
HOUSE BILL 1767

State of Washington 61st Legislature 2009 Regular Session

By Representatives Ericks and Hunter; by request of Department of Revenue

Read first time 01/28/09. Referred to Committee on Finance.

1 AN ACT Relating to requiring the use of electronic methods for
2 taxes administered by the department of revenue, including filing of
3 taxes, payment of taxes, assessment of taxes, and other taxpayer
4 information; and amending RCW 82.32.135, 82.32.080, 82.32.085,
5 82.32.060, and 82.32.087.

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

7 **Sec. 1.** RCW 82.32.135 and 2007 c 111 s 113 are each amended to
8 read as follows:

9 (1) Except as otherwise provided in this subsection, whenever the
10 department is required to send any assessment, notice, or any other
11 information to persons by regular mail, the department (~~may~~) must
12 instead provide the assessment, notice, or other information
13 electronically (~~if the following conditions are met:~~

14 ~~(a) The person entitled to receive the information has authorized~~
15 ~~the department in writing, electronically or otherwise, to provide the~~
16 ~~assessment, notice, or other information electronically; and~~

17 ~~(b))~~. The department may implement the requirement in this
18 subsection in phases. The department, for good cause shown, may waive

1 the requirement in this subsection for any taxpayer. In the discretion
2 of the department, a waiver under this subsection may be made temporary
3 or permanent.

4 (2) If the assessment, notice, or other information is subject to
5 the confidentiality provisions of RCW 82.32.330, the department must
6 use methods reasonably designed to protect the information from
7 unauthorized disclosure. The provisions of this subsection ((1)(b))
8 (2) may be waived by a taxpayer. The waiver must be in writing and may
9 be provided to the department electronically. A person may provide a
10 waiver with respect to a particular item of information or may give a
11 blanket waiver with respect to any item of information or certain items
12 of information to be provided electronically. A blanket waiver will
13 continue until revoked in writing by the taxpayer. Such revocation may
14 be provided to the department electronically in a manner provided or
15 approved by the department.

16 ~~((2) A person may authorize the department under subsection (1)(a)~~
17 ~~of this section to provide a particular item of information~~
18 ~~electronically or may give blanket authorization to provide any item of~~
19 ~~information or certain items of information electronically. Such~~
20 ~~blanket authorization will continue until revoked in writing by the~~
21 ~~taxpayer. Such revocation may be provided to the department~~
22 ~~electronically in a manner provided or approved by the department.))~~

23 (3) Any assessment, notice, or other information provided by the
24 department electronically to a person is deemed to be received by the
25 taxpayer on the date that the department electronically sends the
26 information to the person or electronically notifies the person that
27 the information is available to be accessed by the person.

28 (4) This section also applies to any information that is not
29 expressly required by statute to be sent by regular mail, but is
30 customarily sent by the department using regular mail, to persons
31 entitled to receive the information.

32 **Sec. 2.** RCW 82.32.080 and 2008 c 181 s 502 are each amended to
33 read as follows:

34 (1) When authorized by the department, payment of the tax may be
35 made by uncertified check under such ((regulations)) rules as the
36 department ((shall)) prescribes, but, if a check so received is not
37 paid by the bank on which it is drawn, the taxpayer, by whom such check

1 is tendered, (~~shall~~) will remain liable for payment of the tax and
2 for all legal penalties, the same as if such check had not been
3 tendered.

4 (2)(a) Except as otherwise provided in this subsection, payment of
5 the tax (~~shall~~) must be made by either electronic funds transfer, as
6 defined in RCW 82.32.085, (~~if the amount of the tax due in a calendar~~
7 year is one million eight hundred thousand dollars or more. The
8 department may by rule provide for tax thresholds between two hundred
9 forty thousand dollars and one million eight hundred thousand dollars
10 for mandatory use of electronic funds transfer)) or other form of
11 electronic payment, as authorized by the department, such as credit
12 card and e-check. All taxes administered by this chapter are subject
13 to this requirement except the taxes authorized by chapters 82.14A,
14 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this
15 (~~section~~) subsection to require electronic (~~funds transfer~~) payment
16 for those taxes reported on the department's combined excise tax return
17 or any successor return. The department may implement the requirement
18 in this subsection in phases.

19 (b) The department, for good cause shown, may waive the electronic
20 payment requirement in this subsection for any taxpayer. In the
21 discretion of the department, a waiver under this subsection may be
22 made temporary or permanent. For persons who have received a waiver
23 under this subsection, a remittance transmitted to the department by
24 United States mail is deemed filed or received on the date shown by the
25 post office cancellation mark stamped upon the envelope containing it.

26 (3) (~~A return or remittance which is transmitted to the department~~
27 by United States mail shall be deemed filed or received on the date
28 shown by the post office cancellation mark stamped upon the envelope
29 containing it, except as otherwise provided in this chapter. The
30 department is authorized to allow electronic filing of returns or
31 remittances from any taxpayer. A return or remittance which is
32 transmitted to the department electronically shall be deemed filed or
33 received according to procedures set forth by the department.)) (a)
34 Except as otherwise provided in this subsection, returns must be filed
35 electronically using the department's online tax filing service. The
36 department may implement the requirement in this subsection in phases.

37 (b) The department, for good cause shown, may waive the electronic
38 filing requirement in this subsection for any taxpayer. In the

1 discretion of the department, a waiver under this subsection may be
2 made temporary or permanent. For persons who have received a waiver
3 under this subsection, a return transmitted to the department by United
4 States mail is deemed filed or received on the date shown by the post
5 office cancellation mark stamped upon the envelope containing it.

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

22 (ii) The department (~~shall~~) must review the requirement for
23 deposit at least annually and may require a change in the amount of the
24 deposit required when it believes that such amount does not approximate
25 the tax liability for the reporting period or periods for which the
26 extension is granted.

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

33 (5) The department (~~shall~~) must keep full and accurate records of
34 all funds received and disbursed by it. Subject to the provisions of
35 RCW 82.32.105 and 82.32.350, the department (~~shall~~) must apply the
36 payment of the taxpayer first against penalties and interest, and then
37 upon the tax, without regard to any direction of the taxpayer.

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

11 **Sec. 3.** RCW 82.32.085 and 2006 c 256 s 4 are each amended to read
12 as follows:

13 (1) "Electronic funds transfer" means any transfer of funds, other
14 than a transaction originated by check, drafts, or similar paper
15 instrument, which is initiated through an electronic terminal,
16 telephonic instrument, or computer or magnetic tape so as to order,
17 instruct, or authorize a financial institution to debit or credit an
18 account.

19 (2)(a) Except as provided in (b) of this subsection, the electronic
20 funds transfer is to be completed so that the state receives
21 collectible funds on or before the next banking day following the due
22 date.

23 (b) A remittance made using the automated clearinghouse debit
24 method will be deemed to be received on the due date if the electronic
25 funds transfer is initiated on or before 11:59 p.m. pacific time on the
26 due date with an effective payment date on or before the next banking
27 day following the due date.

28 (3)(~~(a)~~) The department (~~(shall)~~) must adopt rules necessary to
29 implement the provisions of RCW 82.32.080 and this section. The rules
30 (~~(shall)~~) must include but are not limited to: (i) Coordinating the
31 filing of tax returns with payment by electronic funds transfer or
32 other form of electronic payment as authorized by the department; (ii)
33 form and content of electronic funds transfer; (iii) (~~(voluntary use of~~
34 ~~electronic funds transfer with permission of the department; (iv)~~) use
35 of commonly accepted means of electronic funds transfer; (~~(v)~~) (iv)
36 means of crediting and recording proof of payment; and (~~(vi)~~) (v)
37 means of correcting errors in transmission.

1 (~~(b) Any changes in the threshold of tax shall be implemented with~~
2 ~~a separate rule-making procedure.~~)

3 **Sec. 4.** RCW 82.32.060 and 2004 c 153 s 306 are each amended to
4 read as follows:

5 (1) If, upon receipt of an application by a taxpayer for a refund
6 or for an audit of the taxpayer's records, or upon an examination of
7 the returns or records of any taxpayer, it is determined by the
8 department that within the statutory period for assessment of taxes,
9 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
10 penalty, or interest has been paid in excess of that properly due, the
11 excess amount paid within, or attributable to, such period (~~shall~~)
12 must be credited to the taxpayer's account or (~~shall~~) must be
13 refunded to the taxpayer, at the taxpayer's option. Except as provided
14 in subsection (2) of this section, no refund or credit (~~shall~~) may be
15 made for taxes, penalties, or interest paid more than four years prior
16 to the beginning of the calendar year in which the refund application
17 is made or examination of records is completed.

18 (2)(a) The execution of a written waiver under RCW 82.32.050 or
19 82.32.100 (~~shall~~) will extend the time for making a refund or credit
20 of any taxes paid during, or attributable to, the years covered by the
21 waiver if, prior to the expiration of the waiver period, an application
22 for refund of such taxes is made by the taxpayer or the department
23 discovers a refund or credit is due.

24 (b) A refund or credit (~~shall~~) must be allowed for an excess
25 payment resulting from the failure to claim a bad debt deduction,
26 credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037,
27 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26
28 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less
29 than four years prior to the beginning of the calendar year in which
30 the refund application is made or examination of records is completed.

31 (3) Any such refunds (~~shall~~) must be made by means of vouchers
32 approved by the department and by the issuance of state warrants drawn
33 upon and payable from such funds as the legislature may provide.
34 However, taxpayers who are required to pay taxes by electronic funds
35 transfer under RCW 82.32.080 (~~shall~~) must have any refunds paid by
36 electronic funds transfer if the department has the necessary account
37 information to facilitate a refund by electronic funds transfer.

1 (4) Any judgment for which a recovery is granted by any court of
2 competent jurisdiction, not appealed from, for tax, penalties, and
3 interest which were paid by the taxpayer, and costs, in a suit by any
4 taxpayer (~~shall~~) must be paid in the same manner, as provided in
5 subsection (3) of this section, upon the filing with the department of
6 a certified copy of the order or judgment of the court.

7 (a) Interest at the rate of three percent per annum (~~shall~~) must
8 be allowed by the department and by any court on the amount of any
9 refund, credit, or other recovery allowed to a taxpayer for taxes,
10 penalties, or interest paid by the taxpayer before January 1, 1992.
11 This rate of interest (~~shall apply~~) applies for all interest allowed
12 through December 31, 1998. Interest allowed after December 31, 1998,
13 (~~shall~~) must be computed at the rate as computed under RCW
14 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
15 first day of January of each year for use in computing interest for
16 that calendar year.

17 (b) For refunds or credits of amounts paid or other recovery
18 allowed to a taxpayer after December 31, 1991, the rate of interest
19 (~~shall~~) must be the rate as computed for assessments under RCW
20 82.32.050(2) less one percent. This rate of interest (~~shall apply~~)
21 applies for all interest allowed through December 31, 1998. Interest
22 allowed after December 31, 1998, (~~shall~~) must be computed at the rate
23 as computed under RCW 82.32.050(2). The rate so computed (~~shall~~)
24 must be adjusted on the first day of January of each year for use in
25 computing interest for that calendar year.

26 (5) Interest allowed on a credit notice or refund issued after
27 December 31, 2003, (~~shall~~) must be computed as follows:

28 (a) If all overpayments for each calendar year and all reporting
29 periods ending with the final month included in a notice or refund were
30 made on or before the due date of the final return for each calendar
31 year or the final reporting period included in the notice or refund:

32 (i) Interest (~~shall~~) must be computed from January 31st following
33 each calendar year included in a notice or refund; or

34 (ii) Interest (~~shall~~) must be computed from the last day of the
35 month following the final month included in a notice or refund.

36 (b) If the taxpayer has not made all overpayments for each calendar
37 year and all reporting periods ending with the final month included in
38 a notice or refund on or before the dates specified by RCW 82.32.045

1 for the final return for each calendar year or the final month included
2 in the notice or refund, interest (~~(shall)~~) must be computed from the
3 last day of the month following the date on which payment in full of
4 the liabilities was made for each calendar year included in a notice or
5 refund, and the last day of the month following the date on which
6 payment in full of the liabilities was made if the final month included
7 in a notice or refund is not the end of a calendar year.

8 (c) Interest included in a credit notice (~~(shall)~~) must accrue up
9 to the date the taxpayer could reasonably be expected to use the credit
10 notice, as defined by the department's rules. If a credit notice is
11 converted to a refund, interest (~~(shall)~~) must be recomputed to the
12 date the refund is issued, but not to exceed the amount of interest
13 that would have been allowed with the credit notice.

14 **Sec. 5.** RCW 82.32.087 and 2001 c 188 s 2 are each amended to read
15 as follows:

16 (1) The director may grant a direct pay permit to a taxpayer who
17 demonstrates, to the satisfaction of the director, that the taxpayer
18 meets the requirements of this section. The direct pay permit allows
19 the taxpayer to accrue and remit directly to the department use tax on
20 the acquisition of tangible personal property or sales tax on the sale
21 of or charges made for labor and/or services, in accordance with all of
22 the applicable provisions of this title. Any taxpayer that uses a
23 direct pay permit shall remit state and local sales or use tax directly
24 to the department. The agreement by the purchaser to remit tax
25 directly to the department, rather than pay sales or use tax to the
26 seller, relieves the seller of the obligation to collect sales or use
27 tax and requires the buyer to pay use tax on the tangible personal
28 property and sales tax on the sale of or charges made for labor and/or
29 services.

30 (2)(a) A taxpayer may apply for a permit under this section if:
31 (i) The (~~(taxpayer (i) is subject to mandatory use of electronic funds~~
32 ~~transfer under RCW 82.32.080)~~ taxpayer's cumulative tax liability is
33 reasonably expected to be two hundred forty thousand dollars or more in
34 the current calendar year; or (ii) the taxpayer makes purchases subject
35 to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten
36 million dollars per calendar year. For the purposes of this section,
37 "tax liability" means the amount required to be remitted to the

1 department for taxes administered under this chapter, except for the
2 taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,
3 82.29A, and 84.33 RCW.

4 (b) Application for a permit must be made in writing to the
5 director in a form and manner prescribed by the department. A taxpayer
6 who transacts business in two or more locations may submit one
7 application to cover the multiple locations.

8 (c) The director (~~shall~~) must review a direct pay permit
9 application in a timely manner and shall notify the applicant, in
10 writing, of the approval or denial of the application. The department
11 (~~shall~~) must approve or deny an application based on the applicant's
12 ability to comply with local government use tax coding capabilities and
13 responsibilities; requirements for vendor notification; recordkeeping
14 obligations; electronic data capabilities; and tax reporting
15 procedures. Additionally, an application may be denied if the director
16 determines that denial would be in the best interest of collecting
17 taxes due under this title. The department (~~shall~~) must provide a
18 direct pay permit to an approved applicant with the notice of approval.
19 The direct pay permit shall clearly state that the holder is solely
20 responsible for the accrual and payment of the tax imposed under
21 chapters 82.08 and 82.12 RCW and that the seller is relieved of
22 liability to collect tax imposed under chapters 82.08 and 82.12 RCW on
23 all sales to the direct pay permit holder. The taxpayer may petition
24 the director for reconsideration of a denial.

25 (d) A taxpayer who uses a direct pay permit must continue to
26 maintain records that are necessary to a determination of the tax
27 liability in accordance with this title. A direct pay permit is not
28 transferable and the use of a direct pay permit may not be assigned to
29 a third party.

30 (3) Taxes for which the direct pay permit is used are due and
31 payable on the tax return for the reporting period in which the
32 taxpayer (a) receives the tangible personal property purchased or in
33 which the labor and/or services are performed or (b) receives an
34 invoice for such property or such labor and/or services, whichever
35 period is earlier.

36 (4) The holder of a direct pay permit (~~shall~~) must furnish a copy
37 of the direct pay permit to each vendor with whom the taxpayer has
38 opted to use a direct pay permit. Sellers who make sales upon which

1 the sales or use tax is not collected by reason of the provisions of
2 this section, in addition to existing requirements under this title,
3 (~~shall~~) must maintain a copy of the direct pay permit and any such
4 records or information as the department may specify.

5 (5) A direct pay permit is subject to revocation by the director at
6 any time the department determines that the taxpayer has violated any
7 provision of this section or that revocation would be in the best
8 interests of collecting the taxes due under this title. The notice of
9 revocation must be in writing and is effective either as of the end of
10 the taxpayer's next normal reporting period or a date deemed
11 appropriate by the director and identified in the revocation notice.
12 The taxpayer may petition the director for reconsideration of a
13 revocation and reinstatement of the permit.

14 (6) Any taxpayer who chooses to no longer use a direct pay permit
15 or whose permit is revoked by the department, (~~shall~~) must return the
16 permit to the department and immediately make a good faith effort to
17 notify all vendors to whom the permit was given, advising them that the
18 permit is no longer valid.

19 (7) Except as provided in this subsection, the direct pay permit
20 may be used for any purchase of tangible personal property and any
21 retail sale under RCW 82.04.050. The direct pay permit may not be used
22 for:

- 23 (a) Purchases of meals or beverages;
- 24 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
25 other property subject to requirements for title transactions by the
26 department of licensing;
- 27 (c) Purchases for which a resale certificate may be used;
- 28 (d) Purchases that meet the definitions of RCW 82.04.050 (2)(e) and
29 (f), (3)(a) through (d), (f), and (g), and (5); or
- 30 (e) Other activities subject to tax under chapter 82.08 or 82.12
31 RCW that the department by rule designates, consistent with the
32 purposes of this section, as activities for which a direct pay permit
33 is not appropriate and may not be used.

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