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SENATE BILL 6032

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State of Washington                      56th Legislature                      1999 Regular Session

By Senators Spanel, Honeyford and Gardner

Read first time 02/23/1999. Referred to Committee on Ways & Means.

1            AN ACT Relating to granting the department of revenue the authority  
2 to issue direct payment permits; amending RCW 82.08.050, 82.12.040, and  
3 82.32.160; adding a new section to chapter 82.32 RCW; creating a new  
4 section; prescribing penalties; providing an effective date; and  
5 declaring an emergency.

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

7            NEW SECTION.    **Sec. 1.** A new section is added to chapter 82.32 RCW  
8 to read as follows:

9            (1) Upon application by a taxpayer, the director may allow a  
10 taxpayer to accrue and remit the taxes imposed under chapters 82.08 and  
11 82.12 RCW directly to the department pursuant to the issuance of a  
12 direct payment permit.

13            (2) Taxpayers applying for a direct payment permit must apply in  
14 writing to the director in a form and manner prescribed by the  
15 department by rule. A taxpayer who transacts business in two or more  
16 locations may file one application to the department for multiple  
17 locations, but a separate direct payment permit must be issued for each  
18 place of business identified in the application by the taxpayer.

1 (3) The director shall review all direct payment permit  
2 applications in a timely manner and shall inform the applicant, in  
3 writing, of the authorization or denial of the direct payment permit  
4 within sixty days following the receipt of the application. If denied  
5 a direct payment permit, the taxpayer shall have the right to petition  
6 the denial to the department pursuant to the provisions of RCW  
7 82.32.160.

8 (4) If approved, the direct payment permit holder must continue to  
9 maintain all records that are necessary to a determination of the  
10 correct tax liability in accordance with RCW 82.32.070.

11 (5) Each holder of a valid direct payment permit shall, on a form  
12 approved by the department, accrue and pay directly to the department  
13 the taxes due for all transactions subject to tax under chapters 82.08  
14 and 82.12 RCW. Taxes for which the direct payment permit is used shall  
15 be considered due and payable on the tax return next due following the  
16 date on which a determination of taxability is made for a given  
17 transaction, unless otherwise provided by written agreement between the  
18 taxpayer and the department.

19 (6) The holder of a direct payment permit shall furnish a copy of  
20 the direct payment permit or other documentation authorized by the  
21 department to each vendor from whom the holder purchases, leases, or  
22 rents tangible personal property or services under a direct payment  
23 permit. The direct payment permit shall clearly state that the holder  
24 is solely responsible for the accrual and payment of the taxes under  
25 chapters 82.08 and 82.12 RCW and that the seller is relieved of their  
26 liability under RCW 82.08.050 to collect taxes on all sales to the  
27 direct payment permit holder. However, sellers who make sales upon  
28 which the tax is not collected by reason of the provisions of this  
29 subsection shall maintain records in such manner that the amount  
30 involved and identity of the buyer may be ascertained.

31 (7) A direct payment permit holder that uses a permit to make  
32 taxable purchases of tangible personal property or services shall  
33 report and pay all applicable local sales or use taxes on those  
34 purchases. The local sales tax shall be calculated at the rate imposed  
35 by the jurisdiction in which the sale occurs and the local use tax  
36 shall be calculated at the rate imposed by the jurisdiction in which  
37 the first use in the state occurs.

38 (8) A direct payment permit is not transferable and the use of a  
39 direct payment permit may not be assigned to a third party.

1 (9) All direct payment permits are subject to revocation by the  
2 director at any time the department determines that the taxpayer  
3 holding the direct payment permit has violated any provision of this  
4 section or that the revocation would be in the best interests of  
5 collecting the taxes due under chapters 82.08 and 82.12 RCW. The  
6 notice of revocation must be in writing and effective as of the end of  
7 the taxpayer's next normal reporting period. However, the taxpayer  
8 shall have the right to petition the revocation to the department  
9 pursuant to the provisions of RCW 82.32.160.

10 (10) Any taxpayer whose direct payment permit is either voluntarily  
11 forfeited or revoked by the department shall return the direct payment  
12 permit to the department and immediately make a good faith effort to  
13 notify all vendors from whom purchases are made advising them that the  
14 direct payment permit issued to the taxpayer is no longer valid.  
15 Failure to give this notice is a misdemeanor.

16 (11) The department may adopt rules that are necessary for the  
17 administration of this section.

18 **Sec. 2.** RCW 82.08.050 and 1993 sp.s. c 25 s 704 are each amended  
19 to read as follows:

20 The tax hereby imposed shall be paid by the buyer to the seller,  
21 and each seller shall collect from the buyer the full amount of the tax  
22 payable in respect to each taxable sale in accordance with the schedule  
23 of collections adopted by the department pursuant to the provisions of  
24 RCW 82.08.060. The tax required by this chapter, to be collected by  
25 the seller, shall be deemed to be held in trust by the seller until  
26 paid to the department, and any seller who appropriates or converts the  
27 tax collected to his or her own use or to any use other than the  
28 payment of the tax to the extent that the money required to be  
29 collected is not available for payment on the due date as prescribed in  
30 this chapter shall be guilty of a gross misdemeanor.

31 In case any seller fails to collect the tax herein imposed or  
32 having collected the tax, fails to pay it to the department in the  
33 manner prescribed by this chapter, whether such failure is the result  
34 of his or her own acts or the result of acts or conditions beyond his  
35 or her control, he or she shall, nevertheless, be personally liable to  
36 the state for the amount of the tax, unless the seller has taken from  
37 the buyer in good faith a properly executed resale certificate under

1 RCW 82.04.470 or a copy of a valid direct payment permit issued  
2 pursuant to section 1 of this act.

3       The amount of tax, until paid by the buyer to the seller or to the  
4 department, shall constitute a debt from the buyer to the seller and  
5 any seller who fails or refuses to collect the tax as required with  
6 intent to violate the provisions of this chapter or to gain some  
7 advantage or benefit, either direct or indirect, and any buyer who  
8 refuses to pay any tax due under this chapter shall be guilty of a  
9 misdemeanor. The tax required by this chapter to be collected by the  
10 seller shall be stated separately from the selling price in any sales  
11 invoice or other instrument of sale. On all retail sales through  
12 vending machines, the tax need not be stated separately from the  
13 selling price or collected separately from the buyer. For purposes of  
14 determining the tax due from the buyer to the seller and from the  
15 seller to the department it shall be conclusively presumed that the  
16 selling price quoted in any price list, sales document, contract or  
17 other agreement between the parties does not include the tax imposed by  
18 this chapter, but if the seller advertises the price as including the  
19 tax or that the seller is paying the tax, the advertised price shall  
20 not be considered the selling price.

21       Where a buyer has failed to pay to the seller the tax imposed by  
22 this chapter and the seller has not paid the amount of the tax to the  
23 department, the department may, in its discretion, proceed directly  
24 against the buyer for collection of the tax, in which case a penalty of  
25 ten percent may be added to the amount of the tax for failure of the  
26 buyer to pay the same to the seller, regardless of when the tax may be  
27 collected by the department; and all of the provisions of chapter 82.32  
28 RCW, including those relative to interest and penalties, shall apply in  
29 addition; and, for the sole purpose of applying the various provisions  
30 of chapter 82.32 RCW, the twenty-fifth day of the month following the  
31 tax period in which the purchase was made shall be considered as the  
32 due date of the tax.

33       **Sec. 3.** RCW 82.12.040 and 1986 c 48 s 1 are each amended to read  
34 as follows:

35       (1) Every person who maintains in this state a place of business or  
36 a stock of goods, or engages in business activities within this state,  
37 shall obtain from the department a certificate of registration, and  
38 shall, at the time of making sales, or making transfers of either

1 possession or title or both, of tangible personal property for use in  
2 this state, collect from the purchasers or transferees the tax imposed  
3 under this chapter. For the purposes of this chapter, the phrase  
4 "maintains in this state a place of business" shall include the  
5 solicitation of sales and/or taking of orders by sales agents or  
6 traveling representatives. For the purposes of this chapter, "engages  
7 in business activity within this state" includes every activity which  
8 is sufficient under the Constitution of the United States for this  
9 state to require collection of tax under this chapter. The department  
10 shall in rules specify activities which constitute engaging in business  
11 activity within this state, and shall keep the rules current with  
12 future court interpretations of the Constitution of the United States.

13 (2) Every person who engages in this state in the business of  
14 acting as an independent selling agent for persons who do not hold a  
15 valid certificate of registration, and who receives compensation by  
16 reason of sales of tangible personal property of his principals made  
17 for use in this state, shall, at the time such sales are made, collect  
18 from the purchasers the tax imposed under this chapter, and for that  
19 purpose shall be deemed a retailer as defined in this chapter.

20 (3) The tax required to be collected by this chapter shall be  
21 deemed to be held in trust by the retailer until paid to the department  
22 and any retailer who appropriates or converts the tax collected to his  
23 own use or to any use other than the payment of the tax provided herein  
24 to the extent that the money required to be collected is not available  
25 for payment on the due date as prescribed shall be guilty of a  
26 misdemeanor. In case any seller fails to collect the tax herein  
27 imposed or having collected the tax, fails to pay the same to the  
28 department in the manner prescribed, whether such failure is the result  
29 of his own acts or the result of acts or conditions beyond his control,  
30 he shall nevertheless, be personally liable to the state for the amount  
31 of such tax, unless the seller has taken from the buyer in good faith  
32 a copy of a valid direct payment permit issued pursuant to section 1 of  
33 this act.

34 (4) Any retailer who refunds, remits, or rebates to a purchaser, or  
35 transferee, either directly or indirectly, and by whatever means, all  
36 or any part of the tax levied by this chapter shall be guilty of a  
37 misdemeanor.

1       **Sec. 4.** RCW 82.32.160 and 1989 c 378 s 22 are each amended to read  
2 as follows:

3       (1) Any person having been issued a notice of additional taxes,  
4 delinquent taxes, interest, or penalties assessed by the department,  
5 may within thirty days after the issuance of the original notice of the  
6 amount thereof or within the period covered by any extension of the due  
7 date thereof granted by the department petition the department in  
8 writing for a correction of the amount of the assessment, and a  
9 conference for examination and review of the assessment. The petition  
10 shall set forth the reasons why the correction should be granted and  
11 the amount of the tax, interest, or penalties, which the petitioner  
12 believes to be due. The department shall promptly consider the  
13 petition and may grant or deny it. If denied, the petitioner shall be  
14 notified by mail thereof forthwith. If a conference is granted, the  
15 department shall fix the time and place therefor and notify the  
16 petitioner thereof by mail. After the conference the department may  
17 make such determination as may appear to it to be just and lawful and  
18 shall mail a copy of its determination to the petitioner. If no such  
19 petition is filed within the thirty-day period the assessment covered  
20 by the notice shall become final.

21       (2) The procedures provided for herein shall also apply ((also)) to  
22 a notice denying, in whole or in part, an application for a pollution  
23 control tax exemption and credit certificate(~~(, with such modifications~~  
24 ~~to such procedures established by departmental rules and regulations as~~  
25 ~~may be))~~). The department may, however, make modifications to the  
26 procedures established by department rules that are necessary to  
27 accommodate a claim for exemption or credit.

28       (3) The procedures provided for herein shall also apply to a notice  
29 denying, in whole or in part, an application for a direct payment  
30 permit or the revocation of a direct payment permit. The department  
31 may establish modifications to the procedures established by department  
32 rules that are necessary to accommodate relief for the taxpayer denied  
33 a permit or whose permit was revoked.

34       NEW SECTION. **Sec. 5.** (1) The department of revenue shall form an  
35 advisory committee consisting of representatives of local government  
36 and taxpayers to study additional ways to use the direct payment permit  
37 authority contained in section 1 of this act to:

1 (a) Reduce the administrative burden of determining taxability,  
2 collecting, verifying, calculating, and remitting the taxes imposed in  
3 chapters 82.08 and 82.12 RCW;

4 (b) Provide for improved compliance with sales and use tax laws;

5 (c) Provide for more accurate compliance in circumstances where  
6 determination of taxability of an item is difficult or impractical at  
7 the time of purchase;

8 (d) Provide for more accurate calculation of the tax where new or  
9 electronic business processes such as electronic data, interchange,  
10 evaluated receipts settlement, geographic information systems, or  
11 computer-assisted audits are utilized; and

12 (e) Provide for more accurate determination and calculations of tax  
13 where significant automation or centralization of purchasing or  
14 accounting processes have occurred and the taxpayer must comply with  
15 the many differing rates of local sales and use taxes.

16 (2) The department of revenue shall report back to the legislature  
17 by December 31, 1999, regarding the department's initial experience  
18 with the direct payment permit program and shall, in consultation with  
19 the advisory committee established in subsection (1) of this section,  
20 make recommendations for potential legislation that will improve and  
21 enhance the direct payment permit program.

22 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 July 1, 1999.

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