

---

SENATE BILL 5288

---

State of Washington

62nd Legislature

2011 Regular Session

By Senators McAuliffe, Rockefeller, Prentice, Chase, Kline, Shin, and Fraser; by request of Department of Revenue

Read first time 01/20/11. 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, including the  
13 requirement to file returns or remit payment electronically, as  
14 provided by RCW 82.32.080, the department must add a penalty of ten  
15 percent of the amount of the tax that should have been reported and/or  
16 paid electronically or the additional tax found due if there is a  
17 deficiency because of the failure to follow the instructions. A  
18 taxpayer disregards specific written instructions when the department  
19 has informed the taxpayer in writing of the taxpayer's tax obligations  
20 and the taxpayer fails to act in accordance with those instructions  
21 unless, in the case of a deficiency, the department has not issued  
22 final instructions because the matter is under appeal pursuant to this  
23 chapter or departmental regulations. The department may not assess the  
24 penalty under this section upon any taxpayer who has made a good faith  
25 effort to comply with the specific written instructions provided by the  
26 department to that taxpayer. A taxpayer will be considered to have  
27 made a good faith effort to comply with specific written instructions  
28 to file returns and/or remit taxes electronically only if the taxpayer  
29 can show good cause, as defined in RCW 82.32.080, for the failure to  
30 comply with such instructions. Specific written instructions may be  
31 given as a part of a tax assessment, audit, determination, (~~or~~)  
32 closing agreement, or other written communication, provided that such  
33 specific written instructions apply only to the taxpayer addressed or  
34 referenced on such (~~documents~~) communication. Any specific written  
35 instructions by the department must be clearly identified as such and  
36 must inform the taxpayer that failure to follow the instructions may  
37 subject the taxpayer to the penalties imposed by this subsection. If  
38 the department determines that it is necessary to provide specific

1 written instructions to a taxpayer that does not comply with the  
2 requirement to file returns or remit payment electronically as provided  
3 in RCW 82.32.080, the specific written instructions must provide the  
4 taxpayer with a minimum of forty-five days to come into compliance with  
5 its electronic filing and/or payment obligations before the department  
6 may impose the penalty authorized in this subsection.

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

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

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

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

31 (10) For the purposes of this section, "return" means any document  
32 a person is required by the state of Washington to file to satisfy or  
33 establish a tax or fee obligation that is administered or collected by  
34 the department, and that has a statutorily defined due date.

35 NEW SECTION. **Sec. 4.** This act applies only to tax returns and  
36 payments originally due after the effective date of this section,

1 including tax returns and payments for tax liabilities incurred before  
2 the effective date of this section and originally due after the  
3 effective date of this section.

--- END ---