



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

SUMMARY OF 2010 TAX LEGISLATION

**Washington Department of Revenue
Legislation & Policy and Research Divisions
May 2010**

This report summarizes significant revenue and tax legislation in Washington that was approved during the regular and first special sessions of the 2010 Legislature. The material was compiled from information developed by the Legislation & Policy and Research Divisions. 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.

CONTENTS

<u>Subject</u>	<u>Page</u>
State Revenue Impact of Major 2010 Tax Legislation	3-6

HOUSE BILLS

<u>Bill</u>	<u>Chapter</u>	<u>Subject</u>	<u>Page</u>
2SHB 1591	105	Transportation Benefit District Funds	7
E2SHB 1597	106	Administration of State and Local Tax Programs	7
SHB 2402	186	Property Tax Exemption for Farmers Market	8
HB 2428	29	Fees for Locating Surplus Funds	8
2SHB 2436	270	Vehicle License Fraud	9
ESHB 2493	22	Taxation of Cigarettes and Other Tobacco Products	9
SHB 2525	192	Public Facilities Districts	9
2SHB 2551	174	Washington Vaccine Association	10
EHB 2561	35	Creating Jobs	10
SHB 2593	193	Shellfish Resources	11
SHB 2620	111	Excise Tax for Products/Services Furnished Electronically	11
HB 2659	197	Modifying Reporting Requirements for Timber Purchases	12
EHB 2672	2	Tax Relief for Aluminum Smelters	13
SHB 2704	30	Main Street Program	13
SHB 2758	112	Wholesale Sales for Excise Tax Purposes	14

<u>Bill</u>	<u>Chapter</u>	<u>Subject</u>	<u>Page</u>
SHB 2776	236	Funding Distribution Formulas for K-12 Education	15
SHB 2789	22	Investigations of Underground Economic Activity	15
SHB 2893	237	School Levies	15
SHB 2962	200	Automatic Electronic Payment Option for Property Taxes	16
ESHB 3014	16	Sales and Use Tax Deferral Program for Rural Counties	16
SHB 3066	11	Annual Tax Reporting Survey Provisions	17
ESHB 3179	127	Local Excise Tax Provisions for Counties and Cities	17

SENATE BILLS

ESSB 6130	4	Amending Provisions Related to Initiative No. 960	18
2ESSB 6143	23	Modifying Excise Tax Laws	19
SB 6206	137	Filing Tax Incentive Accountability Reports and Surveys	25
ESSB 6241	7	Creating Community Facilities Districts	26
SSB 6271	19	Regional Transit Authority	26
SSB 6273	44	Medical Equipment and Mobility Enhancing Equipment	26
ESB 6287	63	Annexation	26
SSB 6339	225	Wax and Ceramic Materials	27
SB 6418	136	Cities and Towns Annexed to Fire Protection Districts	27
E2SSB 6609	164	Infrastructure Financing for Local Governments	27
SSB 6614	295	Bonneville Power Administration	28
ESSB 6658	202	Modifying Community Solar Project Provisions	28
SSB 6712	11	Extending Expiring Tax Incentives	29
SSB 6727	33	Health Sciences and Services Authorities	30
ESSB 6737	12	Property Tax Exemption for Air Ambulance Services	30
ESSB 6789	1	Data Centers	30
SSB 6831	11	Estates and Trusts	31
SSB 6846	19	Enhanced 911 Emergency Communications Services	32
SB 6855	281	Community Centers	33
SSB 6889	15	Washington State Convention and Trade Center	33

STATE REVENUE IMPACT OF MAJOR 2010 TAX LEGISLATION - Sources Impacting Dept. of Revenue Only

State General Fund

Bill Num	Bill Description	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
2SHB 1591	Transportation benefit district funds	\$0	\$0	\$0	\$0	\$0	\$0
E2SSB 1597	Tax programs administration	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2402	Farmers market/property tax	\$0	(\$2,000)	(\$2,000)	(\$2,000)	(\$1,000)	(\$3,000)
HB 2428	Lodging surplus funds/fees	\$0	\$0	\$0	\$0	\$0	\$0
2SHB 2436	Vehicle license fraud	\$0	\$772,000	\$772,000	\$809,000	\$849,000	\$1,658,000
ESHB 2493	Cigarette & tobacco taxation	\$7,185,000	\$94,192,000	\$101,377,000	\$98,489,000	\$99,267,000	\$197,756,000
SHB 2525	Public facilities districts	\$0	\$0	\$0	\$0	\$0	\$0
2SHB 2551	WA vaccine association	\$0	(\$700,000)	(\$700,000)	(\$700,000)	(\$700,000)	(\$1,400,000)
SHB 2620	Excise taxation	(\$87,000)	(\$853,000)	(\$940,000)	(\$743,000)	(\$583,000)	(\$1,326,000)
HB 2659	Timber purchase reporting	\$0	\$0	\$0	\$0	\$0	\$0
EHB 2672	Aluminum smelters/tax relief	\$0	\$0	\$0	(\$1,354,000)	(\$3,411,000)	(\$4,765,000)
SHB 2704	WA main street program	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2758	Wholesale sales/excise tax	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2776	K-12 education funding	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2789	Underground economy activity	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2893	School levies	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2962	County treasurers/prop taxes	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 3014	Rural co. investmnt projects	\$0	(\$7,921,000)	(\$7,921,000)	(\$7,129,000)	(\$6,938,000)	(\$14,067,000)
SHB 3066	Tax reporting surveys	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 3179	Local excise tax provisions	\$0	\$0	\$0	\$0	\$0	\$0
ESSB 6130	Initiative measure no. 960	\$0	\$0	\$0	\$0	\$0	\$0
2ESSB 6143	Excise tax law modifications (detail below) ⁽³⁾	\$52,293,000	\$615,424,000	\$667,717,000	\$704,479,000	\$785,275,000	\$1,489,754,000
SB 6206	Tax incentive accountability	\$0	(\$339,000)	(\$339,000)	(\$339,000)	(\$339,000)	(\$678,000)
ESSB 6241	Community facilities distr's	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6271	Annexations by cities	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6273	Durable medical equipment	\$0	\$0	\$0	\$0	\$0	\$0

State General Fund (continued)

Bill Num	Bill Description	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
ESB 6287	Annexation to fire district	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6339	Wax and ceramic materials	\$0	(\$173,000)	(\$173,000)	(\$199,000)	(\$209,000)	(\$408,000)
SB 6418	Annexation to fire protection district	\$0	\$0	\$0	\$0	\$0	\$0
E2SSB 6609	Local govt infrastructure	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6614	Bonneville power admin	(\$23,000)	(\$270,000)	(\$293,000)	(\$284,000)	(\$298,000)	(\$582,000)
ESSB 6658	Community solar projects	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6712	Extending tax incentives	\$0	(\$222,000)	(\$222,000)	(\$957,000)	(\$1,102,000)	(\$2,059,000)
SSB 6727	Health sciences and services	\$0	\$0	\$0	\$0	\$0	\$0
ESSB 6737	Air ambulance tax exemption	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6789	Equipment in data centers	\$0	\$0	\$0	\$0	\$0	\$0
SSB 6831	Estates and trusts	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Indeterminate
SSB 6846	Enhanced 911 services	\$0	\$207,000	\$207,000	\$639,000	\$658,000	\$1,297,000
SB 6855	Community center taxation	\$0	\$10,000	\$10,000	\$40,000	\$41,000	\$81,000
SSB 6889	Convention and trade center; transfer to PFD	\$0	\$0	\$0	\$0	\$0	\$0
NET GENERAL FUND IMPACT		\$59,368,000	\$700,125,000	\$759,493,000	\$792,749,000	\$872,509,000	\$1,665,258,000

Detail for 6143 (State General Fund Impact Only)

Part Num	Description	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
Part 1	Minimum Nexus Standards ⁽¹⁾	\$0	\$84,700,000	\$84,700,000	\$176,200,000	\$231,100,000	\$407,300,000
Part 2	Tax Avoidance	\$319,000	\$8,174,000	\$8,493,000	\$12,719,000	\$17,701,000	\$30,420,000
Part 3	HomeStreet Fix - 1st Mortgage Servicing Deduction	\$300,000	\$3,600,000	\$3,900,000	\$3,700,000	\$4,200,000	\$7,900,000
Part 4	Direct Sellers' Exemption Repeal/Dot Foods Fix	\$32,900,000	\$122,100,000	\$155,000,000	\$97,314,000	\$102,133,000	\$199,447,000
Part 5	B&O Tax Preferences for Processing Meat, Fruits or Veg	\$0	\$4,077,000	\$4,077,000	\$4,590,000	\$4,224,000	\$8,814,000
Part 6	Livestock Nutrient Exemption Suspension	\$0	\$1,283,000	\$1,283,000	\$1,400,000	\$1,400,000	\$2,800,000
Part 7	Corporate Board of Directors' Fees	\$0	\$2,097,000	\$2,097,000	\$2,288,000	\$2,288,000	\$4,576,000
Part 8	Tax Debts - Corporate Officer Liability (sales tax only)	\$83,000	\$1,000,000	\$1,083,000	\$1,000,000	\$1,000,000	\$2,000,000
Part 9a	Sales Tax on Candy & Gum, B&O jobs credit ⁽²⁾	\$0	\$30,314,000	\$30,314,000	\$30,753,000	\$31,644,000	\$62,417,000
Part 9b	Sales Tax on Bottled Water	\$0	\$32,612,000	\$32,612,000	\$33,768,000	\$35,355,000	\$69,123,000
Part 10	PUD Privilege Tax	\$91,000	\$1,091,000	\$1,182,000	\$1,113,000	\$1,135,000	\$2,248,000
Part 11	Service B&O to 1.8%/Hospital, R&D narrow exemptions/Doubling SBC	\$18,600,000	\$223,300,000	\$241,900,000	\$235,100,000	\$248,100,000	\$483,200,000
Part 12	Repeal of Property Management Salary Exemption, Except Non-Profit	\$0	\$6,938,000	\$6,938,000	\$7,328,000	\$7,740,000	\$15,068,000
Part 13	Beer Tax Increase of 50 cents/gallon, micros exempt ⁽³⁾	\$0	\$59,000,000	\$59,000,000	\$59,000,000	\$59,000,000	\$118,000,000
Part 14	Carbonated Beverage Tax @ 2 cents/12 oz., \$10 m exemption	\$0	\$33,462,000	\$33,462,000	\$36,285,000	\$36,067,000	\$72,352,000
Part 15	Limiting Bad Debt Deduction	\$0	\$1,676,000	\$1,676,000	\$1,921,000	\$2,188,000	\$4,109,000
Part 16	Data Centers	\$0	\$0	\$0	\$0	\$0	\$0
2 ESSB 6143 TOTAL		\$52,293,000	\$615,424,000	\$667,717,000	\$704,479,000	\$785,275,000	\$1,489,754,000

State Funds other than General Fund

Bill Num	Bill Description (Fund)	FY 2010	FY 2011	2009-11 Bien	FY 2012	FY 2013	2011-13 Bien
2SHB 2436	Vehicle license fraud - Multimodal Transportation	\$0	\$36,000	\$36,000	\$38,000	\$40,000	\$78,000
2SHB 2436	Vehicle license fraud - Perf Audit	\$0	\$19,000	\$19,000	\$20,000	\$21,000	\$41,000
ESHB 2493	Cigarette & tobacco taxation - Education Legacy Trust Account	\$6,000	\$70,000	\$76,000	\$185,000	\$363,000	\$548,000
ESHB 2493	Cigarette & tobacco taxation - Perf Audit	(\$1,000)	(\$3,000)	(\$4,000)	(\$2,000)	(\$1,000)	(\$3,000)
EHB 2561	Energy cost savings & jobs - Perf Audit	\$0	\$0	\$0	\$0	\$0	\$0
SHB 2593	F & W dept. shellfish mgmt - Sea Cucumber Dive Fishery	\$0	\$16,000	\$16,000	\$27,000	\$29,000	\$56,000
SHB 2593	F & W dept. shellfish mgmt - Sea Urchin Dive Fishery	\$0	\$3,000	\$3,000	\$7,000	\$7,000	\$14,000
SHB 2620	Excise taxation - Perf Audit	(\$14,000)	(\$18,000)	(\$32,000)	(\$19,000)	(\$21,000)	(\$40,000)
SHB 2758	Wholesale sales/excise tax - Perf Audit	\$0	\$0	\$0	\$0	\$0	\$0
ESHB 3014	Rural co. investmnt projects - Perf Audit	\$0	(\$12,000)	(\$12,000)	(\$11,000)	(\$10,000)	(\$21,000)
2ESSB 6143	Excise tax law modifications - Public Works Assistance	\$0	\$289,000	\$289,000	\$312,000	\$334,000	\$646,000
2ESSB 6143	Excise tax law modifications - City-County Assistance Account	\$0	\$90,000	\$90,000	\$96,000	\$104,000	\$200,000
2ESSB 6143	Excise tax law modifications - Perf Audit	\$1,000	\$138,000	\$139,000	\$149,000	\$160,000	\$309,000
SSB 6846	Enhanced 911 services - Enhanced 911 Account	\$0	\$2,419,000	\$2,419,000	\$6,562,000	\$7,365,000	\$13,927,000
SSB 6889	Convention and trade center; transfer to PFD - State Convention Center Account	\$0	\$0	\$0	(\$47,388,000)	(\$59,322,000)	(\$106,710,000)

HOUSE BILLS

2SHB 1591 Relating to the use of certain transportation benefit district funds (Chapter 105, Laws of 2010)

This bill lengthens the initial period for which Transportation Benefit Districts (TBDs) can impose a sales and use tax.

Under existing law, TBDs may impose a sales and use tax not to exceed 0.2 percent for a period not to exceed ten years, which can be extended for another ten years with voter approval.

The bill authorizes TBDs that first impose a voter-approved sales and use tax after July 1, 2010, to impose the tax for a period longer than ten years, if the revenue is dedicated to repayment of general obligation bonds.

The bill is effective June 10, 2010.

E2SHB 1597 Relating to improving the administration of state and local tax programs without impacting tax collections by providing greater consistency in numerous tax incentive programs, revising provisions relating to the confidentiality and disclosure of tax information, and amending statutes to improve clarity and constancy, eliminate obsolete provisions, and simplify administration (Chapter 106, Laws of 2010)

The bill, requested by the Department of Revenue, updates and clarifies the confidentiality of taxpayer information. Specifically, the bill:

- Allows a city with a B&O tax to establish by ordinance that taxpayer information is confidential, privileged, and subject to disclosure in the manner provided by the state's confidentiality statute, RCW 82.32.330,
- Extends the confidentiality protections in RCW 82.32.330 to the estate tax,
- Limits the disclosure of real estate excise tax (REET) information to REET affidavit forms filed with the Department,
- Allows the disclosure of the name of a taxpayer against whom a warrant has been issued without regard to the amount of the deficiency, if the warrant remains unpaid for at least ten working days,
- Allows disclosure of taxpayer information to the Streamlined Sales Tax Governing Board for certain audit activities, and
- Clarifies that applications by taxpayers for certain tax incentive programs that were not approved by the Department of Revenue are confidential and not subject to disclosure.

This bill incorporates into Washington law the Streamline Sales and Use Tax Agreement's definition of "retail sale."

The bill also amends the sales tax sourcing statute, RCW 82.32.730, to allow sellers of advertising and promotional direct mail the choice of sourcing their in-state sales of advertising and promotional direct mail to the place where the mail is delivered or to the location of the seller.

The bill also makes numerous clarifications and technical corrections to excise and property tax statutes.

Most of the bill is effective July 1, 2010.

SHB 2402 Relating to a property tax exemption for property owned by a nonprofit organization and used for the purpose of a farmers market (Chapter 186, Laws of 2010)

This bill allows tax exempt property belonging to churches and nonprofit public assembly halls or meeting places to be used for farmers markets for up to 53 days each year. The bill establishes standards for qualifying farmers markets, requiring that they promote the sale of agricultural products as determined by the proportion of sales by farmers in relation to other types of vendors. Imported or secondhand products are prohibited, as are any franchises. Rental income must be used for maintenance of the property. Public assembly halls or meeting places may also use the income for capital improvements or for exempt purposes.

The bill is effective June 10, 2010, through December 31, 2020, and applies to property taxes levied for collection in 2011 through 2020.

HB 2428 Relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges (Chapter 29, Laws of 2010)

This bill, requested by the Attorney General, amends the Washington Uniform Unclaimed Property Act (Chapter 63.29 RCW). Current law limits the fee a person may charge an owner of unclaimed property for locating that unclaimed property held by the Department of Revenue. The maximum finder's fee is five percent of the value of the property that is returned to the owner.

This bill applies the five percent finder's fee limitation to unclaimed funds held by a county that are proceeds from a foreclosure for delinquent property taxes or funds that are otherwise held by a county because of a person's failure to claim funds held as reimbursement for unowed taxes, fees, or other government charges.

A business that exceeds the fee limitation is in violation of Washington's Consumer Protection Act.

The bill is effective June 10, 2010

**2SHB 2436 Relating to vehicle license fraud
(Chapter 270, Laws of 2010)**

This bill increases the penalties for licensing a vehicle in another state to evade taxes and fees.

The bill appropriates \$250,000 to the Washington State Patrol and \$75,000 to the Department of Revenue for the purpose of vehicle license fraud enforcement and collections.

The bill is effective July 1, 2010.

**ESHB 2493 Relating to the taxation of cigarettes and other tobacco products
(Chapter 22, Laws of 2010 1st Special Session)**

This bill increases the taxes on cigarettes and on other tobacco products (OTP). Except as noted below, the revenue goes to the general fund.

On a package of 20 cigarettes, the combined cigarette tax increases by \$1.00 to \$3.025. Of the increase, 51.5 cents is deposited into the education legacy trust account.

On OTP generally, the tax increases from 75 percent to 95 percent of taxable sales price. The maximum tax per cigar increases from 50 cents to 65 cents.

The bill creates two categories of OTP that are defined and taxed separately.

- “Little cigars” are taxed at the same rate as cigarettes.
- “Moist snuff” is taxed at \$2.526, or 83.5 percent of the tax on cigarettes, on any can or package weighing 1.2 ounces or less, and proportionately per ounce for any larger package.

Payment of tax must be verifiable on each package of moist snuff within one year of adoption of a federal “tobacco product code.” If none is adopted by July 1, 2011, the Department must recommend a verification method by November 1, 2014.

The tax increase is effective May 1, 2010, except for the tax on moist snuff, which takes effect October 1, 2010.

**SHB 2525 Relating to public facilities districts created by at least two city or county legislative authorities
(Chapter 192, Laws of 2010)**

This bill changes the requirements under which multiple jurisdictions are authorized to create a public facilities district (PFD) jointly.

Under the bill, a multi-jurisdictional PFD can now be created by a group of at least three contiguous cities or towns, each of which already has a PFD and whose combined population is at least 160,000. The PFD can develop regional centers, including special events centers, in addition to recreational facilities. The facility or center to be funded must be specified in any sales and use tax proposal sent to the voters, and no proposal can be submitted until January 1, 2011.

The bill is effective June 10, 2010

**2SHB 2551 Relating to the establishment of the Washington Vaccine Association
(Chapter 174, Laws of 2010)**

This bill creates the Washington Vaccine Association, a nonprofit corporation whose purpose is to collect and remit funds from health carriers and third-party administrators to fund the cost of vaccines provided to certain children.

The 2009-2011 budget funded universal purchase of vaccine until May 2010. This bill continues the universal purchase program. The Association makes assessments based on the number of children covered. Assessments are exempt from B&O tax.

The bill is effective March 23, 2010.

**EHB 2561 Relating to creating jobs by funding construction of energy cost saving
improvement to public facilities and raising revenue therefore
(Chapter 35, Laws of 2010 1st Special Session)**

The bill authorizes the State Finance Committee to issue general obligation bonds totaling \$505,000,000. The Department of Commerce is appropriated \$500,000,000 for grants to public school districts and higher education institutions for energy and operational cost savings improvements to public facilities.

The temporary sales tax on bottled water would be made permanent to pay the debt service costs for the bonds. With the enactment of 2ESSB 6143 during the 2010 special session, bottled water is subject to the retail sales tax as of June 1, 2010. This temporary tax is scheduled to expire June 30, 2013.

The bonding authority provided in this bill is referred to a vote of the people at the next general election.

SHB 2593 Relating to creating tools to enhance the Department of Fish and Wildlife’s ability to manage shellfish resources (Chapter 193, Laws of 2010)

This bill extends both the surcharge on sea urchin and sea cucumber dive licenses and the current rate of the tax on first commercial possession of sea urchins and sea cucumbers until January 1, 2013, or until the number of each type of license falls to 20, whichever occurs first. The Department of Fish and Wildlife will notify the Department of Revenue if the number of licenses is reduced to 20.

The bill takes effect June 10, 2010

SHB 2620 Relating to excise taxation of certain products and services provided or furnished electronically (Chapter 111, Laws of 2010)

This bill, requested by the Department of Revenue, clarifies and simplifies administration of the excise taxation of products and services furnished electronically, commonly referred to as digital goods or digital products.

Until July 26, 2009, taxation of digital goods, other than prewritten computer software, was not explicitly addressed in the statutes that impose sales and use tax. Engrossed Substitute House Bill (ESHB) 2075, enacted in 2009, addressed the taxation of digital goods specifically. Substitute House Bill 2620 is intended to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the ESHB 2075.

Highlights of the bill include:

- Clarifies that the following activities continue to be taxed under the service and other activities B&O tax classification and are not subject to retail sales tax by excluding them from the definition of “digital automated services” in RCW 82.04.192:
 - Advertising services,
 - Certain market creation activities,
 - Web hosting and storage,
 - Data processing services, and
 - Live interactive presentations.
- Clarifies the definition of “digital goods” in RCW 82.04.192 to ensure:
 - That tangible and digital photographs receive the same tax treatment, and
 - The Internet is not taxed as a digital good.
- Makes clarifications to ensure that:
 - Licensing of digital products to persons who are not end users is subject to the royalties B&O tax,

- Telecommunication services used to provide Internet access remains subject to retailing B&O tax (but is exempt from retail sales tax under the Internet Tax Freedom Act),
 - Income derived by cable and satellite television providers from monthly subscription fees and other programming exempt from sales tax remains subject to service and other activities B&O tax, and
 - Sales of digital products that become components of a new product for sale are treated as a wholesale sale rather than a retail sale (prospective only).
- Provides a “safe harbor” for nexus by specifying that merely storing software on a server does not create nexus.
 - Clarifies the sales and use tax exemption for digital products made available free of charge applies only to digital products made available to the general public by a business or other organization.
 - Amends the amnesty provision of ESHB 2075 to:
 - Provide relief for the failure to pay or collect sales or use tax before July 26, 2009, on labor and services rendered in respect to installing, repairing, altering, or improving digital goods, and
 - Require that, for periods before July 26, 2009, a taxpayer must have remitted sales tax to the Department on the retail sale of digital goods for that taxpayer to be entitled to a refund or credit of any excess B&O tax paid as a result of reporting B&O tax on such sales under the service and other activities classification rather than the retailing classification.
 - Provides rules for sourcing income from the sale of digital products for purposes of local B&O tax. The rules are similar to the destination-based sourcing provisions for state and local sales taxes.
 - Broadens, prospectively, the sales and use tax exemption for standard digital information to include any digital good used solely for business purposes.

The bill takes effect July 1, 2010. Most of the bill applies both prospectively and retroactively to July 26, 2009, the effective date of ESHB 2075, except as noted above.

**HB 2659 Relating to modifying reporting requirements for timber purchases
(Chapter 197, Laws of 2010)**

The bill clarifies the timber sales information that is to be reported to the Department of Revenue and extends the requirement until July 1, 2014.

The Department relies on both public and private timber sales data to determine the stumpage value, which is the tax base for the timber excise tax paid by large harvesters. A purchaser of privately owned timber in an amount in excess of 200,000 board feet is required to provide

purchase information as specified in statute to the Department. This reporting requirement was to expire July 1, 2010.

The bill expands the information to be reported, including the seller's name and address, legal description of the sale area, the harvest permit number, and estimated volume of timber by tree species. The timber reports on private timber sales are confidential taxpayer information under RCW 82.32.330.

The bill takes effect June 10, 2010

**EHB 2672 Relating to tax relief for aluminum smelters
(Chapter 2, Laws of 2010 1st Special Session)**

This bill extends to 2017 tax incentives for the aluminum industry that are scheduled to expire in 2012.

These incentives are:

- A B&O tax rate of 0.2904 percent,
- A B&O tax credit for property taxes paid,
- An exemption from the state portion of sales and use tax for certain property and services, and
- An exemption from use tax on brokered natural and manufactured gas.

In place of periodic reports to the Legislature, the Joint Legislative Audit and Review Committee will review the tax preferences in 2015 with specific analysis of the jobs retained as a result of the tax preferences.

**SHB 2704 Relating to transferring the Washington Main Street Program to the
Department of Archaeology and Historic Preservation
(Chapter 30, Laws of 2010)**

This bill transfers the Washington Main Street Program (Program) from the Department of Commerce to the Department of Archeology and Historic Preservation.

The Program assists communities to preserve and revitalize downtown or neighborhood commercial district areas. The Program is funded through B&O and state public utility tax credits for 50 percent of the amount of a contribution to the Main Street Trust Fund or 75 percent of the amount donated directly to a nonprofit whose sole mission is the revitalization of a downtown or neighborhood commercial district.

The Department of Archeology and Historic Preservation will provide the Department of Revenue with the necessary information to administer the tax credit.

The bill takes effect July 1, 2010.

**SHB 2758 Relating to documenting wholesale sales for excise tax purposes
(Chapter 112, Laws of 2010)**

This bill, requested by the Department of Revenue, amends and clarifies the provisions of 2009 legislation, SB 6173, to improve administration of the new reseller permit system that replaced self-issued resale certificates with permits issued by the Department of Revenue.

The bill does the following:

- Allows the Department to issue reseller permits to construction contractors without an application based on criteria adopted by rule.
- Makes all contractor reseller permits valid for 24 months instead of 12, beginning July 1, 2013. However, beginning July 1, 2011, the Department may issue or renew contractor reseller permits for a 24-month period if the Department is satisfied that doing so will not jeopardize collection of sales tax based on criteria adopted by rule.
- Defines the term “contractor” by reference to the contractor registration and licensing statutes.
- Applies the 2-year expiration date (instead of 4-years) that is used for newer businesses to taxpayers who:
 - Are not registered with the Department,
 - Are registered with the Department but are not required to file tax returns,
 - Have reported no business activity to the Department for sales and B&O tax purposes for the year immediately preceding the date the application was received, or
 - Have failed to file tax returns covering any part of the year immediately preceding the Department’s receipt of the application.
- Authorizes the Department to provide, by rule, for a uniform expiration date for reseller permits.
- Clarifies that sellers who accept the Streamlined Sales and Use Tax Agreement uniform exemption certificate or other acceptable exemption certificate in lieu of a reseller permit do not have to verify with the Department whether the buyer is required to be registered with the Department.
- Allows electronic verification of the permit, relieving the seller of the responsibility to obtain a copy of the buyer’s reseller permit or other acceptable documentation, if the seller electronically verifies the validity of its customers’ reseller permits on at least an annual basis with the Department.
- Changes the name in statute from seller’s permit to reseller permit.
- Identifies the circumstances when a buyer is considered to have improperly used a reseller permit for penalty purposes.

The bill takes effect June 10, 2010. The majority of the bill is retroactive to January 1, 2010, the effective date of SB 6173.

**SHB 2776 Relating to funding distribution formulas for K-12 education
(Chapter 236, Laws of 2010)**

This bill directs the Office of Financial Management and the Office of the Superintendent of Public Instruction to periodically reconvene a technical working group to monitor and provide advice on further development and implementation of the funding formulas for allocating basic education funds and to provide technical assistance to the ongoing work of the quality education council. The Department of Revenue is a member of that working group.

The bill is effective June 10, 2010.

**SHB 2789 Relating to authorizing issuance of subpoenas for purposes of agency investigations of underground economic activity
(Chapter 22, Laws of 2010)**

This bill provides authority for the Department of Revenue, Department of Labor and Industries, and the Employment Security Department to apply and obtain a superior court order approving the agency to issue a subpoena for records or testimony.

Last year the Legislature approved the Department of Revenue's request bill (SB 5568) authorizing the Department to request a superior or district court judge issue a subpoena for records in the possession of third parties that may assist in the collection of taxes.

The bill provides the Department of Revenue with a second method for issuing subpoenas.

This bill takes effect June 10, 2010.

**SHB 2893 Relating to school levies
(Chapter 237, Laws of 2010)**

This bill revises requirements governing school district levies.

The following changes apply to levies to be collected in calendar years 2011 to 2017:

- The maximum levy amount is increased by 4 percent, including districts with "grandfathered" status. For non-grandfathered districts, this increase is from 24 percent to 28 percent.
- The Local Effort Assistance payments for qualified districts are increased from 12 percent to 14 percent.
- The levy base continues to include amounts that the districts would have received under I-728 and I-732, if funding for these initiatives had not been reduced.
- The enhanced allocation for grades K-4 is included in districts' levy bases, in the event that it is reduced in the future.

School districts with an approved maintenance and operations levy are authorized to ask voters to approve an additional levy, if legislation enacted after the existing levy was approved would permit a higher levy.

The bill is effective March 29, 2010.

**SHB 2962 Relating to allowing county treasurers to use electronic bill presentment and payment that includes an automatic electronic payment option for property taxes
(Chapter 200, Laws of 2010)**

This bill authorizes, but does not require, county treasurers to collect taxes, assessments, fees, rates and charges by electronic bill presentation and payment. Electronic bill presentment and payment is optional for the taxpayer. The electronic bill presentment and payment may be monthly or on some other periodic basis as determined by the county treasurer. The county treasurer must electronically provide a payment agreement, which must be signed by the taxpayer and treasurer before an electronic bill is sent to the taxpayer.

The bill takes effect June 10, 2010.

**ESHB 3014 Relating to modifying the sales and use tax deferral program for investment projects in rural counties
(Chapter 16, Laws of 2010 1st Special Session)**

This bill, requested by Governor Gregoire, provides counties with the greatest need an economic stimulus for job creation and poverty reduction. It also clarifies key definitions.

The bill modifies and extends the rural county sales and use tax deferral program from July 1, 2010, to July 1, 2020. The deferral applies in counties with unemployment at least 20 percent above the state average for three years and in community empowerment zones (CEZs). Hiring for purposes of a CEZ extends to residents of the surrounding county.

The Department of Revenue must establish a list of qualifying counties by July 1, 2010, and update it every two years based on Employment Security Department data.

The definition of manufacturing is clarified retroactively to include computer programming, the production of computer software, and other computer-related services, only if the service is provided by a manufacturer for B&O tax purposes and contributes to the production of a new, different, or useful substance or article of tangible personal property for sale. Computer programming, the production of computer software, and other computer-related services are eliminated from the definition of manufacturing beginning July 1, 2010. In addition, the definition of research and development is clarified retroactively to require research and development activities be intended to result in the production of a new, different, or useful

substance or article of tangible personal property for sale. These definitional changes are also made for the rural county new employee B&O tax credit in chapter 82.62 RCW.

Deferral recipients must complete annual surveys, from which the Department of Revenue compiles annual statistical reports to the Legislature and a final outcomes report by December 1, 2019.

Tax deferrals remain in place for up to two years during periods of temporary shutdowns in counties with a population of less than 20,000, if the remaining labor force is greater than 10 percent of the taxpayer's labor force at the time the deferral was approved. If the number of positions falls below the 10 percent threshold during the two-year period, the deferred taxes are due. A taxpayer is entitled to this relief only once.

This bill is effective July 1, 2010.

**SHB 3066 Relating to creating uniformity among annual tax reporting survey provisions
(Chapter 114, Laws of 2010)**

This bill creates more uniform reporting requirements for persons who are required to file an annual tax incentive accountability report or survey with the Department of Revenue. The bill also eliminates redundant statutes and statutory language to provide greater uniformity in certain tax incentive programs.

Currently, persons claiming tax preferences are often required to file an annual accountability report or survey with the Department. The information to be included in these annual reports and surveys, due dates, extensions, and penalties for not filing are prescribed by law. These provisions are not uniform for all required reports and surveys.

The bill takes effect June 10, 2010, and applies to annual surveys and reports due in 2011 and thereafter.

**ESHB 3179 Relating to local excise tax provisions for counties and cities
(Chapter 127, Laws of 2010)**

This bill provides cities and counties with additional tax options and more flexibility in the use of funds from certain existing taxes.

Public Safety Tax: The bill allows cities to impose the public safety sales and use tax with voter approval beginning January 1, 2011. The maximum rate of tax for a city is 0.1 percent. A city may not impose the tax if the county in which the city is located has imposed the public safety tax at the maximum 0.3 percent rate by January 1, 2011. Additional rate limitations and crediting mechanisms are included for both city and county taxes to limit the combined rate of

both city and county tax to 0.3 percent. Under current law, counties may not use the tax revenue to replace (supplant) existing revenues. This bill removes that restriction.

Mental Health Tax: The bill allows cities to impose the mental health sales and use tax beginning January 1, 2011, if:

- The city is located in a county with a population over 800,000,
- The city has a population over 30,000, and
- The county has not imposed the mental health tax.

Once a city imposes the mental health tax, the county in which the city is located can still impose the tax; however, it must provide a credit against its tax for the full amount of the city tax.

Criminal Justice Sales and Use Tax: The bill removes restrictions on the use of the tax revenues and allows the funds to be used for services with ancillary benefits to the criminal justice system.

Brokered Natural Gas Use Tax: The bill provides that the brokered natural gas (BNG) use tax is imposed at the location where the gas is burned by the taxpayer or stored in a facility of the taxpayer for later consumption. The credit against the local BNG use tax for certain taxes paid to another state is narrowed so that it only applies to taxes paid to another municipality or other unit of local government.

Gambling Tax: The bill allows local gambling tax revenue to be used for general public safety programs. The use of these revenues had been limited to local gambling enforcement programs.

The bill takes effect June 10, 2010

SENATE BILLS

ESSB 6130 Relating to amending provisions related to Initiative No. 960 (Chapter 4, Laws of 2010)

This bill temporarily suspends the requirement for a two-thirds super majority vote in the Legislature to raise taxes and the requirement for an advisory vote of the people for any tax increase not referred to voters or otherwise blocked from a public vote. After July 1, 2011, a two-thirds super majority vote will again be required to raise taxes, and an advisory vote of the people will again be required for any tax increase not referred to the voters or otherwise blocked from a public vote.

The bill is effective February 24, 2010.

2ESSB 6143 Relating to modifying excise tax laws to preserve funding for public schools, colleges, and universities, as well as other public systems essential for the safety, health, and security of all Washingtonians (Chapter 23, Laws of 2010 1st Special Session)

Part I - Minimum Nexus Standards

For purposes of imposing B&O tax on service activity and on the activity of receiving royalty income, a business or individual will have substantial nexus with this state, if the business or individual meets one of the following requirements: (1) is a resident or domiciled in the state; (2) is organized or commercially domiciled in the state; or (3) is organized or domiciled outside the state but has more than \$50,000 of property in the state, more than \$50,000 of payroll in the state, more than \$250,000 of receipts from the state, or at least 25 percent of total property, total payroll, or total receipts in the state. A business or individual with substantial nexus in any tax year is deemed to have substantial nexus for the following tax year.

Income derived from service activities and royalties is apportioned to this state based on a receipts factor. The receipts factor is expressed as a fraction whose numerator is the total gross income of the business attributable to this state for the activity, and whose denominator is the worldwide gross income of the business for the activity. The total worldwide gross income from the activity is multiplied by the receipts factor to determine the amount of income apportioned to this state for purposes of the B&O tax. Apportionment using the receipts factor replaces the three-factor apportionment formula for financial institutions and the cost apportionment formula or separate accounting for other service businesses.

Except for financial institutions, gross income is attributable to a state based on the following series of hierarchical rules:

1. If the customer received the benefit of the service in one state or used the taxpayer's intangible property in one state, income is attributable to that state.
2. If the customer received the benefit of the service or used the intangible property in more than one state, income is attributable to the state where the service was primarily received or where the intangible property is primarily used.
3. If income cannot be attributed under the foregoing, then the income is attributable to the state where the customer ordered the service or where the royalty agreement was negotiated.
4. If income cannot be attributed under the foregoing, then the income is attributable to the state to which the billing statements or invoices are sent to the customer.
5. If income cannot be attributed under the foregoing, then the income is attributable to the state from which the customer sends payment to the business.
6. If income cannot be attributed under the foregoing, then the income is attributable to the state where the customer is located as indicated by the customer's address.
7. If income cannot be attributed under the foregoing, then the income is attributable to the state where the business is domiciled.

For financial institutions, the Department must adopt a single-factor apportionment method by rule.

The bill exempts from B&O taxes amounts received by financial institutions from affiliates if the transactions are required to be at arm's length under sections 23A or 23B of the Federal Reserve Act. In addition, the bill exempts from B&O taxes amounts received by investment conduits and securitization entities from cash and securities. Also, the bill provides a new B&O tax deduction for interest and fees on loans secured by certain commercial aircraft. The deduction is not available if the taxpayer has a physical presence in this state.

Part I takes effect June 1, 2010, and applies to gross income generated on and after that date. For purposes of determining nexus under the property, payroll, and receipts factors for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

If a court holds the nexus provisions relating to property, payroll, or receipts unconstitutional or otherwise invalid, Part I is null and void in its entirety.

Part II - Tax Avoidance Transactions

The bill requires the Department of Revenue to disregard certain specified tax avoidance transactions for tax periods on or after January 1, 2006. These specific transactions are:

1. Joint ventures or similar arrangements between a construction contractor and the owner or developer of a construction project that are, in substance, substantially guaranteed payments for the purchase of construction services,
2. Arrangements through which a taxpayer attempts to avoid the B&O tax by disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer from business activities that would be taxable in Washington by moving that income to another entity that would not be taxable in Washington, and
3. Arrangements through which a taxpayer attempts to avoid sales or use tax by engaging in a transaction to disguise its purchase or use of tangible personal property by vesting legal title or other ownership interest in another entity over which the taxpayer exercises control in such a manner as to effectively retain control of the tangible personal property.

If the Department finds a tax deficiency due to a disregarded tax avoidance transaction, the Department must assess a 35 percent penalty.

The bill also requires the Department to conduct a review of the state's tax policy with respect to the taxation of transactions between affiliated entities. The Department must report its findings to the legislative fiscal committees on December 1, 2010, or if the review is not complete, a brief status report by December 1, 2010, with a final report by December 1, 2011.

This part of the bill also amends RCW 82.12.020 to allow for the imposition of use tax on the use of tangible personal property (TPP) acquired in any manner. Under current law, use tax on TPP only applies if the TPP is acquired through a retail sale, lease, gift, repossession, bailment, or is manufactured or extracted by the person using the property, or is otherwise furnished to a person engaged in any business taxable under RCW 82.04.280(2) or (7).

Part II of the bill also closes loopholes and clarifies ambiguities related to real estate excise tax (REET).

The bill provides that the date on which an option agreement is executed is the date on which the transfer or acquisition of a controlling interest pursuant to the option is deemed to occur, for the purpose of determining whether a controlling interest was transferred or acquired within a 12-month period. For any other purpose, the date on which the option is exercised is the date of the transfer or acquisition.

The Department may collect REET on the transfer or acquisition of a controlling interest in a corporation from either the corporation or the buyer, or, if the corporation is not publicly traded, from the seller. In the case of a controlling interest in any other type of entity, the Department may collect REET from either the entity or the buyer or seller of the controlling interest.

A parent corporation of a wholly-owned subsidiary is responsible for REET if the subsidiary transfers real property to a third party and then dissolves before payment of the tax.

Providing notice to the Department of Revenue within thirty days of a sale no longer exempts a buyer from liability for REET that has not been paid by the seller.

The bill clarifies that a lien for any unpaid REET attaches to each parcel of property in this state owned by an entity in which a controlling interest has been transferred.

This part of the bill takes effect May 1, 2010. Section 201 of this bill applies to tax periods beginning January 1, 2006.

Part III - Modifying the First Mortgage Deduction

These provisions clarify which services and fees are deductible as interest received on investments and loans secured by first mortgages. A deduction is also provided for certain loan servicing fees.

This part of the bill is effective June 1, 2010.

Part IV - Direct Seller Business and Occupation Tax Exemption

This part of the bill retroactively clarifies and prospectively eliminates the B&O tax exemption under RCW 82.04.423 for amounts received from sales by certain out-of-state persons to or through direct seller's representatives. The Department of Revenue's position had been that this exemption was limited to those businesses that sold only consumer products through a direct seller's representative and only in the home or otherwise in permanent retail establishments (stores). A recent Washington Supreme Court decision, *Dot Foods, Inc. v. Dep't of Revenue*, 166 Wn.2d 912 (2009), expands the exemption to businesses that sell nonconsumer products, some of which are sold in stores.

This bill:

- Eliminates the exemption in its entirety effective May 1, 2010, and

- For tax periods prior to May 1, 2010, retroactively revises the definition of “direct seller's representative” to conform to the Department's interpretation of the exemption as noted above.

Part V - Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

Part V of the bill changes the application of the B&O tax to manufacturers and wholesalers of certain meat products, meat byproducts, or fruit and vegetable products by clarifying and narrowing the definitions of activities that are subject to the preferential tax treatment.

Currently, processors of perishable meat products are subject to a reduced B&O tax rate of 0.138 percent. In *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392 (2005), the Washington Supreme Court held that this reduced B&O tax rate applied to the processing of perishable meat into a nonperishable finished product, which significantly increased the number of taxpayers who qualified for the preferential tax rate.

Current law also provides a B&O tax exemption for canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables until July 1, 2010, when this exemption is replaced with a reduced B&O tax rate for these activities. The rationale of the *Agrilink* decision could be extended to these tax preferences.

This bill supersedes the *Agrilink* decision by requiring that the end product be:

- A perishable meat product,
- A nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product, or
- A meat by-product manufactured in a rendering plant.

This bill also limits the B&O tax preferences for canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables by requiring the end product to be comprised:

- Exclusively of fruits and/or vegetables, or
- Primarily of fruits and/or vegetables. An end product is comprised primarily of fruits and/or vegetables if the amount of all ingredients contained in the product, other than fruits, vegetables, and water, does not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

These changes take effect June 1, 2010.

Part VI - Suspending the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

This part of the bill temporarily suspends the retail sales and use tax exemption for certain equipment and services related to the management of livestock nutrients. The suspension of the exemption is in effect from July 1, 2010, through June 30, 2013.

Part VII - Ending the Preferential Business and Occupational Tax Treatment Received by Directors of Corporations

Beginning July 1, 2010, compensation received by members of corporate boards of directors is taxed under the service and other activities B&O tax classification at a rate of 1.8 percent, which includes the additional temporary 0.3 percent tax rate in Part XI of this bill. An exemption is provided retroactively for director compensation received before July 1, 2010. However, the exemption does not authorize refunds of B&O tax validly collected before July 1, 2010, on amounts received as compensation for serving on a corporation's board of directors.

Part VIII- Tax Debts

Currently, certain individuals can be held personally liable for collected but unremitted sales tax when a corporation or limited liability company goes out of business. For individuals to be held personally liable, the Department must prove that an individual willfully failed to pay or caused to be paid to the Department sales taxes collected by the business. This bill would impose strict personal liability on an entity's chief executive and chief financial officer regardless of fault or whether those individuals were aware of the unpaid sales tax liability. The bill also expands the types of business entities whose collected but unremitted sales tax debts can be collected from responsible individuals.

This part of the bill is effective May 1, 2010.

Part IX - Repealing the Sales and Use Tax Exemptions for Bottled Water and Candy

This part of the bill extends sales and use tax to candy and bottled water.

“Candy” is defined as a preparation of sugar, honey, or other sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. However, candy does not include any preparation containing flour, nor any products that require refrigeration.

Bottled water includes water that is delivered to the buyer in a reusable container that is not sold with the water. The sale or use of water by prescription or due to the lack of a readily available source of potable water is exempt.

This part of the bill also gives candy manufacturers a B&O tax credit equal to \$1,000 for each full-time employment position maintained in this state for a continuous period of at least 12 consecutive months, and \$1,000 for each full-time equivalent seasonal position by a seasonal employer.

These changes are effective June 1, 2010. The tax on bottled water will expire July 1, 2013, unless the voters approve the issuance of the general obligation bonds authorized in EHB 2561 as noted above.

Part X - PUD Privilege Tax Clarification

The public utility district (PUD) privilege tax compensates for PUDs' exemption from property tax as public entities. The measure of the tax is “gross revenue,” which is defined as “the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.”

This bill amends the definition of gross revenue to clarify that the term includes all amounts received from the sale of electric energy, including any regularly recurring charge to customers as a condition of receiving electric energy, and excluding any tax levied by cities under the authority of RCW 54.28.070. This part of the bill supersedes the decision of the Washington State Court of Appeals in *Clark County Pub. Util. Dist. No. 1 v. Dep't of Revenue*, 153 Wn. App. 737 (2009).

This part of the bill is effective May 1, 2010.

Part XI - Temporarily Increasing the Business and Occupation tax on Service Businesses while Increasing the Small Business Credit for the Same Businesses

Beginning May 1, 2010, through June 30, 2013, this bill imposes an additional rate of B&O tax of 0.3 percent on contests of chance (RCW 82.04.285), real estate brokers (RCW 82.04.255), and services taxable under the catch-all service and other activities classification (RCW 82.04.290(2)(a)). The new total B&O rate for these activities will be 1.8 percent.

In addition, taxable businesses reporting at least 50 percent of their taxable amount under RCW 82.04.285, 82.04.255, and 82.04.290(2)(a) may be entitled to a small business credit not to exceed \$70 per month multiplied by the number of months in the reporting period. The credit amount is reduced as the B&O liability exceeds the maximum credit and is phased out completely when the tax liability reaches twice the maximum credit. There is no expiration date for the increased credit.

For businesses generating at least 50 percent of their taxable amount from activities taxable under RCW 82.04.280, 82.04.255, and 82.04.290(2)(a), the bill also increases the threshold for not having to file tax returns (nonreporting status). The existing threshold is \$28,000 per year, which is increased to \$46,667 per year.

Part XII - Property Management Salaries

This part of the bill narrows the B&O tax exemption for amounts received by property management companies for payment of wages and benefits to on-site personnel. Under the bill, for-profit property management companies are not eligible for the exemption except for amounts received from a city or county housing authority for payment of wages and benefits of on-site personnel. Nonprofit property management companies continue to be eligible for this exemption.

This part is effective June 1, 2010.

Part XIII - Temporarily Increasing Beer Taxes

The excise tax on beer increases by \$0.50 per gallon, from 26 to 76 cents per gallon. The additional tax does not apply to the sale of the first 60,000 barrels annually by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051 of the federal internal revenue code.

This tax is in effect June 1, 2010, through June 30, 2013.

Part XIV - Temporarily Imposing Taxes on Carbonated Beverages

A tax of two cents per 12 ounces is imposed on the wholesale or retail sale of carbonated beverages, except carbonated water. The tax does not apply to successive sales of previously taxed carbonated beverages. The first \$10 million of carbonated beverages sold in this state by a bottler during each calendar year is exempt from this tax.

This tax is in effect July 1, 2010, through June 30, 2013.

Part XV - Limiting the Bad Debt Deduction

This part of the bill limits the bad debt credit or refund for sales and use taxes to the original retail seller, effective for claims for credit or refund filed with the Department after June 30, 2010.

This part of the bill supersedes the decision of the Washington State Supreme Court in *Puget Sound Nat'l Bank v. Dep't of Revenue*, 123 Wn.2d 284 (1994) (holding that banks purchasing installment contracts from a retail seller are entitled to a bad debt credit or refund for sales taxes paid to the Department by the retail seller when the bank incurred a bad debt because the buyer defaulted on the contract).

Part XVI - Data Centers

This bill clarifies 2010 legislation (ESSB 6789), which provides a sales and uses tax exemption for the eligible server equipment and power infrastructure of eligible computer data centers located in a rural county.

This part of the bill clarifies that, for purposes of measuring the required increase in jobs, the date that the Department issued an exemption certificate is the start date, and that leased space newly dedicated to housing working servers may qualify for a sales and use tax exemption if at least three family-wage employment positions are created for each 20,000 square feet.

These provisions are effective May 1, 2010.

SB 6206 Relating to authorizing extensions of the due dates for filing tax incentive accountability reports and surveys with the Department of Revenue (Chapter 137, Laws of 2010)

This bill provides taxpayers with a one-time 90-day extension to file an annual tax incentive accountability survey or report with the Department of Revenue. To qualify for this extension the taxpayer must request an extension in writing and have filed all prior annual reports and surveys on time beginning with reports and surveys due in 2010.

Currently, taxpayers participating in certain tax incentive programs are required to file an annual survey or report with the Department. When the taxpayer fails to file on time, the Department must declare the amount of taxes exempted, credited, or reduced immediately due and payable. Some tax incentive programs allow the Department to extend the due date for 30 days if the failure to file was the result of circumstances beyond the control of the taxpayer.

The bill takes effect June 10, 2010. The bill applies to annual surveys and reports due in 2011 and thereafter.

**ESSB 6241 Relating to creating community facilities districts
(Chapter 7, Laws of 2010)**

This bill authorizes property owners to form “community facilities districts” for the purpose of financing local and regional infrastructure for new development through revenue bonds and special assessments.

The bill takes effect June 10, 2010.

**SSB 6271 Relating to annexations by cities and code cities located within the
boundaries of a regional transit authority
(Chapter 19, Laws of 2010)**

This bill provides that annexations of unincorporated territory by cities located within a regional transit authority (RTA) are simultaneously annexed to the RTA and subject to all RTA taxes, liabilities, and obligations applicable in the city.

Under existing law, an annexation to the city and another annexation to the RTA would be required.

The bill takes effect June 10, 2010.

**SSB 6273 Relating to insurance coverage of the sales tax for prescribed durable
medical equipment and mobility enhancing equipment
(Chapter 44, Laws of 2010)**

This bill requires health plans issued or renewed on or after January 1, 2011, that cover prescribed durable medical equipment and mobility enhancing equipment to include payment of the sales or use tax. Payments must separately identify the sales or use tax that is included.

The bill takes effect June 10, 2010.

**ESB 6287 Relating to the disposition of existing voter-approved indebtedness at the
time of annexation of a city, partial city, or town to a fire protection district
(Chapter 63, Laws of 2010)**

This bill creates an express exemption from any pre-existing fire district levy for fire protection facilities, if a city is annexed to a fire district and property in the city is already subject to a pre-existing city levy for fire protection facilities.

Under current law, if a city is annexed to a fire district, property owners in the city continue to pay any pre-existing city levy for fire protection facilities, along with any such pre-existing fire district levy.

The bill takes effect March 15, 2010

SSB 6339 Relating to a sales and use tax exemption for wax and ceramic materials used to create molds for ferrous and nonferrous investment castings (Chapter 225, Laws of 2010)

This bill provides a sales and use tax exemption for wax and ceramic materials used to make molds consumed during the process of creating ferrous and nonferrous investment castings (a wax casting method) used in industrial applications. The exemption also applies to labor and services used to create the wax patterns and ceramic shells used as molds that are consumed in the process of creating the castings.

The bill takes effect July 1, 2010, and expires June 30, 2015.

SB 6418 Relating to cities and towns annexed to fire protection districts (Chapter 136, Laws of 2010)

This bill provides that a city or town with a population of no more than 300,000 may be annexed into an adjacent fire protection district. Currently, only those cities or towns with a population of no more than 100,000 may be annexed into an adjacent fire district.

The bill is effective June 10, 2010.

E2SSB 6609 Relating to infrastructure financing for local governments (Chapter 164, Laws of 2010)

This bill makes technical and procedural changes to two local government infrastructure financing programs, increases funding for six projects, and requires an economic analysis of local projects.

Local Revitalization Financing Program (LRF)

The bill adds \$1.95 million a fiscal year in new state funding for six demonstration projects on the LRF wait list located in Richland, Lacey, Mill Creek, Puyallup, Renton, and Newcastle and establishes the maximum state contribution for these projects. These cities must resubmit an updated application by September 1, 2010. In addition, the cities must submit an economic analysis by a qualified researcher at the Department of Economics at the University of Washington confirming an 85 percent probability that the assumptions and estimates of jobs created and increased tax receipts will be achieved, including net state tax revenue that equals or

exceeds the state contribution. These cities could impose the tax under RCW 82.14.510 no sooner than July 1, 2012.

Local Infrastructure Financing Tool Program (LIFT):

The bill allows LIFT projects to receive state contributions less than their full award, if the estimated state benefit is less. As long as the appropriate local match is provided, a LIFT project will never receive less than the highest amount of state benefit estimated for a calendar year but no more than the project award.

The bill takes effect June 10, 2010. These programs expire June 30, 2039.

SSB 6614 Relating to clarifying the applicability of business and occupation tax to conservation programs with the Bonneville Power Administration (Chapter 295, Laws of 2010)

This bill provides a B&O tax exemption for amounts received by any person in the form of credits against power contracts with the Bonneville Power Administration (BPA), or funds provided by the BPA, for the purpose of implementing energy conservation programs or demand-side management programs.

Currently, the BPA has two programs to fund energy conservation efforts. One program provides a credit to utilities on their purchase of power from the BPA to fund local weatherization and energy conservation programs. Another provides direct BPA payments to utilities to fund larger conservation projects.

The bill takes effect June 10, 2010, and expires June 30, 2015.

ESSB 6658 Relating to modifying community solar project provisions for investment cost recovery incentives (Chapter 202, Laws of 2010)

This bill amends the Renewable Energy System Cost Recovery Incentive Program (Program). Under existing law, the Program provides a credit against the state public utility tax (PUT) to participating light and power businesses for amounts paid as incentives for community solar projects (CSPs) or renewable energy systems that produce customer-generated electricity. The maximum annual incentive payment is \$5,000. The maximum annual PUT credit that can be taken by a light and power business during a fiscal year is the greater of one percent of the business's taxable power sales or \$100,000.

This bill makes general changes to the incentive program including:

- Requiring that participating renewable energy systems be located in Washington,
- Reducing the maximum annual PUT credit to the greater of one-half percent of a light and power business's taxable power sales or \$100,000, and

- Clarifying that the restriction on light and power businesses with greater than 1,000 megawatt hours of annual sales does not apply to those light and power businesses participating in a utility-owned CSP.

The bill also makes the following changes to the CSP portion of the incentive program:

- Each member of a company-owned CSP is eligible for an incentive payment in proportion to each ownership share, up to \$5,000 per year. With respect to CSPs, a “company” means a limited liability company, a cooperative, or a mutual association.
- The eligibility of a CSP to receive incentive payments is limited to those CSPs capable of generating a maximum of 75 kilowatts of electricity.
- Incentive payments to participants in a company-owned CSP may only account for up to five percent of the total allowable PUT credit for a light and power business.
- Owners of CSPs are allowed to appoint an owner as administrator.
- Requires that administrators and companies receiving CSP incentive payments keep and preserve suitable records for five years to document the amount of payments received.
- Except for utility-owned CSPs, CSP owners are required to hold the participating light and power business and its employees harmless for their good faith reliance on the information in an application or certification submitted by an administrator or company.

The bill is effective June 10, 2010.

**SSB 6712 Relating to extending expiring tax incentives for certain clean alternative fuel vehicles, producers of certain biofuels, and Federal Aviation Regulation Part 145 certificated repair stations
(Chapter 11, Laws of 2010 1st Special Session)**

This bill, requested by the Department of Revenue, extends the expiration date of several tax incentives.

Tax incentives for certain clean alternative fuel vehicles

The expiration date for the sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles exclusively powered by a clean alternative fuel is extended from July 1, 2011, to July 1, 2015. The exemption is also expanded to include used vehicles that are converted to a clean alternative fuel vehicle, are part of a fleet of at least five vehicles, have less than 30,000 miles on them, are sold before the vehicles are two years old, and are sold for the first time after modification.

Tax incentives for producers of certain biofuels

This bill extends the deadline to claim the six-year property tax and leasehold excise tax exemptions for new or expanded manufacturing facilities producing alternative fuels to December 31, 2015.

Tax incentives for federal aviation regulation part 145 certificated repair stations

The bill extends the reduced B&O tax rate for aircraft repair facilities classified as Federal Aviation Regulation Part 145 certificated repair stations from July 1, 2011, to July 1, 2024.

**SSB 6727 Relating to health sciences and services authorities
(Chapter 33, Laws of 2010 1st Special Session)**

This bill concerns Health Sciences and Services Authorities. In 2007, legislation was enacted to allow one Health Sciences and Services Authority (Authority) to be created by a city, town, or county. An Authority was created in Spokane County. The Authority's purpose is to promote bioscience-based economic development and to advance new therapies and procedures to combat disease and promote public health. The legislative authority of a local jurisdiction that created an Authority may impose a sales and use tax of up to 0.02 percent, which is credited against the state portion of the sales and use tax. The authority to impose the sales and use tax expires January 1, 2023.

The bill expands the Authority's power and authorizes the creation of a second Authority in Eastern Washington. However, the new Authority may not receive funds from the sales and use tax that is credited against the state sales and use tax.

The bill is effective July 13, 2010.

**ESSB 6737 Relating to providing an exemption from property tax for aircraft used to provide air ambulance services
(Chapter 12, Laws of 2010 1st Special Session)**

This bill provides exemption from aircraft excise tax and property tax for aircraft that are owned by a nonprofit organization exempt from federal income tax under 26 U.S.C Sec. 501(c)(3) and are used exclusively to provide emergency medical transportation services.

The bill takes effect July 13, 2010, and expires January 1, 2020. The property tax exemption applies beginning with property taxes levied for collection in 2011.

**ESSB 6789 Relating to sales and use tax exemptions for certain equipment and infrastructure contained in data centers
(Chapter 1, Laws of 2010 1st Special Session)**

This bill, requested by the Department of Revenue, provides a retail sales tax and use tax exemption for:

- New server equipment installed on or after April 1, 2010, in an eligible computer data center, including charges for installation,
- Server equipment that replaces existing exempt server equipment, provided it is installed and put into regular use before April 1, 2018, and
- Power infrastructure required to operate the tax-exempt server equipment, including charges for construction, installation, repair, alteration, and improvement.

An “eligible computer data center,” means a facility comprised of one or more buildings constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics:

- Uninterruptible power supplies, generator backup power, or both,
- Sophisticated fire suppression and prevention systems, and
- Enhanced physical security.

The facility must be located in a rural county as defined in RCW 82.14.370. The facility must be at least 100,000 sq. ft., with at least 20,000 square feet dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers, and for which the commencement of construction, including renovation or expansion to existing facilities, occurs after March 31, 2010, and before July 1, 2011. Businesses claiming the exemption must meet certain employment requirements.

The exemptions are not available to persons that have received benefits of the tax deferral program under chapter 82.60 RCW.

Qualifying businesses must complete an annual accountability report with the Department.

The bill is effective April 1, 2010. The sales and use tax exemptions expire April 1, 2018. Effective May 1, 2010, 2ESSB 6143, Part XVI, amended this new tax exemption as described above.

**SSB 6831 Relating to estates and trusts
(Chapter 11, Laws of 2010)**

This bill concerns estates and trusts. Many wills and trusts that are drafted to take advantage of federal tax exemptions for spouses and children use terms and formulas referring to things such as the applicable credit amount, unified credit, federal estate tax, and generation-skipping transfer (GST) tax. However, in 2010 there is no federal estate tax, and therefore many of the formulas used in drafting wills and trusts will not function to fund trust or estate plans as intended when the will or trust document was created.

This bill provides that a will or trust of a decedent who dies after December 31, 2009, but before January 1, 2011, will be deemed to refer to the federal estate and GST tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust:

- Contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, GST tax exemption, GST exemption, marital deduction, maximum marital deduction, or unlimited marital deduction,
- Measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal GST taxes, or
- Is otherwise based on a similar provision of federal estate tax or GST tax law.

The personal representative or any affected beneficiary under a will or trust may bring a proceeding under the trust and estate dispute resolution act to determine whether the decedent intended that the references referred to above be construed with respect to the federal law as it existed after December 31, 2009.

This proposal is expected to have some indeterminate impact on Washington estate tax collections.

The bill takes effect March 10, 2010.

**SSB 6846 Relating to enhanced 911 emergency communications services
(Chapter 19, Laws of 2010 1st Special Session)**

This bill extends the enhanced 911 (E-911) excise taxes to include interconnected voice over internet protocol service (VoIP) lines, increases tax rates, and centralizes administration.

Under existing law, the state and counties are authorized to impose an E-911 excise tax on switched access lines and on radio (wireless) access lines. The state can impose up to \$0.20 per line, and a county can impose up to \$0.50 per line. The state taxes are collected from customers by the telecommunication companies and remitted to the Department. The county taxes are also collected from customers by the telecommunication companies and remitted to the counties.

Beginning January 1, 2011, the rate for county E-911 taxes increases from \$0.50 to \$0.70 per line. The county taxes are deposited into a new county E-911 account, from which funds are distributed back to the counties in the same way as county sales taxes. Counties must contract with the Department of Revenue for the administration of the taxes, and the Department may retain up to two percent of the taxes collected to cover the costs of administration.

Beginning January 1, 2011, the rate for state E-911 taxes increases from \$0.20 to \$0.25 per line. By August 31, 2011, and each year thereafter, the state E-911 coordinator must recommend a tax rate based on a systematic cost and revenue analysis to the Washington Utilities and Transportation Commission, which must set a rate by October 31st of each year for the following calendar year.

The bill is effective, in part, October 1, 2010, with the remainder of the bill taking effect January 1, 2011.

SB 6855 Relating to exempting community centers from property taxation and imposing leasehold excise taxes on such property (Chapter 281, Laws of 2010)

This bill provides a 40-year property tax exemption for surplus school district property that is acquired by a tax-exempt nonprofit organization and used as a community center. Any leases of community center property by parties who are not tax exempt are made subject to state and local leasehold excise taxes.

The bill is effective June 10, 2010, and applies to taxes levied for collection in 2011 and thereafter.

SSB 6889 Relating to the governance and financing of the Washington State Convention and Trade Center (Chapter 15, Laws of 2010 1st Special Session)

This bill authorizes creation of an additional public facilities district (PFD) in King County for the purpose of taking over the Washington State Convention and Trade Center (Center) from the state by June 30, 2011.

The Center is a public nonprofit corporation whose board of directors is appointed by the Governor. The Center is funded through its operations and lodging taxes. The lodging taxes apply to hotels and motels in King County and Seattle that have at least 60 rooms at a rate of 7 percent in Seattle and 2.8 percent in the county, with an additional 2 percent in Seattle, which is credited against the state sales tax.

The PFD will take over all of the Center's facilities, assets, liabilities, and various obligations and powers, and will have authority to impose the same taxes as are currently imposed. The additional two percent lodging tax in Seattle that is credited against state sales tax may be imposed by the PFD only for the purpose of paying debt and making annual payments to the state equal to the amount of the state sales tax credit plus interest. If revenue is insufficient to make the annual payment, the deficiency becomes a loan. This two percent tax ends on the earlier of July 1, 2029, or the date on which all obligations issued or incurred by the PFD to implement any redemption, prepayment, or legal defeasance of the state's obligations related to the Center.

The bill is effective July 13, 2010.