Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 2201

Brief Description: Improving fiscal accountability and transparency standards with respect to state tax preferences.

Sponsors: Representatives Carlyle, Pollet, Jinkins, Tharinger, Ormsby, Walkinshaw and Hudgins.

Brief Summary of Bill

- Consolidates and streamlines the Annual Report and Annual Survey into a single accountability document.
- Increases the availability and consistency of tax preference data reported to the Department of Revenue.
- Authorizes the public disclosure of certain tax information of publicly traded companies annually claiming one or more tax preferences in excess of $10,000, if the tax information was reported to the Department of Revenue at least 24 months prior to the date of disclosure.

Hearing Date: 1/23/14

Staff: Jeff Mitchell (786-7139).

Background:

Tax Preferences
A tax preference confers reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over 650 tax preferences.

Annual Surveys and Reports
Over the last 10 years, the Legislature has required taxpayers to file the Annual Survey (Survey) or the Annual Report (Report) in order to qualify for a variety of new economic development-related tax preferences, or in some cases, when extending existing economic development-

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related preferences. There are currently 32 economic development-related tax preferences that require one of these supplemental filings. While the Report and Survey are similar in that both documents require the annual reporting of employment and wage information, there are a couple of differences. Most notably, the Survey requires the taxpayer to report the tax savings associated with a tax preference requiring a Survey and taxpayer savings amounts are subject to public disclosure; however, the Report does not require firm-specific tax savings to be reported. The table below highlights these distinctions:

	Is Employment/ Wage Data Required to be Reported to DOR?	**Is Employment/ Wage Data Subject to Public Disclosure?**	**Are Firm-Specific Taxpayer Savings Reported to DOR?**	**Are Firm-specific Taxpayer Savings Subject to Public Disclosure?**
Annual Report	Yes	Yes	No	No
Annual Survey	Yes	No	Yes	Yes

In the 2013 session, the Legislature directed the Department of Revenue (Department), in consultation with the Joint Legislative Audit and Review Committee, to recommend improvements for the Annual Survey and Annual Report. The Department made the following six recommendations to ensure more meaningful data is provided, reduce the administrative burden on taxpayers, and improve transparency:

- combine the Report and Survey into a single tax preference accountability document for all job creation and competitiveness preferences that currently utilize the Survey or Report;
- eliminate reporting of information that does not help the Legislative Auditor provide meaningful recommendations on the legislation's effectiveness in creating jobs or improving competiveness;
- require useable tax data accessible from tax returns and employment data. For example, wage bands and detailed breakdowns of job types currently required on the Annual Survey and Annual Report have been found to be of limited analytical value;
- for sales and use tax deferrals, require taxpayers to file for the calendar year in which they first purchase tax exempt goods and services. Taxpayers participating in current programs are not required to file an Annual Survey until the construction or refurbishment project is certified by the Department as operationally complete. This means that certification could occur several years after the initial tax-exempt capital investment is made and the tax benefit is received by the taxpayer. The reporting delay impacts the timeliness of staff analysis of these preferences;
- allow taxpayers to qualify for a preference under an amended return even after the accountability document filing due date. The strict filing deadlines for the Annual Report and Annual Survey can prevent taxpayers from fully utilizing tax preferences; and
- make disclosure of taxpayer information and disclosure waivers consistent.

<u>Tax Data Collection by the Department of Revenue</u>

The Department requires tax preferences structured as deductions to be reported on the return. However, taxpayers will sometimes report a net amount. For example, if a taxpayer has gross income of $1 million but is eligible for an $800,000 deduction, taxpayers may report only the net $200,000 amount. Therefore, the taxpayer's tax liability will be correctly reported; however, the $800,000 data point for the deduction will not exist within the Department's taxpayer database.

Currently, sellers, as part of their tax reporting responsibilities, report their aggregate retail sales during the tax reporting period and any associated sales tax collections. Sales exempt from sales tax are also reported in aggregate. A separate tax reporting code does not exist for all sales tax exemptions. Under current law, buyers claiming sales and use tax exemptions do not report exempt amounts to the Department.

Some sales and use tax exemption are considered "buyer-based" exemptions where the buyer has to submit documentation to the seller to substantiate eligibility for the exemption. The most common example of a buyer-based sales and use tax exemption is the exemption for machinery and equipment used by manufacturers.

Public Disclosure of Tax Information

Generally, firm-specific tax information is confidential unless a specific exception is provided in the law. Examples of existing exceptions include disclosure of tax information as part of a judicial proceeding and disclosure of tax information to certain federal agencies. As noted above, firm-specific taxpayer savings reported on the Annual Survey is an exception to this general rule as well, and may be disclosed.

Summary of Bill:

Annual Survey and Annual Report

The Annual Survey and Annual Report are consolidated into a single Annual Accountability Report reflecting the recommendations of the Department of Revenue. More specifically, the consolidated Accountability Report: (1) Eliminates reporting of information that does not help the Legislative Auditor provide meaningful recommendations on the legislation's effectiveness in creating jobs or improving competiveness. This would include questions such as the number of patents applied for or tons of product produced; (2) requires useable tax data accessible from tax returns and employment data. For example, requirements to report wage bands and detailed breakdowns of job types are replaced with average wages for positions within five basic job categories; (3) for sales and use tax deferrals, taxpayers must initially file the new report in the calendar year in which the firm first purchases tax exempt goods and services; (4) taxpayers are allowed to qualify for a tax preference under an amended return even after the accountability document filing due date; and (5) makes disclosures of taxpayer information and disclosure waivers consistent. Employment data and tax savings data is subject to public disclosure.

Tax Data Collection by the Department of Revenue

Taxpayers claiming buyer-based sales and use tax exemptions are required to report the amount of firm-specific tax savings to the Department as part of the taxpayer's regular tax reporting duties. This reporting requirement only applies if the taxpayer has a pre-existing tax reporting duty, such as ongoing Business and Occupation (B&O) tax reporting responsibilities, and the taxpayer electronically reports taxes.

The Department is required to establish unique reporting codes for data tracking for: All B&O and Public Utility Tax (PUT) deductions, all sales and use tax exemptions reported by sellers, and the sales and use tax exemptions reported by buyers required to report tax savings on an addendum. This requirement only applies to returns filed electronically.

A penalty is imposed for taxpayers not reporting sales and use tax savings on an addendum or B&O tax and PUT deductions. The penalty amount is the lesser of: $50 or one-half of one percent of the unreported amount.

<u>Public Disclosure of Tax Information</u>
In addition to the public disclosure requirements for the information reported on the new Annual Accountability Report, disclosure is authorized for certain tax information of publicly traded companies if: (1) The taxpayer electronically files a state tax return on a monthly or quarterly basis; (2) the taxpayer claims one or more tax preferences and the annual amount claimed for any single tax preference exceeds $10,000; and (3) the tax information is for a tax reporting period that is at least 24 months prior to the date of disclosure.

The Department is required to provide tax information subject to disclosure on its website in the form of a searchable database and any other format it deems appropriate.

Appropriation: None.

Fiscal Note: Available

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 214 and 216 relating to tax rates, which take effect July 1, 2015.