
HOUSE BILL 3223

State of Washington 61st Legislature 2010 2nd Special Session

By Representatives Hunter, Orcutt, and Llias; by request of Department of Revenue

Read first time 12/11/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to establishing a temporary penalty and interest
2 waiver program for certain penalties and interest on delinquent state
3 and local sales and use taxes, state business and occupation taxes, and
4 state public utility taxes; reenacting and amending RCW 82.32.080;
5 adding a new section to chapter 82.32 RCW; providing an effective date;
6 and declaring an emergency.

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

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

10 (1) Except as otherwise provided in subsection (4) of this section,
11 the department must waive all penalties and interest otherwise due
12 under this chapter and that are unpaid as of the effective date of this
13 section, if all of the following circumstances are met:

14 (a) The penalties and interest are imposed with respect to: (i)
15 State business and occupation tax, state public utility tax, state or
16 local sales tax, or state or local use tax; and (ii) tax liability that
17 first became due to the department before February 1, 2011, which
18 includes taxes billed to the taxpayer, or disclosed by the taxpayer to

1 the department, on or after February 1, 2011, but that were required by
2 this chapter to have been reported and paid by the taxpayer before
3 February 1, 2011;

4 (b) The taxpayer must file with the department no later than April
5 18, 2011: (i) All outstanding tax returns for the taxes specified in
6 (a)(i) of this subsection (1); and (ii) any amended returns covering
7 tax liabilities with respect to which a penalty and interest waiver
8 under this section is requested;

9 (c) Before May 1, 2011, the taxpayer must remit full payment to the
10 department of the balance due on all tax liabilities for which a
11 penalty and interest waiver under this section is requested. If a
12 waiver is requested for penalties or interest associated with an
13 invoice that has been billed to the taxpayer, the taxpayer must remit
14 full payment to the department of the entire balance due on that
15 invoice other than any penalty and interest eligible for waiver under
16 this section, even if the invoice includes taxes not specified in
17 (a)(i) of this subsection (1). If the invoice is a tax warrant, the
18 taxpayer must also remit full payment to the department of any filing
19 or other fees added to the tax warrant, including the filing fees
20 provided in RCW 36.18.012 (2) and (10), the fee imposed in RCW
21 36.18.016(4), and the surcharge imposed in RCW 40.14.027;

22 (d) The taxpayer must file and pay in full by the due date all tax
23 returns that become due after January 31, 2011, and before May 1, 2011,
24 for all taxes administered by the department under this chapter;

25 (e) No later than April 18, 2011, the department must receive a
26 completed application for penalty and interest waiver under this
27 section in a form and manner prescribed by the department;

28 (f) The taxpayer must, before May 1, 2011, pay in full any
29 outstanding evasion penalty assessed against the taxpayer by the
30 department under RCW 82.32.090 and any outstanding penalties assessed
31 against the taxpayer by the department under RCW 82.32.291 for misusing
32 a reseller permit or resale certificate; and

33 (g) The taxpayer must never have been a defendant in a criminal
34 prosecution related to an offense involving the failure to collect or
35 pay the proper amount of any tax administered by the department under
36 this chapter.

37 (2) Taxpayers receiving penalty or interest relief under this
38 section may not seek a refund, or otherwise challenge the amount, of

1 any tax liability paid as required by subsection (1)(c) of this
2 section. This subsection (2) applies to refund requests or appeals
3 filed directly with the department and to proceedings brought in any
4 court or administrative tribunal.

5 (3) All tax liability reported and paid as required in subsection
6 (1)(b), (c) and (d) of this section is subject to verification by the
7 department as provided in RCW 82.32.050. This section does not
8 preclude the assessment of taxes, penalties, and interest with respect
9 to any amounts determined by the department to have been underpaid for
10 any tax period for which the taxpayer previously received penalty or
11 interest relief under this section.

12 (4) This section does not authorize the department to waive the
13 evasion penalty currently authorized by RCW 82.32.090(7) or the penalty
14 currently authorized by RCW 82.32.291 for misusing a reseller permit or
15 resale certificate.

16 (5) Nothing in this section may be construed as requiring a
17 taxpayer to have first paid any penalty or interest for which a waiver
18 is sought under this section.

19 (6) Solely for purposes of determining whether a taxpayer qualifies
20 for a waiver of penalties or interest under this section with respect
21 to a balance owing as of the effective date of this section on any
22 invoice issued by the department, any payments made to the department
23 on that taxpayer's account before May 1, 2011, are deemed to have been
24 applied first to any of the taxes specified in subsection (1)(a)(i) of
25 this section, then to any other taxes, and then to penalties or
26 interest, if such payments were applied either:

- 27 (a) To that invoice; or
- 28 (b) Against any liability reflected in that invoice before that
29 invoice was issued by the department.

30 (7) A taxpayer in a bankruptcy proceeding is ineligible for relief
31 under this section to the extent that the payment of any tax debt by
32 the taxpayer to the department as required under this section violates
33 the federal bankruptcy code.

34 **Sec. 2.** RCW 82.32.080 and 2010 c 106 s 226 and 2010 c 111 s 304
35 are each reenacted and amended to read as follows:

36 (1) When authorized by the department, payment of the tax may be
37 made by uncertified check under such rules as the department

1 prescribes, but, if a check so received is not paid by the bank on
2 which it is drawn, the taxpayer, by whom such check is tendered, will
3 remain liable for payment of the tax and for all legal penalties and
4 interest, the same as if such check had not been tendered.

5 (2)(a) Except as otherwise provided in this subsection, payment of
6 the tax must be made by electronic funds transfer, as defined in RCW
7 82.32.085, if the taxpayer is required to file and remit its taxes on
8 a monthly basis. As an alternative to electronic funds transfer, the
9 department may authorize other forms of electronic payment, such as
10 credit card and e-check. All taxes administered by this chapter are
11 subject to this requirement except the taxes authorized by chapters
12 82.14A, 82.14B, 82.24, 82.29A, and 84.33 RCW. It is the intent of this
13 subsection to require electronic payment for those taxes reported on
14 the department's combined excise tax return or any successor return.
15 The mandatory electronic payment requirement in this subsection also
16 applies to taxpayers who: (i) Are subject to the tax imposed in RCW
17 82.04.257 but for whom the department has authorized a tax reporting
18 frequency that is less frequent than monthly; or (ii) meet the
19 threshold for filing and remitting taxes on a monthly basis as
20 established by rule of the department but for whom the department has
21 authorized a less frequent reporting frequency, when such authorization
22 became effective on or after July 26, 2009.

23 (b) The department, for good cause, may waive the electronic
24 payment requirement in this subsection for any taxpayer. In the
25 discretion of the department, a waiver under this subsection may be
26 made temporary or permanent, and may be made on the department's own
27 motion.

28 (c) The department is authorized to accept payment of taxes by
29 electronic funds transfer or other acceptable forms of electronic
30 payment from taxpayers that are not subject to the mandatory electronic
31 payment requirements in this subsection.

32 (3)(a) Except as otherwise provided in this subsection, returns
33 must be filed electronically using the department's online tax filing
34 service, if the taxpayer is required to file and remit its taxes on a
35 monthly basis. The mandatory electronic filing requirement in this
36 subsection also applies to taxpayers who: (i) Are subject to the tax
37 imposed in RCW 82.04.257 but for whom the department has authorized a
38 tax reporting frequency that is less frequent than monthly; or (ii)

1 meet the threshold for filing and remitting taxes on a monthly basis as
2 established by rule of the department but for whom the department has
3 authorized a less frequent reporting frequency, when such authorization
4 became effective on or after July 26, 2009.

5 (b) The department, for good cause, may waive the electronic filing
6 requirement in this subsection for any taxpayer. In the discretion of
7 the department, a waiver under this subsection may be made temporary or
8 permanent, and may be made on the department's own motion.

9 (c) The department is authorized to allow electronic filing of
10 returns from taxpayers that are not subject to the mandatory electronic
11 filing requirements in this subsection.

12 (4)(a)(i) The department, for good cause shown, may extend the time
13 for making and filing any return, and may grant such reasonable
14 additional time within which to make and file returns as it may deem
15 proper, but any permanent extension granting the taxpayer a reporting
16 date without penalty more than ten days beyond the due date, and any
17 extension in excess of thirty days must be conditional on deposit with
18 the department of an amount to be determined by the department which is
19 approximately equal to the estimated tax liability for the reporting
20 period or periods for which the extension is granted. In the case of
21 a permanent extension or a temporary extension of more than thirty days
22 the deposit must be deposited within the state treasury with other tax
23 funds and a credit recorded to the taxpayer's account which may be
24 applied to taxpayer's liability upon cancellation of the permanent
25 extension or upon reporting of the tax liability where an extension of
26 more than thirty days has been granted.

27 (ii) The department must review the requirement for deposit at
28 least annually and may require a change in the amount of the deposit
29 required when it believes that such amount does not approximate the tax
30 liability for the reporting period or periods for which the extension
31 is granted.

32 (b) During a state of emergency declared under RCW 43.06.010(12),
33 the department, on its own motion or at the request of any taxpayer
34 affected by the emergency, may extend the time for making or filing any
35 return as the department deems proper. The department may not require
36 any deposit as a condition for granting an extension under this
37 subsection (4)(b).

1 (5) The department must keep full and accurate records of all funds
2 received and disbursed by it. Subject to the provisions of RCW
3 82.32.105, section 1 of this act, and 82.32.350, the department must
4 apply the payment of the taxpayer first against penalties and interest,
5 and then upon the tax, without regard to any direction of the taxpayer.

6 (6) The department may refuse to accept any return that is not
7 accompanied by a remittance of the tax shown to be due thereon or that
8 is not filed electronically as required in this section. When such
9 return is not accepted, the taxpayer is deemed to have failed or
10 refused to file a return and is subject to the procedures provided in
11 RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The
12 above authority to refuse to accept a return may not apply when a
13 return is timely filed electronically and a timely payment has been
14 made by electronic funds transfer or other form of electronic payment
15 as authorized by the department.

16 (7) Except for returns and remittances required to be transmitted
17 to the department electronically under this section and except as
18 otherwise provided in this chapter, a return or remittance that is
19 transmitted to the department by United States mail is deemed filed or
20 received on the date shown by the post office cancellation mark stamped
21 upon the envelope containing it. A return or remittance that is
22 transmitted to the department electronically is deemed filed or
23 received according to procedures set forth by the department.

24 (8)(a) For purposes of subsections (2) and (3) of this section,
25 "good cause" means the inability of a taxpayer to comply with the
26 requirements of subsection (2) or (3) of this section because:

27 (i) The taxpayer does not have the equipment or software necessary
28 to enable the taxpayer to comply with subsection (2) or (3) of this
29 section;

30 (ii) The equipment or software necessary to enable the taxpayer to
31 comply with subsection (2) or (3) of this section is not functioning
32 properly;

33 (iii) The taxpayer does not have access to the internet using the
34 taxpayer's own equipment;

35 (iv) The taxpayer does not have a bank account or a credit card;

36 (v) The taxpayer's bank is unable to send or receive electronic
37 funds transfer transactions; or

1 (vi) Some other circumstance or condition exists that, in the
2 department's judgment, prevents the taxpayer from complying with the
3 requirements of subsection (2) or (3) of this section.

4 (b) "Good cause" also includes any circumstance that, in the
5 department's judgment, supports the efficient or effective
6 administration of the tax laws of this state, including providing
7 relief from the requirements of subsection (2) or (3) of this section
8 to any taxpayer that is voluntarily collecting and remitting this
9 state's sales or use taxes on sales to Washington customers but has no
10 legal requirement to be registered with the department.

11 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 February 1, 2011.

--- END ---