
ENGROSSED HOUSE BILL 2269

State of Washington

58th Legislature

2003 Regular Session

By Representative Gombosky

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1 AN ACT Relating to increasing revenue; amending RCW 63.29.020,
2 63.29.050, 63.29.060, 63.29.070, 63.29.100, 63.29.120, 63.29.140,
3 82.32.045, 82.23B.020, 82.27.060, 82.04.180, 82.32.140, 82.32.090, and
4 82.32.020; adding a new section to chapter 82.32 RCW; creating a new
5 section; prescribing penalties; providing effective dates; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 63.29.020 and 1992 c 122 s 1 are each amended to read
9 as follows:

10 (1) Except as otherwise provided by this chapter, all intangible
11 property, including any income or increment derived therefrom, less any
12 lawful charges, that is held, issued, or owing in the ordinary course
13 of the holder's business and has remained unclaimed by the owner for
14 more than ((five)) three years after it became payable or distributable
15 is presumed abandoned.

16 (2) Property, with the exception of unredeemed Washington state
17 lottery tickets and unrepresented winning parimutuel tickets, is payable
18 and distributable for the purpose of this chapter notwithstanding the

1 owner's failure to make demand or to present any instrument or document
2 required to receive payment.

3 (3) This chapter does not apply to claims drafts issued by
4 insurance companies representing offers to settle claims unliquidated
5 in amount or settled by subsequent drafts or other means.

6 (4) This chapter does not apply to property covered by chapter
7 63.26 RCW.

8 (5) This chapter does not apply to used clothing, umbrellas, bags,
9 luggage, or other used personal effects if such property is disposed of
10 by the holder as follows:

11 (a) In the case of personal effects of negligible value, the
12 property is destroyed; or

13 (b) The property is donated to a bona fide charity.

14 **Sec. 2.** RCW 63.29.050 and 1983 c 179 s 5 are each amended to read
15 as follows:

16 (1) Any sum payable on a check, draft, or similar instrument,
17 except those subject to RCW 63.29.040, on which a banking or financial
18 organization is directly liable, including a cashier's check and a
19 certified check, which has been outstanding for more than ((five))
20 three years after it was payable or after its issuance if payable on
21 demand, is presumed abandoned, unless the owner, within ((five)) three
22 years, has communicated in writing with the banking or financial
23 organization concerning it or otherwise indicated an interest as
24 evidenced by a memorandum or other record on file prepared by an
25 employee thereof.

26 (2) A holder may not deduct from the amount of any instrument
27 subject to this section any charge imposed by reason of the failure to
28 present the instrument for payment unless there is a valid and
29 enforceable written contract between the holder and the owner of the
30 instrument pursuant to which the holder may impose a charge, and the
31 holder regularly imposes such charges and does not regularly reverse or
32 otherwise cancel them.

33 **Sec. 3.** RCW 63.29.060 and 1983 c 179 s 6 are each amended to read
34 as follows:

35 (1) Any demand, savings, or matured time deposit with a banking or
36 financial organization, including a deposit that is automatically

1 renewable, and any funds paid toward the purchase of a share, a mutual
2 investment certificate, or any other interest in a banking or financial
3 organization is presumed abandoned unless the owner, within ((five))
4 three years, has:

5 (a) In the case of a deposit, increased or decreased its amount or
6 presented the passbook or other similar evidence of the deposit for the
7 crediting of interest;

8 (b) Communicated in writing with the banking or financial
9 organization concerning the property;

10 (c) Otherwise indicated an interest in the property as evidenced by
11 a memorandum or other record on file prepared by an employee of the
12 banking or financial organization;

13 (d) Owned other property to which subsection (1)(a), (b), or (c) of
14 this section applies and if the banking or financial organization
15 communicates in writing with the owner with regard to the property that
16 would otherwise be presumed abandoned under this subsection at the
17 address to which communications regarding the other property regularly
18 are sent; or

19 (e) Had another relationship with the banking or financial
20 organization concerning which the owner has:

21 (i) In the case of a deposit, increased or decreased the amount of
22 the deposit or presented the passbook or other similar evidence of the
23 deposit for the crediting of interest;

24 (ii) Communicated in writing with the banking or financial
25 organization; or

26 (iii) Otherwise indicated an interest as evidenced by a memorandum
27 or other record on file prepared by an employee of the banking or
28 financial organization and if the banking or financial organization
29 communicates in writing with the owner with regard to the property that
30 would otherwise be abandoned under this subsection at the address to
31 which communications regarding the other relationship regularly are
32 sent.

33 (2) For purposes of subsection (1) of this section property
34 includes interest and dividends.

35 (3) This chapter shall not apply to deposits made by a guardian or
36 decedent's personal representative with a banking organization when the
37 deposit is subject to withdrawal only upon the order of the court in
38 the guardianship or estate proceeding.

1 (4) A holder may not impose with respect to property described in
2 subsection (1) of this section any charge due to dormancy or inactivity
3 or cease payment of interest unless:

4 (a) There is an enforceable written contract between the holder and
5 the owner of the property pursuant to which the holder may impose a
6 charge or cease payment of interest;

7 (b) For property in excess of ten dollars, the holder, no more than
8 three months before the initial imposition of those charges or
9 cessation of interest, has given written notice to the owner of the
10 amount of those charges at the last known address of the owner stating
11 that those charges will be imposed or that interest will cease, but the
12 notice provided in this section need not be given with respect to
13 charges imposed or interest ceased before June 30, 1983; and

14 (c) The holder regularly imposes such charges or ceases payment of
15 interest and does not regularly reverse or otherwise cancel them or
16 retroactively credit interest with respect to the property.

17 (5) Any property described in subsection (1) of this section that
18 is automatically renewable is matured for purposes of subsection (1) of
19 this section upon the expiration of its initial time period, or after
20 one year if the initial period is less than one year, but in the case
21 of any renewal to which the owner consents at or about the time of
22 renewal by communicating in writing with the banking or financial
23 organization or otherwise indicating consent as evidenced by a
24 memorandum or other record on file prepared by an employee of the
25 organization, the property is matured upon the expiration of the last
26 time period for which consent was given. If, at the time provided for
27 delivery in RCW 63.29.190, a penalty or forfeiture in the payment of
28 interest would result from the delivery of the property, the time for
29 delivery is extended until the time when no penalty or forfeiture would
30 result.

31 **Sec. 4.** RCW 63.29.070 and 1983 c 179 s 7 are each amended to read
32 as follows:

33 (1) Funds held or owing under any life or endowment insurance
34 policy or annuity contract that has matured or terminated are presumed
35 abandoned if unclaimed for more than ((five)) three years after the
36 funds became due and payable as established from the records of the

1 insurance company holding or owing the funds, but property described in
2 subsection (3)(b) of this section is presumed abandoned if unclaimed
3 for more than two years.

4 (2) If a person other than the insured or annuitant is entitled to
5 the funds and an address of the person is not known to the company or
6 it is not definite and certain from the records of the company who is
7 entitled to the funds, it is presumed that the last known address of
8 the person entitled to the funds is the same as the last known address
9 of the insured or annuitant according to the records of the company.

10 (3) For purposes of this chapter, a life or endowment insurance
11 policy or annuity contract not matured by actual proof of the death of
12 the insured or annuitant according to the records of the company is
13 matured and the proceeds due and payable if:

14 (a) The company knows that the insured or annuitant has died; or

15 (b)(i) The insured has attained, or would have attained if he were
16 living, the limiting age under the mortality table on which the reserve
17 is based;

18 (ii) The policy was in force at the time the insured attained, or
19 would have attained, the limiting age specified in subparagraph (i) of
20 this subsection; and

21 (iii) Neither the insured nor any other person appearing to have an
22 interest in the policy within the preceding two years, according to the
23 records of the company, has assigned, readjusted, or paid premiums on
24 the policy, subjected the policy to a loan, corresponded in writing
25 with the company concerning the policy, or otherwise indicated an
26 interest as evidenced by a memorandum or other record on file prepared
27 by an employee of the company.

28 (4) For purposes of this chapter, the application of an automatic
29 premium loan provision or other nonforfeiture provision contained in an
30 insurance policy does not prevent a policy from being matured or
31 terminated under subsection (1) of this section if the insured has died
32 or the insured or the beneficiaries of the policy otherwise have become
33 entitled to the proceeds thereof before the depletion of the cash
34 surrender value of a policy by the application of those provisions.

35 (5) If the laws of this state or the terms of the life insurance
36 policy require the company to give notice to the insured or owner that
37 an automatic premium loan provision or other nonforfeiture provision
38 has been exercised and the notice, given to an insured or owner whose

1 last known address according to the records of the company is in this
2 state, is undeliverable, the company shall make a reasonable search to
3 ascertain the policyholder's correct address to which the notice must
4 be mailed.

5 (6) Notwithstanding any other provision of law, if the company
6 learns of the death of the insured or annuitant and the beneficiary has
7 not communicated with the insurer within four months after the death,
8 the company shall take reasonable steps to pay the proceeds to the
9 beneficiary.

10 (7) Commencing two years after June 30, 1983, every change of
11 beneficiary form issued by an insurance company under any life or
12 endowment insurance policy or annuity contract to an insured or owner
13 who is a resident of this state must request the following information:

14 (a) The name of each beneficiary, or if a class of beneficiaries is
15 named, the name of each current beneficiary in the class;

16 (b) The address of each beneficiary; and

17 (c) The relationship of each beneficiary to the insured.

18 **Sec. 5.** RCW 63.29.100 and 1996 c 45 s 1 are each amended to read
19 as follows:

20 (1) Except as provided in subsections (2) and (5) of this section,
21 stock or other intangible ownership interest in a business association,
22 the existence of which is evidenced by records available to the
23 association, is presumed abandoned and, with respect to the interest,
24 the association is the holder, if a dividend, distribution, or other
25 sum payable as a result of the interest has remained unclaimed by the
26 owner for (~~five~~) three years and the owner within (~~five~~) three
27 years has not:

28 (a) Communicated in writing with the association regarding the
29 interest or a dividend, distribution, or other sum payable as a result
30 of the interest; or

31 (b) Otherwise communicated with the association regarding the
32 interest or a dividend, distribution, or other sum payable as a result
33 of the interest, as evidenced by a memorandum or other record on file
34 with the association prepared by an employee of the association.

35 (2) At the expiration of a (~~five-year~~) three-year period
36 following the failure of the owner to claim a dividend, distribution,
37 or other sum payable to the owner as a result of the interest, the

1 interest is not presumed abandoned unless there have been at least five
2 dividends, distributions, or other sums paid during the period, none of
3 which has been claimed by the owner. If five dividends, distributions,
4 or other sums are paid during the (~~five-year~~) three-year period, the
5 period leading to a presumption of abandonment commences on the date
6 payment of the first such unclaimed dividend, distribution, or other
7 sum became due and payable. If five dividends, distributions, or other
8 sums are not paid during the presumptive period, the period continues
9 to run until there have been five dividends, distributions, or other
10 sums that have not been claimed by the owner.

11 (3) The running of the (~~five-year~~) three-year period of
12 abandonment ceases immediately upon the occurrence of a communication
13 referred to in subsection (1) of this section. If any future dividend,
14 distribution, or other sum payable to the owner as a result of the
15 interest is subsequently not claimed by the owner, a new period of
16 abandonment commences and relates back to the time a subsequent
17 dividend, distribution, or other sum became due and payable.

18 (4) At the time any interest is presumed abandoned under this
19 section, any dividend, distribution, or other sum then held for or
20 owing to the owner as a result of the interest, and not previously
21 presumed abandoned, is presumed abandoned.

22 (5) This chapter shall not apply to any stock or other intangible
23 ownership interest enrolled in a plan that provides for the automatic
24 reinvestment of dividends, distributions, or other sums payable as a
25 result of the interest unless:

26 (a) The records available to the administrator of the plan show,
27 with respect to any intangible ownership interest not enrolled in the
28 reinvestment plan, that the owner has not within (~~five~~) three years
29 communicated in any manner described in subsection (1) of this section;
30 or

31 (b) (~~Five~~) Three years have elapsed since the location of the
32 owner became unknown to the association, as evidenced by the return of
33 official shareholder notifications or communications by the postal
34 service as undeliverable, and the owner has not within those (~~five~~)
35 three years communicated in any manner described in subsection (1) of
36 this section. The (~~five-year~~) three-year period from the return of
37 official shareholder notifications or communications shall commence

1 from the earlier of the return of the second such mailing or the date
2 the holder discontinues mailings to the shareholder.

3 **Sec. 6.** RCW 63.29.120 and 1983 c 179 s 12 are each amended to read
4 as follows:

5 (1) Intangible property and any income or increment derived
6 therefrom held in a fiduciary capacity for the benefit of another
7 person is presumed abandoned unless the owner, within ((five)) three
8 years after it has become payable or distributable, has increased or
9 decreased the principal, accepted payment of principal or income,
10 communicated concerning the property, or otherwise indicated an
11 interest as evidenced by a memorandum or other record on file prepared
12 by the fiduciary.

13 (2) Funds in an individual retirement account or a retirement plan
14 for self-employed individuals or similar account or plan established
15 pursuant to the internal revenue laws of the United States are not
16 payable or distributable within the meaning of subsection (1) of this
17 section unless, under the terms of the account or plan, distribution of
18 all or part of the funds would then be mandatory.

19 (3) For the purpose of this section, a person who holds property as
20 an agent for a business association is deemed to hold the property in
21 a fiduciary capacity for that business association alone, unless the
22 agreement between him and the business association provides otherwise.

23 (4) For the purposes of this chapter, a person who is deemed to
24 hold property in a fiduciary capacity for a business association alone
25 is the holder of the property only insofar as the interest of the
26 business association in the property is concerned, and the business
27 association is the holder of the property insofar as the interest of
28 any other person in the property is concerned.

29 **Sec. 7.** RCW 63.29.140 and 1983 c 179 s 14 are each amended to read
30 as follows:

31 (1) A gift certificate or a credit memo issued in the ordinary
32 course of an issuer's business which remains unclaimed by the owner for
33 more than ((five)) three years after becoming payable or distributable
34 is presumed abandoned.

35 (2) In the case of a gift certificate, the amount presumed

1 abandoned is the price paid by the purchaser for the gift certificate.
2 In the case of a credit memo, the amount presumed abandoned is the
3 amount credited to the recipient of the memo.

4 **Sec. 8.** RCW 82.32.045 and 1999 c 357 s 1 are each amended to read
5 as follows:

6 (1) Except as otherwise provided in this chapter, payments of the
7 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,
8 along with reports and returns on forms prescribed by the department,
9 are due monthly within (~~(twenty-five)~~) twenty days after the end of the
10 month in which the taxable activities occur.

11 (2) The department of revenue may relieve any taxpayer or class of
12 taxpayers from the obligation of remitting monthly and may require the
13 return to cover other longer reporting periods, but in no event may
14 returns be filed for a period greater than one year. For these
15 taxpayers, tax payments are due on or before the last day of the month
16 next succeeding the end of the period covered by the return.

17 (3) The department of revenue may also require verified annual
18 returns from any taxpayer, setting forth such additional information as
19 it may deem necessary to correctly determine tax liability.

20 (4) Notwithstanding subsections (1) and (2) of this section, the
21 department may relieve any person of the requirement to file returns if
22 the following conditions are met:

23 (a) The person's value of products, gross proceeds of sales, or
24 gross income of the business, from all business activities taxable
25 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per
26 year;

27 (b) The person's gross income of the business from all activities
28 taxable under chapter 82.16 RCW is less than twenty-four thousand
29 dollars per year; and

30 (c) The person is not required to collect or pay to the department
31 of revenue any other tax or fee which the department is authorized to
32 collect.

33 **Sec. 9.** RCW 82.23B.020 and 2000 c 69 s 25 are each amended to read
34 as follows:

35 (1) An oil spill response tax is imposed on the privilege of
36 receiving crude oil or petroleum products at a marine terminal within

1 this state from a waterborne vessel or barge operating on the navigable
2 waters of this state. The tax imposed in this section is levied upon
3 the owner of the crude oil or petroleum products immediately after
4 receipt of the same into the storage tanks of a marine terminal from a
5 waterborne vessel or barge at the rate of one cent per barrel of crude
6 oil or petroleum product received.

7 (2) In addition to the tax imposed in subsection (1) of this
8 section, an oil spill administration tax is imposed on the privilege of
9 receiving crude oil or petroleum products at a marine terminal within
10 this state from a waterborne vessel or barge operating on the navigable
11 waters of this state. The tax imposed in this section is levied upon
12 the owner of the crude oil or petroleum products immediately after
13 receipt of the same into the storage tanks of a marine terminal from a
14 waterborne vessel or barge at the rate of four cents per barrel of
15 crude oil or petroleum product.

16 (3) The taxes imposed by this chapter shall be collected by the
17 marine terminal operator from the taxpayer. If any person charged with
18 collecting the taxes fails to bill the taxpayer for the taxes, or in
19 the alternative has not notified the taxpayer in writing of the
20 imposition of the taxes, or having collected the taxes, fails to pay
21 them to the department in the manner prescribed by this chapter,
22 whether such failure is the result of the person's own acts or the
23 result of acts or conditions beyond the person's control, he or she
24 shall, nevertheless, be personally liable to the state for the amount
25 of the taxes. Payment of the taxes by the owner to a marine terminal
26 operator shall relieve the owner from further liability for the taxes.

27 (4) Taxes collected under this chapter shall be held in trust until
28 paid to the department. Any person collecting the taxes who
29 appropriates or converts the taxes collected shall be guilty of a gross
30 misdemeanor if the money required to be collected is not available for
31 payment on the date payment is due. The taxes required by this chapter
32 to be collected shall be stated separately from other charges made by
33 the marine terminal operator in any invoice or other statement of
34 account provided to the taxpayer.

35 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
36 the person charged with collection of the taxes and the person charged
37 with collection fails to pay the taxes to the department, the

1 department may, in its discretion, proceed directly against the
2 taxpayer for collection of the taxes.

3 (6) The taxes shall be due from the marine terminal operator, along
4 with reports and returns on forms prescribed by the department, within
5 (~~twenty-five~~) twenty days after the end of the month in which the
6 taxable activity occurs.

7 (7) The amount of taxes, until paid by the taxpayer to the marine
8 terminal operator or to the department, shall constitute a debt from
9 the taxpayer to the marine terminal operator. Any person required to
10 collect the taxes under this chapter who, with intent to violate the
11 provisions of this chapter, fails or refuses to do so as required and
12 any taxpayer who refuses to pay any taxes due under this chapter, shall
13 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

14 (8) Upon prior approval of the department, the taxpayer may pay the
15 taxes imposed by this chapter directly to the department. The
16 department shall give its approval for direct payment under this
17 section whenever it appears, in the department's judgment, that direct
18 payment will enhance the administration of the taxes imposed under this
19 chapter. The department shall provide by rule for the issuance of a
20 direct payment certificate to any taxpayer qualifying for direct
21 payment of the taxes. Good faith acceptance of a direct payment
22 certificate by a terminal operator shall relieve the marine terminal
23 operator from any liability for the collection or payment of the taxes
24 imposed under this chapter.

25 (9) All receipts from the tax imposed in subsection (1) of this
26 section shall be deposited into the state oil spill response account.
27 All receipts from the tax imposed in subsection (2) of this section
28 shall be deposited into the oil spill prevention account.

29 (10) Within forty-five days after the end of each calendar quarter,
30 the office of financial management shall determine the balance of the
31 oil spill response account as of the last day of that calendar quarter.
32 Balance determinations by the office of financial management under this
33 section are final and shall not be used to challenge the validity of
34 any tax imposed under this chapter. The office of financial management
35 shall promptly notify the departments of revenue and ecology of the
36 account balance once a determination is made. For each subsequent
37 calendar quarter, the tax imposed by subsection (1) of this section
38 shall be imposed during the entire calendar quarter unless:

1 (a) Tax was imposed under subsection (1) of this section during the
2 immediately preceding calendar quarter, and the most recent quarterly
3 balance is more than nine million dollars; or

4 (b) Tax was not imposed under subsection (1) of this section during
5 the immediately preceding calendar quarter, and the most recent
6 quarterly balance is more than eight million dollars.

7 **Sec. 10.** RCW 82.27.060 and 1990 c 214 s 1 are each amended to read
8 as follows:

9 The taxes levied by this chapter shall be due for payment monthly
10 and remittance therefor shall be made within (~~(twenty-five)~~) twenty
11 days after the end of the month in which the taxable activity occurs.
12 The taxpayer on or before the due date shall make out a signed return,
13 setting out such information as the department of revenue may require,
14 including the gross measure of the tax, any deductions, credits, or
15 exemptions claimed, and the amount of tax due for the preceding monthly
16 period, which amount shall be transmitted to the department along with
17 the return.

18 The department may relieve any taxpayer from the obligation of
19 filing a monthly return and may require the return to cover other
20 periods, but in no event may periodic returns be filed for a period
21 greater than one year. In such cases tax payments are due on or before
22 the last day of the month next succeeding the end of the period covered
23 by the return.

24 **Sec. 11.** RCW 82.04.180 and 1985 c 414 s 6 are each amended to read
25 as follows:

26 (1) "Successor" means:

27 (a) Any person to whom a taxpayer quitting, selling out,
28 exchanging, or disposing of a business sells or otherwise conveys,
29 directly or indirectly, in bulk and not in the ordinary course of the
30 taxpayer's business, (~~(a major part of the materials, supplies,~~
31 ~~merchandise, inventory, fixtures, or equipment)~~) more than fifty
32 percent of the fair market value of either the (i) tangible assets or
33 (ii) intangible assets of the taxpayer; or

34 (b) A surviving corporation of a statutory merger.

35 (2) Any person obligated to fulfill the terms of a contract shall

1 be deemed a successor to any contractor defaulting in the performance
2 of any contract as to which such person is a surety or guarantor.

3 **Sec. 12.** RCW 82.32.140 and 1985 c 414 s 7 are each amended to read
4 as follows:

5 (1) Whenever any taxpayer quits business, or sells out, exchanges,
6 or otherwise disposes of ((his business or his stock of goods)) more
7 than fifty percent of the fair market value of either its tangible or
8 intangible assets, any tax payable hereunder shall become immediately
9 due and payable, and such taxpayer shall, within ten days thereafter,
10 make a return and pay the tax due((; and)).

11 (2) Any person who becomes a successor shall ((become liable for
12 the full amount of the tax and)) withhold from the purchase price a sum
13 sufficient to pay any tax due from the taxpayer until such time as the
14 taxpayer shall produce a receipt from the department of revenue showing
15 payment in full of any tax due or a certificate that no tax is due
16 ((and, if such)). If any tax is not paid by the taxpayer within ten
17 days from the date of such sale, exchange, or disposal, the successor
18 shall become liable for the payment of the full amount of tax((, and
19 the payment thereof by such)). If the fair market value of the assets
20 acquired by a successor is less than fifty thousand dollars, the
21 successor's liability for payment of the unpaid tax is limited to the
22 fair market value of the assets acquired from the taxpayer. The burden
23 of establishing the fair market value of the assets acquired is on the
24 successor.

25 (3) The payment of any tax by a successor shall, to the extent
26 thereof, be deemed a payment upon the purchase price((;))i and if such
27 payment is greater in amount than the purchase price the amount of the
28 difference shall become a debt due ((such)) the successor from the
29 taxpayer.

30 (4) No successor shall be liable for any tax due from the person
31 from whom ((he)) the successor has acquired a business or stock of
32 goods if ((he)) the successor gives written notice to the department of
33 revenue of such acquisition and no assessment is issued by the
34 department of revenue within six months of receipt of such notice
35 against the former operator of the business and a copy thereof mailed
36 to ((such)) the successor.

1 **Sec. 13.** RCW 82.32.090 and 2000 c 229 s 7 are each amended to read
2 as follows:

3 (1) If payment of any tax due on a return to be filed by a taxpayer
4 is not received by the department of revenue by the due date, there
5 shall be assessed a penalty of five percent of the amount of the tax;
6 and if the tax is not received on or before the last day of the month
7 following the due date, there shall be assessed a total penalty of
8 ~~((ten))~~ fifteen percent of the amount of the tax under this subsection;
9 and if the tax is not received on or before the last day of the second
10 month following the due date, there shall be assessed a total penalty
11 of ~~((twenty))~~ twenty-five percent of the amount of the tax under this
12 subsection. No penalty so added shall be less than five dollars.

13 (2) If the department of revenue determines that any tax is due,
14 there shall be assessed a penalty of five percent of the amount of the
15 tax determined by the department to be due; and if payment of any tax
16 ~~((assessed))~~ determined by the department ~~((of revenue))~~ to be due is
17 not received by the department by the due date specified in the notice,
18 or any extension thereof, ~~((the department shall add a penalty of ten~~
19 ~~percent of the amount of the additional tax found due))~~ there shall be
20 assessed a total penalty of fifteen percent of the amount of the tax
21 under this subsection; and if the tax is not received on or before the
22 thirtieth day following the due date specified in the notice of tax
23 due, or any extension thereof, there shall be assessed a total penalty
24 of twenty-five percent of the amount of the tax under this subsection.
25 No penalty so added shall be less than five dollars.

26 (3) If a warrant be issued by the department of revenue for the
27 collection of taxes, increases, and penalties, there shall be added
28 thereto a penalty of ~~((five))~~ ten percent of the amount of the tax, but
29 not less than ten dollars.

30 (4) If the department finds that a person has engaged in any
31 business or performed any act upon which a tax is imposed under this
32 title and that person has not obtained from the department a
33 registration certificate as required by RCW 82.32.030, the department
34 shall impose a penalty of five percent of the amount of tax due from
35 that person for the period that the person was not registered as
36 required by RCW 82.32.030. The department shall not impose the penalty
37 under this subsection (4) if a person who has engaged in business

1 taxable under this title without first having registered as required by
2 RCW 82.32.030, prior to any notification by the department of the need
3 to register, obtains a registration certificate from the department.

4 (5) If the department finds that all or any part of a deficiency
5 resulted from the disregard of specific written instructions as to
6 reporting or tax liabilities, the department shall add a penalty of ten
7 percent of the amount of the additional tax found due because of the
8 failure to follow the instructions. A taxpayer disregards specific
9 written instructions when the department of revenue has informed the
10 taxpayer in writing of the taxpayer's tax obligations and the taxpayer
11 fails to act in accordance with those instructions unless the
12 department has not issued final instructions because the matter is
13 under appeal pursuant to this chapter or departmental regulations. The
14 department shall not assess the penalty under this section upon any
15 taxpayer who has made a good faith effort to comply with the specific
16 written instructions provided by the department to that taxpayer.
17 Specific written instructions may be given as a part of a tax
18 assessment, audit, determination, or closing agreement, provided that
19 such specific written instructions shall apply only to the taxpayer
20 addressed or referenced on such documents. Any specific written
21 instructions by the department of revenue shall be clearly identified
22 as such and shall inform the taxpayer that failure to follow the
23 instructions may subject the taxpayer to the penalties imposed by this
24 subsection.

25 ~~((+5))~~ (6) If the department finds that all or any part of the
26 deficiency resulted from an intent to evade the tax payable hereunder,
27 a further penalty of fifty percent of the additional tax found to be
28 due shall be added.

29 ~~((+6))~~ (7) The ~~((aggregate of))~~ penalties imposed under
30 subsections (1)~~((, (2), and (3)))~~ through (4) of this section ~~((shall~~
31 ~~not exceed thirty five percent of the tax due, or twenty dollars,~~
32 ~~whichever is greater))~~ can each be imposed on the same tax found to be
33 due. This subsection does not prohibit or restrict the application of
34 other penalties authorized by law.

35 ~~((+7))~~ (8) The department of revenue may not impose both the
36 evasion penalty and the penalty for disregarding specific written
37 instructions on the same tax found to be due.

1 (~~(8)~~) (9) For the purposes of this section, "return" means any
2 document a person is required by the state of Washington to file to
3 satisfy or establish a tax or fee obligation that is administered or
4 collected by the department of revenue, and that has a statutorily
5 defined due date.

6 NEW SECTION. **Sec. 14.** Except as otherwise provided in this
7 section, section 13 of this act applies to all penalties imposed after
8 June 30, 2003. The five percent penalty imposed in section 13(2) of
9 this act applies to all assessments originally issued after June 30,
10 2003.

11 NEW SECTION. **Sec. 15.** A new section is added to chapter 82.32 RCW
12 to read as follows:

13 (1) A promoter of a special event within the state of Washington
14 shall not permit a vendor to make or solicit retail sales of tangible
15 personal property or services at the special event unless the promoter
16 obtains verification that the vendor has obtained a certificate of
17 registration from the department.

18 (2) A promoter of a special event shall:

19 (a) Keep, in addition to the records required under RCW 82.32.070,
20 a record of the dates and place of each special event, and the name,
21 address, and registration certificate number of vendors permitted to
22 make or solicit retail sales of tangible personal property or services
23 at the special event; and

24 (b) Provide to the department, within twenty days of receipt of a
25 written request from the department, a list of vendors permitted to
26 make or solicit retail sales of tangible personal property or services.
27 The list shall be in a form and contain such information as the
28 department may require, and shall include the date and place of the
29 event, and the name, address, and registration certificate number of
30 each vendor.

31 (3) If a promoter fails to comply with the provisions of this
32 section, the promoter is liable for the penalties provided in this
33 subsection (3).

34 (a) If a promoter fails to comply with the provisions of subsection
35 (1) of this section, the department shall impose a penalty of one

1 hundred dollars for each vendor permitted to make or solicit retail
2 sales of tangible personal property or services at the special event.

3 (b) If a promoter fails to comply with the provisions of subsection
4 (2)(b) of this section, the department shall impose a penalty of:

5 (i) Two hundred fifty dollars if the information requested is not
6 received by the department within twenty days of the department's
7 written request; and

8 (ii) One hundred dollars for each vendor for whom the information
9 as required by subsection (2)(b) of this section is not provided to the
10 department.

11 (4) The aggregate of penalties imposed under subsection (3) of this
12 section may not exceed two thousand five hundred dollars for a special
13 event if the promoter has not previously been penalized under this
14 section. Under no circumstances is a promoter liable for sales tax or
15 business and occupation tax not remitted to the department by a vendor
16 at a special event.

17 (5) The department shall notify a promoter by mail of any penalty
18 imposed under this section, and the penalty shall be due within thirty
19 days from the date of the notice. If any penalty imposed under this
20 section is not received by the department by the due date, there shall
21 be assessed interest on the unpaid amount beginning the day following
22 the due date until the penalty is paid in full. The rate of interest
23 shall be computed on a daily basis on the amount of outstanding penalty
24 at the rate as computed under RCW 82.32.050(2). The rate computed
25 shall be adjusted annually in the same manner as provided in RCW
26 82.32.050(1)(c).

27 (6) For purposes of this section:

28 (a) "Promoter" means a person who organizes, operates, or sponsors
29 a special event and who contracts with vendors for participation in the
30 special event.

31 (b) "Special event" means an entertainment, amusement,
32 recreational, educational, or marketing event, whether held on a
33 regular or irregular basis, at which more than one vendor makes or
34 solicits retail sales of tangible personal property or services. The
35 term includes, but is not limited to: Auto shows, recreational vehicle
36 shows, boat shows, home shows, garden shows, hunting and fishing shows,
37 stamp shows, comic book shows, sports memorabilia shows, craft shows,
38 art shows, antique shows, flea markets, exhibitions, festivals,

1 concerts, swap meets, bazaars, carnivals, athletic contests, circuses,
2 fairs, or other similar activities. "Special event" does not include
3 an event that is organized for the exclusive benefit of any nonprofit
4 organization as defined in RCW 82.04.3651. An event is organized for
5 the exclusive benefit of a nonprofit organization if all of the gross
6 proceeds of retail sales of all vendors at the event inure to the
7 benefit of the nonprofit organization on whose behalf the event is
8 being held. "Special event" does not include athletic contests that
9 involve competition between teams, when such competition consists of
10 more than five contests in a calendar year by at least one team at the
11 same facility or site.

12 (c) "Vendor" means a person who, at a special event, makes or
13 solicits retail sales of tangible personal property or services.

14 (7) This section does not apply to:

15 (a) A special event whose promoter does not charge more than two
16 hundred dollars for a vendor to participate in a special event;

17 (b) A special event whose promoter charges a percentage of sales
18 instead of, or in addition to, a flat charge for a vendor to
19 participate in a special event if the promoter, in good faith, believes
20 that no vendor will pay more than two hundred dollars to participate in
21 the special event; or

22 (c) A person who does not organize, operate, or sponsor a special
23 event, but only provides a venue, supplies, furnishings, fixtures,
24 equipment, or services to a promoter of a special event.

25 **Sec. 16.** RCW 82.32.020 and 1983 c 3 s 220 are each amended to read
26 as follows:

27 For the purposes of this chapter:

28 The meaning attributed in chapters 82.01 through 82.27 RCW to the
29 words and phrases "tax year," "taxable year," "person," "company,"
30 "gross proceeds of sales," "gross income of the business," "business,"
31 "engaging in business," "successor," "gross operating revenue," "gross
32 income," "taxpayer," "retail sale," and "value of products" shall apply
33 equally to the provisions of this chapter.

34 NEW SECTION. **Sec. 17.** (1) Sections 8 through 10 of this act are
35 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and take effect August 1, 2003.

3 (2) Sections 11 through 16 of this act are necessary for the
4 immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and take effect July 1, 2003.

7 (3) Sections 1 through 7 of this act take effect January 1, 2004.

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