
SENATE BILL 5946

State of Washington

62nd Legislature

2011 Regular Session

By Senators Ranker, White, Rockefeller, Harper, Conway, Kohl-Welles, Fraser, Prentice, Hargrove, Kline, Chase, and Nelson

Read first time 04/14/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to strengthening compliance measures for the
2 collection of excise taxes from corporate officers responsible for tax
3 payments to provide funding for essential government services; amending
4 RCW 82.32.145; creating a new section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that there is a
7 critical need to maintain public services that support the high quality
8 of life in Washington state by providing opportunities for
9 Washingtonians to live healthy, productive, and successful lives,
10 providing care and support for those who are unable to care for
11 themselves, and helping to ensure that Washington remains a safe,
12 beautiful, vibrant place to live, work, and raise a family.

13 (2) The legislature finds that the payment of duly owed excise
14 taxes is the responsibility of a business' corporate officers. By
15 failing to meet these obligations, such corporate officers shift the
16 burden of the payment of taxes onto other businesses and provides those
17 officers with a competitive advantage. The legislature further finds
18 that during this economic crisis and the necessity to balance the
19 budget, strengthening compliance measures meets general tax policy

1 goals and enhances revenue collections without the imposition of new
2 taxes. At a time when virtually every area of the budget is being
3 reduced by substantial amounts, corporate officers must meet their
4 fairly imposed tax obligations so that all citizens bear some of the
5 burden to balance the budget.

6 (3) Therefore, it is the legislature's intent that the additional
7 revenues from enhanced compliance of excise tax payments by responsible
8 corporate officers in this act be used to support schools, colleges,
9 health care, public safety, environmental protection, and other core
10 functions of the state.

11 **Sec. 2.** RCW 82.32.145 and 2010 1st sp.s. c 23 s 801 are each
12 amended to read as follows:

13 (1) Whenever the department has issued a warrant under RCW
14 82.32.210 for the collection of unpaid (~~retail sales tax funds~~
15 ~~collected and held in trust under RCW 82.08.050~~) taxes from a limited
16 liability business entity and that business entity has been terminated,
17 dissolved, or abandoned, or is insolvent, the department may pursue
18 collection of the entity's unpaid (~~sales~~) taxes, including penalties
19 and interest on those taxes, against any or all of the responsible
20 individuals. For purposes of this subsection, "insolvent" means the
21 condition that results when the sum of the entity's debts exceeds the
22 fair market value of its assets. The department may presume that an
23 entity is insolvent if the entity refuses to disclose to the department
24 the nature of its assets and liabilities.

25 (2) Personal liability under this section may be imposed for state
26 and local sales (~~taxes~~) and use taxes, state business and occupation
27 taxes, and any other state and local taxes collected by the department
28 in respect to which the provisions of this chapter apply, regardless of
29 whether the tax is denominated a tax, fee, charge, or some other term.

30 (3)(a) For a responsible individual who is the current or a former
31 chief executive or chief financial officer, liability under this
32 section applies regardless of fault or whether the individual was or
33 should have been aware of the unpaid (~~sales~~) tax liability of the
34 limited liability business entity.

35 (b) For any other responsible individual, liability under this
36 section applies only if he or she willfully fails to pay or to cause to

1 be paid to the department the ((sales)) taxes due from the limited
2 liability business entity.

3 (4)(a) Except as provided in this subsection (4)(a), a responsible
4 individual who is the current or a former chief executive or chief
5 financial officer is liable under this section only for ((sales)) tax
6 liability accrued during the period that he or she was the chief
7 executive or chief financial officer. However, if the responsible
8 individual had the responsibility or duty to remit payment of the
9 limited liability business entity's ((sales)) taxes to the department
10 during any period of time that the person was not the chief executive
11 or chief financial officer, that individual is also liable for
12 ((sales)) tax liability that became due during the period that he or
13 she had the duty to remit payment of the limited liability business
14 entity's taxes to the department but was not the chief executive or
15 chief financial officer.

16 (b) All other responsible individuals are liable under this section
17 only for ((sales)) tax liability that became due during the period he
18 or she had the responsibility or duty to remit payment of the limited
19 liability business entity's taxes to the department.

20 (5) Persons described in subsection (3)(b) of this section are
21 exempt from liability under this section in situations where nonpayment
22 of the limited liability business entity's ((sales)) taxes is due to
23 reasons beyond their control as determined by the department by rule.

24 (6) Any person having been issued a notice of assessment under this
25 section is entitled to the appeal procedures under RCW 82.32.160,
26 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

27 (7) This section does not relieve the limited liability business
28 entity of its ((sales)) tax liability or otherwise impair other tax
29 collection remedies afforded by law.

30 (8) Collection authority and procedures prescribed in this chapter
31 apply to collections under this section.

32 (9) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Chief executive" means: The president of a corporation; or
35 for other entities or organizations other than corporations or if the
36 corporation does not have a president as one of its officers, the
37 highest ranking executive manager or administrator in charge of the
38 management of the company or organization.

1 (b) "Chief financial officer" means: The treasurer of a
2 corporation; or for entities or organizations other than corporations
3 or if a corporation does not have a treasurer as one of its officers,
4 the highest senior manager who is responsible for overseeing the
5 financial activities of the entire company or organization.

6 (c) "Limited liability business entity" means a type of business
7 entity that generally shields its owners from personal liability for
8 the debts, obligations, and liabilities of the entity, or a business
9 entity that is managed or owned in whole or in part by an entity that
10 generally shields its owners from personal liability for the debts,
11 obligations, and liabilities of the entity. Limited liability business
12 entities include corporations, limited liability companies, limited
13 liability partnerships, trusts, general partnerships and joint ventures
14 in which one or more of the partners or parties are also limited
15 liability business entities, and limited partnerships in which one or
16 more of the general partners are also limited liability business
17 entities.

18 (d) "Manager" has the same meaning as in RCW 25.15.005.

19 (e) "Member" has the same meaning as in RCW 25.15.005, except that
20 the term only includes members of member-managed limited liability
21 companies.

22 (f) "Officer" means any officer or assistant officer of a
23 corporation, including the president, vice president, secretary, and
24 treasurer.

25 (g)(i) "Responsible individual" includes any current or former
26 officer, manager, member, partner, or trustee of a limited liability
27 business entity with an unpaid tax warrant issued by the department.

28 (ii) "Responsible individual" also includes any current or former
29 employee or other individual, but only if the individual had the
30 responsibility or duty to remit payment of the limited liability
31 business entity's unpaid (~~sales~~) tax liability reflected in a tax
32 warrant issued by the department.

33 (iii) Whenever any taxpayer has one or more limited liability
34 business entities as a member, manager, or partner, "responsible
35 individual" also includes any current and former officers, members, or
36 managers of the limited liability business entity or entities or of any
37 other limited liability business entity involved directly in the

1 management of the taxpayer. For purposes of this subsection
2 (9)(g)(iii), "taxpayer" means a limited liability business entity with
3 an unpaid tax warrant issued against it by the department.

4 (h) "Willfully fails to pay or to cause to be paid" means that the
5 failure was the result of an intentional, conscious, and voluntary
6 course of action.

7 NEW SECTION. **Sec. 3.** This act takes effect August 1, 2011.

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