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SENATE BILL 5715

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Hill, Carrell, and Hargrove

Read first time 02/11/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to addressing the evasion of taxes by the use of  
2 certain electronic means; amending RCW 82.32.215 and 82.32.290; adding  
3 new sections to chapter 82.32 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 82.32.215 and 1998 c 311 s 9 are each amended to read  
6 as follows:

7 ~~((If any))~~ (1) The department may, by order, revoke the certificate  
8 of registration of a taxpayer for any of the following reasons:

9 (a) A warrant issued under this chapter is not paid within thirty  
10 days after it has been filed with the clerk of the superior court ~~((, or~~  
11 ~~if any))~~;

12 (b) The taxpayer is delinquent, for three consecutive reporting  
13 periods, in the transmission to the department ~~((of revenue of retail~~  
14 ~~sales tax collected by the taxpayer, the department of revenue may, by~~  
15 ~~order, revoke the certificate of registration of the taxpayer against~~  
16 ~~whom the warrant was issued, and, if the order is entered, a copy~~  
17 ~~thereof shall be posted in a conspicuous place at the main entrance to~~  
18 ~~the taxpayer's place of business and shall remain posted until such~~

1 ~~time as the warrant has been paid. Any certificate so revoked shall~~  
2 ~~not be reinstated, nor shall~~) of retail sales tax collected by the  
3 taxpayer; or

4 (c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4)  
5 and continues to engage in business without fully complying with RCW  
6 82.32.290(4)(b) (i) through (iii); or

7 (B) A person convicted of violating RCW 82.32.290(4) is an owner,  
8 officer, director, partner, trustee, member, or manager of the  
9 taxpayer, and the person and taxpayer have not fully complied with RCW  
10 82.32.290(4)(b) (i) through (iii).

11 (ii) For the purposes of this subsection (1)(c), the terms  
12 "manager," "member," and "officer" mean the same as defined in RCW  
13 82.32.145.

14 (2) If the department enters a final order revoking a taxpayer's  
15 certificate of registration, a copy of the order must, if practicable,  
16 be posted in a conspicuous place at the main entrance to the taxpayer's  
17 place of business. The department may also post a final order revoking  
18 a taxpayer's certificate of registration in any public facility, such  
19 as a courthouse or post office, as may be allowed by the public entity  
20 that owns or occupies the facility. A final order posted at the  
21 taxpayer's place of business must remain posted until such time as the  
22 taxpayer is eligible to have its certificate of registration reinstated  
23 as provided in subsection (3) of this section or has abandoned the  
24 premises. A taxpayer will not be deemed to have abandoned the premises  
25 if the taxpayer or any person with an ownership interest in the  
26 taxpayer continues to operate a substantially similar type of business  
27 under a different legal entity at the same location.

28 (3) Any certificate revoked under subsection (1) of this section  
29 may not be reinstated, nor may a new certificate of registration be  
30 issued to the taxpayer, until:

31 (a) The amount due on the warrant has been paid, or provisions for  
32 payment satisfactory to the department (~~of revenue~~) have been  
33 entered, and until the taxpayer has deposited with the department (~~of~~  
34 revenue—such)) security for payment of any taxes, increases, and  
35 penalties, due or which may become due in an amount and under such  
36 terms and conditions as the department of revenue may require, but the  
37 amount of the security (~~shall~~) may not be greater than one-half the  
38 estimated average annual liability of the taxpayer; or

1        (b) The taxpayer and, if applicable, the owner, officer, director,  
2 partner, trustee, member, or manager of the taxpayer who was convicted  
3 of violating RCW 82.32.290(4) are in full compliance with RCW  
4 82.32.290(4)(b) (i) through (iii), if the certificate of registration  
5 was revoked under the provisions of subsection (1)(c) of this section.

6        **Sec. 2.** RCW 82.32.290 and 2010 c 112 s 11 are each amended to read  
7 as follows:

8        (1)(a) It (~~shall be~~) is unlawful:

9        (i) For any person to engage in business without having obtained a  
10 certificate of registration as provided in this chapter;

11        (ii) For the president, vice president, secretary, treasurer, or  
12 other officer of any company to cause or permit the company to engage  
13 in business without having obtained a certificate of registration as  
14 provided in this chapter;

15        (iii) For any person to tear down or remove any order or notice  
16 posted by the department in violation of this chapter;

17        (iv) For any person to aid or abet another in any attempt to evade  
18 the payment of any tax or any part thereof;

19        (v) For any purchaser to fraudulently sign or furnish to a seller  
20 documentation authorized under RCW 82.04.470 without intent to resell  
21 the property purchased or with intent to otherwise use the property in  
22 a manner inconsistent with the claimed wholesale purchase; or

23        (vi) For any person to fail or refuse to permit the examination of  
24 any book, paper, account, record, or other data by the department or  
25 its duly authorized agent; or to fail or refuse to permit the  
26 inspection or appraisal of any property by the department or its duly  
27 authorized agent; or to refuse to offer testimony or produce any record  
28 as required.

29        (b) Any person violating any of the provisions of this subsection  
30 (1) (~~shall be~~) is guilty of a gross misdemeanor in accordance with  
31 chapter 9A.20 RCW.

32        (2)(a) It (~~shall be~~) is unlawful:

33        (i) For any person to engage in business after revocation of a  
34 certificate of registration unless the person's certification of  
35 registration has been reinstated;

36        (ii) For the president, vice president, secretary, treasurer, or

1 other officer of any company to cause or permit the company to engage  
2 in business after revocation of a certificate of registration unless  
3 the company's certificate of registration has been reinstated; or

4 (iii) For any person to make any false or fraudulent return or  
5 false statement in any return, with intent to defraud the state or  
6 evade the payment of any tax or part thereof.

7 (b) Any person violating any of the provisions of this subsection  
8 (2) (~~shall be~~) is guilty of a class C felony in accordance with  
9 chapter 9A.20 RCW.

10 (3) In addition to the foregoing penalties, any person who  
11 knowingly swears to or verifies any false or fraudulent return, or any  
12 return containing any false or fraudulent statement with the intent  
13 aforesaid, (~~shall be~~) is guilty of the offense of perjury in the  
14 second degree; and any company for which a false return, or a return  
15 containing a false statement, as aforesaid, is made, (~~shall~~) must be  
16 punished, upon conviction thereof, by a fine of not more than one  
17 thousand dollars.

18 (4)(a) It is unlawful for any person to knowingly sell, purchase,  
19 install, transfer, manufacture, create, design, update, repair, use,  
20 possess, or otherwise make available, in this state, any automated  
21 sales suppression device or phantom-ware. However, it is not unlawful  
22 for persons to possess or use automated sales suppression devices or  
23 phantom-ware as authorized in section 3(6) of this act.

24 (b) It is unlawful for any person who has been convicted of  
25 violating this section to engage in business, or participate in any  
26 business as an owner, officer, director, partner, trustee, member, or  
27 manager of the business, unless:

28 (i) All taxes, penalties, and interest lawfully due are paid;

29 (ii) The person pays in full all penalties and fines imposed on the  
30 person for violating this section; and

31 (iii) The person, if the person is engaging in business subject to  
32 tax under this title, or the business in which the person participates,  
33 enters into a written agreement with the department for the electronic  
34 monitoring of the business's sales, by a method acceptable to the  
35 department, for five years at the business's expense.

36 (c)(i) Any person violating the provisions of this subsection,  
37 including material breach of the monitoring agreement under (b)(iii) of

1 this subsection, is guilty of a class C felony in accordance with  
2 chapter 9A.20 RCW and, as applicable, (c)(ii) of this subsection.

3 (ii) Any person violating the provisions of this subsection by  
4 furnishing an automated sales suppression device or phantom-ware to  
5 another person or by updating or repairing another person's automated  
6 sales suppression device or phantom-ware is, in addition to the  
7 punishments prescribed in chapter 9A.20 RCW, subject to a mandatory  
8 fine fixed by the court in an amount equal to the greater of ten  
9 thousand dollars, the defendant's gain from the commission of the  
10 crime, or the state's loss from the commission of the crime. For  
11 purposes of this subsection (4)(c)(ii), "loss" means the total of all  
12 taxes, penalties, and interest certified by the department to be due,  
13 as of the date of sentencing, as a result of any violation of the  
14 provisions of this subsection by a person using the automated sales  
15 suppression device or phantom-ware obtained from, or updated or  
16 repaired by, the defendant, which results in the defendant's conviction  
17 for violating the provisions of this subsection.

18 (d) For the purposes of this subsection (4), the terms "manager,"  
19 "member," and "officer" have the same meaning as in RCW 82.32.145.

20 (e) The definitions in section 3 of this act apply to this  
21 subsection (4).

22 (5) All penalties or punishments provided in this section (~~shall~~  
23 be)) are in addition to all other penalties provided by law.

24 NEW SECTION. Sec. 3. A new section is added to chapter 82.32 RCW  
25 to read as follows:

26 (1)(a) Automated sales suppression devices, phantom-ware,  
27 electronic cash registers or point of sale systems used with automated  
28 sales suppression devices or phantom-ware, and any property  
29 constituting proceeds traceable to any violation of RCW 82.32.290(4)  
30 are considered contraband and are subject to seizure and forfeiture.

31 (b) Property subject to forfeiture under (a) of this subsection (1)  
32 may be seized by any agent of the department authorized to assess or  
33 collect taxes, or law enforcement officer of this state, upon process  
34 issued by any superior court or district court having jurisdiction over  
35 the property. Seizure without process may be made if:

36 (i) The seizure is incident to an arrest or a search under a search  
37 warrant; or

1 (ii) The department or the law enforcement officer has probable  
2 cause to believe that the property was used or is intended to be used  
3 in violation of RCW 82.32.290(4) and exigent circumstances exist making  
4 procurement of a search warrant impracticable.

5 (2) Forfeiture authorized by this section is deemed to have  
6 commenced by the seizure. Notice of seizure must be given to the  
7 department if the seizure is made by a law enforcement officer without  
8 the presence of any agent of the department. The department must cause  
9 notice of the seizure and intended forfeiture to be served on the owner  
10 of the property seized, if known, and on any other person known by the  
11 department to have a right or interest in the seized property. Such  
12 service must be made within fifteen days following the seizure or the  
13 department's receipt of notification of the seizure. The notice may be  
14 served by any method authorized by law or court rule, by certified mail  
15 with return receipt requested, or electronically in accordance with RCW  
16 82.32.135. Service by certified mail or electronic means is deemed  
17 complete upon mailing the notice, electronically sending the notice, or  
18 electronically notifying the person or persons entitled to the notice  
19 that the notice is available to be accessed by the person or persons,  
20 within the fifteen-day period following the seizure or the department's  
21 receipt of notification of the seizure.

22 (3) If no person notifies the department in writing of the person's  
23 claim of lawful ownership or right to lawful possession of the item or  
24 items seized within thirty days of the date of service of the notice of  
25 seizure and intended forfeiture, the item or items seized are deemed  
26 forfeited.

27 (4)(a) If any person notifies the department, in writing, of the  
28 person's claim of lawful ownership or lawful right to possession of the  
29 item or items seized within thirty days of the date of service of the  
30 notice of seizure and intended forfeiture, the person or persons must  
31 be afforded a reasonable opportunity to be heard as to the claim. The  
32 hearing must be before the director or the director's designee. A  
33 hearing and any administrative or judicial review is governed by  
34 chapter 34.05 RCW. The burden of proof by a preponderance of the  
35 evidence is upon the person claiming to be the lawful owner or the  
36 person claiming to have the lawful right to possession of the item or  
37 items seized.

1 (b) The department must return the item or items to the claimant as  
2 soon as possible upon a determination that the claimant is the present  
3 lawful owner or is lawfully entitled to possession of the item or items  
4 seized.

5 (5) When property is sought to be forfeited on the ground that it  
6 constitutes proceeds traceable to a violation of RCW 82.32.290(4), the  
7 department must prove by a preponderance of the evidence that the  
8 property constitutes proceeds traceable to a violation of RCW  
9 82.32.290(4).

10 (6)(a) When property forfeited under this section, other than  
11 proceeds traceable to a violation of RCW 82.32.290(4), is no longer  
12 required for evidentiary purposes, the department may:

13 (i) Destroy or have the property destroyed;

14 (ii) Retain the property for training or other official purposes;

15 or

16 (iii) Loan or give the property to any law enforcement or tax  
17 administration agency of any state, political subdivision or municipal  
18 corporation of a state, or the United States for training or other  
19 official purposes. For purposes of this subsection (6)(a)(iii),  
20 "state" has the same meaning as in RCW 82.04.462.

21 (b) When proceeds traceable to a violation of RCW 82.32.290(4)  
22 forfeited under this section are no longer required for evidentiary  
23 purposes, they must be deposited into the general fund.

24 (7) The definitions in this subsection apply to this section:

25 (a) "Automated sales suppression device" means a software program  
26 that falsifies the electronic records of electronic cash registers or  
27 other point of sale systems, including transaction data and transaction  
28 reports. The term includes the software program, any device that  
29 carries the software program, or an internet link to the software  
30 program.

31 (b) "Electronic cash register" means a device that keeps a register  
32 or supporting documents through the means of an electronic device or  
33 computer system designed to record transaction data for the purpose of  
34 computing, compiling, or processing sales transaction data in whatever  
35 manner.

36 (c) "Phantom-ware" means a programming option that is hidden,  
37 preinstalled, or installed-at-a-later-time in the operating system of  
38 an electronic cash register or other point of sale device, or hardwired

1 into the electronic cash register or other point of sale device, and  
2 that can be used to create a virtual second till or may eliminate or  
3 manipulate transaction reports that may or may not be preserved in  
4 digital formats to represent the true or manipulated record of  
5 transactions in the electronic cash register or other point of sale  
6 device.

7 (d) "Transaction data" means information about sales transactions,  
8 including items purchased by a customer, the price for each item, a  
9 taxability determination for each item, a segregated tax amount for  
10 each of the taxed items, the amount of cash or credit tendered, the net  
11 amount returned to the customer in change, the date and time of the  
12 purchase, the name, address, and identification number of the vendor,  
13 and the receipt or invoice number of the transaction.

14 (e) "Transaction reports" means a report that includes information  
15 associated with sales transactions, taxes collected, media totals, and  
16 discount voids at an electronic cash register that can be printed on  
17 cash register tape at the end of a day or shift, or a report  
18 documenting every action at an electronic cash register or other point  
19 of sale device and that is stored electronically.

20 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.32 RCW  
21 to read as follows:

22 When the department has good reason to believe that any property  
23 subject to seizure and forfeiture under section 3 of this act is being  
24 used or maintained in this state in violation of RCW 82.32.290(4)(a),  
25 the department may make affidavit of facts describing the place or  
26 thing to be searched before any judge of any superior or district court  
27 in this state. The judge may issue a search warrant directed to a law  
28 enforcement officer or agent of the department authorized under section  
29 3 of this act to seize contraband, commanding him or her to diligently  
30 search any place or thing as designated in the affidavit and search  
31 warrant, and to seize such suspected contraband and hold it until  
32 disposed of as provided by section 3 of this act.

33 NEW SECTION. **Sec. 5.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the



1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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