



## BROWNING SALT CONSULTING, INC.

RECENT STATE & LOCAL TAX DEVELOPMENTS AFFECTING WASHINGTON BUSINESSES  
BY STEVEN J. BROWNING, CPA

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*“Bringing value to your business”*

#### Visit our new Website:

[www.saltconsulting.net](http://www.saltconsulting.net)

We have included links to several state, local and other helpful websites and will continue to add other sites as we become aware of them.

Please note our contact information has changed:

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## New Washington Tax Laws: A Legislative Summary

With the recent completion of this year’s Washington State legislative session, it is time to take a brief look at some of the key tax law changes coming out of Olympia.

• Miscellaneous Revenue and Taxation Bill (ESHB 2314) – This law includes several tax changes. Three of these changes are shown below.

– Extended Warranties. On July 1, 2005, extended warranties will be subject to retail sales tax even if purchased separately. Sellers also will need to report this revenue under the retailing B&O classification rather than service & other classification.

– Direct Mail Delivery Charges. Direct mail delivery charges are now statutorily exempt from sales/use tax and B&O tax if the charges are separately stated on the bill.

– High Technology Credit. A technical correction to last year’s law changes the way the credit rate is computed and makes the change retroactive to June 10, 2004. It also gradually increases the credit rate starting in January 2007. Electronic filing of the annual survey is now mandatory for most taxpayers.

• Reporting of Transfer of Controlling Interest in Real Property (HB 1315) – Persons required to file an annual report with the Secretary of State are now required to disclose any transfer of a controlling interest in real property on the annual report.

• Liter Tax Exemption (HB 1887) – This law exempts caterers from the litter tax on the sale of prepared food or beverages when the food or beverage is served in reusable containers.

• Estate Tax (ESB 6096) – A new estate tax was enacted with tax rates ranging from 10 to 19 percent of estates with a value of \$1.5 million or more. Favorable rules for estates with farm property were also enacted. The new estate tax replaces the estate tax that was held unconstitutional by the Washington State Supreme Court earlier this year.

• More DOR Auditors (ESSB 6090) – An additional \$1.4 million has been added to the Department of Revenue budget to hire more audit personnel, which will result in even more audits this year.

(New WA Tax Law continued from page 1)

- **Field Burning Exemptions** (SB 5663) – This law repeals existing B&O, property, and sales/use tax exemptions and credits for property used to reduce field burning and enacts a new sales/use tax exemption that refines and narrows the incentives that are offered for this type of property. A person considering purchasing property of this type should consider timing the purchase to occur either before or after the effective date of July 1, 2005, depending on which provision provides the greatest benefit.
- **Commute Trip Reduction Credit** (SB 6003) – This law increases the annual commute trip reduction tax credit from \$2.25 million to \$2.75 million and requires that an application be filed between January 1 and January 31 of the following year. If total applications exceed \$2.75 million, a ratable reduction will occur to all approved application amounts. The law takes effect July 1, 2005.

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## States Continue Aggressive Hunt for Unregistered Businesses

States continue to aggressively go after out-of-state companies that are not registered but are doing business in their state. Armed with several recent court cases, states are looking for unregistered businesses that are making a market in the state through independent sales representatives.

To read more about ways to minimize this tax, interest, and penalty exposure, go to [www.saltconsulting.net](http://www.saltconsulting.net), click on the “Services” tab, and page down to “Registration Assistance.” Learn how anonymous, voluntary registration may benefit your company.

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## Telecommuters Beware! New York is Looking for You! Other States Could Follow Suit

New York has long held the reputation of heavily taxing its residents. However, what many do not know is that New York’s tax burden may weigh heavily on nonresidents as well. Washington residents who work even part-time as an employee in New York may be required to pay New York income tax on 100 percent of compensation. Federal legislation is about to be reintroduced that would prohibit this practice.

The state of New York has an administrative rule that allows it to tax 100 percent of the compensation paid to a nonresident who telecommutes for a New York employer. This rule was upheld by the NY Court of Appeals this spring in Huckaby v. New York. Huckaby, a Tennessee resident who spent 25 percent of his time working in New York and the rest working from his home in Tennessee, was held to be taxable on 100 percent of his compensation, including that portion he earned in Tennessee. Known as the “Convenience of the Employer” rule,

all the income is taxable if the employee telecommutes as a personal convenience rather than out of necessity. However, according to Nicole Belson Goluboff, a New York attorney who serves on the Advisory Board of The Telework Coalition, New York has made the distinction between convenience and necessity virtually meaningless by holding that telecommuting is a necessity only in situations where the work cannot be performed in New York.

Last September Senator Christopher Dodd (D-CT) and Rep. Christopher Shays (R-CT) introduced a federal bill calling for the effective elimination of this rule. Specifically, it would prohibit any state from taxing income earned by a nonresident for services performed outside the state. The bill was motivated by an earlier decision involving a Connecticut

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resident, Zelinsky v. New York Tax Appeals Tribunal. As a result of Huckaby, it is now clear New York intends to apply its rule to nonresidents regardless of how near they live to New York.

Although the session ended without passage of the bill, Ms. Goluboff said Senator Dodd and Rep. Shays recently held a press conference to announce they would be reintroducing the bill this year. Ms. Goluboff encourages anyone who would like to know more about this issue to visit the coalition's website at [www.telcoa.org](http://www.telcoa.org). Anyone wishing to write their representatives to urge support of the bill will also find sample letters and other helpful information they may use.

### DOR Seeks Stakeholder Input on Two Rule Revisions

Two very significant Washington Administrative Code (WAC) rules are being reconstructed by the Department of Revenue. First, a rewrite of WAC Rule 155, Computer and Information Services, is underway. A stakeholders meeting was held in April 27 to begin the process of identifying key issues surrounding the taxation of computer software. A second meeting was held May 26. Anyone interested in attending future meetings or making comments should contact Allan Lau at [allanl@dor.wa.gov](mailto:allanl@dor.wa.gov). One issue the revised rule will address is the taxability of electronically delivered software and inactive, imbedded software. It will also address the issue of routine software installation—which is a retail sale—versus software configuration—which is not.

Second, Rule 194, Doing Business Inside and Outside the State, is undergoing a major revision. Rule 194 explains how to determine what portion of a multi-state taxpayer's service income is taxable in Washington. The revised rule will explain

when a taxpayer is engaging in business outside Washington. It will also outline how costs are assigned for apportionment purposes and when separate accounting can be used.

We are monitoring both rule revisions and will discuss them in future newsletters.

### Guidelines for Temp Staffing Companies Now Available

In our last newsletter we reported on developments affecting temporary staffing companies. Since then, the Department of Revenue has issued written guidelines for companies in this industry. These guidelines can be accessed at the following internet address: [www.dor.wa.gov/content/taxes/Industry/Staffing/default.aspx](http://www.dor.wa.gov/content/taxes/Industry/Staffing/default.aspx). The good news is the Department will not assess tax on taxpayers that reported revenue net of employee reimbursements for periods before January 1, 2003. Temporary staffing agencies whose employees perform retail activities, such as construction services for a consumer, must start collecting retail sales tax July 1, 2005.



**Browning SALT Consulting, Inc.** specializes exclusively in state and local tax (SALT) matters. Its mission is to help clients minimize their overall SALT burden—both above and below the line—and increase the value of their business through improved profitability and cash flow. Some of the services Browning offers clients include:

- Refund/Credit Studies
- Audit Representation and Defense
- Research and Analysis
- Transaction Planning
- Due Diligence
- Voluntary Disclosure Agreements
- Compliance and Registration Services
- Temporary Staffing

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