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HOUSE BILL 1206

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Anderson, Wallace, Orcutt, Takko, Sullivan,  
Ericksen, Green, Kelley, and Schmick

Read first time 01/15/09. Referred to Committee on Finance.

1            AN ACT Relating to eliminating prepayment requirements as a  
2 condition to contesting a tax or related penalty and interest; and  
3 amending RCW 82.32.150, 82.32.180, and 82.32.190.

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

5            **Sec. 1.** RCW 82.32.150 and 1961 c 15 s 82.32.150 are each amended  
6 to read as follows:

7            (~~All taxes, penalties, and interest shall be paid in full before~~  
8 ~~any action may be instituted in any court to contest all or any part of~~  
9 ~~such taxes, penalties, or interest.~~) No restraining order or  
10 injunction shall be granted or issued by any court or judge to restrain  
11 or enjoin the collection of any tax or penalty or any part thereof,  
12 except upon the ground that the assessment thereof was in violation of  
13 the Constitution of the United States or that of the state.

14            **Sec. 2.** RCW 82.32.180 and 1997 c 156 s 4 are each amended to read  
15 as follows:

16            Any person, except one who has failed to keep and preserve books,  
17 records, and invoices as required in this chapter and chapter 82.24  
18 RCW, (~~having paid any tax as required and~~) feeling aggrieved by the

1 amount of the tax may appeal to the superior court of Thurston county,  
2 within the time limitation for a refund provided in chapter 82.32 RCW  
3 or, if an application for refund has been made to the department within  
4 that time limitation, then within thirty days after rejection of the  
5 application, whichever time limitation is later. In the appeal the  
6 taxpayer shall set forth the amount of the tax imposed upon the  
7 taxpayer which the taxpayer concedes to be the correct tax and the  
8 reason why the tax should be reduced or abated. The appeal shall be  
9 perfected by serving a copy of the notice of appeal upon the department  
10 within the time herein specified and by filing the original thereof  
11 with proof of service with the clerk of the superior court of Thurston  
12 county.

13 The trial in the superior court on appeal shall be de novo and  
14 without the necessity of any pleadings other than the notice of appeal.  
15 At trial, the burden shall rest upon the taxpayer to prove that the tax  
16 as paid by the taxpayer is incorrect, either in whole or in part, and  
17 to establish the correct amount of the tax. In such proceeding the  
18 taxpayer shall be deemed the plaintiff, and the state, the defendant;  
19 and both parties shall be entitled to subpoena the attendance of  
20 witnesses as in other civil actions and to produce evidence that is  
21 competent, relevant, and material to determine the correct amount of  
22 the tax that should be paid by the taxpayer. Either party may seek  
23 appellate review in the same manner as other civil actions are appealed  
24 to the appellate courts.

25 It shall not be necessary for the taxpayer to protest against the  
26 payment of any tax or to make any demand to have the same refunded or  
27 to petition the director for a hearing in order to appeal to the  
28 superior court, but no court action or proceeding of any kind shall be  
29 maintained by the taxpayer to recover any tax paid, or any part  
30 thereof, except as herein provided.

31 The provisions of this section shall not apply to any tax payment  
32 which has been the subject of an appeal to the board of tax appeals  
33 with respect to which appeal a formal hearing has been elected.

34 **Sec. 3.** RCW 82.32.190 and 1996 c 149 s 3 are each amended to read  
35 as follows:

36 (1) The department, by its order, may hold in abeyance the  
37 collection of tax from any taxpayer or any group of taxpayers when a

1 question bearing on their liability for tax hereunder is pending before  
2 the courts. The department may impose such conditions as may be deemed  
3 just and equitable (~~and~~); however, the department may not require  
4 payment of taxes, interest, and penalties before any action may be  
5 instituted in any court to contest all or any part of such taxes,  
6 interest, or penalties. If a final judgment is entered against the  
7 taxpayer for payment of any tax or penalty, the department shall  
8 require the payment of interest at the rate of three-quarters of one  
9 percent of the amount of the tax for each thirty days or portion  
10 thereof from the date upon which such tax became due until the date of  
11 payment.

12 (2) Interest imposed under this section for periods after January  
13 1, 1997, shall be computed on a daily basis at the rate as computed  
14 under RCW 82.32.050(2). The rate so computed shall be adjusted on the  
15 first day of January of each year. Interest for taxes held in abeyance  
16 under this section before January 1, 1997, but outstanding after  
17 January 1, 1997, shall not be recalculated but shall remain at  
18 three-quarters of one percent per each thirty days or portion thereof.

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