

SENATE BILL REPORT

SB 6169

As Reported by Senate Committee On:
Ways & Means, 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, 4/18/09 [DPS, DNP].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6169 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Keiser, Kline, Kohl-Welles, McDermott, Murray, Parlette, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Carrell, Hewitt, Honeyford, Pflug and Schoesler.

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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 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 (Recommended Substitute): 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 must allow the financial institution to answer electronically in a format provided or approved by DOR. 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. Enhanced levies must provide Federal Taxpayer Identification Numbers if they are available. A financial institution may be relieved of the enhanced levies upon request to DOR. DOR must consider size, customer base, and geographic location of the financial institution when considering whether to provide relief. The time for a financial institution to answer to an enhanced levy is increased to 30 days (from 20). Financial institutions may

answer an enhanced levy in aggregate, but must answer with specificity. 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.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): Removes Parts I (Personal Liability for an Entity's Unpaid Tax Debts) and III (Miscellaneous Provisions). Retains and modifies Part II (Levy).

Changes to Part II include:

- Enhanced levies must provide Federal Taxpayer Identification Numbers if they are available.
- A financial institution may be relieved of the enhanced levies upon request to DOR. DOR must consider the size, customer base, and geographic location of the financial institution when considering whether to provide relief.
- The time for a financial institution to answer to an enhanced levy is increased to 30 days (from 20).
- Financial institutions may answer an enhanced levy in aggregate, but must answer with specificity.
- DOR must allow a bank who is served electronically to answer electronically and DOR must approve the format.

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 on Original Bill: 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.