SENATE BILL REPORT
SB 5039

As of February 13, 2013

Title: An act relating to increasing revenues dedicated to basic education purposes.

Brief Description: Increasing revenues dedicated to basic education purposes.

Sponsors: Senators McAuliffe, Shin, Kohl-Welles and Kline; by request of Governor Gregoire.

Brief History:
Committee Activity: Ways & Means: 2/14/13.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

Background: Beer Tax. The state's beer tax is a tax on brewers or distributors of beer for the privilege of manufacturing or selling beer in the state. The tax applies to each 31 gallon barrel or its equivalent. Prior to July 1, 2010, the rate of the beer tax was $8.08 per barrel. On July 1, 2010, the Legislature increased the rate of the tax by an additional $15.50 per barrel of beer, to be deposited into the general fund. Small breweries are exempt from the increase on their first 60,000 barrels produced each year. The additional rate is set to expire July 1, 2013.

Business and Occupation (B&O) Tax on Service Activities. Washington's major business tax is the B&O tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business. Revenues are deposited in the state general fund. There are a number of different rates depending on the business and activity engaged in. The main rates are: 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.8 percent for professional and personal services, and activities not classified elsewhere. Prior to July 1, 2010, the service rate was 1.5 percent. At that time a temporary increase of 0.3 percent was passed by the Legislature to be in effect until July 1, 2013. The increase also applied to other classification taxed at the 1.5 percent rate with the exception of public and private hospitals and certain research and development activities. In addition, the small business tax credit for these businesses is doubled to be worth a maximum of $70 per month from $35 a month. The small business tax credit is a permanent change.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Streamline Sales and Use Tax. Washington and 45 other states impose retail sales and use taxes. These taxes are imposed on the retail sale or use of most items of tangible personal property, digital products, and some services. The rates, definitions, and administrative provisions relating to sales and use taxes vary greatly among the approximately 7500 state and local taxing jurisdictions. This variety is one reason cited in *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), where the United States Supreme Court held that the federal commerce clause prohibits a state from requiring mail-order, and by extension Internet, firms to collect and remit state and local sales taxes unless they have a physical presence in the state.

An effort was started in early 2000 by the Federation of Tax Administrators, the Multistate Tax Commission, the National Conference of State Legislatures, and the National Governors Association, to simplify and modernize sales and use tax collection and administration nation-wide. The effort is known as the Streamlined Sales Tax Project (SSTP). The purpose of the project was to simplify sales tax collection across the country in order to address the issues raised in the *Quill* case.

Over the past couple of years, several bills have been introduced in the United States Congress that would grant states the authority to require all sellers, regardless of nexus, to collect those states' sales and use taxes.

Summary of Bill: The additional $15.50 beer tax and the additional 0.3 percent B&O tax on service activities are extended through December 31, 2016. The revenue from the extension of these additional tax rates is deposited into the education legacy trust account instead of the general fund.

A new tax on the distribution of gasoline and diesel is imposed and is based on the wholesale value of the fuel. The tax applies regardless of the use of the gasoline or diesel. Refiners and terminal operators owe the tax when fuel is removed from the rack. Distributors that import fuel from outside of the state also owe the tax. The rate of the tax is as follows:

- 1.85 percent beginning July 1, 2013;
- 2.91 percent beginning July 1, 2015; and
- 4.62 percent beginning July 1, 2017.

Revenues from the tax on fuel distribution are deposited into the education legacy trust account and may only be used for state allocations to school districts for pupil transportation purposes.

The following credits or deductions are allowed for the new tax on fuel distribution on:

- handing losses
- bad debts
- similar taxes paid to another state on the same taxable fuel
- distribution of fuel exported outside the state; and
- sales to the federal government.

A contingency is provided in the bill where if congress or the courts allow states to require remote sellers to collect sales tax on sales into states where they do not have a physical presence, the Department of Revenue, with help from the economic and revenue forecast council must annually estimate the anticipated net increase in state sale tax revenue resulting from the action. On the last day of each fiscal year, the state Treasurer must transfer this amount from the general fund to the education legacy trust account.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2013