

2ESSB 6143 Bill Comparison as passed Senate, as passed House, and Conference Report H-5847.5/10

Subject	Senate	House	Conference Striking Amendment	2009-11 Millions
<u>Part I:</u> Minimum nexus standards	<p><u>Economic Nexus:</u> As of June 1, 2010, substantial nexus for B&O tax assessed on income from service activities and royalties includes businesses domiciled outside the state meeting one of the following thresholds: 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 this state, or at least 25 percent of the business's total property, total payroll, or total receipts in this state. Income from certain financial institution affiliates and investment conduits is excluded.</p> <p><u>Apportionment:</u> Income derived from service activities and royalties is apportioned to Washington based on a receipts factor. For financial institutions the Department must adopt their apportionment methods by rule.</p>	Same as the Senate except that expressly excludes local B&O. Makes additional provision for securitization entities or investment conduits. Makes some changes to apportionment of newspapers. Starts July 1, 2010.	Incorporates all changes from Senate and House. In addition, includes a B&O deduction for interest and fees on loans secured by commercial aircraft. Effective June 1, 2010. Part I, Page 1, Line 9	\$84.7
<u>Part II:</u> Tax avoidance transactions	DOR must respect the form of a business transaction unless the purpose of the transaction is to disguise income, disguise purchase or sale of property or services, or avoid use tax. In general, applies to transactions initiated after July 1, 2010. Closes methods used to avoid use tax and real estate excise tax.	Removes express adoption of tax avoidance doctrines. DOR required to study to the taxation of intercompany transactions.	Provides DOR authority to disregard 3 specific types of tax avoidance transactions. Creates legislative oversight committee. Effective May 1, 2010. Part II Page 16, line 5	\$8.5
<u>Part III:</u> Modifying first mortgage deduction	Not included.	The first mortgage interest deduction is expressly disallowed for certain types of fees and charges.	Servicing of loans by the originator of the loans qualifies for the deduction; other types of fees and charges are not deductible. Effective June 1, 2010. Part III, Page 33, Line 20	\$3.6
<u>Part IV:</u> Direct seller B&O exemption	Eliminates the B&O exemption for firms that sell into Washington using direct seller's representatives. For periods prior to April 1, 2010 limits the exemption to consumer products. This is also known as the DOT Foods issue.	Same.	Same, except for May 1, 2010 effective date. Part IV, Page 35, Line 8	\$155.0
<u>Part V:</u> B&O tax on manufacturing of certain agricultural products	Limits the B&O preferential tax rate (0.138%) for meat processing to the manufacturing of perishable meat products, dehydrated, cured, or smoked meat products, and hides, tallow, and other meat by-products. Requires the final product using the special B&O tax treatment for fruit and vegetable processing to be at least 50% fruit and vegetables.	Same.	Same, except for May 1, 2010 effective date. Part V, Page 37, Line 5	\$4.1
<u>Part VI:</u> Sales Tax Exemption for Livestock Nutrient Equipment and Facilities	Suspends the sales and use tax exemption for equipment and facilities used for handling livestock nutrients at dairies and livestock feeding operations for 3 years, starting July 1, 2010.	Same as Senate, except changes effective date to April 1, 2010.	Changes effective date to July 1, 2010. Part VI, Page 71, Line 3	\$1.3

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<u>Part VII:</u> B&O tax on corporate directors	Disallows the employee exemption from B&O tax for corporate directors. Applies B&O tax rate for "service and other" category. Provides forgiveness of tax for periods before July 1, 2010.	Same as Senate, except changes effective date to April 1, 2010.	Changes effective as of July 1, 2010. Part VII, Page 74, Line 22	\$2.1
<u>Part VIII:</u> Tax Debts - Corporate Officer Liability	Allows the DOR to pursue uncollected taxes of a terminated or insolvent limited liability business from the chief executive or chief financial officer, or other persons responsible for paying the taxes.	Same as Senate, except applies new corporate officer liability provisions only to unremitted sales taxes.	Same as House striker. Effective May 1, 2010. Part VIII, Page 76, Line 12	\$1.1
<u>Part IX:</u> Sales and Use tax on Bottled Water	From May 1, 2010 to June 30, 2013, imposes sales tax (and thereby use tax) on sales of bottled water. Exemptions are provided for prescription bottled water and sales to persons without readily available potable water.	Same as Senate, except changes effective date to April 1, 2010 and removed the expiration date.	From June 1, 2010 to June 30, 2013, bottled water is subject to sales and use tax. The exemptions for prescribed water and for persons without potable water are made in the form of a refund, except for bulk deliveries. Part IX, Page 79, Line 30	\$32.6
<u>Part IX:</u> Sales Tax on Candy with Job Credit	Not included.	Not included in House Striker to 2ESSB 6143.	Candy and gum are subject to sales tax, as of June 1, 2010. Provides a job credit of \$1,000 per position for the next 2 years for candy manufacturers. DOR will publish a list of taxable candy; if not on the list, retailers must check with DOR. Part IX, Page 79, Line 30	\$30.5
<u>Part X:</u> PUD privilege tax clarification	Clarifies that "gross revenue" for purpose of the tax applies to all charges for electricity including recurring charges as a condition of receiving the electricity. Effective date: June 1, 2010.	Same as Senate, except changes effective date to April 1, 2010.	Changes effective date to May 1, 2010. Part X, Page 92, line 5.	\$1.2
<u>Part XI:</u> Temporary B&O Tax Surcharge on Service Businesses	From July 1, 2010 through June 30, 2013, and additional tax rate of 0.25% is added to the B&O tax on service businesses currently taxed at the rate of 1.5%. For any businesses subject to the additional B&O tax, the maximum small biz tax credit is permanently increased from \$35/mo to \$70/mo.	Same as Senate except excludes private hospitals. Effective May 1, 2010.	Temporary B&O surcharge of 0.3%, from May 1, 2010 to June 30, 2013. Permanently doubles the small business tax credit for service businesses. Excludes public and private hospitals as well as certain R&D activities. Part XI, Page 92, line 14	\$241.9

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<u>Part XII:</u> Limiting the B&O Exemption for Property Management Salaries	Repeals the B&O exemption for amounts received by a property management company from the owner of a property for gross wages and benefits paid to on-site personnel. Effective June 1, 2010.	Same as Senate, except changes effective date to April 1, 2010.	The exemption is not repealed, but rather is limited to nonprofit property management companies and property management companies that contract with a housing authority. Effective June 1, 2010. Part XII, Page 94, Line 27	\$6.9
<u>Part XIII:</u> Temporary Beer Tax Increase	Not included.	Not included in House Striker to 2ESSB 6143.	From June 1, 2010 to June 30, 2013, increases the Beer Tax by 50 cents per gallon (28 cent increase/six pack). The temporary increase does not apply to the first 60,000 barrels produced by small brewers. Part XIII, Page 96, Line 19	\$59.0
<u>Part XIV:</u> Temporary Tax Increase on Carbonated Beverages	Not included.	Not included in House Striker to 2ESSB 6143.	Beginning July 1, 2010 to June 30, 2013, increases the tax on carbonated beverages [pop] by 2 cents per 12 oz. bottle. The first \$10 million in sales is exempt from the tax increase. Part XIV, Page 98, Line 35	\$33.5
<u>Part XV:</u> Limiting the Bad Debt Deduction	Limits the deduction for bad debts to the seller (no person purchasing an installment sales contract may claim this deduction).	Not included in House Striker to 2ESSB 6143.	Same as Senate. Effective May 1, 2010. Part XV, Page 101, Line 13	\$1.7

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<p><u>Part XVI:</u> Data Centers</p>	<p>Not included.</p>	<p>Not included in House Striker to 2ESSB 6143.</p>	<p>A follow up to ESSB 6789. Amends the definition of “qualifying business” so that a lessee of at least 20,000 sq. ft. of space within an eligible computer data center can qualify for the exemption. Amends the job provisions to provide associated definitions regarding the requirement to increase employment by 35 family wage jobs. Part XVI, Page 103, Line 27</p>	<p>\$0.0</p>
<p>Total</p>				<p>\$667.7</p>

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Additional tax elements in Senate (2ESSB 6143) not contained in conference report				
Foreclosure exemption from REET	Limits the real estate excise tax (REET) exemption for transfers made pursuant to foreclosure. Sales of the property to a third party would be subject to tax. When a transfer or conveyance pursuant to a judicial or nonjudicial foreclosure or enforcement of a judgment is a sale the tax levied under this chapter is the obligation of the buyer.	Not included in House Striker to 2ESSB 6143.		
Repealing the B&O Tax Job Credit for International Service Activities	Repeals an underutilized B&O tax credit for international service activities (legal, accounting, tax, engineering, architectural, consulting ...) provided to persons domiciled outside the US or for use outside the US. Currently available only in CEZ and international services districts.	Not included in House Striker to 2ESSB 6143.		
Rural County Tax Incentives	Clarifies that a business claiming the sales and use tax deferral under ch. 82.60 RCW and B&O credits under ch. 82.62 RCW are allowed to claim the incentives for computer programming, but only when it is used to create a new item for sale.	Not included in House Striker to 2ESSB 6143.		
Limiting the B&O Deduction for Dues and Fees	Current law provides a B&O tax deduction for dues and initiation fees; this would only allow the deduction for certain nonprofit organizations. They include those under 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(8), (c)(10), or (c)(19). Provides a definition of initiation dues and fees.	Not included in House Striker to 2ESSB 6143.		
Repealing the sales tax exemption for	The sales and use tax exemption for coal used at a coal-fired thermal electric generation facility is repealed.	Not included in House Striker to 2ESSB 6143.		
Exemption for machinery used to create electricity from wind.	In order to qualify for the exemption for machinery and equipment used to create energy from wind, a producer must either be a local utility or someone contracting with a local utility for the sale of power.	Not included in House Striker to 2ESSB 6143.		
Temporary 0.2% sales/use tax and Working Families Tax Credit	From June 1, 2010 until June 30, 2013, an additional sales and use tax of 0.2% is imposed. The Working Families' Tax Exemption is amended. For remittances made in 2012, the exemption is the greater of \$25 or 5% of the EITC granted. For remittances made in 2013 and thereafter, the exemption is the greater of \$50 or 10% of the EITC granted.	Not included in House Striker to 2ESSB 6143.		

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Additional tax elements in House Striking Amendment not contained in the conference report				
Nonresident sales tax exemption	Not included.	Repeals the sales tax exemption for purchases by nonresidents from Oregon, Montana, Alaska, and a number of Canadian provinces.		
Aircraft excise tax	Not included.	3-tiered aircraft excise tax; fee by type for aircraft manufactured before 1970; fee by type for aircraft manufactured after 1970; and fee by gross weight for turbojet multi-engine aircraft.		
First mortgage interest deduction cap.	Not included.	A cap of \$120 million is placed on the first mortgage deduction so that amounts above \$120 million are subject to tax.		
Custom Software	Not included.	Extends sales tax to custom software and customized prewritten computer software.		
Convention Center	Not included.	Eliminates the credit against the state tax and makes it an additional tax.		