

# SENATE BILL REPORT

## SB 6169

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As of April 18, 2009

**Title:** An act relating to enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

**Brief Description:** Enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

**Sponsors:** Senator Prentice.

**Brief History:**

**Committee Activity:** Ways & Means: 4/16/09.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dianne Criswell (786-7433)

**Background:** Excise Tax Administration. The Department of Revenue (DOR) collects the major state excise taxes, such as the retail sales tax, use tax, business and occupation (B&O) tax, and the public utility tax (PUT). The general administrative provisions for the collection of excise taxes are provided in chapter 82.32 RCW, including payment schedules, payment types, assessments, notice, and collection provisions.

Sales Tax. The sales tax is imposed by the state, counties, and cities on retail sales of most items of tangible personal property and some services, including construction and repair services. The state sales rate is 6.5 percent and the local rates vary by location. The combined state/local rate is between 7 and 9.5 percent, depending on location.

Sales Tax Held in Trust. The buyer pays the sales tax and the seller collects the tax and remits it to the state. Sellers hold sales taxes in trust until paid to DOR, and any seller who appropriates or converts the tax collected to any purpose other than the payment of the tax is guilty of a gross misdemeanor. Further, if a seller fails to collect or pay the sales tax, that seller is personally liable for the tax regardless of whether the nonpayment resulted from conditions beyond the seller's control.

If the seller is a corporation or a limited liability corporation (LLC), there may be personal liability for unpaid sales tax trust funds for the following persons: officers, members, managers, or other persons having control or supervision of sales tax funds; or persons

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charged with the responsibility for the filing of returns or tax payments. There are additional requirements for personal liability for unpaid sales tax trust funds to attach in the corporate or LLC context: the business must be terminated, dissolved, or abandoned; the failure to pay must be willful as a result of an intentional, conscious, and voluntary course of action; and DOR must determine that there are no reasonable means of collecting the unpaid sales tax funds held directly from the corporation.

There is no similar personal liability for other unpaid excise taxes, such as the use tax, B&O tax, and the PUT.

Notice and Order to Withhold and Deliver. If taxes are 15 days past due, DOR may issue a tax warrant and file a copy of the warrant with the superior court of any county in which real and/or personal property of the taxpayer may be found and the warrant is entered as a judgment against the taxpayer and acts as a lien upon property.

To collect on a tax warrant, DOR may seek property held by third parties, such as banks or other financial institutions, by serving notices and orders to them to withhold and deliver property. Under current law, DOR must serve the third party a separate notice and order to withhold and deliver for each taxpayer either through in-person service (by a sheriff, sheriff's deputy, or an authorized DOR representative) or by certified mail and return receipt. The third party must respond within 20 days after receipt of the notice and order and must deliver property subject to the tax warrant or a sufficient bond for the property.

**Summary of Bill:** Personal Liability for Unpaid Excise Taxes. Responsible individuals at limited liability business entities may be personally liable for certain unpaid taxes (such as retail sales tax, use tax, B&O tax, and the PUT), as well as penalties and interest, if the entity has been terminated, dissolved, or abandoned or is insolvent.

"Insolvent" means the condition that results when the sum of an entity's debts exceeds the fair market value of its assets. DOR may presume that an entity is insolvent if the entity refuses to disclose the nature of its assets and liabilities.

"Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

"Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant. "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of an unpaid tax warrant. For chief executive or chief financial officers, personal liability applies regardless of fault or awareness of the unpaid tax liability. For other responsible individuals, liability under this

section applies only if the failure to pay the taxes due was willful. Other responsible individuals are exempt from personal liability when nonpayment was due to reasons beyond their control as determined by DOR rule.

Additional Methods of Issuing Notices and Orders to Withhold and Deliver. In addition to existing methods, DOR is authorized to issue notices and orders to withhold and deliver to any financial institution by providing a full or partial list of unsatisfied tax warrants for which no payment agreement has been made. Such lists may be delivered electronically and if delivered electronically, DOR may authorize the financial institution to answer electronically. Only one such list may be served on a single financial institution each month. "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law. Existing law is also amended to provide clarifications and updated language.

DOR is directed to work with interested financial institutions to develop policies regarding the frequency of service of levies in the form of a listing of unpaid tax warrants and under what circumstances such a levy will contain only a partial list of unpaid tax warrants eligible to be included in the notice and order to withhold and deliver. DOR is also directed to develop a policy regarding the information to be contained in a notice and order to withhold and deliver to ensure that financial institutions can accurately match their records with the names of tax debtors. DOR must report to the fiscal committees of the Legislature on the implementation of the notice and order to withhold and deliver by serving financial institutions with lists of unsatisfied tax warrants by January 1, 2012, describing the policies developed, any difficulties encountered, and any DOR suggestions to improve the effectiveness and reduce the burden on financial institutions in complying.

**Appropriation:** None.

**Fiscal Note:** Requested on April 15, 2009.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** CON: We have strong concerns about imposing personal liability on certain officers and employees of limited liability business entities. This will take away motives to establish businesses in Washington and could have a chilling effect on our business climate. This places an additional burden on businesses at a time when employers are struggling. DOR should intervene early and work with struggling businesses. This greatly expands personal liability from trust funds to other excise taxes. There is no rational legal basis for extending this liability, because nontrust fund excise taxes accrue like other business debts. The definition of insolvency is too broad and would allow DOR too much discretion to impose personal liability. We support other tax efficiency efforts, such as SB 5568. Notice and order to withhold and deliver can be burdensome on smaller financial institutions. These lists could be onerous, because banks would have to run matches on and respond to each taxpayer warrant separately. There may be taxpayer privacy issues in this proposal.

**Persons Testifying:** CON: Amber Carter, AWB; Brad Tower, Community Bankers of Washington; Van Collins, Associated General Contractors.