city must be located in a county with a population over 600,000 (King, Snohomish, and Pierce counties), and certain city and annexation area population criteria are used to determine the maximum rate of tax between 0.1 percent and 0.85 percent that can be imposed by a city. The annexation services tax must be used to provide, maintain, and operate municipal services for the qualifying annexed areas.

In 2009, the statute was amended to provide that beginning July 1, 2011, a tax rate of 0.85 percent can be imposed for an annexed area with a population greater than 18,000 if the annexed area was, prior to November 1, 2008, officially designated as a potential annexation area by more than one city, one of which having a population greater than 400,000 (Seattle). A jurisdiction imposing the tax at the 0.85 percent rate may not collect more than \$5 million in tax per fiscal year. As of the date this summary was written, no city had imposed the tax at the 0.85 percent tax rate.

The bill takes effect July 22, 2011.

**ESHB 1731 Relating to the formation, operation, and governance of regional fire protection service authorities**

(Chapter 141, Laws of 2011)

The bill makes changes to regional fire protection service authority statutes. It also provides that any fire protection district, city, town, or port district annexed into a regional fire protection service authority (Authority) is subject to the same property tax levy rate limitations as a fire protection jurisdiction that is on the governing board of the Authority.

The bill takes effect July 22, 2011.

**ESHB 1826 Relating to providing taxpayers additional appeal protections for value changes**  
(Chapter 84, Laws of 2011)

This bill provides that a county board of equalization must waive the deadline for appealing the assessed value of property for property tax purposes under the following circumstances:

- The taxpayer's property was in a revaluation area,
- The property value did not change,
- The taxpayer was not sent a revaluation notice, and
- The appeal is filed within a reasonable time after the July 1 filing deadline.

Currently, no revaluation notice is required if the assessed value of a property within a revaluation area has not changed. When the assessor changes the property value, a notice of revaluation must be sent to the property owner within 30 days. If the property owner disagrees with the new value, the owner may appeal to the county board of equalization. That appeal must occur on or before July 1 or within 30 days of the date the revaluation notice was mailed. There are some exceptions to these appeal requirements.

The bill takes effect July 22, 2011, and will apply to property taxes levied for collection in 2012 and thereafter.

**SHB 1854 Relating to annexation of territory by regional fire protection service authorities**  
(Chapter 271, Laws of 2011)

This bill provides a process for a fire protection jurisdiction to annex into an adjacent regional fire protection service authority (Authority). The annexation must be approved by a simple majority vote of the voters in the fire protection jurisdiction. For purposes of calculating property tax levy rates, a fire protection district, city, town, or port district that is annexed into an Authority is subject to the same property tax levy limitations as a fire protection jurisdiction that is represented on the governing board of the Authority.

The bill takes effect July 22, 2011.

**ESHB 1902 Relating to a business and occupation tax deduction for amounts received with respect to child welfare services**  
(Chapter 163, Laws of 2011)

This bill provides a B&O tax deduction for amounts received by health or social welfare organizations as compensation for providing child welfare services under a government funded program.

The bill also provides a B&O tax deduction for amounts received by any person from the state for distribution to a health or social welfare organization for providing child welfare services if

the recipient of the distribution from the taxpayer is eligible to deduct the distribution as described in the preceding paragraph.

The bill takes effect July 22, 2011. However, the law applies to amounts received by a taxpayer on or after August 1, 2011.

***Background***

This bill is the result of changes in the way DSHS contracts for child welfare services. As a result of legislation enacted in 2009 requiring DSHS to reduce the number of contracts for child welfare services, DSHS is moving to a performance-based contracting model. Under this contracting model, DSHS will contract with lead agencies that may provide child welfare services directly, subcontract with other organizations to provide direct child welfare services, or engage in both the provision of some direct services and subcontracting with others to provide direct services.

Current law (RCW 82.04.4297) provides a B&O tax deduction for amounts received directly from the state, federal, or local government as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization. Under the new performance-based contracting model, nonprofit subcontractors which previously contracted directly with DSHS and qualified for the deduction in RCW 82.04.4297 would no longer be entitled to that deduction because their compensation is received from a lead agency rather than the state.

**HB 1953      Relating to county and city real estate excise taxes**  
(Chapter 354, Laws of 2011)

This bill temporarily provides greater flexibility in how certain REET revenues can be used.

***Background***

Currently, cities, towns, and counties may levy a REET of up to 0.25 percent of the selling price of real property for financing capital improvements. For purposes of this summary, this tax is referred to as REET I. Cities, towns, and counties required to fully plan under the Growth Management Act may levy an additional 0.25 percent REET to finance capital projects specified in the capital facilities element of a comprehensive plan. For purposes of this summary, this tax is referred to as REET II. Counties that opt to fully plan under the Growth Management Act and cities and towns in such counties, with voter approval, may impose the REET II.

***Summary of the bill***

House Bill 1953 provides that cities, towns, and counties may use the greater of \$100,000 or 35 percent of REET I revenues, not to exceed \$1 million per year, to pay for the operations and maintenance expenditures of existing capital projects. This authority is also extended to the use of REET II revenues. In addition, counties may use REET II revenues for the payment of existing debt service on any capital project for which REET I revenues may be used. The use of REET II revenues for the payment of existing debt service and any amounts used for operations and maintenance expenditures of existing capital projects is subject to the fiscal limitations

described above (the greater of \$100,000 or 35 percent of REET II revenues, not to exceed \$1 million per year). The authority provided by this bill applies from the bill's effective date through December 31, 2016.

All but one section of the bill takes effect July 22, 2011.

**EHB 1969    Relating to the exemption of flood control zone districts that are coextensive with a county from certain limitations upon regular property tax levies (Chapter 275, Laws of 2011)**

This bill affects how flood control zone district regular property tax levies are impacted by certain limits on regular property tax levies.

***Background***

Under current law, flood control zone districts can impose a regular property tax levy not to exceed 50 cents per \$1,000 of assessed value. The state constitution limits the aggregate of all regular property tax levies to no more than 1 percent of the true and fair value of the taxed property (\$10 per \$1,000 of assessed value). In addition, state statute provides that the aggregate of most regular property tax levies, other than the state's levy, cannot exceed \$5.90 per \$1,000 of assessed value. If these levy limitations are exceeded, state statute prescribes the order in which the various levies will be reduced or eliminated to ensure that the aggregate levy does not exceed these limitations.

***Summary of the bill***

Engrossed House Bill 1969 allows a flood control zone district located in a county with a population of 775,000 or more with boundaries coextensive with a county to place up to 25 cents of its regular levy outside of the \$5.90 limit. The levy for a flood control zone district, including the portion protected from the \$5.90 limit, is still within the constitutional 1 percent limit. If the constitutional 1 percent levy limit is exceeded as a result of an aggregate levy that includes any portion of a flood control zone district's levy that is protected from the \$5.90 levy limit, the bill provides that the first levy to be reduced or eliminated is the portion of a flood control zone district's levy that is protected from the \$5.90 levy limit.

The bill also contains an apparent drafting error that affects the order that certain taxing districts' levies are reduced or eliminated under the constitutional 1 percent and statutory \$5.90 levy limits. Under existing law, the levies of flood control zone districts are reduced or eliminated before certain other levies must be reduced or eliminated. For those flood control zone districts that have a population less than 775,000, this bill moves their levies down one level in the order in which levies are reduced or eliminated under the constitutional 1 percent and statutory \$5.90 levy limits. This could have a negative impact on those taxing districts whose levies, under this bill, would be reduced or eliminated at the same time as flood control zone districts with a population less than 775,000 instead of being reduced or eliminated only after the levy of any flood control zone district is eliminated as provided under current law.

The bill takes effect July 22, 2011, and applies to property taxes levied for collection in 2012 through 2017. The bill expires January 1, 2018.

**SHB 2017      Relating to the Master License Service Program**  
(Chapter 298, Laws of 2011)

This bill transfers responsibility for administration of the Master License Service (MLS) Program from the Department of Licensing to the Department of Revenue. This transfer includes funding, staff, and tangible property associated with the MLS program.

The responsibilities transferred to the Department under this bill include:

- Administering the MLS, which handles nearly 300 state and local business licenses.
- Establishing handling fees for master applications and renewals by rule, subject to new statutory maximums. The current fees are \$15 for master applications and \$9 for renewal applications. Under the bill, the fees could be increased to \$19 for master applications and \$11 for renewal applications.
- Administering a performance-based grant program, subject to appropriations from the Master License Account. The grants provide funding assistance to counties and cities that issue business licenses and would like to join the MLS. The annual amount of grants may not exceed \$750,000.
- Providing information regarding the regulatory programs associated with each license obtainable under the MLS.

The bill takes effect July 1, 2011.

**HB 2019      Relating to the deposit of the additional cigarette tax**  
(Chapter 334, Laws of 2011)

The bill eliminates the provision of law directing a portion of the cigarette tax to the education legacy trust account. The tax revenue that would have been deposited into the education legacy trust account will instead be deposited into the General Fund.

Currently, the combined state cigarette tax totals \$3.025 per package of 20 cigarettes. The cigarette tax earmarked for the education legacy trust account is equal to \$0.516 per package of 20 cigarettes. The remainder is deposited in the General Fund.

The bill takes effect May 12, 2011. However, the change in the distribution of cigarette tax receipts provided by this bill is retroactive to July 1, 2010.

**ESHB 2088 Relating to creating the Opportunity Scholarship Board to assist middle-income students and invest in high employer demand programs**  
(Chapter 13, Laws of 2011 1st Special Session)

The bill creates the Opportunity Scholarship Program and the Opportunity Expansion Program to help mitigate the impact of tuition increases and to promote higher education degrees in vocations that are in high demand.

The Opportunity Scholarship Program provides funds to eligible students from low- and middle-income families. The scholarships are funded by voluntary private grants and contributions, which are eligible for matching funds from the state up to \$50 million per year. State matching funds must be appropriated by the Legislature and may not be provided until the later of: (1) January 1, 2014; or (2) January 1 immediately following the end of the fiscal year in which the Department of Revenue determines that collections of state retail sales and use tax, state business and occupation tax, and state public utility tax exceed, by 10 percent, the amounts collected from these tax sources in Fiscal Year 2008.

The Opportunity Expansion Program provides funds for state institutions of higher education to implement innovative programs designed to increase the number of baccalaureate degrees in high employer demand and other programs of study. This program is funded by taxpayers who are eligible for the high technology research and development business and occupation tax credit (RCW 82.04.4452) and who choose to contribute all or a portion of their credit to the program. The Department of Revenue must certify the amount of credit contributed to the program to the State Treasurer who transfers that amount from the General Fund into the Opportunity Expansion Account.

The bill takes effect June 6, 2011.

## **SENATE BILLS**

**SB 5044 Relating to the tax preference review process**  
(Chapter 335, Laws of 2011)

Senate Bill 5044 modifies the tax preference review process under chapter 43.136 RCW as follows:

- The requirement that the Citizen Commission for Performance Measurement of Tax Preferences schedule tax preference reviews in the order in which they were enacted into law is modified to allow for other factors in determining the schedule. Those other factors may include, but are not limited to, type of industry, economic sector, and policy area.
- The requirement that an expedited review can only be applied to preferences with an estimated biennial fiscal impact of \$10 million or less is eliminated.
- An analysis of the economic impact is added to the list of factors to be considered by the Joint Legislative Audit and Review Committee (JLARC) when reviewing tax preferences. For purposes of the analysis, JLARC is directed to compare the economic

impact of the tax preference to the economic impact of government activities funded by the tax for which the tax preference is taken at the same level of expenditure as the tax preference. In determining the economic impact, the state input-output model as published by the Office of Financial Management must be used.

The bill also includes:

- A legislative finding that tax preferences for economic development must demonstrate growth in full-time family wage jobs with health and retirement benefits; and
- A statement of legislative intent that the overall impacts of economic development-focused tax preferences benefit the state's economy.

**SB 5083      Relating to clarifying that the basis for business and occupation tax for real estate firms is the commission amount received by each real estate firm involved in a transaction**

(Chapter 322, Laws of 2011 (partial veto))

This bill provides that when a real estate commission on a particular transaction is divided among firms providing real estate brokerage services, each firm must pay the B&O tax only upon its respective share of the total commission. In addition, statutory terms are updated to be consistent with real estate licensing laws.

The bill takes effect July 22, 2011. The bill included a provision that would have applied the tax changes in this bill both retroactively and prospectively. However, the Governor vetoed the retroactivity provision.

***Background***

Under current law, when the real estate commission on a particular transaction is shared between an "originating brokerage office" (representing the seller) and a "cooperating brokerage office" (representing the buyer), each brokerage office pays the B&O tax on its share of the commission. The Department of Revenue takes the position that an originating or cooperating brokerage office is not allowed to deduct the payment of a portion of its commission to a third-party brokerage office for referring a potential buyer or seller to the originating or cooperating brokerage office. Both the brokerage office receiving a referral fee and the brokerage office that paid the referral fee are liable for B&O tax on the amount of the fee.

**SSB 5167      Relating to tax statute clarifications and technical corrections, including for the purposes of local rental car taxes**

(Chapter 174, Laws of 2011)

This bill amends certain excise and property tax statutes to update references and definitions, provide numerous clarifications and technical corrections, and merge certain tax statutes.

Part I provides miscellaneous technical corrections and clarifications, including:



- Clarifying that the service and other activities business and occupation tax classification does not apply to any activity taxed under the international investment management services classification.
- Clarifying the definition of “affiliated” for purposes of RCW 82.04.645.
- Updating the sales and use tax exemption for otherwise taxable food purchased under the federal food stamp program, which is now called the Supplemental Nutrition Assistance Program (SNAP).
- Clarifying eligibility for the property tax exemption for persons disabled due to a service-connected disability and eliminating an incorrect citation to a federal statute.
- Clarifying requirements for county assessors to notify those persons receiving a property tax exemption for senior citizens and disabled persons to file a renewal application every six years rather than every four years.

Part I also provides local governments with more flexibility in the expenditure of the local 1 percent sales and use tax on rental cars. Currently this local tax may be used solely to pay for: (1) acquiring, constructing, maintaining, or operating a public sports stadium; (2) services incidental to a public sports stadium facility (such as engineering, planning, financial, legal, or professional services); (3) youth or amateur sport activities or facilities; and (4) debt service for the construction of a public sports stadium facility. This bill removes the current requirement that 75 percent of the receipts from the local tax must be used for purposes (1), (2), and (4). This allows a greater percentage of the tax receipts to be used for youth or amateur sport activities or facilities in counties with a population less than one million.

Part II updates statutory references to reflect changes made in 2010 legislation.

Part III merges multiple amendments to statutes from 2010 legislation.

Part IV combines two separate statutes authorizing the Department of Revenue to obtain a court-issued subpoena into a single subpoena statute.

All but one section of the bill takes effect July 22, 2011.

**ESSB 5253 Relating to tax increment financing for landscape conservation and local infrastructure**  
(Chapter 318, Laws of 2011)

This bill provides qualifying cities within King, Pierce, and Snohomish counties (if those counties have a program for transfer of development rights) with a tax increment financing (TIF) program to fund infrastructure improvements. Tax increment financing programs use tax revenue that is generated from the investment in public infrastructure within a designated area to fund those infrastructure projects.

In general, under the TIF program established by this bill, sponsoring cities are authorized to use a portion of incremental increases in regular property tax revenue as a result of new construction

within a specified area to pay for the local public infrastructure projects in that specified area. The incremental revenue is limited to increases in regular property tax revenue of a sponsoring city and the county in which the city is located. Taxing districts other than the cities and counties are not affected.

The bill is effective July 22, 2011.

**SB 5289      Relating to a business and occupation tax deduction for payments made to certain property management companies for personnel performing on-site functions**

(Chapter 26, Laws of 2011 1st Special Session)

This bill repeals the existing B&O tax exemption (RCW 82.04.394) for payments made to certain property management companies for wages and benefits paid to, or on behalf of, on-site personnel. The bill replaces that exemption with a new deduction for certain property management companies for amounts received for wages, benefits, and payroll taxes paid to, or for, personnel performing on-site functions. The new deduction allows for personnel to perform on-site functions at the owner's property or to centrally perform on-site functions for the owner's property. In contrast, the repealed exemption required that the on-site personnel work primarily at the owner's property.

Under the repealed exemption, only nonprofit property management companies as well as for-profit property management companies working for a city or county housing authority were eligible for the exemption. The new deduction applies not only to nonprofit property management companies and for-profit property management companies working for a housing authority, but it also applies to for-profit property management companies working for a limited liability company (LLC) or limited partnership (LP) if the sole managing member or sole general partner of the LLC or LP is a housing authority.

Under the repealed exemption, a nonprofit property management company was defined as a property management company exempt from federal income tax under section 501(c) of the Internal Revenue Code. SB 5289 modified the definition of a nonprofit property management company in two ways. First, a nonprofit property management company now includes a property management company that is a public corporation established under RCW 35.21.730. Second, a property management company exempt from federal income tax under section 501(c) of the Internal Revenue Code is considered a nonprofit property management company only when it is providing property management services for low-income housing that has qualified for a property tax exemption under RCW 84.36.560.

The bill takes effect August 24, 2011.

**SSB 5359      Relating to contiguous land under current use open space property tax programs**  
(Chapter 101, Laws of 2011)

This bill makes changes to the current use and designated forest land property tax programs.

The current use program allows qualifying land to be valued for property taxes based on its current use rather than its highest and best use. To qualify for the current use program as “farm and agricultural land” or “timber land,” the land must meet certain criteria depending on the size of the parcel. To determine parcel size, multiple parcels that are contiguous are combined. Contiguous parcels must be held by the “same ownership.”

This bill expands the definition of “same ownership” for purposes of the current use program to include parcels that are both managed as part of a single operation and owned by different persons, if the owners are:

- Members of the same family as “family” is defined in the bill,
- Legal entities wholly owned by members of the same family, or
- An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual and/or members of his or her family.

The bill adds a virtually identical definition of “contiguous” to the designated forest land property tax program, which allows eligible forest land to be valued for property tax purposes based on its use for growing and harvesting timber rather than its highest and best use. This new definition of “contiguous” also incorporates the definition of “same ownership” described above.

The bill takes effect July 22, 2011.

**SB 5501      Relating to the taxation of employee meals provided without specific charge**  
(Chapter 55, Laws of 2011)

This bill exempts meals provided by a restaurant to its employees without a specific charge from business and occupation, retail sales, and use taxes. Meals are defined as one or more items of prepared food or beverages other than alcoholic beverages. Restaurant is also defined in the bill.

The definition of restaurant includes:

- Any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate but not necessarily on-site consumption, but excluding grocery stores, mini-markets, and convenience stores.
- Lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias.
- Space and accommodations where food and beverages are sold to the public for immediate consumption that are located within hotels, motels, lodges, boarding houses, bed and breakfast facilities, hospitals, office buildings, movie theaters, and schools, colleges, or universities, if a separate charge is made for such food or beverages.

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge.
- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge for the food and/or beverages is made.

Restaurant does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

The bill takes effect July 1, 2011.

**SSB 5525      Relating to hospital benefit zones that have already formed**  
(Chapter 363, Laws of 2011)

This bill amends the Hospital Benefit Zone (HBZ) Financing Program by:

- Expanding the definition of "public improvements" to include the construction, maintenance, and improvements of state highways that are connected to the HBZ, including highway interchanges.
- Allowing the sponsoring local government to modify the public improvements to be financed through HBZ funds by adopting an ordinance and holding a public hearing, as long as the total cost of the public improvements is not increased.
- Clarifying which revenues may and may not be used as local matching funds by the sponsoring local government. Amounts expended by a hospital in the HBZ since the date the HBZ was formed may be used as local matching funds. The state-subsidized portion of any state loan or grant may not be used as local matching funds.
- Allowing excess local matching funds to be carried over and used in future years.
- Clarifying that HBZ local sales tax funds do not have to be expended in the same year as received.

The bill is effective July 22, 2011.

***Background***

In 2006, the HBZ Financing Program was created to allow counties, cities, and towns to finance public improvements in a defined area commonly referred to as a hospital benefit zone or HBZ. The HBZ must include an area in which a hospital has received a certificate of need from the Department of Health to be constructed. The HBZ Financing Program uses a form of tax increment financing to finance local public infrastructure improvements within the HBZ. The growth in certain local sales and use tax revenues and revenue from other local public sources is matched with a state contribution of money to pay for the eligible public infrastructure improvements.

The state contribution is received through a local sales and use tax imposed by the sponsoring local government, which is credited against the state sales and use tax. This local sales and use tax is limited annually to the lesser of: (1) the project award approved by the Department of Revenue; (2) the amount of local matching funds allocated to the payment or financing of the infrastructure improvements in the previous calendar year; (3) the amount of growth in certain

state sales and use tax revenues received in the previous calendar year from the HBZ; or (4) \$2 million. The state contribution is limited to \$2 million per year statewide and ends after the earlier of 30 years or when the tax is no longer needed to pay or fund debt service for the public improvements in the HBZ.

Currently, only Gig Harbor, partnering with Pierce County, has been approved for HBZ financing. Gig Harbor plans on imposing the local sales and use tax under the program for the first time July 1, 2011.

**SB 5526      Relating to incentives for stirling converters**  
(Chapter 179, Laws of 2011)

This bill reduces the B&O tax rate from 0.484 percent to 0.275 percent for manufacturing solar energy systems using stirling converters and for wholesale sales by the manufacturer of such solar energy systems. The bill also includes stirling converters manufactured in Washington as qualifying for the higher renewable energy investment cost recovery incentive payments provided for solar energy systems that use certain components manufactured in this state. The bill defines “stirling converter” as a device that produces electricity by converting heat from a solar source using a stirling engine.

***Background***

Currently, the general B&O tax rate on manufacturing and wholesaling activities is 0.484 percent. Certain manufacturing and wholesaling activities are taxed at lower rates. For example, a reduced B&O tax rate of 0.275 percent is provided for manufacturing solar energy systems using photovoltaic modules and manufacturing solar-grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of solar energy systems using photovoltaic modules. Income from wholesale sales of these products by the manufacturer is also taxed at a rate of 0.275 percent.

Under the Renewable Energy Investment Cost Recovery Incentive Program, light and power businesses are allowed a credit against the state public utility tax for amounts paid to qualifying customers as incentive payments for investment in certain renewable energy systems. Credits cannot exceed \$5,000 per customer. The maximum annual credit that may be taken by a light and power business during a fiscal year is the greater of one-half of 1 percent of the business’s taxable power sales or \$100,000.

The bill takes effect July 22, 2011.

**2SSB 5595      Relating to distribution of the public utility district privilege tax**  
(Chapter 361, Laws of 2011)

This bill changes the distribution of the county share of the state public utility district (PUD) privilege tax in the following limited circumstance:

- A county (“the receiving county”) receives PUD privilege taxes because a PUD operated by another county owns fee title to property in a city or town in the receiving county;
- Such city or town adjoins a reservoir on the Columbia River wholly or partially created by the PUD’s hydroelectric facility which began commercial power generation in 1967; and
- The PUD has no sales of electrical energy in such city or town.

In this circumstance, the county may retain 70 percent of the PUD privilege tax proceeds and must remit the remaining 30 percent to the city or town in which the PUD owns fee title to property but has no sales of electrical energy. If the PUD owns property in more than one city or town in the receiving county and has no sales of electrical energy in those cities or towns, the remaining 30 percent of the tax must be divided evenly among all such cities and towns.

The purpose of the bill is to require Okanogan County to redistribute 30 percent of its PUD privilege tax distribution evenly to the cities of Pateros and Brewster. The bill does not affect the portion of the PUD privilege tax that the state retains.

The bill takes effect July 22, 2011, and will apply beginning with PUD privilege taxes distributed in 2012.

**SB 5628      Relating to a limited property tax exemption from emergency medical services levy**  
(Chapter 365, Laws of 2011)

This bill provides that for purposes of imposing an emergency medical service (EMS) property tax levy, the boundary of a county with a population greater than 1.5 million does not include all of the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county with a population greater than 1.5 million is less than \$250 million. The bill also clarifies that a fire protection district may impose the full amount of its EMS levy in a city that the fire protection district has annexed and that is located in two counties, one of which has a population greater than 1.5 million, and the locally assessed value of all the property in the area of the city within the county with a population greater than 1.5 million is less than \$250 million. The bill is intended to ensure that the owners of property in the portion of the City of Milton located in King County will not have to pay for two EMS levies that could result from the layering of King County’s EMS levy and a City of Milton (or fire district) EMS levy.

***Background***

Subject to various limitations and restrictions, certain taxing districts are authorized, with voter approval, to impose regular EMS property tax levies of up to 50 cents per \$1,000 of assessed value to fund emergency medical care and emergency medical services. If a county and another taxing jurisdiction within the county both impose EMS levies, the maximum cumulative rate for both levies is 50 cents per \$1,000 of assessed value. The City of Milton is located partially within King and Pierce Counties. Currently, King County and the City of Milton both impose an EMS levy. An Attorney General Opinion was issued in 2010 (AGO 2010 No. 8) concluding that

a city within two counties, only one of which imposes its own EMS levy, could impose an EMS levy at the maximum rate throughout the entire city without regard to the EMS levy imposed by the one county.

The bill takes effect July 22, 2011, and applies to taxes levied for collection in 2012 and thereafter.

**SB 5633      Relating to exempting agricultural fair premiums from the Unclaimed Property Act**  
(Chapter 116, Laws of 2011)

This bill exempts premiums paid by an agricultural fair by check from the Unclaimed Property Act. Premiums are amounts paid for exhibits and educational contests, displays, and demonstrations of an educational nature.

The bill takes effect July 22, 2011.

***Background***

Washington's Unclaimed Property Act applies to certain types of property—mainly intangible property such as bank deposits, insurance proceeds, uncashed checks, and utility deposits. If such property remains unclaimed for a certain period of time (usually three years), the holder of the property is required to report and transfer the unclaimed property to the Department of Revenue. The Department becomes the custodian for all of the unclaimed property that is turned over to it. The rightful owners of unclaimed property transferred to the Department can make a claim for the return of the property. There is no time limit for filing a claim with the Department for the return of unclaimed property.

Many people who receive premiums from agricultural fairs retain the premium checks as mementos instead of cashing them. These checks are commonly for very small sums. This bill relieves agricultural fairs from having to report and transfer the value of uncashed premium checks to the Department as unclaimed property.

**2ESB 5638      Relating to the exemption of certain taxing districts**  
(Chapter 28, Laws of 2011 1st Special Session)

This bill affects how certain metropolitan park districts are impacted by constitutional and statutory limits on regular property tax levies. It also makes a technical correction to similar legislation enacted in the 2011 regular legislative session for certain flood control zone districts.

***Background***

The state constitution limits the aggregate of all regular property tax levies to no more than 1 percent of the true and fair value of the taxed property (\$10 per \$1,000 of assessed value). In addition, state statute provides that the aggregate of most regular property tax levies, other than the state's levy, cannot exceed \$5.90 per \$1,000 of assessed value. If these levy limitations are

exceeded, state statute prescribes the order in which the various levies will be reduced or eliminated to ensure that the aggregate levy does not exceed these limitations. This reduction or elimination of levies is commonly referred to as “prorating.”

### ***Summary of the bill***

Second Engrossed Senate Bill 5638 provides that any metropolitan park district (MPD) located in a county with a population of at least 1.5 million (King County) may, with voter approval, protect all or any portion of its \$0.25 per \$1,000 of assessed value property tax levy from prorating under the \$5.90 aggregate levy limit. Current law (RCW 84.52.120) already provides this authority for MPDs with a population of at least 150,000.

The bill also provides that if the constitutional 1 percent levy limit is exceeded as a result of an aggregate levy that includes any portion of a levy that is protected from the \$5.90 limit by an MPD that has a population of less than 150,000 and is located in a county with a population of at least 1.5 million, the first levy to be prorated is the portion of the MPD’s levy that is protected from prorating under the \$5.90 limit.

The bill also makes technical corrections to chapter 275, Laws of 2011 (EHB 1969) to eliminate a potential negative impact from that bill on those taxing districts whose levies would have been prorated at the same time as flood control zone districts with a population less than 775,000 rather than being prorated only after the prorating of the levy of any flood control zone district as the law provided prior to the effective date of EHB 1969. See the summary of EHB 1969 for a more detailed explanation of the apparent drafting error in that bill.

The bill takes effect August 24, 2011, and applies to taxes levied for collection in 2012 through 2017. The bill expires January 1, 2018.

## **2ESSB 5742 Relating to the Washington state ferry system** (Chapter 16, Laws of 2011 1st Special Session)

This comprehensive bill addresses funding and operations of the Washington State ferry system. The only provision of the bill affecting the Department of Revenue is a sales and use tax exemption for fuel purchased by the Washington State ferry system for use in state-owned ferries and for fuel purchased by a county for use in a county-owned ferry. This exemption applies to fuel purchased after June 30, 2013.

### ***Background***

Fuel used other than for motor vehicles on the public highways is not subject to the motor vehicle fuel and special fuel taxes. Instead, such fuel is subject to state and local sales or use tax, unless specifically exempt. Fuel purchased by the Washington State ferry system for use in the state’s ferries is not subject to the motor vehicle fuel and special fuel taxes and is therefore subject to state and local sales and use taxes. Fuel purchased for use in a passenger-only-ferry owned by a public transportation benefit area, a county, or a ferry district is also not subject to the motor vehicle fuel and special fuel taxes. It is also exempt from retail sales and use taxes.



**SB 5763 Relating to amending the existing nonresident retail sales tax exemption**  
(Chapter 7, Laws of 2011)

This bill, requested by the Department of Revenue, provides that the residents of any state, possession, territory, or province of Canada may not take the nonresident sales tax exemption if their place of residence imposes a generally applicable value added tax, gross receipts tax on retailing activities, or similar generally applicable tax of 3 percent or more.

The bill takes effect July 1, 2011.

***Background***

Sales of tangible personal property or digital goods to nonresidents for use outside the state are exempt from the sales tax if the purchaser is a resident of a state or province of Canada that imposes a sales or use tax of less than 3 percent (RCW 82.08.0273).

In recent years, a number of Canadian provinces have replaced their provincial sales taxes with the Harmonized Sales Tax (HST). Most recently, the provinces of British Columbia and Ontario converted to the HST effective July 1, 2010. The Department views the HST as a value added tax. Consequently, the Department determined that residents of British Columbia and the other provinces that have converted to the HST are eligible for the nonresident sales tax exemption.

The City of Bellingham and Whatcom County brought suit against the Department, arguing that residents of British Columbia and other provinces that have implemented an HST are not entitled to the nonresident exemption in RCW 82.08.0273. The Skagit County Superior Court entered a preliminary injunction, which calls into question the Department's interpretation of law and orders the Department to advise retailers that residents of Canadian provinces with an HST do not qualify for the exemption. The litigation had not been resolved as of the date this summary was completed.

**ESSB 5834 Relating to permitting counties to direct an existing portion of local lodging taxes to programs for arts, culture, heritage, tourism, and housing**  
(Chapter 38, Laws of 2011 1st Special Session)

This bill makes a number of changes to various local lodging and other taxes.

***Background***

Cities and counties are authorized under RCW 67.28.180 to impose a tax of up to 2 percent on sales of lodging. This local lodging tax is credited against the state sales and use tax due on the same sale of lodging. When a county and a city within that county both impose the tax, the city's tax is credited against the county's tax, except in the cities of Bellevue and Yakima. Within the city boundaries of Yakima and Bellevue, a total lodging tax of 4 percent is credited against the state sales and use tax. (This is commonly referred to as a "double-dip" of the lodging tax.) Until January 1, 2021, no cities in King County other than Bellevue can impose this lodging tax. In King County the revenues from this lodging tax are used for various purposes, including

repaying the debt on the Kingdome; funding art, cultural, and heritage programs through December 31, 2012; and from January 1, 2016, or earlier if the debt on the Kingdome is retired, through December 31, 2020, to retire the debt on the professional football stadium and adjacent exhibition center. In other cities and counties, the revenues from this tax are used for tourism-related purposes.

Counties, cities, and PFDs are authorized to impose an admissions tax. The rate of tax is 5 percent of the admission charge, except that King County may impose a rate of up to 10 percent for events at the professional baseball and football stadiums and the adjacent exhibition center.

PFDs are authorized to impose a parking tax of up to 10 percent for parking at any facility that is owned or leased by the PFD as part of a regional center. This tax is in lieu of any similar parking tax imposed by a city, town, or county within which the regional center is located.

### ***Summary of the bill***

Engrossed Substitute Senate Bill 5834 makes the following changes:

- The “double-dip” of lodging taxes authorized by RCW 67.28.180 within the city of Yakima is extended from January 1, 2021, until January 1, 2035.
- The requirement for Yakima County to do a financial audit of organizations that receive funding from the lodging tax authorized by RCW 67.28.180 is eliminated.
- The prohibition against city-imposed lodging taxes under RCW 67.28.180 in King County, except for the city of Bellevue, is made permanent.
- After the debt on the Kingdome is retired and through December 31, 2015, King County’s lodging tax under RCW 67.28.180 must be placed in the account dedicated to art, cultural, and heritage museums, the arts, and the performing arts.
- Beginning January 1, 2021, lodging taxes imposed under RCW 67.28.180 must be used as follows:
  - At least 37.5 percent must be used for art, cultural, and heritage museums, the arts, and the performing arts.
  - At least 37.5 percent must be used for nonprofit organizations or public housing authorities for affordable workforce housing within 0.5 miles of a transit station or for services for homeless youth.
  - The remainder must be used for capital or operating programs that promote tourism and attract tourists to the county.
- The major league baseball stadium PFD is allowed to impose a parking tax of up to 10 percent at parking facilities owned or leased by the PFD (in lieu of a city or county parking tax). The revenue from the tax must be used for repair, re-equipping, and capital improvement of the baseball stadium.
- Requires that King County’s admissions tax at events at the professional baseball stadium be used exclusively to fund repair, re-equipping, and capital improvement of the baseball stadium when not needed to retire the stadium debt.

The bill takes effect August 24, 2011.

**SB 5849      Relating to estates and trusts**  
(Chapter 113, Laws of 2011)

For estates of decedents dying after December 31, 2009, and before December 18, 2010, this bill allows the personal representative, trustee, or any affected beneficiary of a will or trust to bring a court proceeding to determine whether the decedent intended that a formula clause in the will or trust be construed based on federal law as it existed after December 31, 2009, including changes made to the federal estate tax in 2010, regardless of whether the will or trust is ambiguous. The proceeding must be brought within two years following the decedent's death. The bill provides that the due dates for payment and filing of Washington estate tax returns do not change.

The bill takes effect April 18, 2011.

***Background***

Many wills and trusts are drafted to take advantage of federal estate tax exemptions for spouses and children. These wills and trusts may contain formula clauses that reference the federal estate tax. Effective January 1, 2010, the federal estate tax expired temporarily. As a result, many formula clauses used in wills and trusts did not function as intended when the will or trust was created. The 2010 Legislature responded by enacting SSB 6831 (Chapter 11, Laws of 2010). That law created a rebuttable presumption that for estates of decedents dying after December 31, 2009, and before the federal estate tax was reestablished, the decedent intended certain provisions of his or her will or trust to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

On December 17, 2010, the federal estate tax was reestablished retroactive to January 1, 2010, with an increased exemption of \$5 million per taxpayer. As a result, it was not clear if formula clauses used in wills and trusts of decedents dying between January 1, 2010, and December 17, 2010, would result in a \$3.5 million federal estate tax exemption (based on the 2009 federal estate tax law) or a \$5 million exemption (based on the retroactive 2010 estate tax law).