HB 1115/SB 5111 Taxes on Recording Fees Testimony

* Here on behalf of the Washington Land Title Association in support of HB 1115/SB 5111
  + The WLTA was established in 1905 and is an association of title and escrow agents and title underwriters.
  + We are the agents that handle the closing of real estate transactions, including paying off loans and filing various fees and taxes at closing, such as document recording fees, so that property can be transferred free and clear.
* We are here today because of a tax situation that has been very confusing to the WLTA members. The DOR has audited some of our members and told them they need to pay Sales and B&O tax on document recording fees along with back taxes; other members have been audited and have NOT been told that they need to pay tax on recording fees – nor has it been included in their instructions going forward.
* The bill before you - HB 1115/SB 5111 - would clarify that recording fees are not taxable.
* Recording fees are a “pass through” fee, meaning the title company takes in this fee and passes it directly to the county auditor. In fact, the title companies handle many pass-through items, including loan payoffs and other real estate taxes that are due at a real estate closing. It is confusing to understand why recording fees have been specifically targeted for a tax yet the other pass through items have not.
* We also want to make you aware of a recent Court of Appeals decision that was issued in February 2024. The Court of Appeals, Division II, in BIAW v. State of WA, held that recording fees are excise taxes - and not fees - because the majority of the fee goes to support public programs and not just to cover the administrative cost of filing the document. This decision was not appealed and is now the law in Washington State.
* Since the Court has now clearly stated that a document recording fee is a tax and not a fee, we are asking the Legislature to clarify that recording FEES/TAXES are not subject to B&O and sales tax.
* Finally, we have been in discussions with the DOR since last summer and as recently as last Friday. We have agreed to remove the intent section of the bill and also to fix unintentional language that would create a technical problem for DOR on implementation. We continue to be open to a dialogue with them. Thank you.