

Multiple Agency Fiscal Note Summary

Bill Number: 5581 S SB PL	Title: State tax laws
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Estimated Cash Receipts

Agency Name	2019-21		2021-23		2023-25	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Revenue	114,857,000	115,876,000	190,020,000	191,595,000	213,389,000	215,139,000
Total \$	114,857,000	115,876,000	190,020,000	191,595,000	213,389,000	215,139,000

Local Gov. Courts						
Loc School dist-SPI						
Local Gov. Other		41,897,790		60,897,870		66,258,720
Local Gov. Total		41,897,790		60,897,870		66,258,720

Estimated Operating Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Department of Revenue	3.8	740,100	740,100	1.2	169,000	169,000	.9	128,000	128,000
Total \$	3.8	740,100	740,100	1.2	169,000	169,000	0.9	128,000	128,000

Estimated Capital Budget Expenditures

Agency Name	2019-21			2021-23			2023-25		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Total \$	0.0	0	0	0.0	0	0	0.0	0	0

Estimated Capital Budget Breakout

NONE

Prepared by: Kathy Cody, OFM	Phone: (360) 902-9822	Date Published: Final 4/ 1/2019
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Department of Revenue Fiscal Note

Bill Number: 5581 S SB PL	Title: State tax laws	Agency: 140-Department of Revenue
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Part I: Estimates

No Fiscal Impact

Estimated Cash Receipts to:

Account	FY 2020	FY 2021	2019-21	2021-23	2023-25
GF-STATE-State 01 - Taxes 01 - Retail Sales Tax	33,671,000	57,733,000	91,404,000	132,395,000	143,851,000
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax	7,694,000	15,759,000	23,453,000	57,625,000	69,538,000
Enhanced 911 Account-State 00 - 11 -	34,000	88,000	122,000	191,000	212,000
Waste Tire Removal Account-State 02 - Lic., Permits & Fees 96 - Replace Tire Fee	40,000	103,000	143,000	222,000	247,000
Motor Vehicle Account-State 02 - Lic., Permits & Fees 99 - Other Licenses Permi	5,000	12,000	17,000	25,000	29,000
Wood Stove Education Account-State 02 - Lic., Permits & Fees 99 - Other Licenses Permi	2,000	5,000	7,000	11,000	12,000
Multimodal Transportation Account-State 01 - Taxes 70 - Other Taxes	126,000	328,000	454,000	709,000	791,000
Performance Audits of Government Account-State 01 - Taxes 01 - Retail Sales Tax	54,000	92,000	146,000	213,000	231,000
Local Tourism Promotion Account-State 02 - Lic., Permits & Fees 99 - Other Licenses Permi	36,000	94,000	130,000	204,000	228,000
Total \$	41,662,000	74,214,000	115,876,000	191,595,000	215,139,000

Estimated Expenditures from:

Account	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	5.8	1.9	3.9	1.2	0.9
GF-STATE-State 001-1	594,100	146,000	740,100	169,000	128,000
Total \$	594,100	146,000	740,100	169,000	128,000

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact:	Phone:	Date: 03/29/2019
Agency Preparation: Rachel Knutson	Phone: 360-534-1532	Date: 04/01/2019
Agency Approval: Don Gutmann	Phone: 360-534-1510	Date: 04/01/2019
OFM Review: Kathy Cody	Phone: (360) 902-9822	Date: 04/01/2019

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Note: This fiscal note reflects language in SSB 5581 as passed in the 2019 Legislative Session.

OVERVIEW

On June 21, 2018, the U. S. Supreme Court decided *South Dakota v. Wayfair, Inc.*, which overturned the longstanding physical presence nexus precedent and upheld a South Dakota law that imposed a sales tax collection obligation on sellers with gross sales over \$100,000 or at least 200 transactions in the state in the current or prior calendar year.

This proposal addresses conflicts between current tax laws related to the collection of sales tax and the Wayfair decision, and provides consistency in a number of other related tax law areas.

PART I - Nexus

This section codifies the Wayfair thresholds of over \$100,000 in receipts from Washington sales (receipts threshold) or at least 200 transactions into the state (transactions threshold), in the current or immediately preceding calendar year. This provision is retroactive to October 1, 2018. Through December 31, 2019, receipts counting towards the receipts threshold are limited to receipts from retail sales sourced to Washington. Transactions counting towards the transactions threshold are limited to transactions from retail sales sourced to Washington.

For marketplace facilitators, receipts and transactions counting towards the receipts and transactions thresholds include:

- Receipts and transactions from the marketplace facilitator's own sales into this state, and
- Receipts and transactions from marketplace sellers' sales into this state through the marketplace facilitator's marketplace, including sales by marketplace sellers that do not have nexus with this state.

Effective upon the governor's signature:

- Any person with nexus for B&O tax purposes is required to pay all other applicable taxes and fees that are imposed on the person's business activity and administered by the Department.
- The transactions threshold is eliminated.
- "Click through" nexus is eliminated. Click-through nexus refers to a presumption that a remote seller has physical-presence nexus with Washington when the remote seller makes sales in which a Washington resident referred the customer to the remote seller through a link on a website or by any other means.

Effective July 1, 2019:

- The definition of "seller" is amended to include marketplace facilitators and adds definitions for "affiliated person," "marketplace," "marketplace facilitator," "marketplace seller," and "remote seller" to chapter 82.08 RCW-state sales tax statutes.
- These definitions are largely based on the definitions in RCW 82.13.010, which is being repealed in Section 301(2) of this proposal. However, the definition of "marketplace facilitator" is modified to:
 - Clarify that merely providing internet advertising or travel agency services does not make a person a marketplace facilitator; and
 - Exclude persons who provide travel agency services or operate online travel platforms offering transient lodging accommodations in hotels or other commercial lodging facilities. "Travel agency services" is defined as arranging or booking, for consideration, vacation or travel packages, rental car or other travel reservations or accommodations, tickets for travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations.

Effective January 1, 2020:

- The B&O tax nexus statute is amended by:
 - Eliminating the property, payroll, and 25-percent thresholds.

- Reducing the receipts threshold to \$100,000 (to match the receipts threshold for sales tax collection purposes).
- Eliminating the inflation adjustment for the receipts threshold.

- As a result, nexus provisions for B&O tax and sales tax collection are aligned.
- Any seller obligated to collect and remit sales tax is also required to collect any other taxes and fees imposed on a buyer, collected by a seller, and paid over to the Department, such as lodging taxes, E-911 tax, replacement tire fee, studded tire fee, and the wood stove fee.
- Businesses that establish nexus for B&O tax purposes must begin paying B&O tax only on business activity occurring on and after the date nexus is established. A business that establishes nexus in one year is deemed to have nexus for B&O tax purposes for the remainder of that year and the entire subsequent year.

PART II - Marketplace Facilitators

The Wayfair thresholds codified under RCW 82.08.052 apply to marketplace facilitators under RCW 82.08.0531, retroactively to October, 1, 2018.

- Marketplace facilitators with nexus are required to collect sales tax on all of their own retail sales sourced to this state.
- They must also collect sales tax on all facilitated sales sourced to this state, including sales by marketplace sellers without nexus with this state.

Beginning July 1, 2019:

- Any marketplace facilitator obligated to collect and remit sales tax is also required to provide gross sales information to each marketplace seller that makes sales through the marketplace facilitator's marketplace for the purpose of ensuring the marketplace seller has information to accurately report B&O tax. If a marketplace facilitator does not comply with this requirement:
 - A marketplace seller may determine its B&O tax liability based on a reasonable method of estimating Washington sales as the Department may require or approve; and
 - The marketplace facilitator is ineligible for liability relief provisions.

Beginning January 1, 2020:

- Any marketplace facilitator obligated to collect and remit sales tax is also required to collect any other taxes and fees imposed on a buyer, collected by a seller, and paid over to the Department, such as lodging taxes, E-911 tax, replacement tire fee, studded tire fee, and the wood stove fee.
- The liability relief provisions for marketplace facilitators based on a percentage of the total tax due from facilitated sales through the marketplace facilitator's marketplace are eliminated.
- All references to "referrers" in RCW 82.08.0531 are eliminated.

PART III - Repealing and Modifying Conflicting and Unnecessary Laws

Effective July 1, 2019, current laws that are inconsistent with the state's expanded sales tax collection authority under the Wayfair decision are repealed, including the following:

- RCW 82.08.053, which allowed for certain remote sellers, marketplace facilitators, or referrers to elect to either collect and remit sales tax on retail sales or comply with use tax notice and reporting requirements. This statute also provided a "digital products delay," whereby marketplace facilitators and referrers were relieved of the requirement to elect to collect sales tax or comply with the use tax notice and reporting requirements on retail sales of certain digital products until January 1, 2020. The repeal eliminates the election, since remote sellers and marketplace facilitators with nexus are required to collect and remit sales tax as of October 1, 2018, and also eliminates the digital products delay.

- Chapter 82.13 RCW, which provides the use tax notice and reporting requirements for remote sellers, marketplace facilitators, and referrers.

The annual reporting of use tax for most individual consumer use tax liability is phased out.

- For taxable events occurring beginning July 1, 2019, use tax is due by the 25th of the month following the month in which the taxable event occurred. Consumer use tax reporting requirements are returned to what they were before enactment of Part II of EHB 2163.

PART IV - SSUTA Compliance and Federal Preemption

The sales tax exemption for food is clarified by:

- Specifying when food is considered to be sold with eating utensils provided by the seller (and therefore is non-exempt prepared food).
- Codifying in statute the “75 percent rule” under the Streamlined Sales and Use Tax Agreement (SSUTA), which is currently contained in WAC 458-20-244. The 75 percent rule requires sales tax to be collected on all food sales by a business that sells prepared food, makes utensils available to its customers, and has more than 75 percent of its food sales consisting of prepared food.
- Clarifying that the 75 percent rule is based on only retail sales of food.

The definition of “Model 1 seller” in RCW 82.32.020 is amended.

- Currently, the term is defined as a seller that has selected a certified service provider (CSP) to perform all of the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.
- The amendment limits the term to situations in which a seller has selected a CSP to perform all of the seller’s sales and use tax functions as outlined in the contract between the Streamlined Sales Tax Governing Board and the CSP.

The provisions for monetary allowances are amended. Monetary allowances are compensation provided to certain sellers. The SSUTA requires member states to provide monetary allowances to CSPs and certain “Model 2 sellers.”

- Monetary allowances for CSPs are available to those CSPs selected by Model 1 sellers.
- Monetary allowances for CSPs are limited to a base rate.
- The Department’s discretionary authority to provide monetary allowances for sellers other than as required under the SSUTA is eliminated. This does not take monetary allowances away from any sellers, as the Department has never exercised its discretion to provide monetary allowances for sellers other than as required under the SSUTA.
- The Department may modify its rules for monetary allowances in light of the Wayfair decision.

The Department may adopt rules re-imposing the use tax notice and reporting election provisions on remote sellers and marketplace facilitators (repealed in Part III of this proposal) if the Department determines that a subsequent change in federal law eliminates the Department’s ability to enforce a sales tax collection obligation on any remote sellers or marketplace facilitators.

PART V - Eliminating Unfair Tax Advantages

Effective immediately upon the governor’s signature:

- The B&O tax and sales tax exemptions for sales of goods in “import commerce” are eliminated. This requires marketplace facilitators and remote sellers located in foreign countries to collect sales tax on retail sales into this state and pay B&O tax on their Washington wholesale and retail sales.
- An exception is provided for wholesale sales of personal property in import commerce when:
 - The wholesale sale is of unroasted coffee beans, or

- The wholesale sale is between a parent company and a wholly-owned subsidiary.
- The B&O tax and sales tax exemption for sales of goods in “export commerce” is preserved unchanged.

PART VI - Sourcing Mitigation for Local Governments

The SSUTA sourcing mitigation “true-up” provisions in RCW 82.14.500(6)(b) are eliminated.

PART VII - Conforming Amendments

Various current laws are amended to conform with amendments to RCW 82.04.067 and to the repeal of chapter 82.13 RCW.

PART VIII - Miscellaneous

- The application of all sections of this proposal are made prospective only, except for Section 106 (amendments to RCW 82.08.052) and Section 201 (amendments to RCW 82.08.0531), which are both prospective and retroactive to October 1, 2018.

- Effective dates for the various sections of this proposal are set. Sections without a specific effective date take effect 90 days after final adjournment of the session in which this bill is enacted.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

WAYFAIR CLARIFICATIONS / CODIFICATIONS (THROUGHOUT MULTIPLE PARTS OF BILL)

ASSUMPTIONS

- Revenues assume an October 1, 2018, effective date unless otherwise noted.
- Due to the state marketplace fairness law, Washington has already been collecting sales taxes from some marketplace facilitators and remote sellers since January 2018. Additional forecasted revenues from the Wayfair decision have already been incorporated into the General Fund sales tax forecast. This part of the estimate represents the additional revenue that can be expected with the clarifications and alignments with federal law that are contained in this bill.
- It is assumed that the vast majority of large and medium-sized known companies have already started remitting sales tax or have a plan in place with DOR to begin remitting in the near future, so any additional revenues due are relatively small.

DATA SOURCES

- Industry data
- 2014 US Census Bureau E-Stats, E-Commerce Multi-Sector Data Tables
- 2014 US Bureau of Economic Analysis, State and National GDP
- 2014 Forrester Research, US Online Retail Spending Forecast
- 2015 Top 1,000 Online Retailer Data
- 2015 eMarketer, Retail E-Commerce Sales, by Country
- 2017 Washington State Department of Revenue, Statewide Average Local Tax Rate
- November 2018 general fund forecast

REPEAL OF THE DIGITAL PRODUCTS DELAY

ASSUMPTIONS

- An exemption for third-party sales of specified digital goods made through large retail marketplaces, prior to January 1, 2020, is repealed.
- Provisions related to the election, referrers, and use tax notice and reporting are also repealed.

DATA SOURCES

Industry data

ELIMINATE LIABILITY RELIEF FOR MARKETPLACE FACILITATORS

ASSUMPTIONS

- A January 1, 2020, effective date resulting in 5 months of impact for Fiscal Year 2020.
- This part of the estimate assumes maximum relief based on the total state sales tax impacts of Part II for EHB 2163.

DATA SOURCES

Fiscal note 2163-3 for EHB 2163 from the 2017 legislative session.

REQUIRE THE COLLECTION OF ALL TAXES FOR MARKETPLACE FACILITATORS OBLIGATED TO COLLECT SALES TAX

ASSUMPTIONS

- The "other" taxes defined in this proposal are not already being voluntarily collected by remote sellers, except for lodging taxes from short-term online rental platforms that the Department has existing agreements with.
- This estimate is very assumption driven; there is no available data on how much tax we do not currently collect. Values have been inferred using current versus future sales tax revenue forecasts as a scaler.
- These additional amounts go into the current dedicated accounts, so no impact to the state general fund.
- This part of the bill is effective January 1, 2020.

DATA SOURCES

Department of Revenue tax return data

PARTIAL REPEAL OF THE IMPORT EXEMPTION

ASSUMPTIONS

- All sellers into Washington have nexus for the wholesaling B&O tax. Wholesalers in selected NAICS codes that have a greater chance of importing or exporting were selected as a proxy for this analysis.
- The sale of these imports are currently exempt from B&O and retail sales tax, hence the repeal of this exemption will increase B&O tax and retail sales tax revenues. The sale of imports between parent companies and their wholly-owned subsidiaries remains exempt from wholesaling B&O tax. The sale of unroasted coffee beans also remains exempt from wholesaling B&O tax.
- Selected NAICS includes wholesalers of: vehicles, photographic equipment, computer equipment, computer peripherals, and various electronic equipment and parts.
- Employment Security data and Department tax return data were combined to estimate the exempted importing activity.
- Due to the volatility found from year to year in imports, this estimate assumes three percent growth into the future.
- Compliance levels:
 - 13 percent revenue collections in Fiscal Year 2020,
 - 26 percent revenue collections in Fiscal Year 2021,
 - 39 percent revenue collections in Fiscal Year 2022, and
 - 52 percent revenue collections in Fiscal Year 2023 and thereafter.
- An effective date of May 1, 2019, for this part of the bill, resulting in 12 months of cash collections for Fiscal Year 2020.

DATA SOURCES

- Employment Security Department data
- Department of Revenue tax return data
- Internal Revenue Service, federal business tax return statistics
- US Census Bureau, US Imports by State of Final Destination, 2017

REVENUE ESTIMATES

This bill increases state revenues by an estimated \$115.9 million in the 2019-21 Biennium. This bill also increases local revenues by an estimated \$42.1 million in the 2019-21 Biennium.

TOTAL REVENUE IMPACT:

State Government (cash basis, \$000):

FY 2020 -	\$ 41,662
FY 2021 -	\$ 74,214
FY 2022 -	\$ 88,270
FY 2023 -	\$ 103,325
FY 2024 -	\$ 106,200
FY 2025 -	\$ 108,939

Local Government, if applicable (cash basis, \$000):

FY 2020 -	\$ 15,310
FY 2021 -	\$ 26,826
FY 2022 -	\$ 29,293
FY 2023 -	\$ 32,014
FY 2024 -	\$ 32,946
FY 2025 -	\$ 33,762

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

ASSUMPTIONS:

This bill affects approximately 15,000 taxpayers.

FIRST YEAR COSTS:

The Department will incur total costs of \$594,100 in Fiscal Year 2020. These costs include:

Labor Costs – Time and effort equates to 5.8 FTEs.

- Create and update special notices and respond to letter ruling requests;
- Answer additional telephone calls and counter inquiries;
- Establish new accounts, correspondence and account maintenance;
- Reconcile and amend returns, address refund requests, apportionment reconciliation and monitor reports;
- Review assessments, monitor timelines and assist in form development; and
- Amend three and create two new administrative rules and work with internal and external stakeholders.

Object Costs - \$49,200.

- Print and mail special notices;
- Print and mail tax returns for new taxpayers; and
- Contract for computer system programming.

SECOND YEAR COSTS:

The Department will incur total costs of \$146,000 in Fiscal Year 2021. These costs include:

Labor Costs – Time and effort equates to 1.9 FTEs.

- Answer additional telephone calls and counter inquiries;
- Establish new accounts, correspondence and account maintenance;
- Batch and scan documents and key returns;
- Reconcile and amend returns, address refund requests, apportionment reconciliation and monitor reports; and
- Review assessments, monitor timelines and assist in form development.

Object Costs - \$2,800.

- Mailing tax returns for new taxpayers.

ONGOING COSTS:

Ongoing costs for the 2021-23 Biennium equal \$169,000 and include similar activities described in the second year costs.

Time and effort equates to 1.15 FTEs.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	5.8	1.9	3.9	1.2	0.9
A-Salaries and Wages	338,700	92,100	430,800	103,800	78,800
B-Employee Benefits	101,600	27,700	129,300	31,100	23,500
C-Professional Service Contracts	26,400		26,400		
E-Goods and Other Services	89,700	22,200	111,900	29,200	22,100
J-Capital Outlays	37,700	4,000	41,700	4,900	3,600
Total \$	\$594,100	\$146,000	\$740,100	\$169,000	\$128,000

III. B - Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
EMS BAND 4	115,593	0.0		0.0		
EMS BAND 5	135,039	0.0		0.0		
EXCISE TAX ASST	35,556	0.5		0.3		
EXCISE TAX EX 2	51,000	0.4	0.3	0.4	0.3	0.2
EXCISE TAX EX 3	56,256	0.3	0.1	0.2	0.2	0.1
EXCISE TAX EX 4	62,148	0.2		0.1		0.1
MGMT ANALYST1	45,096	0.1		0.0		
TAX INFO SPEC 1	40,908	1.5	1.0	1.3	0.8	0.5
TAX INFO SPEC 4	60,636	1.0	0.5	0.8		
TAX POLICY SP 2	68,580	0.0		0.0		
TAX POLICY SP 3	77,616	1.4		0.7		
TAX POLICY SP 4	83,556	0.4		0.2		
WMS BAND 3	98,308	0.1		0.0		
Total FTEs		5.8	1.9	3.9	1.2	0.9

Part IV: Capital Budget Impact

None.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will use the standard process to amend WAC 458-20-221, titled: "Collection of use tax by retailers and selling agents," WAC 458-20-277, "Certified service providers," WAC 458-20-193C, titled: "Imports and exports - Sales of goods from or to persons in foreign countries," and WAC 458-20-244 "Food and food ingredients." The Department will use the complex process to adopt two new rules. Persons affected by this rule making would include out-of-state and international sellers.

LOCAL GOVERNMENT FISCAL NOTE

Department of Commerce

Bill Number: 5581 S SB PL	Title: State tax laws
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Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- Cities: Revenue increase
- Counties: Same as above
- Special Districts: Same as above
- Specific jurisdictions only:
- Variance occurs due to:

Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:

Estimated revenue impacts to:

Jurisdiction	FY 2020	FY 2021	2019-21	2021-23	2023-25
City	4,990,568	8,726,768	13,717,336	19,937,963	21,693,105
County	5,187,203	9,070,615	14,257,818	20,723,545	22,547,842
Special District	5,065,259	8,857,377	13,922,636	20,236,362	22,017,773
TOTAL \$	15,243,030	26,654,760	41,897,790	60,897,870	66,258,720
GRAND TOTAL \$					169,054,380

Estimated expenditure impacts to:

None

Part III: Preparation and Approval

Fiscal Note Analyst: Tom Gilmore	Phone: 360-725-5038	Date: 04/01/2019
Leg. Committee Contact:	Phone:	Date: 03/29/2019
Agency Approval: Renee Martine-Tebow	Phone: 360-725-5045	Date: 04/01/2019
OFM Review: Kathy Cody	Phone: (360) 902-9822	Date: 04/01/2019

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

CHANGE FROM PREVIOUS BILL VERSION:

This bill version makes no changes to previous version.

SUMMARY OF CURRENT BILL VERSION:

PART I - Nexus

This section codifies the Wayfair thresholds of over \$100,000 in receipts from Washington sales (receipts threshold) or at least 200 transactions into the state (transactions threshold), in the current or immediately preceding calendar year. This provision is retroactive to October 1, 2018. Through December 31, 2019, receipts counting towards the receipts threshold are limited to receipts from retail sales sourced to Washington. Transactions counting towards the transactions threshold are limited to transactions from retail sales sourced to Washington.

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- Receipts and transactions from the marketplace facilitator's own sales into this state, and
- Receipts and transactions from marketplace sellers' sales into this state through the marketplace facilitator's marketplace, including sales by marketplace sellers that do not have nexus with this state.

Effective upon the governor's signature:

- Any person with nexus for B&O tax purposes is required to pay all other applicable taxes and fees that are imposed on the person's business activity and administered by the Department.
- The transactions threshold is eliminated.
- "Click through" nexus is eliminated. Click-through nexus refers to a presumption that a remote seller has physical-presence nexus with Washington when the remote seller makes sales in which a Washington resident referred the customer to the remote seller through a link on a website or by any other means.

Effective July 1, 2019:

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- These definitions are largely based on the definitions in RCW 82.13.010, which is being repealed in Section 301(2) of this proposal. However, the definition of "marketplace facilitator" is modified to:
 - Clarify that merely providing internet advertising or travel agency services does not make a person a marketplace facilitator; and
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 - Eliminating the property, payroll, and 25-percent thresholds.
 - Reducing the receipts threshold to \$100,000 (to match the receipts threshold for sales tax collection purposes).
 - Eliminating the inflation adjustment for the receipts threshold.
- As a result, nexus provisions for B&O tax and sales tax collection are aligned.
- Any seller obligated to collect and remit sales tax is also required to collect any other taxes and fees imposed on a buyer, collected by a seller, and paid over to the Department, such as lodging taxes, E-911 tax, replacement tire fee, studded tire fee, and the wood stove fee.
- Businesses that establish nexus for B&O tax purposes must begin paying B&O tax only on business activity occurring on and after the date nexus is established. A business that establishes nexus in one year is deemed to have nexus for B&O tax purposes for the remainder of that year and the entire subsequent year.

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 - The marketplace facilitator is ineligible for liability relief provisions.

Beginning January 1, 2020:

- Any marketplace facilitator obligated to collect and remit sales tax is also required to collect any other taxes and fees imposed on a buyer, collected by a seller, and paid over to the Department, such as lodging taxes, E-911 tax, replacement tire fee, studded tire fee, and the wood stove fee.
- The liability relief provisions for marketplace facilitators based on a percentage of the total tax due from facilitated sales through the marketplace facilitator's marketplace are eliminated.
- All references to "referrers" in RCW 82.08.0531 are eliminated.

PART III - Repealing and Modifying Conflicting and Unnecessary Laws

Effective July 1, 2019, current laws that are inconsistent with the state's expanded sales tax collection authority under the Wayfair decision are repealed, including the following:

- RCW 82.08.053, which allowed for certain remote sellers, marketplace facilitators, or referrers to elect to either collect and remit sales tax on retail sales or comply with use tax notice and reporting requirements. This statute also provided a "digital products delay," whereby marketplace facilitators and referrers were relieved of the requirement to elect to collect sales tax or comply with the use tax notice and reporting requirements on retail sales of certain digital products until January 1, 2020. The repeal eliminates the election, since remote sellers and marketplace facilitators with nexus are required to collect and remit sales tax as of October 1, 2018, and also eliminates the digital products delay.
- Chapter 82.13 RCW, which provides the use tax notice and reporting requirements for remote sellers, marketplace facilitators, and referrers.

The annual reporting of use tax for most individual consumer use tax liability is phased out.

- For taxable events occurring beginning July 1, 2019, use tax is due by the 25th of the month following the month in which the taxable event occurred. Consumer use tax reporting requirements are returned to what they were before enactment of Part II of EHB 2163.

PART IV - SSUTA Compliance and Federal Preemption

The sales tax exemption for food is clarified by:

- Specifying when food is considered to be sold with eating utensils provided by the seller (and therefore is non-exempt prepared food).
- Codifying in statute the "75 percent rule" under the Streamlined Sales and Use Tax Agreement (SSUTA), which is currently contained in WAC 458-20-244. The 75 percent rule requires sales tax to be collected on all food sales by a business that sells prepared food, makes utensils available to its customers, and has more than 75 percent of its food sales consisting of prepared food.
- Clarifying that the 75 percent rule is based on only retail sales of food.

The definition of "Model 1 seller" in RCW 82.32.020 is amended.

- Currently, the term is defined as a seller that has selected a certified service provider (CSP) to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.
- The amendment limits the term to situations in which a seller has selected a CSP to perform all of the seller's sales and use tax functions as outlined in the contract between the Streamlined Sales Tax Governing Board and the CSP.

The provisions for monetary allowances are amended. Monetary allowances are compensation provided to certain sellers. The SSUTA requires member states to provide monetary allowances to CSPs and certain "Model 2 sellers."

- Monetary allowances for CSPs are available to those CSPs selected by Model 1 sellers.
- Monetary allowances for CSPs are limited to a base rate.
- The Department's discretionary authority to provide monetary allowances for sellers other than as required under the SSUTA is eliminated. This does not take monetary allowances away from any sellers, as the Department has never exercised its discretion to provide monetary allowances for sellers other than as required under the SSUTA.

- The Department may modify its rules for monetary allowances in light of the Wayfair decision.

The Department may adopt rules re-imposing the use tax notice and reporting election provisions on remote sellers and marketplace facilitators (repealed in Part III of this proposal) if the Department determines that a subsequent change in federal law eliminates the Department's ability to enforce a sales tax collection obligation on any remote sellers or marketplace facilitators.

PART V - Eliminating Unfair Tax Advantages

Effective immediately upon the governor's signature:

- The B&O tax and sales tax exemptions for sales of goods in "import commerce" are eliminated. This requires marketplace facilitators and remote sellers located in foreign countries to collect sales tax on retail sales into this state and pay B&O tax on their Washington wholesale and retail sales.
- An exception is provided for wholesale sales of tangible personal property in import commerce when the wholesale sale is between a parent company and a wholly-owned subsidiary.
- The B&O tax and sales tax exemption for sales of goods in "export commerce" is preserved unchanged.
- Would add a sales tax exemption for unroasted coffee beans

PART VI - Sourcing Mitigation for Local Governments

The SSUTA sourcing mitigation "true-up" provisions in RCW 82.14.500(6)(b) are eliminated.

PART VII - Conforming Amendments

Various current laws are amended to conform with amendments to RCW 82.04.067 and to the repeal of chapter 82.13 RCW.

PART VIII - Miscellaneous

- The application of all sections of this proposal are made prospective only, except for Section 106 (amendments to RCW 82.08.052) and Section 201 (amendments to RCW 82.08.0531), which are both prospective and retroactive to October 1, 2018.
- Effective dates for the various sections of this proposal are set. Sections without a specific effective date take effect 90 days after final adjournment of the session in which this bill is enacted.

BACKGROUND:

On June 21, 2018, the U. S. Supreme Court decided *South Dakota v. Wayfair, Inc.*, which overturned the longstanding physical presence nexus precedent and upheld a South Dakota law that imposed a sales tax collection obligation on sellers with gross sales over \$100,000 or at least 200 transactions in the state in the current or prior calendar year.

This proposal addresses conflicts between current tax laws related to the collection of sales tax and the Wayfair decision, and provides consistency in a number of other related tax law areas.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

This bill would not have expenditure impacts on local governments.

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

This bill would increase local revenues by an estimated \$41.7 million in the 2019-21 Biennium.

ASSUMPTIONS:

- All sellers into Washington have nexus for the wholesaling B&O tax. Wholesalers in selected NAICS codes that have a greater chance of importing or exporting were selected as a proxy for this analysis.
- The sale of these imports are currently exempt from B&O and retail sales tax, hence the repeal of this exemption will increase B&O tax and retail sales tax revenues. The sale of imports between parent companies and their wholly-owned subsidiaries remains exempt from wholesaling B&O tax.
- Selected NAICS includes wholesalers of: vehicles, photographic equipment, computer equipment, computer peripherals, and various electronic equipment and parts.
- An effective date of May 1, 2019, for this part of the bill, resulting in 12 months of cash collections for Fiscal Year 2020.

LOCAL GOVERNMENT REVENUE IMPACT:

Counties:

FY 2020 - \$5,157,893
FY 2021 - \$9,037,599
FY 2022 - \$9,868,724
FY 2023 - \$10,785,421
FY 2024 - \$11,099,409
FY 2025 - \$11,374,317

Cities:

FY 2020 - \$4,962,369
FY 2021 - \$8,695,004
FY 2022 - \$9,494,623
FY 2023 - \$10,376,570
FY 2024 - \$10,678,655
FY 2025 - \$10,943,142

Special Districts:

FY 2020 - \$5,036,638
FY 2021 - \$8,825,137
FY 2022 - \$9,636,723
FY 2023 - \$10,531,870
FY 2024 - \$10,838,476
FY 2025 - \$11,106,921

METHODOLOGY:

The distributions in this note for cities, counties, and special districts are based on Department of Revenue (DOR) data for local sales and use tax distributions from calendar year 2015 (the most current year available). Mitigation payments and distributions to hospital benefit zones are not factored into this distribution. School districts are also not included in the special districts distribution. This results in a distribution of 34.03 percent to counties, 32.74 percent to cities, and 33.23 percent to special districts. The one percent DOR administrative fee has also been accounted for.

Note: School district impacts, including construction costs, operating costs, levy shifts, and other revenue impacts are described in fiscal notes prepared by the OSPI School District Fiscal Note process. Local Government Fiscal Notes include impacts to all other local governments (cities, counties, special districts).

SOURCES:

Department of Revenue fiscal note
Department of Revenue Local Tax Distributions (2016)
Lewis County Treasurer Office
Local Government Fiscal Note program "Local Sales Tax" model (2019)
Local Government Fiscal Note program "Sales and Use Tax Distribution" model (2019)
Washington Association of County Officials