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HOUSE BILL 1342

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State of Washington

55th Legislature

1997 Regular Session

By Representatives B. Thomas, Dunshee and Wensman; by request of  
Department of Revenue

Read first time 01/22/97. Referred to Committee on Finance.

1 AN ACT Relating to interest and penalty administration of the  
2 department of revenue; and amending RCW 82.32.050, 82.32.060,  
3 82.32.210, 82.45.100, and 83.100.070.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.32.050 and 1996 c 149 s 2 are each amended to read  
6 as follows:

7 (1) If upon examination of any returns or from other information  
8 obtained by the department it appears that a tax or penalty has been  
9 paid less than that properly due, the department shall assess against  
10 the taxpayer such additional amount found to be due and shall add  
11 thereto interest on the tax only. The department shall notify the  
12 taxpayer by mail of the additional amount and the additional amount  
13 shall become due and shall be paid within thirty days from the date of  
14 the notice, or within such further time as the department may provide.

15 (a) For tax liabilities arising before January 1, 1992, interest  
16 shall be computed at the rate of nine percent per annum from the last  
17 day of the year in which the deficiency is incurred until the earlier  
18 of December 31, 1998, or the date of payment ((for tax liabilities  
19 arising before January 1, 1992)). After December 31, 1998, the rate of

1 interest shall be variable and computed as provided in subsection (2)  
2 of this section. The rate so computed shall be adjusted on the first  
3 day of January of each year for use in computing interest for that  
4 calendar year.

5 (b) For tax liabilities arising after December 31, 1991, (~~until~~  
6 ~~the date of payment,~~) the rate of interest shall be variable and  
7 computed as provided in subsection (2) of this section from the last  
8 day of the year in which the deficiency is incurred until the date of  
9 payment. The rate so computed shall be adjusted on the first day of  
10 January of each year(~~. The department shall notify the taxpayer by~~  
11 ~~mail of the additional amount and the same shall become due and shall~~  
12 ~~be paid within thirty days from the date of the notice, or within such~~  
13 ~~further time as the department may provide)~~) for use in computing  
14 interest for that calendar year.

15 (c) Interest imposed after December 31, 1998, shall be computed  
16 from the last day of the month following each calendar year included in  
17 a notice, and the last day of the month following the final month  
18 included in a notice if not the end of a calendar year, until the due  
19 date of the notice. If payment in full is not made by the due date of  
20 the notice, additional interest shall be computed until the date of  
21 payment. The rate of interest shall be variable and computed as  
22 provided in subsection (2) of this section. The rate so computed shall  
23 be adjusted on the first day of January of each year for use in  
24 computing interest for that calendar year.

25 (2) For the purposes of this section, the rate of interest to be  
26 charged to the taxpayer shall be an average of the federal short-term  
27 rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points.  
28 The rate shall be computed by taking an arithmetical average to the  
29 nearest percentage point of the federal short-term rate, compounded  
30 annually, for the months of January, April, July, and October of the  
31 immediately preceding calendar year as published by the United States  
32 secretary of the treasury.

33 (3) No assessment or correction of an assessment for additional  
34 taxes, penalties, or interest due may be made by the department more  
35 than four years after the close of the tax year, except (a) against a  
36 taxpayer who has not registered as required by this chapter, (b) upon  
37 a showing of fraud or of misrepresentation of a material fact by the  
38 taxpayer, or (c) where a taxpayer has executed a written waiver of such

1 limitation. The execution of a written waiver shall also extend the  
2 period for making a refund or credit as provided in RCW 82.32.060(2).

3 (4) For the purposes of this section, "return" means any document  
4 a person is required by the state of Washington to file to satisfy or  
5 establish a tax or fee obligation that is administered or collected by  
6 the department of revenue and that has a statutorily defined due date.

7 **Sec. 2.** RCW 82.32.060 and 1992 c 169 s 2 are each amended to read  
8 as follows:

9 (1) If, upon receipt of an application by a taxpayer for a refund  
10 or for an audit of the taxpayer's records, or upon an examination of  
11 the returns or records of any taxpayer, it is determined by the  
12 department that within the statutory period for assessment of taxes,  
13 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,  
14 penalty, or interest has been paid in excess of that properly due, the  
15 excess amount paid within, or attributable to, such period shall be  
16 credited to the taxpayer's account or shall be refunded to the  
17 taxpayer, at the taxpayer's option. Except as provided in subsections  
18 (2) and (3) of this section, no refund or credit shall be made for  
19 taxes, penalties, or interest paid more than four years prior to the  
20 beginning of the calendar year in which the refund application is made  
21 or examination of records is completed.

22 (2) The execution of a written waiver under RCW 82.32.050 or  
23 82.32.100 shall extend the time for making a refund or credit of any  
24 taxes paid during, or attributable to, the years covered by the waiver  
25 if, prior to the expiration of the waiver period, an application for  
26 refund of such taxes is made by the taxpayer or the department  
27 discovers a refund or credit is due.

28 (3) Notwithstanding the foregoing limitations there shall be  
29 refunded or credited to taxpayers engaged in the performance of United  
30 States government contracts or subcontracts the amount of any tax paid,  
31 measured by that portion of the amounts received from the United  
32 States, which the taxpayer is required by contract or applicable  
33 federal statute to refund or credit to the United States, if claim for  
34 such refund is filed by the taxpayer with the department within one  
35 year of the date that the amount of the refund or credit due to the  
36 United States is finally determined and filed within four years of the  
37 date on which the tax was paid: PROVIDED, That no interest shall be  
38 allowed on such refund.

1 (4) Any such refunds shall be made by means of vouchers approved by  
2 the department and by the issuance of state warrants drawn upon and  
3 payable from such funds as the legislature may provide. However,  
4 taxpayers who are required to pay taxes by electronic funds transfer  
5 under RCW 82.32.080 shall have any refunds paid by electronic funds  
6 transfer.

7 (5) Any judgment for which a recovery is granted by any court of  
8 competent jurisdiction, not appealed from, for tax, penalties, and  
9 interest which were paid by the taxpayer, and costs, in a suit by any  
10 taxpayer shall be paid in the same manner, as provided in subsection  
11 (4) of this section, upon the filing with the department of a certified  
12 copy of the order or judgment of the court. (~~Except as to the credits~~  
13 ~~in computing tax authorized by RCW 82.04.435,~~)

14 (a) Interest at the rate of three percent per annum shall be  
15 allowed by the department and by any court on the amount of any refund,  
16 credit, or other recovery allowed to a taxpayer for taxes, penalties,  
17 or interest paid by the taxpayer before January 1, 1992. This rate of  
18 interest shall apply for all interest allowed through December 31,  
19 1998. Interest allowed after December 31, 1998, shall be computed at  
20 the rate as computed under RCW 82.32.050(2), less one percentage point.  
21 The rate so computed shall be adjusted on the first day of January of  
22 each year for use in computing interest for that calendar year.

23 (b) For refunds or credits of amounts paid or other recovery  
24 allowed to a taxpayer after December 31, 1991, the rate of interest  
25 shall be the rate as computed for assessments under RCW 82.32.050(2),  
26 less one percentage point. The rate so computed shall be adjusted on  
27 the first day of January of each year for use in computing interest for  
28 that calendar year.

29 **Sec. 3.** RCW 82.32.210 and 1987 c 405 s 15 are each amended to read  
30 as follows:

31 (1) If any fee, tax, increase, or penalty or any portion thereof is  
32 not paid within fifteen days after it becomes due, the department of  
33 revenue may issue a warrant under its official seal in the amount of  
34 such unpaid sums, together with interest thereon (~~at the rate of one~~  
35 ~~percent of the amount of such warrant for each thirty days or portion~~  
36 ~~thereof after the date of such warrant)) from the date the warrant is  
37 issued until the date of payment. If, however, the department of  
38 revenue believes that a taxpayer is about to cease business, leave the~~

1 state, or remove or dissipate the assets out of which fees, taxes or  
2 penalties might be satisfied and that any tax or penalty will not be  
3 paid when due, it may declare the fee, tax or penalty to be immediately  
4 due and payable and may issue a warrant immediately.

5 (a) Interest imposed before January 1, 1999, shall be computed at  
6 the rate of one percent of the amount of the warrant for each thirty  
7 days or portion thereof.

8 (b) Interest imposed after December 31, 1998, shall be computed on  
9 a daily basis on the amount of outstanding tax or fee at the rate as  
10 computed under RCW 82.32.050(2). The rate so computed shall be  
11 adjusted on the first day of January of each year for use in computing  
12 interest for that calendar year. As used in this subsection, "fee"  
13 does not include an administrative filing fee such as a court filing  
14 fee and warrant fee.

15 (2) The department shall file a copy of the warrant with the clerk  
16 of the superior court of any county of the state in which real and/or  
17 personal property of the taxpayer may be found. Upon filing, the clerk  
18 shall enter in the judgment docket, the name of the taxpayer mentioned  
19 in the warrant and in appropriate columns the amount of the fee, tax or  
20 portion thereof and any increases and penalties for which the warrant  
21 is issued and the date when the copy is filed, and thereupon the amount  
22 of the warrant so docketed shall become a specific lien upon all goods,  
23 wares, merchandise, fixtures, equipment, or other personal property  
24 used in the conduct of the business of the taxpayer against whom the  
25 warrant is issued, including property owned by third persons who have  
26 a beneficial interest, direct or indirect, in the operation of the  
27 business, and no sale or transfer of the personal property in any way  
28 affects the lien.

29 (3) The lien shall not be superior, however, to bona fide interests  
30 of third persons which had vested prior to the filing of the warrant  
31 when the third persons do not have a beneficial interest, direct or  
32 indirect, in the operation of the business, other than the securing of  
33 the payment of a debt or the receiving of a regular rental on  
34 equipment(~~(:—PROVIDED, HOWEVER, That)~~)). The phrase "bona fide  
35 interests of third persons" does not include any mortgage of real or  
36 personal property or any other credit transaction that results in the  
37 mortgagee or the holder of the security acting as trustee for unsecured  
38 creditors of the taxpayer mentioned in the warrant who executed the

1 chattel or real property mortgage or the document evidencing the credit  
2 transaction.

3 (4) The amount of the warrant so docketed shall thereupon also  
4 become a lien upon the title to and interest in all other real and  
5 personal property of the taxpayer against whom it is issued the same as  
6 a judgment in a civil case duly docketed in the office of the clerk.  
7 The warrant so docketed shall be sufficient to support the issuance of  
8 writs of garnishment in favor of the state in the manner provided by  
9 law in the case of judgments wholly or partially unsatisfied.

10 **Sec. 4.** RCW 82.45.100 and 1996 c 149 s 5 are each amended to read  
11 as follows:

12 (1) Payment of the tax imposed under this chapter is due and  
13 payable immediately at the time of sale, and if not paid within one  
14 month thereafter shall bear interest (~~at the rate of one percent per~~  
15 ~~month~~) from the time of sale until the date of payment.

16 (a) Interest imposed before January 1, 1999, shall be computed at  
17 the rate of one percent per month.

18 (b) Interest imposed after December 31, 1998, shall be computed on  
19 a monthly basis at the rate as computed under RCW 82.32.050(2). The  
20 rate so computed shall be adjusted on the first day of January of each  
21 year for use in computing interest for that calendar year. The  
22 department of revenue shall provide written notification to the county  
23 treasurers of the variable rate on or before December 1 of the year  
24 preceding the calendar year in which the rate applies.

25 (2) In addition to the interest described in subsection (1) of this  
26 section, if the payment of any tax is not received by the county  
27 treasurer or the department of revenue, as the case may be, within one  
28 month of the date due, there shall be assessed a penalty of five  
29 percent of the amount of the tax; if the tax is not received within two  
30 months of the date due, there shall be assessed a total penalty of ten  
31 percent of the amount of the tax; and if the tax is not received within  
32 three months of the date due, there shall be assessed a total penalty  
33 of twenty percent of the amount of the tax. The payment of the penalty  
34 described in this subsection shall be collectible from the seller only,  
35 and RCW 82.45.070 does not apply to the penalties described in this  
36 subsection.

37 (3) If the tax imposed under this chapter is not received by the  
38 due date, the transferee shall be personally liable for the tax, along

1 with any interest as provided in subsection (1) of this section,  
2 unless:

3 (a) An instrument evidencing the sale is recorded in the official  
4 real property records of the county in which the property conveyed is  
5 located; or

6 (b) Either the transferor or transferee notifies the department of  
7 revenue in writing of the occurrence of the sale within thirty days  
8 following the date of the sale.

9 (4) If upon examination of any affidavits or from other information  
10 obtained by the department or its agents it appears that all or a  
11 portion of the tax is unpaid, the department shall assess against the  
12 taxpayer the additional amount found to be due plus interest and  
13 penalties as provided in subsections (1) and (2) of this section. The  
14 department shall notify the taxpayer by mail of the additional amount  
15 and the same shall become due and shall be paid within thirty days from  
16 the date of the notice, or within such further time as the department  
17 may provide.

18 (5) No assessment or refund may be made by the department more than  
19 four years after the date of sale except upon a showing of:

20 (a) Fraud or misrepresentation of a material fact by the taxpayer;

21 (b) A failure by the taxpayer to record documentation of a sale or  
22 otherwise report the sale to the county treasurer; or

23 (c) A failure of the transferor or transferee to report the sale  
24 under RCW 82.45.090(2).

25 (6) Penalties collected on taxes due under this chapter under  
26 subsection (2) of this section and RCW 82.32.090 (2) through (6) shall  
27 be deposited in the housing trust fund as described in chapter 43.185  
28 RCW.

29 **Sec. 5.** RCW 83.100.070 and 1996 c 149 s 13 are each amended to  
30 read as follows:

31 (1) Any tax due under this chapter which is not paid by the due  
32 date under RCW 83.100.060(1) shall bear interest at the rate of twelve  
33 percent per annum from the date the tax is due until the date of  
34 payment.

35 (2) Interest imposed under this section for periods after January  
36 1, 1997, shall be computed at the rate as computed under RCW  
37 82.32.050(2). The rate so computed shall be adjusted on the first day  
38 of January of each year.

1 (3) If the Washington return is not filed when due under RCW  
2 83.100.050, then the person required to file the federal return shall  
3 pay, in addition to interest, a penalty equal to five percent of the  
4 tax due for each month after the date the return is due until filed.  
5 No penalty may exceed twenty-five percent of the tax.

6 (4) If the department finds that a return due under this chapter  
7 has not been filed by the due date, and the delinquency was the result  
8 of circumstances beyond the control of the person required to file the  
9 federal return, the department shall waive or cancel any penalties  
10 imposed under this chapter with respect to the filing of such a tax  
11 return.

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