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**SUBSTITUTE SENATE BILL 6892**

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**State of Washington                      61st Legislature                      2010 2nd Special Session**

**By Senate Ways & Means (originally sponsored by Senator Murray; by request of Department of Revenue)**

READ FIRST TIME 12/11/10.

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 subsections (4) and (5) of this  
11 section, the department must waive all penalties and interest otherwise  
12 due under this chapter and that are unpaid as of the effective date of  
13 this 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 never have had an evasion penalty assessed  
29 against the taxpayer by the department under RCW 82.32.090 or a penalty  
30 assessed against the taxpayer by the department under RCW 82.32.291 for  
31 misusing a reseller permit or resale certificate; and

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

36 (2) Taxpayers receiving penalty or interest relief under this  
37 section may not seek a refund, or otherwise challenge the amount, of  
38 any tax liability paid as required by subsection (1)(c) of this

1 section. This subsection (2) applies to refund requests or appeals  
2 filed directly with the department and to proceedings brought in any  
3 court or administrative tribunal.

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

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

15 (5) If taxpayers are current for tax returns due as of November 25,  
16 2010, tax liability that accrues after that date would not qualify  
17 under this section.

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

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

29 (a) To that invoice; or

30 (b) Against any liability reflected in that invoice before that  
31 invoice was issued by the department.

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

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

1 (1) When authorized by the department, payment of the tax may be  
2 made by uncertified check under such rules as the department  
3 prescribes, but, if a check so received is not paid by the bank on  
4 which it is drawn, the taxpayer, by whom such check is tendered, will  
5 remain liable for payment of the tax and for all legal penalties and  
6 interest, the same as if such check had not been tendered.

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

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

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

34 (3)(a) Except as otherwise provided in this subsection, returns  
35 must be filed electronically using the department's online tax filing  
36 service, if the taxpayer is required to file and remit its taxes on a  
37 monthly basis. The mandatory electronic filing requirement in this  
38 subsection also applies to taxpayers who: (i) Are subject to the tax

1 imposed in RCW 82.04.257 but for whom the department has authorized a  
2 tax reporting frequency that is less frequent than monthly; or (ii)  
3 meet the threshold for filing and remitting taxes on a monthly basis as  
4 established by rule of the department but for whom the department has  
5 authorized a less frequent reporting frequency, when such authorization  
6 became effective on or after July 26, 2009.

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

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

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

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

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

1 any deposit as a condition for granting an extension under this  
2 subsection (4)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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