

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1357

62nd Legislature
2011 Regular Session

Passed by the House March 7, 2011
Yeas 65 Nays 31

Speaker of the House of Representatives

Passed by the Senate March 23, 2011
Yeas 34 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1357** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1357

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Carlyle, Parker, Hunter, Dickerson, Roberts, and Kenney; by request of Department of Revenue

Read first time 01/19/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing the department of revenue with
2 additional flexibility to achieve operational efficiencies through the
3 expanded use of electronic means to remit and report taxes; amending
4 RCW 82.32.085 and 82.32.090; reenacting and amending RCW 82.32.080; and
5 creating a new section.

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

7 **Sec. 1.** RCW 82.32.080 and 2010 c 111 s 304 and 2010 c 106 s 226
8 are each reenacted and amended to read as follows:

9 (1) When authorized by the department, payment of the tax may be
10 made by uncertified check under such rules as the department
11 prescribes, but, if a check so received is not paid by the bank on
12 which it is drawn, the taxpayer, by whom such check is tendered, will
13 remain liable for payment of the tax and for all legal penalties, the
14 same as if such check had not been tendered.

15 (2)(a) Except as otherwise provided in this subsection, payment of
16 the tax must be made by electronic funds transfer, as defined in RCW
17 82.32.085(~~(, if the taxpayer is required to file and remit its taxes on~~
18 ~~a monthly basis)~~). As an alternative to electronic funds transfer, the
19 department may authorize other forms of electronic payment, such as

1 payment by credit card ((and e-check)). All taxes administered by this
2 chapter are subject to this requirement, except ~~((the taxes authorized~~
3 ~~by chapters 82.14A, 82.14B, 82.24, 82.29A, and 84.33 RCW. It is the~~
4 ~~intent of this subsection to require electronic payment for those taxes~~
5 ~~reported on the department's combined excise tax return or any~~
6 ~~successor return. The mandatory electronic payment requirement in this~~
7 ~~subsection also applies to taxpayers who: (i) Are subject to the tax~~
8 ~~imposed in RCW 82.04.257 but for whom the department has authorized a~~
9 ~~tax reporting frequency that is less frequent than monthly; or (ii)~~
10 ~~meet the threshold for filing and remitting taxes on a monthly basis as~~
11 ~~established by rule of the department but for whom the department has~~
12 ~~authorized a less frequent reporting frequency, when such authorization~~
13 ~~became effective on or after July 26, 2009))~~ that the department may
14 exclude any taxes not reported on the combined excise tax return or any
15 successor return from the electronic payment requirement in this
16 subsection.

17 (b) The department ~~((, for good cause,))~~ may waive the electronic
18 payment requirement in this subsection for any taxpayer or class of
19 taxpayers, for good cause or for whom the department has assigned a
20 reporting frequency that is less than quarterly. In the discretion of
21 the department, a waiver under this subsection may be made temporary or
22 permanent, and may be made on the department's own motion.

23 (c) The department is authorized to accept payment of taxes by
24 electronic funds transfer or other acceptable forms of electronic
25 payment from taxpayers that are not subject to the mandatory electronic
26 payment requirements in this subsection.

27 (3)(a) Except as otherwise provided in this subsection, returns
28 must be filed electronically using the department's online tax filing
29 service ~~((, if the taxpayer is required to file and remit its taxes on~~
30 ~~a monthly basis. The mandatory electronic filing requirement in this~~
31 ~~subsection also applies to taxpayers who: (i) Are subject to the tax~~
32 ~~imposed in RCW 82.04.257 but for whom the department has authorized a~~
33 ~~tax reporting frequency that is less frequent than monthly; or (ii)~~
34 ~~meet the threshold for filing and remitting taxes on a monthly basis as~~
35 ~~established by rule of the department but for whom the department has~~
36 ~~authorized a less frequent reporting frequency, when such authorization~~
37 ~~became effective on or after July 26, 2009))~~ or other method of
38 electronic reporting as the department may authorize.

1 (b) The department(~~(, for good cause,)~~) may waive the electronic
2 filing requirement in this subsection for any taxpayer or class of
3 taxpayers, for good cause or for whom the department has assigned a
4 reporting frequency that is less than quarterly. In the discretion of
5 the department, a waiver under this subsection may be made temporary or
6 permanent, and may be made on the department's own motion.

7 (c) The department is authorized to allow electronic filing of
8 returns from taxpayers that are not subject to the mandatory electronic
9 filing requirements in this subsection.

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

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

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

36 (5) The department must keep full and accurate records of all funds
37 received and disbursed by it. Subject to the provisions of RCW

1 82.32.105 and 82.32.350, the department must apply the payment of the
2 taxpayer first against penalties and interest, and then upon the tax,
3 without regard to any direction of the taxpayer.

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

14 (7) Except for returns and remittances required to be transmitted
15 to the department electronically under this section and except as
16 otherwise provided in this chapter, a return or remittance that is
17 transmitted to the department by United States mail is deemed filed or
18 received on the date shown by the post office cancellation mark stamped
19 upon the envelope containing it. A return or remittance that is
20 transmitted to the department electronically is deemed filed or
21 received according to procedures set forth by the department.

22 (8)(a) For purposes of subsections (2) and (3) of this section,
23 "good cause" means the inability of a taxpayer to comply with the
24 requirements of subsection (2) or (3) of this section because:

25 (i) The taxpayer does not have the equipment or software necessary
26 to enable the taxpayer to comply with subsection (2) or (3) of this
27 section;

28 (ii) The equipment or software necessary to enable the taxpayer to
29 comply with subsection (2) or (3) of this section is not functioning
30 properly;

31 (iii) The taxpayer does not have access to the internet using the
32 taxpayer's own equipment;

33 (iv) The taxpayer does not have a bank account or a credit card;

34 (v) The taxpayer's bank is unable to send or receive electronic
35 funds transfer transactions; or

36 (vi) Some other circumstance or condition exists that, in the
37 department's judgment, prevents the taxpayer from complying with the
38 requirements of subsection (2) or (3) of this section.

1 (b) "Good cause" also includes any circumstance that, in the
2 department's judgment, supports the efficient or effective
3 administration of the tax laws of this state, including providing
4 relief from the requirements of subsection (2) or (3) of this section
5 to any taxpayer that is voluntarily collecting and remitting this
6 state's sales or use taxes on sales to Washington customers but has no
7 legal requirement to be registered with the department.

8 **Sec. 2.** RCW 82.32.085 and 2009 c 176 s 3 are each amended to read
9 as follows:

10 (1) "Electronic funds transfer" means any transfer of funds, other
11 than a transaction originated or accomplished by conventional check,
12 drafts, or similar paper instrument, which is initiated through an
13 electronic terminal, telephonic instrument, or computer or magnetic
14 tape so as to order, instruct, or authorize a financial institution to
15 debit or credit ~~((an))~~ a checking or other deposit account.
16 "Electronic funds transfer" includes payments made by electronic check
17 (e-check).

18 (2)(a) ~~((Except as provided in (b) of this subsection, the))~~ An
19 electronic funds transfer ~~((is to))~~ using the automated clearinghouse
20 credit method must be completed so that the state receives collectible
21 funds on or before the next banking day following the due date.

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

28 (3) The department must adopt rules necessary to implement the
29 provisions of RCW 82.32.080 and this section. The rules must include
30 but are not limited to: (a) Coordinating the filing of tax returns
31 with payment by electronic funds transfer or other form of electronic
32 payment as authorized by the department; (b) form and content of
33 electronic funds transfer; (c) voluntary use of electronic funds
34 transfer with permission of the department for those taxpayers that are
35 not subject to the mandatory electronic payment requirement in RCW
36 82.32.080; (d) use of commonly accepted means of electronic funds

1 transfer; (e) means of crediting and recording proof of payment; and
2 (f) means of correcting errors in transmission.

3 **Sec. 3.** RCW 82.32.090 and 2010 1st sp.s. c 23 s 203 are each
4 amended to read as follows:

5 (1) If payment of any tax due on a return to be filed by a taxpayer
6 is not received by the department of revenue by the due date, there is
7 assessed a penalty of five percent of the amount of the tax; and if the
8 tax is not received on or before the last day of the month following
9 the due date, there is assessed a total penalty of fifteen percent of
10 the amount of the tax under this subsection; and if the tax is not
11 received on or before the last day of the second month following the
12 due date, there is assessed a total penalty of twenty-five percent of
13 the amount of the tax under this subsection. No penalty so added
14 (~~shall~~) may be less than five dollars.

15 (2) If the department of revenue determines that any tax has been
16 substantially underpaid, there is assessed a penalty of five percent of
17 the amount of the tax determined by the department to be due. If
18 payment of any tax determined by the department to be due is not
19 received by the department by the due date specified in the notice, or
20 any extension thereof, there is assessed a total penalty of fifteen
21 percent of the amount of the tax under this subsection; and if payment
22 of any tax determined by the department to be due is not received on or
23 before the thirtieth day following the due date specified in the notice
24 of tax due, or any extension thereof, there is assessed a total penalty
25 of twenty-five percent of the amount of the tax under this subsection.
26 No penalty so added may be less than five dollars. As used in this
27 section, "substantially underpaid" means that the taxpayer has paid
28 less than eighty percent of the amount of tax determined by the
29 department to be due for all of the types of taxes included in, and for
30 the entire period of time covered by, the department's examination, and
31 the amount of underpayment is at least one thousand dollars.

32 (3) If a warrant is issued by the department of revenue for the
33 collection of taxes, increases, and penalties, there is added thereto
34 a penalty of ten percent of the amount of the tax, but not less than
35 ten dollars.

36 (4) If the department finds that a person has engaged in any
37 business or performed any act upon which a tax is imposed under this

1 title and that person has not obtained from the department a
2 registration certificate as required by RCW 82.32.030, the department
3 must impose a penalty of five percent of the amount of tax due from
4 that person for the period that the person was not registered as
5 required by RCW 82.32.030. The department may not impose the penalty
6 under this subsection (4) if a person who has engaged in business
7 taxable under this title without first having registered as required by
8 RCW 82.32.030, prior to any notification by the department of the need
9 to register, obtains a registration certificate from the department.

10 (5) If the department finds that (~~all or any part of a deficiency~~
11 ~~resulted from the disregard of~~) a taxpayer has disregarded specific
12 written instructions as to reporting or tax liabilities, or willfully
13 disregarded the requirement to file returns or remit payment
14 electronically, as provided by RCW 82.32.080, the department must add
15 a penalty of ten percent of the amount of the tax that should have been
16 reported and/or paid electronically or the additional tax found due if
17 there is a deficiency because of the failure to follow the
18 instructions. A taxpayer disregards specific written instructions when
19 the department has informed the taxpayer in writing of the taxpayer's
20 tax obligations and the taxpayer fails to act in accordance with those
21 instructions unless, in the case of a deficiency, the department has
22 not issued final instructions because the matter is under appeal
23 pursuant to this chapter or departmental regulations. The department
24 may not assess the penalty under this section upon any taxpayer who has
25 made a good faith effort to comply with the specific written
26 instructions provided by the department to that taxpayer. A taxpayer
27 will be considered to have made a good faith effort to comply with
28 specific written instructions to file returns and/or remit taxes
29 electronically only if the taxpayer can show good cause, as defined in
30 RCW 82.32.080, for the failure to comply with such instructions. A
31 taxpayer will be considered to have willfully disregarded the
32 requirement to file returns or remit payment electronically if the
33 department has mailed or otherwise delivered the specific written
34 instructions to the taxpayer on at least two occasions. Specific
35 written instructions may be given as a part of a tax assessment, audit,
36 determination, (~~or~~) closing agreement, or other written
37 communication, provided that such specific written instructions apply
38 only to the taxpayer addressed or referenced on such (~~documents~~)

1 communication. Any specific written instructions by the department
2 must be clearly identified as such and must inform the taxpayer that
3 failure to follow the instructions may subject the taxpayer to the
4 penalties imposed by this subsection. If the department determines
5 that it is necessary to provide specific written instructions to a
6 taxpayer that does not comply with the requirement to file returns or
7 remit payment electronically as provided in RCW 82.32.080, the specific
8 written instructions must provide the taxpayer with a minimum of forty-
9 five days to come into compliance with its electronic filing and/or
10 payment obligations before the department may impose the penalty
11 authorized in this subsection.

12 (6) If the department finds that all or any part of a deficiency
13 resulted from engaging in a disregarded transaction, as described in
14 RCW 82.32.655(3), the department must assess a penalty of thirty-five
15 percent of the additional tax found to be due as a result of engaging
16 in a transaction disregarded by the department under RCW 82.32.655(2).
17 The penalty provided in this subsection may be assessed together with
18 any other applicable penalties provided in this section on the same tax
19 found to be due, except for the evasion penalty provided in subsection
20 (7) of this section. The department may not assess the penalty under
21 this subsection if, before the department discovers the taxpayer's use
22 of a transaction described under RCW 82.32.655(3), the taxpayer
23 discloses its participation in the transaction to the department.

24 (7) If the department finds that all or any part of the deficiency
25 resulted from an intent to evade the tax payable hereunder, a further
26 penalty of fifty percent of the additional tax found to be due must be
27 added.

28 (8) The penalties imposed under subsections (1) through (4) of this
29 section can each be imposed on the same tax found to be due. This
30 subsection does not prohibit or restrict the application of other
31 penalties authorized by law.

32 (9) The department may not impose the evasion penalty in
33 combination with the penalty for disregarding specific written
34 instructions or the penalty provided in subsection (6) of this section
35 on the same tax found to be due.

36 (10) For the purposes of this section, "return" means any document
37 a person is required by the state of Washington to file to satisfy or

1 establish a tax or fee obligation that is administered or collected by
2 the department, and that has a statutorily defined due date.

3 NEW SECTION. **Sec. 4.** This act applies only to tax returns and
4 payments originally due after the effective date of this section,
5 including tax returns and payments for tax liabilities incurred before
6 the effective date of this section and originally due after the
7 effective date of this section.

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