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HOUSE BILL 2671

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State of Washington

59th Legislature

2006 Regular Session

By Representatives Ericks, Kessler, Simpson, Clibborn, Morrell, Springer, Dunn and Wallace; by request of Governor Gregoire

Read first time 01/11/2006. Referred to Committee on Finance.

1 AN ACT Relating to providing excise tax relief by modifying due  
2 dates and eliminating an assessment penalty; amending RCW 82.32.045,  
3 82.23B.020, 82.27.060, 82.32.085, and 82.32.090; creating new sections;  
4 and providing effective dates.

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

6 **Sec. 1.** RCW 82.32.045 and 2003 1st sp.s. c 13 s 8 are each amended  
7 to read as follows:

8 (1) Except as otherwise provided in this chapter, payments of the  
9 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,  
10 along with reports and returns on forms prescribed by the department,  
11 are due monthly within (~~twenty~~) twenty-five days after the end of the  
12 month in which the taxable activities occur.

13 (2) The department of revenue may relieve any taxpayer or class of  
14 taxpayers from the obligation of remitting monthly and may require the  
15 return to cover other longer reporting periods, but in no event may  
16 returns be filed for a period greater than one year. For these  
17 taxpayers, tax payments are due on or before the last day of the month  
18 next succeeding the end of the period covered by the return.

1 (3) The department of revenue may also require verified annual  
2 returns from any taxpayer, setting forth such additional information as  
3 it may deem necessary to correctly determine tax liability.

4 (4) Notwithstanding subsections (1) and (2) of this section, the  
5 department may relieve any person of the requirement to file returns if  
6 the following conditions are met:

7 (a) The person's value of products, gross proceeds of sales, or  
8 gross income of the business, from all business activities taxable  
9 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per  
10 year;

11 (b) The person's gross income of the business from all activities  
12 taxable under chapter 82.16 RCW is less than twenty-four thousand  
13 dollars per year; and

14 (c) The person is not required to collect or pay to the department  
15 of revenue any other tax or fee which the department is authorized to  
16 collect.

17 **Sec. 2.** RCW 82.23B.020 and 2003 1st sp.s. c 13 s 9 are each  
18 amended to read as follows:

19 (1) An oil spill response tax is imposed on the privilege of  
20 receiving crude oil or petroleum products at a marine terminal within  
21 this state from a waterborne vessel or barge operating on the navigable  
22 waters of this state. The tax imposed in this section is levied upon  
23 the owner of the crude oil or petroleum products immediately after  
24 receipt of the same into the storage tanks of a marine terminal from a  
25 waterborne vessel or barge at the rate of one cent per barrel of crude  
26 oil or petroleum product received.

27 (2) In addition to the tax imposed in subsection (1) of this  
28 section, an oil spill administration tax is imposed on the privilege of  
29 receiving crude oil or petroleum products at a marine terminal within  
30 this state from a waterborne vessel or barge operating on the navigable  
31 waters of this state. The tax imposed in this section is levied upon  
32 the owner of the crude oil or petroleum products immediately after  
33 receipt of the same into the storage tanks of a marine terminal from a  
34 waterborne vessel or barge at the rate of four cents per barrel of  
35 crude oil or petroleum product.

36 (3) The taxes imposed by this chapter shall be collected by the  
37 marine terminal operator from the taxpayer. If any person charged with

1 collecting the taxes fails to bill the taxpayer for the taxes, or in  
2 the alternative has not notified the taxpayer in writing of the  
3 imposition of the taxes, or having collected the taxes, fails to pay  
4 them to the department in the manner prescribed by this chapter,  
5 whether such failure is the result of the person's own acts or the  
6 result of acts or conditions beyond the person's control, he or she  
7 shall, nevertheless, be personally liable to the state for the amount  
8 of the taxes. Payment of the taxes by the owner to a marine terminal  
9 operator shall relieve the owner from further liability for the taxes.

10 (4) Taxes collected under this chapter shall be held in trust until  
11 paid to the department. Any person collecting the taxes who  
12 appropriates or converts the taxes collected shall be guilty of a gross  
13 misdemeanor if the money required to be collected is not available for  
14 payment on the date payment is due. The taxes required by this chapter  
15 to be collected shall be stated separately from other charges made by  
16 the marine terminal operator in any invoice or other statement of  
17 account provided to the taxpayer.

18 (5) If a taxpayer fails to pay the taxes imposed by this chapter to  
19 the person charged with collection of the taxes and the person charged  
20 with collection fails to pay the taxes to the department, the  
21 department may, in its discretion, proceed directly against the  
22 taxpayer for collection of the taxes.

23 (6) The taxes shall be due from the marine terminal operator, along  
24 with reports and returns on forms prescribed by the department, within  
25 (~~twenty~~) twenty-five days after the end of the month in which the  
26 taxable activity occurs.

27 (7) The amount of taxes, until paid by the taxpayer to the marine  
28 terminal operator or to the department, shall constitute a debt from  
29 the taxpayer to the marine terminal operator. Any person required to  
30 collect the taxes under this chapter who, with intent to violate the  
31 provisions of this chapter, fails or refuses to do so as required and  
32 any taxpayer who refuses to pay any taxes due under this chapter, shall  
33 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

34 (8) Upon prior approval of the department, the taxpayer may pay the  
35 taxes imposed by this chapter directly to the department. The  
36 department shall give its approval for direct payment under this  
37 section whenever it appears, in the department's judgment, that direct  
38 payment will enhance the administration of the taxes imposed under this

1 chapter. The department shall provide by rule for the issuance of a  
2 direct payment certificate to any taxpayer qualifying for direct  
3 payment of the taxes. Good faith acceptance of a direct payment  
4 certificate by a terminal operator shall relieve the marine terminal  
5 operator from any liability for the collection or payment of the taxes  
6 imposed under this chapter.

7 (9) All receipts from the tax imposed in subsection (1) of this  
8 section shall be deposited into the state oil spill response account.  
9 All receipts from the tax imposed in subsection (2) of this section  
10 shall be deposited into the oil spill prevention account.

11 (10) Within forty-five days after the end of each calendar quarter,  
12 the office of financial management shall determine the balance of the  
13 oil spill response account as of the last day of that calendar quarter.  
14 Balance determinations by the office of financial management under this  
15 section are final and shall not be used to challenge the validity of  
16 any tax imposed under this chapter. The office of financial management  
17 shall promptly notify the departments of revenue and ecology of the  
18 account balance once a determination is made. For each subsequent  
19 calendar quarter, the tax imposed by subsection (1) of this section  
20 shall be imposed during the entire calendar quarter unless:

21 (a) Tax was imposed under subsection (1) of this section during the  
22 immediately preceding calendar quarter, and the most recent quarterly  
23 balance is more than nine million dollars; or

24 (b) Tax was not imposed under subsection (1) of this section during  
25 the immediately preceding calendar quarter, and the most recent  
26 quarterly balance is more than eight million dollars.

27 **Sec. 3.** RCW 82.27.060 and 2003 1st sp.s. c 13 s 10 are each  
28 amended to read as follows:

29 The taxes levied by this chapter shall be due for payment monthly  
30 and remittance therefor shall be made within (~~twenty~~) twenty-five  
31 days after the end of the month in which the taxable activity occurs.  
32 The taxpayer on or before the due date shall make out a signed return,  
33 setting out such information as the department of revenue may require,  
34 including the gross measure of the tax, any deductions, credits, or  
35 exemptions claimed, and the amount of tax due for the preceding monthly  
36 period, which amount shall be transmitted to the department along with  
37 the return.

1 The department may relieve any taxpayer from the obligation of  
2 filing a monthly return and may require the return to cover other  
3 periods, but in no event may periodic returns be filed for a period  
4 greater than one year. In such cases tax payments are due on or before  
5 the last day of the month next succeeding the end of the period covered  
6 by the return.

7 **Sec. 4.** RCW 82.32.085 and 1990 c 69 s 3 are each amended to read  
8 as follows:

9 (1) "Electronic funds transfer" means any transfer of funds, other  
10 than a transaction originated by check, drafts, or similar paper  
11 instrument, which is initiated through an electronic terminal,  
12 telephonic instrument, or computer or magnetic tape so as to order,  
13 instruct, or authorize a financial institution to debit or credit an  
14 account.

15 ~~((The electronic funds transfer is to be completed so that the  
16 state receives collectible funds on or before the next banking day  
17 following the due date.))~~

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

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

27 (3)(a) The department shall adopt rules necessary to implement the  
28 provisions of RCW 82.32.080 and this section. The rules shall include  
29 but are not limited to: ~~((1))~~ (i) Coordinating the filing of tax  
30 returns with payment by electronic funds transfer; ~~((2))~~ (ii) form  
31 and content of electronic funds transfer; ~~((3))~~ (iii) voluntary use  
32 of electronic funds transfer with permission of the department; ~~((4))~~  
33 (iv) use of commonly accepted means of electronic funds transfer;  
34 ~~((5))~~ (v) means of crediting and recording proof of payment; and  
35 ~~((6))~~ (vi) means of correcting errors in transmission.

36 (b) Any changes in the threshold of tax shall be implemented with  
37 a separate rule-making procedure.

1           NEW SECTION.   **Sec. 5.** (1) The legislature recognizes the following  
2 with respect to the payment of excise taxes to the department of  
3 revenue by electronic funds transfer:

4           (a) Taxpayers required to pay their taxes by electronic funds  
5 transfer must do so through the use of either the automated  
6 clearinghouse debit method or automated clearinghouse credit method;

7           (b) For a remittance by electronic funds transfer to be considered  
8 timely, the transfer must be completed so that the state receives  
9 collectible funds on or before the next banking day following the due  
10 date;

11           (c) For the state to receive collectible funds on or before the  
12 next banking day following the due date, taxpayers using the automated  
13 clearinghouse debit method must initiate the transfer before 5:00 p.m.  
14 pacific time on the due date;

15           (d) The department of revenue receives information identifying the  
16 precise date and time the electronic funds transfer is initiated when  
17 a taxpayer uses the debit method; and

18           (e) The department receives information identifying only the date  
19 that the state receives collectible funds when a taxpayer uses the  
20 automated clearinghouse credit method.

21           (2) The legislature therefore finds that a remittance made using  
22 the automated clearinghouse debit method should be deemed to be  
23 received on the due date if the transfer is initiated on or before  
24 11:59 p.m. pacific time on the due date with an effective payment date  
25 on or before the next banking day following the due date. The  
26 legislature further finds that because the department does not receive  
27 information about when an electronic funds transfer is initiated when  
28 a taxpayer uses the automated clearinghouse credit method, such  
29 transfers must be completed so that the state receives collectible  
30 funds on or before the next banking day following the due date.

31           **Sec. 6.** RCW 82.32.090 and 2003 1st sp.s. c 13 s 13 are each  
32 amended to read as follows:

33           (1) If payment of any tax due on a return to be filed by a taxpayer  
34 is not received by the department of revenue by the due date, there  
35 shall be assessed a penalty of five percent of the amount of the tax;  
36 and if the tax is not received on or before the last day of the month  
37 following the due date, there shall be assessed a total penalty of

1 fifteen percent of the amount of the tax under this subsection; and if  
2 the tax is not received on or before the last day of the second month  
3 following the due date, there shall be assessed a total penalty of  
4 twenty-five percent of the amount of the tax under this subsection. No  
5 penalty so added shall be less than five dollars.

6 (2) If (~~the department of revenue determines that any tax is due,~~  
7 ~~there shall be assessed a penalty of five percent of the amount of the~~  
8 ~~tax determined by the department to be due; and if~~)) payment of any tax  
9 determined by the department to be due is not received by the  
10 department by the due date specified in the notice, or any extension  
11 thereof, there shall be assessed a total penalty of fifteen percent of  
12 the amount of the tax under this subsection; and if the tax is not  
13 received on or before the thirtieth day following the due date  
14 specified in the notice of tax due, or any extension thereof, there  
15 shall be assessed a total penalty of twenty-five percent of the amount  
16 of the tax under this subsection. No penalty so added shall be less  
17 than five dollars.

18 (3) If a warrant be issued by the department of revenue for the  
19 collection of taxes, increases, and penalties, there shall be added  
20 thereto a penalty of ten percent of the amount of the tax, but not less  
21 than ten dollars.

22 (4) If the department finds that a person has engaged in any  
23 business or performed any act upon which a tax is imposed under this  
24 title and that person has not obtained from the department a  
25 registration certificate as required by RCW 82.32.030, the department  
26 shall impose a penalty of five percent of the amount of tax due from  
27 that person for the period that the person was not registered as  
28 required by RCW 82.32.030. The department shall not impose the penalty  
29 under this subsection (4) if a person who has engaged in business  
30 taxable under this title without first having registered as required by  
31 RCW 82.32.030, prior to any notification by the department of the need  
32 to register, obtains a registration certificate from the department.

33 (5) If the department finds that all or any part of a deficiency  
34 resulted from the disregard of specific written instructions as to  
35 reporting or tax liabilities, the department shall add a penalty of ten  
36 percent of the amount of the additional tax found due because of the  
37 failure to follow the instructions. A taxpayer disregards specific  
38 written instructions when the department of revenue has informed the

1 taxpayer in writing of the taxpayer's tax obligations and the taxpayer  
2 fails to act in accordance with those instructions unless the  
3 department has not issued final instructions because the matter is  
4 under appeal pursuant to this chapter or departmental regulations. The  
5 department shall not assess the penalty under this section upon any  
6 taxpayer who has made a good faith effort to comply with the specific  
7 written instructions provided by the department to that taxpayer.  
8 Specific written instructions may be given as a part of a tax  
9 assessment, audit, determination, or closing agreement, provided that  
10 such specific written instructions shall apply only to the taxpayer  
11 addressed or referenced on such documents. Any specific written  
12 instructions by the department of revenue shall be clearly identified  
13 as such and shall inform the taxpayer that failure to follow the  
14 instructions may subject the taxpayer to the penalties imposed by this  
15 subsection.

16 (6) If the department finds that all or any part of the deficiency  
17 resulted from an intent to evade the tax payable hereunder, a further  
18 penalty of fifty percent of the additional tax found to be due shall be  
19 added.

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

24 (8) The department of revenue may not impose both the evasion  
25 penalty and the penalty for disregarding specific written instructions  
26 on the same tax found to be due.

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

31 NEW SECTION. **Sec. 7.** (1) Sections 1 through 3 of this act apply  
32 to returns due after July 31, 2006.

33 (2) Section 4 of this act applies to payments due after July 31,  
34 2006.

35 (3) Section 6 of this act only applies to assessments originally  
36 issued after June 30, 2006.

1        NEW SECTION.   **Sec. 8.**   This act does not affect any existing right  
2        acquired or liability or obligation incurred under the sections amended  
3        in this act or under any rule or order adopted under those sections,  
4        nor does it affect any proceeding instituted under those sections.

5        NEW SECTION.   **Sec. 9.**   (1) Sections 1 through 4 of this act take  
6        effect August 1, 2006.

7        (2) Sections 6 and 7 of this act take effect July 1, 2006.

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