Multiple Agency Fiscal Note Summary

Bill Number: 5733 SB	**Title:** Payment card processing/tax

Estimated Cash Receipts

Agency Name	2023-25			2025-27			2027-29		
	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total	GF-State	NGF-Outlook	Total
Department of Revenue	(183,300,000)	(208,600,000)	(208,600,000)	(31,100,000)	(53,900,000)	(53,900,000)	(45,700,000)	(75,400,000)	(75,400,000)
Total $	**(183,300,000)**	**(208,600,000)**	**(208,600,000)**	**(31,100,000)**	**(53,900,000)**	**(53,900,000)**	**(45,700,000)**	**(75,400,000)**	**(75,400,000)**

Estimated Operating Expenditures

Agency Name	2023-25				2025-27				2027-29			
	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total	FTEs	GF-State	NGF-Outlook	Total
Department of Revenue	1.7	489,400	489,400	489,400	.6	123,400	123,400	123,400	.5	100,600	100,600	100,600
Board of Tax Appeals	.0	0	0	0	.0	0	0	0	.0	0	0	0
Total $	**1.7**	**489,400**	**489,400**	**489,400**	**0.6**	**123,400**	**123,400**	**123,400**	**0.5**	**100,600**	**100,600**	**100,600**

Estimated Capital Budget Expenditures

Agency Name	2023-25			2025-27			2027-29		
	FTEs	Bonds	Total	FTEs	Bonds	Total	FTEs	Bonds	Total
Department of Revenue	.0	0	0	.0	0	0	.0	0	0
Board of Tax Appeals	.0	0	0	.0	0	0	.0	0	0
Total $	**0.0**	**0**	**0**	**0.0**	**0**	**0**	**0.0**	**0**	**0**

Estimated Capital Budget Breakout

Prepared by: Cheri Keller, OFM	**Phone:** (360) 584-2207	**Date Published:** Final 2/14/2023

FNPID 66959

FNS029 Multi Agency rollup

Department of Revenue Fiscal Note

Bill Number: 5733 SB	Title: Payment card processing/tax	Agency: 140-Department of Revenue

Part I: Estimates

☐ **No Fiscal Impact**

Estimated Cash Receipts to:

Account	FY 2024	FY 2025	2023-25	2025-27	2027-29
GF-STATE-State 01 - Taxes 05 - Bus and Occup Tax	(107,200,000)	(9,400,000)	(116,600,000)	(31,100,000)	(45,700,000)
GF-STATE-State 01 - Taxes 75 - Penalties and Intrst	(66,700,000)		(66,700,000)		
Workforce Education Investment Account-State 01 - Taxes 05 - Bus and Occup Tax	(16,700,000)	(8,600,000)	(25,300,000)	(22,800,000)	(29,700,000)
Total $	(190,600,000)	(18,000,000)	(208,600,000)	(53,900,000)	(75,400,000)

Estimated Expenditures from:

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	2.3	1.2	1.7	0.6	0.5
Account					
GF-STATE-State 001-1	367,900	121,500	489,400	123,400	100,600
Total $	367,900	121,500	489,400	123,400	100,600

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

☒ If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

☐ If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

☐ Capital budget impact, complete Part IV.

☐ Requires new rule making, complete Part V.

Legislative Contact:	Alia Kennedy	Phone: 360-786-7405	Date: 02/09/2023
Agency Preparation:	Melissa Howes	Phone: 360-534-1518	Date: 02/13/2023
Agency Approval:	Valerie Torres	Phone: 360-534-1521	Date: 02/13/2023
OFM Review:	Cheri Keller	Phone: (360) 584-2207	Date: 02/14/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

CURRENT LAW:
The state's primary business activities tax, the business and occupation (B&O) tax, is a gross receipts tax. As a gross receipts tax, business expenses generally cannot be deducted from the measure of the tax.

The gross income of a payment card processing company from processing credit, debit, and prepaid card transactions is taxable under the service and other activities B&O tax classification. This includes the gross amount of merchant discount income with no deduction for the payment card processing company's expenses, including interchange fees, network fees, or other such fees. Several payment card processing companies are in litigation with the Department of Revenue (department) over the department's position that these companies are subject to B&O tax on interchange fees and network fees, which are typically retained by the banks that issue payment cards to consumers (issuing banks) and by payment networks (also known as card associations).

Income taxable under the service and other activities B&O tax classification may also be subject to the additional tax on specified financial institutions (82.04.29004) or the workforce education investment surcharge (RCW 82.04.299) if a business is required to pay either tax.

Generally, businesses with total service and other activities income totaling $1 million or more pay tax at the rate of 1.75%. Of the tax paid at this rate 14.3% is deposited into the workforce education investment account. Businesses with total service and other activities income totaling less than $1 million, or businesses that pay the workforce education investment surcharge, pay tax at the rate of 1.5%.

PROPOSAL:
This bill creates a new B&O tax classification for merchant discount income received by payment card processing companies, including merchant banks, and a new deduction is created for amounts received in the form of interchange fees or network fees. The tax rate for the new classification is 3%.

If more than one payment card processor receives a portion of the merchant discount, each business reports only the amount of merchant discount it is entitled to keep.

The income taxable under the new classification may also be subject to the additional tax on specified financial institutions and the workforce education investment surcharge if the payment card processing company is required to pay either tax.

The retroactive application of this bill applies to tax periods open for assessment within the statute of limitations, including any disputed assessments pending with the department, Board of Tax Appeals, or any court of law.

If retroactive application results in overpaid tax, no tax, interest, or penalties will be refunded.

If retroactive application results in underpaid tax, the underpaid tax is exempt from penalties and interest and must be paid within 90 days of this bill's enactment.

"Merchant discount" means the aggregate fee, or negotiated discount, incurred by a merchant for the processing of payment card transactions under its contract with a payment card processing company when it accepts a payment network-branded credit, debit, or prepaid card in a sales transaction.

“Payment card processing company” means a company, including a merchant bank, that acquires, either directly or indirectly, credit, debit, or prepaid card transactions from merchants, facilitates the submission of those transactions to payment networks, and facilitates the payment of proceeds of those transactions to merchants.

“Merchant bank” means a bank that is a participant in a payment network(s) that contracts, directly or indirectly, with a merchant, enabling that merchant to accept a payment network-branded credit, debit, or prepaid card and receive cash proceeds from the sale.

“Interchange fee” means a fee set by a payment network, or by agreement between an issuing bank and a merchant or merchant bank, that an issuing bank retains from the amounts settled to the merchant as compensation for the services the issuing bank provides in issuing a credit, debit, or prepaid card to a cardholder, advancing proceeds to settle a credit, debit, or prepaid card transaction, and incurring a portion of the risks relating to the transaction.

“Network fees” means fees a payment network charges and receives as compensation for its services, including for facilitating the payment of a credit, debit, or prepaid card transaction from cardholders to a merchant through its network.

“Payment network,” means an operator of a system or network connecting one or more issuing banks to one or more merchant banks, facilitating financial transactions through the use of a credit, debit, or prepaid product.

"Issuing bank” means a bank that issues payment network-branded credit, debit, or prepaid cards to cardholders.

EFFECTIVE DATE:
This bill takes effect on October 1, 2023. However, due to the time it will take to program this bill's changes, the department is unable to implement the bill until January 1, 2024.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS
- Some payment card processing companies are not reporting a portion of the merchant discount representing interchange and network fees on their excise tax returns, because they are disputing whether they owe B&O tax on these amounts, which are retained by issuing banks and payment networks. In these instances, taxable amounts have been adjusted to calculate the amount of deduction that would be available should this bill become law.
- An analysis of audit enforcement activity for the payment card processing industry shows that 72% of businesses audited underreported interchange and network fees on their excise tax returns by a factor of 3.34. This means that for every $1 in tax reported, taxpayers should have reported $3.34, resulting in underreporting of $2.34.
- Interchange fees and network fees generally represent 68% of a credit card processor's taxable service and other activities income subject to B&O tax.
- Under current law, any disputed tax assessments regarding interchange and network fees will be upheld in favor of the department.
- Under current law, taxpayer education and audit enforcement efforts will continue and the expected revenue from the payment card processing industry will increase each fiscal year.
- If this bill passes, the retroactive language has an overall negative revenue impact in the first year as follows:
  - Any disputed tax assessments will be cancelled resulting in a revenue loss equal to the amount of those assessments.
  - Current enforcement efforts will cease and those pending assessments will not be issued resulting in a revenue loss equal to the estimated amount of those pending assessments.
  - Taxpayers will report at the higher rate based on their taxable amount after the new deduction resulting in a revenue gain.
- If this bill passes, taxpayers will begin reporting in compliance with the bill.

- For tax that is due for periods preceding the effective date of this bill, where penalties and interest are unknown, they are estimated to be 32% of the tax due.
- The department implements this legislation effective January 1, 2024.

DATA SOURCES
- Department of Revenue, Excise tax return data
- Department of Revenue, Audit data
- Economic and Revenue Forecast Council, November 2022 forecast

REVENUE ESTIMATES:
This bill decreases state revenues by an estimated $190.6 million in the five months of impacted collections in fiscal year 2024, and by $18 million in fiscal year 2025, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):
FY 2024 - ($ 190,600)
FY 2025 - ($ 18,000)
FY 2026 - ($ 23,800)
FY 2027 - ($ 30,100)
FY 2028 - ($ 36,800)
FY 2029 - ($ 38,600)

Local Government, if applicable (cash basis, $000): None.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

ASSUMPTIONS:
- This legislation will affect approximately 300 payment card processing companies, including merchant banks acting as a payment card processing company.
- The department is not able to fully implement this proposal until January 1, 2024.
- The department will not be able to receive amended returns for the retroactive portion of this legislation until after January 1, 2024. All amended returns for the retroactive portion of this legislation will be received before June 30, 2024.
- The department will be required to process amended returns using a manual process that will require increased resources for a limited amount of time.

FIRST YEAR COSTS:
The department will incur total costs of $367,900 in fiscal year 2024. These costs include:

Labor Costs - Time and effort equate to 2.25 FTEs.
- Set up, program, and test computer systems to add one new B&O tax line code for payment card processing activities and one new deduction code for interchange and network fees under the new line code.
- Update the combined excise tax return in all systems.
- Update apportionment reconciliation to include the new reporting line code.
- Create or update taxpayer notifications.
- Create a Special Notice to inform affected taxpayers of the reporting change.
- Update or create publications in print and information on the department's website.
- Respond to tax ruling requests and email inquiries.

- Process returns, payments, and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Examine accounts and make corrections as necessary.
- Process accounts with retroactive changes and interest and penalty waivers using a manual process and system adjustments.
- Amend one excise tax advisory.

Object Costs - $107,800.
- Contract computer system programming.

SECOND YEAR COSTS:
The department will incur total costs of $121,500 in fiscal year 2025. These costs include:

Labor Costs - Time and effort equate to 1.2 FTEs.
- Respond to tax ruling requests and email inquiries.
- Process returns, payments, and all associated work items, including issuing assessments for return errors and underpayments.
- Assist taxpayers with reporting questions and respond to inquiries via email, web message, and paper correspondence.
- Examine accounts and make corrections as necessary.
- Process accounts with retroactive changes and interest and penalty waivers using a manual process and system adjustments.

ONGOING COSTS:
Ongoing costs for the 2025-27 biennium equal $123,400 and include similar activities described in the second-year costs. Time and effort equate to 0.6 FTE.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2024	FY 2025	2023-25	2025-27	2027-29
FTE Staff Years	2.3	1.2	1.7	0.6	0.5
A-Salaries and Wages	158,300	79,000	237,300	80,200	65,400
B-Employee Benefits	52,300	26,100	78,400	26,400	21,600
C-Professional Service Contracts	107,800		107,800		
E-Goods and Other Services	34,000	12,700	46,700	13,000	10,600
J-Capital Outlays	15,500	3,700	19,200	3,800	3,000
Total $	$367,900	$121,500	$489,400	$123,400	$100,600

III. B - Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

Job Classification	Salary	FY 2024	FY 2025	2023-25	2025-27	2027-29
EMS BAND 4	126,619	0.0		0.0		
EMS BAND 5	147,919	0.0		0.0		
EXCISE TAX EX 2	55,872	0.1	0.1	0.1	0.1	0.1
EXCISE TAX EX 3	61,632	0.7	0.7	0.7	0.2	0.2
IT SYS ADM-JOURNEY	92,844	0.2		0.1		
MGMT ANALYST4	73,260	0.7	0.2	0.5	0.2	0.1
MGMT ANALYST5	80,952	0.1	0.1	0.1		
TAX POLICY SP 2	75,120	0.4	0.1	0.3	0.1	0.1
TAX POLICY SP 3	85,020	0.0		0.0		
TAX POLICY SP 4	91,524	0.0		0.0		
WMS BAND 3	107,685	0.0		0.0		
Total FTEs		2.3	1.2	1.8	0.6	0.5

III. C - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

Part V: New Rule Making Required

Summary of SB 5733 Total State Revenue Impact

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
Forecasted ongoing impact from this legislation	($5,300,000)	($18,000,000)	($23,800,000)	($30,100,000)	($36,800,000)	($38,600,000)
Retroactive impact from this legislation (Section 7)	($185,400,000)					
Total State Revenue Impact	($190,700,000)	($18,000,000)	($23,800,000)	($30,100,000)	($36,800,000)	($38,600,000)

Forecasted ongoing impact from this legislation						
Current Law	($22,800,000)	($61,800,000)	($69,700,000)	($78,300,000)	($87,000,000)	($91,000,000)
Proposed Law	$17,500,000	$43,800,000	$45,900,000	$48,200,000	$50,200,000	$52,400,000
	($5,300,000)	($18,000,000)	($23,800,000)	($30,100,000)	($36,800,000)	($38,600,000)

Retroactive impact from this legislation (Section 7)						
Loss of current law tax	($241,500,000)					
New tax	$56,100,000					
	($185,400,000)	$0	$0	$0	$0	$0

Summary of SB 5733 Revenue Impact by Fund

	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029
General Fund						
Forecasted ongoing tax collections	(2,400,000)	(9,400,000)	(13,400,000)	(17,700,000)	(22,300,000)	(23,400,000)
Retroactive tax collections - tax amounts	(104,800,000)	-	-	-	-	-
Retroactive tax collections - penalties and interest	(66,700,000)	-	-	-	-	-
	(173,900,000)	(9,400,000)	(13,400,000)	(17,700,000)	(22,300,000)	(23,400,000)
WEIA						
Forecasted ongoing tax collections	(2,900,000)	(8,600,000)	(10,400,000)	(12,400,000)	(14,500,000)	(15,200,000)
Retroactive tax collections	(13,800,000)	-	-	-	-	-
	(16,700,000)	(8,600,000)	(10,400,000)	(12,400,000)	(14,500,000)	(15,200,000)

Individual State Agency Fiscal Note

Bill Number: 5733 SB	Title: Payment card processing/tax	Agency: 142-Board of Tax Appeals

Part I: Estimates

[X] **No Fiscal Impact**

Estimated Cash Receipts to:

NONE

Estimated Operating Expenditures from:
NONE

Estimated Capital Budget Impact:

NONE

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

[ ] If fiscal impact is greater than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

[ ] If fiscal impact is less than $50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

[ ] Capital budget impact, complete Part IV.

[ ] Requires new rule making, complete Part V.

Legislative Contact:	Alia Kennedy	Phone: 360-786-7405	Date: 02/09/2023
Agency Preparation:	Bret Skipworth	Phone: 3608906657	Date: 02/14/2023
Agency Approval:	Bret Skipworth	Phone: 3608906657	Date: 02/14/2023
OFM Review:	Amy Hatfield	Phone: (360) 280-7584	Date: 02/14/2023

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Significant provisions of the bill and any related workload or policy assumptions that have revenue or expenditure impact on the responding agency by section number.

Section 7 applies this act retroactively to periods open for assessment under RCW 82.32.050 including disputed assessments pending before the Department of Revenue (DOR), Board of Tax Appeals (BTA), or any court of law.

The BTA does not collect, administer, or set taxes or fees.

The BTA has determined that applying the changes of this bill to existing cases will have no fiscal impact on the agency.

II. B - Cash receipts Impact

Cash receipts impact of the legislation on the responding agency with the cash receipts provisions identified by section number and when appropriate, the detail of the revenue sources. Description of the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explanation of how workload assumptions translate into estimates. Distinguished between one time and ongoing functions.

II. C - Expenditures

Agency expenditures necessary to implement this legislation (or savings resulting from this legislation), with the provisions of the legislation that result in the expenditures (or savings) identified by section number. Description of the factual basis of the assumptions and the method by which the expenditure impact is derived. Explanation of how workload assumptions translate into cost estimates. Distinguished between one time and ongoing functions.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

NONE

III. B - Expenditures by Object Or Purpose

NONE

III. C - Operating FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part I and Part IIIA.*

NONE

III. D - Expenditures By Program (optional)

NONE

Part IV: Capital Budget Impact

IV. A - Capital Budget Expenditures

NONE

IV. B - Expenditures by Object Or Purpose

NONE

IV. C - Capital Budget Breakout

Acquisition and construction costs not reflected elsewhere on the fiscal note and description of potential financing methods.

NONE

IV. D - Capital FTE Detail: *FTEs listed by classification and corresponding annual compensation. Totals agree with total FTEs in Part IVB.*

NONE

Part V: New Rule Making Required

Provisions of the bill that require the agency to adopt new administrative rules or repeal/revise existing rules.

Multiple Agency Ten-Year Analysis Summary

Bill Number	Title
5733 SB	Payment card processing/tax

This ten-year analysis is limited to the estimated cash receipts associated with the proposed tax or fee increases.

Estimated Cash Receipts

	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	Fiscal Year 2032	Fiscal Year 2033	2024-33 TOTAL
Department of Revenue	40,900,000	43,800,000	45,900,000	48,100,000	50,100,000	52,500,000	55,000,000	57,500,000	60,000,000	62,800,000	516,600,000
Board of Tax Appeals	0	0	0	0	0	0	0	0	0	0	0
Total	**40,900,000**	**43,800,000**	**45,900,000**	**48,100,000**	**50,100,000**	**52,500,000**	**55,000,000**	**57,500,000**	**60,000,000**	**62,800,000**	**516,600,000**

Ten-Year Analysis

Bill Number	Title	Agency
5733 SB	Payment card processing/tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

☐ **No Cash Receipts** ☐ **Partially Indeterminate Cash Receipts** ☐ **Indeterminate Cash Receipts**

Estimated Cash Receipts

Name of Tax or Fee	Acct Code	Fiscal Year 2024	Fiscal Year 2025	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030	Fiscal Year 2031	Fiscal Year 2032	Fiscal Year 2033	2024-33 TOTAL
Business and occupation tax	001	40,800,000	43,700,000	45,800,000	48,000,000	50,000,000	52,400,000	54,800,000	57,300,000	59,800,000	62,600,000	515,200,000
Business and occupation tax	24j	100,000	100,000	100,000	100,000	100,000	100,000	200,000	200,000	200,000	200,000	1,400,000
Total		**40,900,000**	**43,800,000**	**45,900,000**	**48,100,000**	**50,100,000**	**52,500,000**	**55,000,000**	**57,500,000**	**60,000,000**	**62,800,000**	**516,600,000**
Biennial Totals		**84,700,000**		**94,000,000**		**102,600,000**		**112,500,000**		**122,800,000**		**516,600,000**

Narrative Explanation (Required for Indeterminate Cash Receipts)

CURRENT LAW:
The state's primary business activities tax, the business and occupation (B&O) tax, is a gross receipts tax. As a gross receipts tax, business expenses generally cannot be deducted from the measure of the tax.

The gross income of a payment card processing company from processing credit, debit, and prepaid card transactions is taxable under the service and other activities B8 tax classification. This includes the gross amount of merchant discount income with no deduction for the payment card processing company's expenses, including interchange fees, network fees, or other such fees. Several payment card processing companies are in litigation with the Department of Revenue (department) over the department's position that these companies are subject to B&O tax on interchange fees and network fees, which are typically retained by the banks that issue payment cards to consumers (issuing banks) and by payment networks (also known as card associations).

Income taxable under the service and other activities B&O tax classification may also be subject to the additional tax on specified financial institutions (82.04.29004) or th workforce education investment surcharge (RCW 82.04.299) if a business is required to pay either tax.

Ten-Year Analysis

Bill Number	Title	Agency
5733 SB	Payment card processing/tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Narrative Explanation (Required for Indeterminate Cash Receipts)

Generally, businesses with total service and other activities income totaling $1 million or more pay tax at the rate of 1.75%. Of the tax paid at this rate 14.3% is deposited into the workforce education investment account. Businesses with total service and other activities income totaling less than $1 million, or businesses that pay the workfo education investment surcharge, pay tax at the rate of 1.5%.

PROPOSAL:
This bill creates a new B&O tax classification for merchant discount income received by payment card processing companies, including merchant banks, and a new deduction is created for amounts received in the form of interchange fees or network fees. The tax rate for the new classification is 3%.

If more than one payment card processor receives a portion of the merchant discount, each business reports only the amount of merchant discount it is entitled to keep.

The income taxable under the new classification may also be subject to the additional tax on specified financial institutions and the workforce education investment surcharge if the payment card processing company is required to pay either tax.

The retroactive application of this bill applies to tax periods open for assessment within the statute of limitations, including any disputed assessments pending with the department, Board of Tax Appeals, or any court of law.

If retroactive application results in overpaid tax, no tax, interest, or penalties will be refunded.

If retroactive application results in underpaid tax, the underpaid tax is exempt from penalties and interest and must be paid within 90 days of this bill's enactment.

"Merchant discount" means the aggregate fee, or negotiated discount, incurred by a merchant for the processing of payment card transactions under its contract with a payment card processing company when it accepts a payment network-branded credit, debit, or prepaid card in a sales transaction.

“Payment card processing company” means a company, including a merchant bank, that acquires, either directly or indirectly, credit, debit, or prepaid card transactions from merchants, facilitates the submission of those transactions to payment networks, and facilitates the payment of proceeds of those transactions to merchants.

“Merchant bank” means a bank that is a participant in a payment network(s) that contracts, directly or indirectly, with a merchant, enabling that merchant to accept a payment network-branded credit, debit, or prepaid card and receive cash proceeds from the sale.

“Interchange fee” means a fee set by a payment network, or by agreement between an issuing bank and a merchant or merchant bank, that an issuing bank retains from

Ten-Year Analysis

Bill Number	Title	Agency
5733 SB	Payment card processing/tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Narrative Explanation (Required for Indeterminate Cash Receipts)

amounts settled to the merchant as compensation for the services the issuing bank provides in issuing a credit, debit, or prepaid card to a cardholder, advancing proceed settle a credit, debit, or prepaid card transaction, and incurring a portion of the risks relating to the transaction.

“Network fees” means fees a payment network charges and receives as compensation for its services, including for facilitating the payment of a credit, debit, or prepaid c transaction from cardholders to a merchant through its network.

“Payment network,” means an operator of a system or network connecting one or more issuing banks to one or more merchant banks, facilitating financial transactions through the use of a credit, debit, or prepaid product.

"Issuing bank” means a bank that issues payment network-branded credit, debit, or prepaid cards to cardholders.

EFFECTIVE DATE:
This bill takes effect on October 1, 2023. However, due to the time it will take to program this bill's changes, the department is unable to implement the bill until January 1 2024.

ASSUMPTIONS
- Some payment card processing companies are not reporting a portion of the merchant discount representing interchange and network fees on their excise tax returns, because they are disputing whether they owe B&O tax on these amounts, which are retained by issuing banks and payment networks. In these instances, taxable amoun have been adjusted to calculate the amount of deduction that would be available should this bill become law.
- An analysis of audit enforcement activity for the payment card processing industry shows that 72% of businesses audited underreported interchange and network fees c their excise tax returns by a factor of 3.34. This means that for every $1 in tax reported, taxpayers should have reported $3.34, resulting in underreporting of $2.34.
- Interchange fees and network fees generally represent 68% of a credit card processor's taxable service and other activities income subject to B&O tax.
- Under current law, any disputed tax assessments regarding interchange and network fees will be upheld in favor of the department.
- Under current law, taxpayer education and audit enforcement efforts will continue and the expected revenue from the payment card processing industry will increase ea fiscal year.
- If this bill passes, the retroactive language has an overall negative revenue impact in the first year as follows:
  - Any disputed tax assessments will be cancelled resulting in a revenue loss equal to the amount of those assessments.
  - Current enforcement efforts will cease and those pending assessments will not be issued resulting in a revenue loss equal to the estimated amount of those pending assessments.
  - Taxpayers will report at the higher rate based on their taxable amount after the new deduction resulting in a revenue gain.

Ten-Year Analysis

Bill Number	Title	Agency
5733 SB	Payment card processing/tax	140 Department of Revenue

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Narrative Explanation (Required for Indeterminate Cash Receipts)

- If this bill passes, taxpayers will begin reporting in compliance with the bill.
- For tax that is due for periods preceding the effective date of this bill, where penalties and interest are unknown, they are estimated to be 32% of the tax due.
- The department implements this legislation effective January 1, 2024.

DATA SOURCES
- Department of Revenue, Excise tax return data
- Department of Revenue, Audit data
- Economic and Revenue Forecast Council, November 2022 forecast

REVENUE ESTIMATES:
This bill decreases state revenues by an estimated $190.6 million in the five months of impacted collections in fiscal year 2024, and by $18 million in fiscal year 2025, the first full year of impacted collections.

TOTAL REVENUE IMPACT:

State Government (cash basis, $000):
FY 2024 - ($ 190,600)
FY 2025 - ($ 18,000)
FY 2026 - ($ 23,800)
FY 2027 - ($ 30,100)
FY 2028 - ($ 36,800)
FY 2029 - ($ 38,600)

Local Government, if applicable (cash basis, $000): None.

Agency Preparation: Melissa Howes	Phone: 360-534-1518	Date: 2/13/2023 6:38:01 pm
Agency Approval: Valerie Torres	Phone: 360-534-1521	Date: 2/13/2023 6:38:01 pm
OFM Review:	Phone:	Date:

Ten-Year Analysis

Bill Number	Title	Agency
5733 SB	Payment card processing/tax	142 Board of Tax Appeals

This ten-year analysis is limited to agency estimated cash receipts associated with the proposed tax or fee increases. The Office of Financial Management ten-year projection can be found at http://www.ofm.wa.gov/tax/default.asp .

Estimates

[X] **No Cash Receipts**

[ ] **Partially Indeterminate Cash Receipts**

[ ] **Indeterminate Cash Receipts**

Name of Tax or Fee	Acct Code											

Agency Preparation:	Bret Skipworth	Phone:	3608906657	Date:	2/14/2023 8:01:28 am
Agency Approval:	Bret Skipworth	Phone:	3608906657	Date:	2/14/2023 8:01:28 am
OFM Review:		Phone:		Date:	