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**HOUSE BILL 1834**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Walen, Springer, Orcutt, Stokesbary, Wylie, and Barnard

AN ACT Relating to reconciliation returns for apportionable income; amending RCW 82.04.462, 82.32.090, 82.32.105, and 82.45.100; reenacting and amending RCW 82.45.150; and creating a new section.

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

**Sec.**  RCW 82.04.462 and 2014 c 97 s 305 are each amended to read as follows:

(1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(4)(a) (i) through (x) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and, for financial institutions, as provided in the rule adopted by the department under the authority of RCW 82.04.460(2).

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property. When a customer receives the benefit of the taxpayer's services or uses the taxpayer's intangible property in this and one or more other states and the amount of gross income of the business that was received by the taxpayer in return for the services received or intangible property used by the customer in this state can be reasonably determined by the taxpayer, such amount of gross income must be attributed to this state.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state and if the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) of this subsection (3), gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or (vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have a substantial nexus with that state under the standards in RCW 82.04.067(1) regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in subsection (4) of this section and the rule adopted by the department under the authority of RCW 82.04.460(2) with respect to apportionable income taxable under RCW 82.04.290. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x) must calculate a separate receipts factor, as provided in this section, for each of the other tax classifications that the financial institution is taxable under.

(4)(a) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. ((~~In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year.~~))

(b) Following the end of a tax year, any taxpayer who is required to apportion its income under this section and who has underreported or overreported their apportionable income for the immediately preceding tax year must file a return with the department to reconcile the amount of tax reported on apportionable income for the immediately preceding tax year to the actual amount of tax due on apportionable income for the immediately preceding tax year. Reconciliation returns must be filed in a form and manner prescribed by the department. Reconciliation returns for a tax year, along with payment of any additional tax due on the reconciliation return, are due on or before October 31st of the following tax year.

(c) Interest ((~~will apply~~)) applies to any additional tax due on a ((~~corrected tax~~)) reconciliation return. Interest must be computed and assessed as provided in RCW 82.32.050 ((~~and accrues until the additional taxes are paid~~)). Penalties as provided in RCW 82.32.090 ((~~will~~)) apply to any such additional tax due only if ((~~the current tax year reporting is not corrected and~~)) the additional tax is not paid by the October 31st ((~~of the following tax year~~)) due date established in (b) of this subsection (4).

(d) Interest as provided in RCW 82.32.060 ((~~will apply~~)) applies to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete or inaccurate current-year data to calculate the receipts factor.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**Sec.**  RCW 82.32.090 and 2015 3rd sp.s. c 5 s 401 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer, other than a reconciliation return required under RCW 82.04.462(4), is not received by the department of revenue by the due date, there is assessed a penalty of nine percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there is assessed a total penalty of nineteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there is assessed a total penalty of twenty-nine percent of the amount of the tax under this subsection. No penalty so added may be less than five dollars.

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

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

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

(5) If the department finds that a taxpayer has disregarded specific written instructions as to reporting or tax liabilities, or willfully disregarded the requirement to file returns or remit payment electronically, as provided by RCW 82.32.080, the department must add a penalty of ten percent of the amount of the tax that should have been reported and/or paid electronically or the additional tax found due if there is a deficiency because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless, in the case of a deficiency, the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. A taxpayer will be considered to have made a good faith effort to comply with specific written instructions to file returns and/or remit taxes electronically only if the taxpayer can show good cause, as defined in RCW 82.32.080, for the failure to comply with such instructions. A taxpayer will be considered to have willfully disregarded the requirement to file returns or remit payment electronically if the department has mailed or otherwise delivered the specific written instructions to the taxpayer on at least two occasions. Specific written instructions may be given as a part of a tax assessment, audit, determination, closing agreement, or other written communication, provided that such specific written instructions apply only to the taxpayer addressed or referenced on such communication. Any specific written instructions by the department must be clearly identified as such and must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection. If the department determines that it is necessary to provide specific written instructions to a taxpayer that does not comply with the requirement to file returns or remit payment electronically as provided in RCW 82.32.080, the specific written instructions must provide the taxpayer with a minimum of forty-five days to come into compliance with its electronic filing and/or payment obligations before the department may impose the penalty authorized in this subsection.

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

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

(8) If the department does not receive a reconciliation return required under RCW 82.04.462(4) and payment in full of the tax due on the return by the due date, the department must assess a penalty equal to the greater of $25 or 9 percent of the unpaid tax due. The department may waive or cancel this penalty as provided in RCW 82.32.105.

(9) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. The penalties imposed under subsections (2) through (4) and (8) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

((~~(9)~~)) (10) The department may not impose the evasion penalty in combination with the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

((~~(10)~~)) (11) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department, and that has a statutorily defined due date.

**Sec.**  RCW 82.32.105 and 2017 c 323 s 106 are each amended to read as follows:

(1) If the department finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department must waive or cancel any penalties imposed under this chapter with respect to such tax.

(2)(a) The department must waive or cancel the penalty imposed under RCW 82.32.090(8) when the taxpayer does not qualify for waiver or cancellation under subsection (1) of this section, if the department determines that the delinquency under RCW 82.04.462(4) occurred as a result of the department's reclassification of apportionable income reported incorrectly by the taxpayer under a tax classification that applies to income that is not apportionable under RCW 82.04.460 and 82.04.462.

(b) A taxpayer may not receive relief from the penalty under this subsection (2) more than once. However, in cases involving the assessment of the penalty imposed under RCW 82.32.090(8) for the reason described in (a) of this subsection (2) with respect to multiple tax years included in the department's audit or examination of the taxpayer's returns or records, the waiver under this subsection (2) applies to all tax years included in the examination or audit.

(c) A taxpayer is not eligible for a waiver or cancellation of penalty under this subsection (2) if:

(i) The taxpayer's incorrect reporting of the apportionable income at issue was due to the taxpayer's failure to act in accordance with specific written instructions provided to that taxpayer by the department as to the taxpayer's obligations under chapter 82.04 RCW with respect to its business activities that generated the apportionable income at issue; or

(ii) Prior to the tax year at issue, the taxpayer properly reported apportionable income generated from the same type of business activities that generated the apportionable income at issue.

(3)(a) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

((~~(a)~~)) (i) The taxpayer requests the waiver for a tax return required to be filed under RCW 54.28.040, 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

((~~(b)~~)) (ii) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty‑four months immediately preceding the period covered by the return for which the waiver is being requested.

((~~(3)~~)) (b) For purposes of this subsection (3), "return" does not include a reconciliation return required under RCW 82.04.462(4).

(4) The department must waive or cancel the penalty imposed under RCW 82.32.090(8) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsections (1) or (2) of this section if:

(a) The taxpayer requests the waiver for a reconciliation return required to be filed under RCW 82.04.462(4); and

(b) The taxpayer has not previously been assessed a penalty under RCW 82.32.090(8), or having previously been assessed a penalty under RCW 82.32.090(8), the taxpayer has timely filed reconciliation returns required under RCW 82.04.462(4) and timely remitted full payment of tax due on those returns, if any, for the most recent two tax years for which the taxpayer was required to file reconciliation returns under RCW 82.04.462(4).

(5) The department must waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

((~~(4)~~)) (6) The department must adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

**Sec.**  RCW 82.45.100 and 2010 1st sp.s. c 23 s 211 are each amended to read as follows:

(1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter will bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, is computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, is computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department must provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there will be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection is collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee is personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department must assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same becomes due and must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through ((~~(8)~~)) (7) must be deposited in the housing trust fund as described in chapter 43.185 RCW.

**Sec.**  RCW 82.45.150 and 2014 c 97 s 307 and 2014 c 58 s 26 are each reenacted and amended to read as follows:

All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and 82.32.090 (1) and ((~~(10)~~)) (8), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue must by rule provide for the effective administration of this chapter. The rules must prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right-of-way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative and except that a transfer on death deed need be verified only on behalf of the transferor. The department of revenue must annually conduct audits of transactions and affidavits filed under this chapter.

NEW SECTION. **Sec.**  This act applies prospectively only beginning with reconciliation returns initially due in 2023 for the 2022 tax year.

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