
HOUSE BILL 1929

State of Washington 56th Legislature 1999 Regular Session

By Representative Dunshee; by request of Department of Revenue

Read first time 02/10/1999. Referred to Committee on Finance.

1 AN ACT Relating to prescribing conditions for the offsetting of
2 taxes; amending RCW 82.32.050, 82.32.060, and 82.32.180; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** This act is in response to the decision of
6 the Washington supreme court in *Paccar Inc. v. State of Washington*, 135
7 Wn.2d 301 (1998). The decision results in increased burdens upon
8 taxpayers and the department of revenue in the determination of tax
9 liabilities. The legislature finds that the normal statutory
10 limitations for assessments and refund claims of taxes should be
11 subject only to certain limited exceptions. Therefore, the legislature
12 finds it necessary to enact this remedial legislation regarding the
13 offsetting of taxes.

14 **Sec. 2.** RCW 82.32.050 and 1997 c 157 s 1 are each amended to read
15 as follows:

16 (1) If upon examination of any returns or from other information
17 obtained by the department it appears that a tax or penalty has been
18 paid less than that properly due, the department shall assess against

1 the taxpayer such additional amount found to be due and shall add
2 thereto interest on the tax only. The department shall notify the
3 taxpayer by mail of the additional amount and the additional amount
4 shall become due and shall be paid within thirty days from the date of
5 the notice, or within such further time as the department may provide.
6 The department shall make an assessment or a correction of an
7 assessment within the time period and subject to the limitations in
8 subsection (3) of this section.

9 (a) For tax liabilities arising before January 1, 1992, interest
10 shall be computed at the rate of nine percent per annum from the last
11 day of the year in which the deficiency is incurred until the earlier
12 of December 31, 1998, or the date of payment. After December 31, 1998,
13 the rate of interest shall be variable and computed as provided in
14 subsection (2) of this section. The rate so computed shall be adjusted
15 on the first day of January of each year for use in computing interest
16 for that calendar year.

17 (b) For tax liabilities arising after December 31, 1991, the rate
18 of interest shall be variable and computed as provided in subsection
19 (2) of this section from the last day of the year in which the
20 deficiency is incurred until the date of payment. The rate so computed
21 shall be adjusted on the first day of January of each year for use in
22 computing interest for that calendar year.

23 (c) Interest imposed after December 31, 1998, shall be computed
24 from the last day of the month following each calendar year included in
25 a notice, and the last day of the month following the final month
26 included in a notice if not the end of a calendar year, until the due
27 date of the notice. If payment in full is not made by the due date of
28 the notice, additional interest shall be computed until the date of
29 payment. The rate of interest shall be variable and computed as
30 provided in subsection (2) of this section. The rate so computed shall
31 be adjusted on the first day of January of each year for use in
32 computing interest for that calendar year.

33 (2) For the purposes of this section, the rate of interest to be
34 charged to the taxpayer shall be an average of the federal short-term
35 rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points.
36 The rate shall be computed by taking an arithmetical average to the
37 nearest percentage point of the federal short-term rate, compounded
38 annually, for the months of January, April, July, and October of the

1 immediately preceding calendar year as published by the United States
2 secretary of the treasury.

3 (3) No assessment or correction of an assessment for any additional
4 ~~((taxes, penalties))~~ tax, penalty, or interest due may be made by the
5 department more than four years after the close of the tax year, except
6 (a) against a taxpayer who has not registered as required by this
7 chapter, (b) upon a showing of fraud or of misrepresentation of a
8 material fact by the taxpayer, or (c) where a taxpayer has executed a
9 written waiver of such limitation. The execution of a written waiver
10 shall also extend the period for making a refund or credit as provided
11 in RCW 82.32.060(2). An assessment for an additional amount of a tax
12 may be offset by an overpayment of a like tax for the same tax period
13 in an amount not exceeding the amount of the assessment, where refund
14 of the overpaid tax may not be made because of the lapse of the claim
15 period. No offset may be allowed against taxes that are not alike; for
16 example a use tax overpayment may be offset against a use tax
17 assessment but a business and occupation tax overpayment may not be
18 offset against a use tax or a hazardous substance tax assessment. For
19 the purposes of this subsection, the taxes imposed by chapter 82.04 or
20 82.16 RCW, respectively, shall be considered "like taxes." Therefore,
21 any tax under chapter 82.04 RCW may be offset against any other tax
22 under chapter 82.04 RCW and any tax under chapter 82.16 RCW may be
23 offset against any other tax under chapter 82.16 RCW.

24 (4) For the purposes of this section, "return" means any document
25 a person is required by the state of Washington to file to satisfy or
26 establish a tax or fee obligation that is administered or collected by
27 the department of revenue and that has a statutorily defined due date.

28 **Sec. 3.** RCW 82.32.060 and 1997 c 157 s 2 are each amended to read
29 as follows:

30 (1) If, upon receipt of an application by a taxpayer for a refund
31 or for an audit of the taxpayer's records, or upon an examination of
32 the returns or records of any taxpayer, it is determined by the
33 department that within the statutory period for assessment of ~~((taxes,~~
34 ~~penalties))~~ any tax, penalty, or interest prescribed by RCW 82.32.050
35 any ~~((amount of))~~ tax, penalty, or interest has been paid in excess of
36 that properly due, the excess amount paid within, or attributable to,
37 such period shall be credited to the taxpayer's account or shall be
38 refunded to the taxpayer, at the taxpayer's option. Except as provided

1 in subsections (2) and (3) of this section, no refund or credit shall
2 be made for ~~((taxes, penalties))~~ any tax, penalty, or interest paid
3 more than four years prior to the beginning of the calendar year in
4 which the refund application is made or examination of records is
5 completed. A refund claim determined to be otherwise proper may be
6 offset by an underpayment of a like tax for the same tax period in an
7 amount not exceeding the amount of the refund claim, where assessment
8 of the underpaid tax may not be made because of the lapse of the
9 assessment period. No offset may be allowed against taxes that are not
10 alike; for example a use tax underpayment may be offset against a use
11 tax refund claim but a business and occupation tax underpayment may not
12 be offset against a use tax or a hazardous substance tax refund claim.
13 For the purposes of this subsection, the taxes imposed by chapter 82.04
14 or 82.16 RCW, respectively, shall be considered "like taxes."
15 Therefore, any tax under chapter 82.04 RCW may be offset against any
16 other tax under chapter 82.04 RCW and any tax under chapter 82.16 RCW
17 may be offset against any other tax under chapter 82.16 RCW.

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

24 (3) Notwithstanding the foregoing limitations there shall be
25 refunded or credited to taxpayers engaged in the performance of United
26 States government contracts or subcontracts the amount of any tax paid,
27 measured by that portion of the amounts received from the United
28 States, which the taxpayer is required by contract or applicable
29 federal statute to refund or credit to the United States, if claim for
30 such refund is filed by the taxpayer with the department within one
31 year of the date that the amount of the refund or credit due to the
32 United States is finally determined and filed within four years of the
33 date on which the tax was paid: PROVIDED, That no interest shall be
34 allowed on such refund.

35 (4) Any such refunds shall be made by means of vouchers approved by
36 the department and by the issuance of state warrants drawn upon and
37 payable from such funds as the legislature may provide. However,
38 taxpayers who are required to pay taxes by electronic funds transfer

1 under RCW 82.32.080 shall have any refunds paid by electronic funds
2 transfer.

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

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

18 (b) For refunds or credits of amounts paid or other recovery
19 allowed to a taxpayer after December 31, 1991, the rate of interest
20 shall be the rate as computed for assessments under RCW 82.32.050(2).
21 The rate so computed shall be adjusted on the first day of January of
22 each year for use in computing interest for that calendar year.

23 **Sec. 4.** RCW 82.32.180 and 1997 c 156 s 4 are each amended to read
24 as follows:

25 Any person, except one who has failed to keep and preserve books,
26 records, and invoices as required in this chapter and chapter 82.24
27 RCW, having paid any tax as required and feeling aggrieved by the
28 amount of the tax may appeal to the superior court of Thurston county,
29 within the time limitation for a refund provided in chapter 82.32 RCW
30 or, if an application for refund has been made to the department within
31 that time limitation, then within thirty days after rejection of the
32 application, whichever time limitation is later. In the appeal the
33 taxpayer shall set forth the amount of ((the)) each tax imposed upon
34 the taxpayer which the taxpayer concedes to be the correct tax and the
35 reason why ((the)) such tax or taxes should be reduced or abated. The
36 appeal shall be perfected by serving a copy of the notice of appeal
37 upon the department within the time herein specified and by filing the

1 original thereof with proof of service with the clerk of the superior
2 court of Thurston county.

3 The trial in the superior court on appeal shall be de novo and
4 without the necessity of any pleadings other than the notice of appeal.
5 At trial, the burden shall rest upon the taxpayer to prove that the tax
6 as paid by the taxpayer is incorrect, either in whole or in part, and
7 to establish the correct amount of the tax. The amount of refund of
8 any tax to which the taxpayer may otherwise be entitled shall be
9 subject to offset in accordance with RCW 82.32.050(3) and 82.32.060(1).
10 In such proceeding the taxpayer shall be deemed the plaintiff, and the
11 state, the defendant; and both parties shall be entitled to subpoena
12 the attendance of witnesses as in other civil actions and to produce
13 evidence that is competent, relevant, and material to determine the
14 correct amount of the tax that should be paid by the taxpayer. Either
15 party may seek appellate review in the same manner as other civil
16 actions are appealed to the appellate courts.

17 It shall not be necessary for the taxpayer to protest against the
18 payment of any tax or to make any demand to have the same refunded or
19 to petition the director for a hearing in order to appeal to the
20 superior court, but no court action or proceeding of any kind shall be
21 maintained by the taxpayer to recover any tax paid, or any part
22 thereof, except as herein provided.

23 The provisions of this section shall not apply to any tax payment
24 which has been the subject of an appeal to the board of tax appeals
25 with respect to which appeal a formal hearing has been elected.

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