Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 2134

Brief Description: Concerning the creation, extension, expansion, accountability, and transparency of state tax preferences.

Sponsors: Representatives Carlyle, Manweller, Pollet, Ryu, Reykdal, Ormsby and Tharinger.

Brief Summary of Bill

- Consolidates and streamlines the Annual Report and Annual Survey into a single accountability document.
- Increases the availability and consistency with regard to tax preference data reported to the Department of Revenue (Department).
- Authorizes the firm-specific public disclosure of certain tax preferences in excess of $10,000, if the tax information was reported to the Department at least 24 months prior to the date of disclosure.
- Updates the Department of Revenue Tax Exemption Report.

Hearing Date: 2/20/15

Staff: Jeffrey 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.

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.

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-related preferences. There are currently 32 economic development-related tax preferences that require one of these supplemental filings. While the Report and the 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 and the taxpayer's 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 (JLARC), to recommend improvements for the Survey and the 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 the Survey into a single tax preference accountability document for all job creation and competitiveness preferences that currently utilize the Survey or the 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;
- requires usable tax data accessible from tax returns and employment data. For example, wage bands and detailed breakdowns of job types currently required on the Survey and the 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 the 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 Report and the Survey can prevent taxpayers from fully utilizing tax preferences; and

- make disclosure of taxpayer information and disclosure waivers consistent.

Tax Data Collection by the Department of Revenue.
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.

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 the sharing of tax information, under certain conditions, to legislators on fiscal, economic-development, or industry-related committees. As noted above, firm-specific taxpayer savings reported on the Survey is an exception to this general rule as well, and may be disclosed.

DOR Tax Exemption Report.
The Department of Revenue (DOR) must produce and submit to the Legislature a tax exemption report every four years. The report includes a listing of the estimated revenue loss from the exemption and the beneficiary of the exemption. The report also includes the estimated revenue loss for other tax preferences including, preferential rates, deductions, and credits. The next report is due in January 2016.

Summary of Bill:

Annual Survey and Annual Report.
The Survey and the Report are consolidated into a single Annual Accountability Report reflecting the recommendations of the Department. 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 Accountability 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.

A taxpayer is explicitly required to report any Business and Occupation (B&O) Tax and Public Utility Tax deductions. The Department is required to establish unique reporting codes for data tracking for: all B&O Tax and Public Utility Tax deductions and credits, all sales and use tax exemptions reported by sellers, and all preferential B&O tax rates. This requirement only applies to returns filed electronically.

A penalty is imposed for taxpayers not properly reporting B&O tax deductions related to investment income, rental income from commercial real estate, and interest income from certain residential loans. The penalty amount is the lesser of: $25 or one-half of one percent of the unreported amount.

Public Disclosure of Tax Information.
In addition to the public disclosure requirements for the information reported on the new Annual Accountability Report, firm-specific disclosure is authorized for preferential B&O Tax and Public Utility Tax rates, B&O Tax credits, and three deductions related to investment income, commercial real estate rental income, and interest income from certain residential loans, 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.

The Department is allowed to share confidential tax information with all legislators.

DOR Tax Exemption Report.
A number of changes are made to the DOR Tax Exemption Study to update and modernize it. Changes include the following:

- requires an updated DOR Tax Exemption Study every 2 years instead of 4 years;
- requires a section showing the effective tax rate for various industries and also including employment levels within each industry, a specific breakdown of all major taxes paid by industry, and the industry's average wage;
- requires a section showing General Fund collections as a percentage of state GDP and personal income;
- requires a section that provides the current biennial fiscal impact of tax preferences by decade of enactment;
- requires a section that provides the impact of the 1 percent property tax revenue limit;
- requires a section that provides the sales tax revenue loss from remote sales; and
- requires the report to show the most recent JLARC recommendation, if any.

Appropriation: None.

Fiscal Note: Requested on February 13, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.