

### Fiscal Estimate - 2011 Session

Original     
  Updated     
  Corrected     
  Supplemental

<b>LRB Number</b> <b>11-2769/3</b>	<b>Introduction Number</b> <b>AB-0023 (SE1)</b>	
<b>Description</b> Various duties of the Department of Revenue, including issuing declaratory judgments, conducting audits and assessments, asserting liability, allowing claims for refunds, awarding the costs of litigation, prohibiting browsing of returns and claims, imposing penalties related to a taxpayer's negligence, requiring the exercise of rule-making authority, and providing a penalty		
<b>Fiscal Effect</b>  <b>State:</b> <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
<b>Local:</b> <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs      3. <input type="checkbox"/> Increase Revenue                          5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs      4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
<b>Fund Sources Affected</b> <b>Affected Ch. 20 Appropriations</b> <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
<b>Agency/Prepared By</b> DOR/ Bradley Caruth (608) 261-8984	<b>Authorized Signature</b> John Koskinen (608) 267-8973	<b>Date</b> 10/24/2011

## Fiscal Estimate Narratives

DOR 10/24/2011

LRB Number 11-2769/3	Introduction Number AB-0023 (SE1)	Estimate Type Original
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### Assumptions Used in Arriving at Fiscal Estimate

#### RELIANCE ON PUBLISHED GUIDANCE

Under current law, positions taken by DOR rely on current statute, administrative rule or court cases. DOR publications give guidance on these laws, rules and court decisions. DOR provides notice of changes to standards resulting from law changes or court decisions; however DOR does not always retract or amend past publications.

Under the bill, DOR would not be allowed to take a position adverse to any taxpayer if that position is contrary to any rule promulgated by DOR that was in effect during the period of the audit, assessment, or claim or that is contrary to any guidance published by DOR prior to that period and not subsequently retracted, altered, or amended.

#### RELIANCE ON PAST AUDITS

Under the bill, persons subject to audits or assessments, including commonly controlled groups for income or franchise tax purposes, would not be liable for amounts if the liability asserted by DOR was present in a prior audit or assessment but not asserted by DOR and DOR knew about the tax issue creating the liability prior to completing the prior audit or assessment. This provision does not cover the treatment of tax issues that were not specifically addressed in the prior assessment or audit determination by DOR.

Since DOR regularly audits the largest corporation and also re-audits other taxpayers, this provision would potentially affect the revenue generated by such activities. In fiscal year 2007 it was estimated that a similar provision would reduce revenue by \$6.5 million annually. This provision is expected to have a substantially smaller fiscal impact, but the amount is unknown. Annual revenue loss is expected to fluctuate based on audit selection. The provision will not affect revenue in the current biennium.

#### CLASS ACTION LAWSUITS INVOLVING TAX REFUNDS

The bill also prohibits pending and future class action lawsuits against the state or any other party if the relief sought by the plaintiff includes the refund of any tax administered by the state.

Class action lawsuits involving states taxes are rare, but the bill would eliminate the risk of potentially large, though infrequent judgments.

#### TAX APPEALS COMMISSION - NONACQUIESCENCE

Under current law, DOR can choose not to appeal a ruling by the Tax Appeals Commission (TAC). DOR can instead file a notice of nonacquiescence with the commission. As a result of this filing, the TAC decision is binding on the parties, but DOR is not bound by the TAC's legal reasoning in future cases.

Under the bill, although DOR may file a notice of nonacquiescence, the decision may be cited by the commission and the courts in future cases. To the extent that current law does not prohibit nonacquiesced TAC decisions to be cited in future cases, this provision has no effect.

#### DECLARATORY RULINGS

Under current law, any state agency, including DOR, may, upon petition, issue a declaratory ruling regarding

the applicability of any rule or statute it enforces. Agencies are required, within a reasonable time after receipt of the petition, to either deny the petition or schedule a hearing on the petition. The agency may deny the petition but must provide reasons for the denial. These rulings bind the agency and all parties on the statement of facts alleged, unless the rulings are altered or set aside by a court. Appeal of a ruling is made through the circuit court.

Under the bill, if a taxpayer files a petition with DOR to issue a declaratory ruling, DOR must either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition no later than 30 days after receiving it. If DOR does not deny the petition, DOR must hold a hearing and issue a ruling no later than 180 days after receiving the petition, unless the time is extended by written agreement with all parties.

#### PROMULGATING RULES

Under current law, taxpayers can file a petition with a state agency to have that agency promulgate a rule. Under this bill, if a petition filed with DOR alleges that DOR has established a standard, but has not promulgated a rule to adopt that standard, DOR must submit a statement of the scope of the proposed rule in final draft form to the governor no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, DOR must submit the proposed rule in final draft form to the governor for approval. The rule does not have to adhere to the standard established by DOR but has to address the same circumstances as the standard addresses.

#### ADMINISTRATIVE COSTS

The department may incur annual administrative costs associated with awarding the costs of litigation to the prevailing party. In a given year there may be no costs or costs may be as much as \$200,000 if there are awards for major cases involving specialized tax attorneys.

#### **Long-Range Fiscal Implications**

## Fiscal Estimate Worksheet - 2011 Session

Detailed Estimate of Annual Fiscal Effect

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<b>I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b>			
<b>II. Annualized Costs:</b>		<b>Annualized Fiscal Impact on funds from:</b>	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
	State Operations - Salaries and Fringes	\$	\$
	(FTE Position Changes)		
	State Operations - Other Costs		
	Local Assistance		
	Aids to Individuals or Organizations		
	<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$</b>
<b>B. State Costs by Source of Funds</b>			
	GPR		
	FED		
	PRO/PRS		
	SEG/SEG-S		
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>			
		Increased Rev	Decreased Rev
	GPR Taxes	\$	\$
	GPR Earned		
	FED		
	PRO/PRS		
	SEG/SEG-S		
	<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>
<b>NET ANNUALIZED FISCAL IMPACT</b>			
		<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS		\$SeeText	\$
NET CHANGE IN REVENUE		\$SeeText	\$
<b>Agency/Prepared By</b>		<b>Authorized Signature</b>	<b>Date</b>
DOR/ Bradley Caruth (608) 261-8984		John Koskinen (608) 267-8973	10/24/2011