

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2671

59th Legislature
2006 Regular Session

Passed by the House March 8, 2006
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 7, 2006
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2671** 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**

HOUSE BILL 2671

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

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

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

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

1 (5) If the department finds that all or any part of a deficiency
2 resulted from the disregard of specific written instructions as to
3 reporting or tax liabilities, the department shall add a penalty of ten
4 percent of the amount of the additional tax found due because of the
5 failure to follow the instructions. A taxpayer disregards specific
6 written instructions when the department of revenue has informed the
7 taxpayer in writing of the taxpayer's tax obligations and the taxpayer
8 fails to act in accordance with those instructions unless the
9 department has not issued final instructions because the matter is
10 under appeal pursuant to this chapter or departmental regulations. The
11 department shall not assess the penalty under this section upon any
12 taxpayer who has made a good faith effort to comply with the specific
13 written instructions provided by the department to that taxpayer.
14 Specific written instructions may be given as a part of a tax
15 assessment, audit, determination, or closing agreement, provided that
16 such specific written instructions shall apply only to the taxpayer
17 addressed or referenced on such documents. Any specific written
18 instructions by the department of revenue shall be clearly identified
19 as such and shall inform the taxpayer that failure to follow the
20 instructions may subject the taxpayer to the penalties imposed by this
21 subsection.

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

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

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

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

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

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

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

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

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

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

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