HOUSE BILL REPORT
EHB 2269

As Passed House:
June 5, 2003

Title: An act relating to increasing revenue.

Brief Description: Relating to increasing revenue.

Sponsors: By Representative Gombosky.

Brief History:
First Special Session
Floor Activity:
Passed House: 6/5/03, 67-30.

Brief Summary of Engrossed Bill

- Requires payment of most excise taxes by the 20th of the month instead of the 25th.
- Increases penalties for underpayments of state excise taxes.
- Requires promoters of special events such as auto shows, garden shows, and flea markets to verify that vendors at the event are registered with the Department of Revenue.
- Modifies the definition of "successor" for purposes of liability for unpaid excise taxes after a business or its assets are sold.
- Reduces the holding period for certain types of unclaimed property under the Uniform Unclaimed Property Act from five to three years.

HOUSE COMMITTEE ON FINANCE

Majority/Minority Report: None.

Staff: Bob Longman (786-7139).

Background:

Tax Reporting Due Dates. The Department of Revenue (DOR) collects the state's major excise taxes, such as the retail sales tax and the business and occupation (B&O) tax. The taxes collected by the DOR are reported on the combined excise tax return. Taxpayers reporting on this form whose estimated tax liability is greater than $4,800 a year are required to pay taxes by the 25th of each month for activity in the previous month. Taxpayers whose estimated tax liability is between $4,800 and $1,050 a year are required to pay quarterly. Taxpayers whose estimated tax liability is less than $1,050 a year are required to pay annually. Quarterly and annual taxpayers are required to pay taxes by the end of the month following the end of the reporting period.

Penalties. Penalties are imposed if a tax return is not filed or if the return is filed late.

· If the return is filed on time, without any tax, or the return is filed late, a penalty is imposed. If the return is filed on time, with only part of the tax, no penalty is imposed unless the underpayment appears to be intentional. The penalty is 5 percent if paid by the last day of the month after the due date; 10 percent if paid by the last day of the second month after the due date, and 20 percent after that.

· If taxes assessed by the DOR (through audit, from finding calculation errors on a return, or from returns with no payment) are not paid by the due date specified in the notice, a penalty of 10 percent applies to the assessed taxes.

· If a warrant is issued for the payment of taxes, a penalty of 5 percent applies.

In addition to these penalties, a negligence penalty for failure to follow specific written instructions from the DOR on how to report tax liabilities of 10 percent may be imposed. An additional penalty of 50 percent applies to under-payments resulting from an intent to evade taxes. The DOR may not impose both this evasion penalty and the penalty for failure to follow specific instructions.

An unregistered taxpayer is one who should have been registered and reporting taxes but was not. Under current law, unregistered taxpayers who come forward on their own volition are assessed taxes and interest for the past four years; unregistered taxpayers discovered by the DOR are assessed taxes, interest, and late penalties for seven years.

Penalties are waived if DOR finds that deficient or late payment was the result of circumstances beyond the control of the taxpayer. Following are examples of circumstances where a penalty would be waived:

· The death or serious illness of the taxpayer, someone in the taxpayer's immediate family, or the taxpayer's bookkeeper or accountant;
· The destruction by fire or other casualty of the taxpayer's place of business or business records;
· An act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or bookkeeper, that the taxpayer could not immediately detect or prevent;

or

- The taxpayer was acting under information given to the taxpayer by a DOR employee in writing.

The late payment penalties are waived if the taxpayer requests the waiver and the taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of 24 months immediately preceding the period covered by the return for which the waiver is being requested.

Vendor Verification. Any business that makes sales at retail is required to register with DOR and collect retail sales tax. This includes persons who sell from booths or other temporary locations at events such as auto shows, garden shows, and flea markets. However, there is a low rate of compliance with registration and sales tax collection at these events.

Successorship. A person buying a business or a major part of the physical assets of a business is known as a successor. A successor becomes liable for any unpaid excise tax of the business. Successors are required to withhold money from the purchase price of the business sufficient to pay the taxes. However, the successor's liability for unpaid taxes could exceed the purchase price of the business or the assets acquired. If the successor gives written notice of the purchase to DOR, and DOR does not issue a tax assessment within six months, the successor is no longer liable for the tax.

Only physical assets are considered when determining the tax liability of a successor. Intangible assets are not considered. Thus, a person might buy the business name, customer lists, contract rights, licenses, and other intangible assets that constitute the major value of a business and not be considered a successor, unless the person also bought a major part of the physical assets of the business.

In some circumstances, being treated as a successor has tax advantages. A successor is liable for the unpaid taxes of a purchased business, but not penalties and interest on the unpaid taxes. A question arose as to whether the surviving corporation after a statutory merger was a successor. A statutory merger is one where one of the merging companies continues to exist as a legal entity, rather than being replaced by a new entity. The Board of Tax Appeals ruled that a surviving corporation after a statutory merger is not a successor. Under the Board of Tax Appeals ruling, the surviving corporation is liable for the taxes, penalties, and interest of the merged corporation. Before this ruling, DOR treated the surviving corporation as a successor that was liable for tax, but not liable for penalties and interest.

Unclaimed Property. The Uniform Unclaimed Property Act governs the disposition of intangible property that is unclaimed by its owner. A business that holds unclaimed intangible property must transfer it to the DOR after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the holding period is five years. After the holding period has passed, the business in possession of the property transfers the property to the DOR.

Abandoned property is turned over from many sources including banks, credit unions, corporations, utilities, insurance companies, governmental entities and retailers throughout the United States. The types of abandoned property that are subject to the DOR program include bank accounts; uncashed checks such as payroll, insurance payments or travelers checks; utility and/or phone company deposits; safe deposit box contents; insurance proceeds; and stocks, bonds, and mutual funds.

Under the program, DOR's duty is to find the rightful owner of the property, if possible. The DOR sends notices to the last known addresses of owners, places advertisements with names of owners in newspapers, sends press releases to television and radio stations, and undertakes other efforts to find owners. The DOR is not required to publish or mail notices when the property value is less than $75. With some exceptions, DOR will sell property that is still unclaimed five years after it is received. The sale proceeds are deposited in the state general fund. However, the owner of unclaimed property may still come forward and obtain reimbursement from the state general fund at any time.

Summary of Engrossed Bill:

Tax Reporting Due Dates. Taxpayers with total tax liability greater than $4,800 in a calendar year are required to report and pay taxes by the 20th of the month rather than the 25th.

Penalties. Penalties for failure to pay excise taxes on time are increased. The penalty for being more than one month late on the payment of tax on a tax return or filing a late tax return is increased from 10 percent to 15 percent. The penalty for being more than two months late is increased from 20 to 25 percent.

The 10 percent penalty on failing to pay assessments by the due date is replaced. A new penalty of 5 percent applies to all tax billings. If the tax is not paid by the due date, the penalty increases to 15 percent. If the penalty is not paid within a month of the due date, the penalty increases to 25 percent.

The 5 percent penalty imposed if a warrant is issued for the payment of taxes is increased to 10 percent. A new penalty is imposed on unregistered taxpayers discovered by the DOR. The penalty is equal to 5 percent of the tax found to be due. Unregistered taxpayers who come forward on their own are not be subject to this penalty.

These penalties apply beginning July 1, 2003, except the penalty on assessments applies to assessments originally made after July 1, 2003.

Vendor Verification. A promoter of a special event such as an auto show, garden show, or flea market must verify that all vendors at the event are registered with DOR. Special events that charge vendors less than $200 to participate, charitable events, and on-going athletic contests are exempted from the verification requirement. A promoters who only provides a venue for an event, without organizing, operating, or sponsoring the event, is exempt from the verification requirement. A promoter who is not exempt must keep records about the date and location of the event and the vendors at the event, and provide this information to DOR on request. A promoter who fails to meet these requirements is subject to penalties of $100 for each failure to verify that a vendor has obtained a certificate of registration from the DOR, $100 for each vendor from whom the promoter fails to collect required information; and $250 if the information is not received by DOR within 20 days of request. Total penalties cannot exceed $2,500 per event, for first-time violations.

Successorship. A successor for excise tax purposes is a person who acquires 50 percent of the fair market value of either the tangible assets or intangible assets of a business.

The surviving corporation of a statutory merger is defined as a successor. Thus, a surviving corporation of a statutory merger is liable for the unpaid taxes of a purchased business, but not penalties and interest on the unpaid taxes.

If the fair market value of the assets acquired by a successor is less than $50,000, the successor's liability for unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

Unclaimed Property. The holding period for abandoned property under the Uniform Unclaimed Property Act is shortened from five to three years for the following types of property: bank accounts; certain uncashed checks such as payroll and cashier's checks; gift certificates and credit memos; life insurance; intangible property held by a fiduciary; and stocks, bonds and mutual funds.

Appropriation: None.

Fiscal Note: Requested on June 3, 2003.

Effective Date: Sections 1 through 7, relating to unclaimed property, take effect January 1, 2004. Sections 8 through 10, relating to tax reporting due dates, are subject to an emergency clause and take effect August 1, 2003. Sections 11 through 16, relating to successorship, penalties, and vendor registration are subject to an emergency clause and take effect July 1, 2003.

Testimony For: None.

Testimony Against: None.

Testified: None.