
HOUSE BILL 1834

State of Washington

68th Legislature

2023 Regular Session

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

Read first time 02/17/23. Referred to Committee on Finance.

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

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

5 **Sec. 1.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to
6 read as follows:

7 (1) The apportionable income of a person within the scope of RCW
8 82.04.460(1) is apportioned to Washington by multiplying its
9 apportionable income by the receipts factor. Persons who are subject
10 to tax under more than one of the tax classifications enumerated in
11 RCW 82.04.460(4)(a) (i) through (x) must calculate a separate
12 receipts factor for each tax classification that the person is
13 taxable under.

14 (2) For purposes of subsection (1) of this section, the receipts
15 factor is a fraction and is calculated as provided in subsections (3)
16 and (4) of this section and, for financial institutions, as provided
17 in the rule adopted by the department under the authority of RCW
18 82.04.460(2).

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

1 denominator of the receipts factor is the total gross income of the
2 business of the taxpayer from engaging in an apportionable activity
3 everywhere in the world during the tax year.

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

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

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

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

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

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

39 (vi) If the taxpayer is unable to attribute gross income of the
40 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of

1 this subsection (3), gross income of the business must be attributed
2 to the state where the customer is located as indicated by the
3 customer's address: (A) Shown in the taxpayer's business records
4 maintained in the regular course of business; or (B) obtained during
5 consummation of the sale or the negotiation of the contract for
6 services or for the use of the taxpayer's intangible property,
7 including any address of a customer's payment instrument when readily
8 available to the taxpayer and no other address is available.

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

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

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

37 (d) This subsection (3) does not apply to financial institutions
38 with respect to apportionable income taxable under RCW 82.04.290.
39 Financial institutions must calculate the receipts factor as provided
40 in subsection (4) of this section and the rule adopted by the

1 department under the authority of RCW 82.04.460(2) with respect to
2 apportionable income taxable under RCW 82.04.290. Financial
3 institutions that are subject to tax under any other tax
4 classification enumerated in RCW 82.04.460(4)(a)(i) through (v) and
5 (vii) through (x) must calculate a separate receipts factor, as
6 provided in this section, for each of the other tax classifications
7 that the financial institution is taxable under.

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

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

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

38 (d) Interest as provided in RCW 82.32.060 (~~(will apply)~~) applies
39 to any tax paid in excess of that properly due on a return as a

1 result of a taxpayer using previous calendar year data or incomplete
2 or inaccurate current-year data to calculate the receipts factor.

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

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

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

11 **Sec. 2.** RCW 82.32.090 and 2015 3rd sp.s. c 5 s 401 are each
12 amended to read as follows:

13 (1) If payment of any tax due on a return to be filed by a
14 taxpayer, other than a reconciliation return required under RCW
15 82.04.462(4), is not received by the department of revenue by the due
16 date, there is assessed a penalty of nine percent of the amount of
17 the tax; and if the tax is not received on or before the last day of
18 the month following the due date, there is assessed a total penalty
19 of nineteen percent of the amount of the tax under this subsection;
20 and if the tax is not received on or before the last day of the
21 second month following the due date, there is assessed a total
22 penalty of twenty-nine percent of the amount of the tax under this
23 subsection. No penalty so added may be less than five dollars.

24 (2) If the department of revenue determines that any tax has been
25 substantially underpaid, there is assessed a penalty of five percent
26 of the amount of the tax determined by the department to be due. If
27 payment of any tax determined by the department to be due is not
28 received by the department by the due date specified in the notice,
29 or any extension thereof, there is assessed a total penalty of
30 fifteen percent of the amount of the tax under this subsection; and
31 if payment of any tax determined by the department to be due is not
32 received on or before the thirtieth day following the due date
33 specified in the notice of tax due, or any extension thereof, there
34 is assessed a total penalty of twenty-five percent of the amount of
35 the tax under this subsection. No penalty so added may be less than
36 five dollars. As used in this section, "substantially underpaid"
37 means that the taxpayer has paid less than eighty percent of the
38 amount of tax determined by the department to be due for all of the
39 types of taxes included in, and for the entire period of time covered

1 by, the department's examination, and the amount of underpayment is
2 at least one thousand dollars.

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

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

19 (5) If the department finds that a taxpayer has disregarded
20 specific written instructions as to reporting or tax liabilities, or
21 willfully disregarded the requirement to file returns or remit
22 payment electronically, as provided by RCW 82.32.080, the department
23 must add a penalty of ten percent of the amount of the tax that
24 should have been reported and/or paid electronically or the
25 additional tax found due if there is a deficiency because of the
26 failure to follow the instructions. A taxpayer disregards specific
27 written instructions when the department has informed the taxpayer in
28 writing of the taxpayer's tax obligations and the taxpayer fails to
29 act in accordance with those instructions unless, in the case of a
30 deficiency, the department has not issued final instructions because
31 the matter is under appeal pursuant to this chapter or departmental
32 regulations. The department may not assess the penalty under this
33 section upon any taxpayer who has made a good faith effort to comply
34 with the specific written instructions provided by the department to
35 that taxpayer. A taxpayer will be considered to have made a good
36 faith effort to comply with specific written instructions to file
37 returns and/or remit taxes electronically only if the taxpayer can
38 show good cause, as defined in RCW 82.32.080, for the failure to
39 comply with such instructions. A taxpayer will be considered to have
40 willfully disregarded the requirement to file returns or remit

1 payment electronically if the department has mailed or otherwise
2 delivered the specific written instructions to the taxpayer on at
3 least two occasions. Specific written instructions may be given as a
4 part of a tax assessment, audit, determination, closing agreement, or
5 other written communication, provided that such specific written
6 instructions apply only to the taxpayer addressed or referenced on
7 such communication. Any specific written instructions by the
8 department must be clearly identified as such and must inform the
9 taxpayer that failure to follow the instructions may subject the
10 taxpayer to the penalties imposed by this subsection. If the
11 department determines that it is necessary to provide specific
12 written instructions to a taxpayer that does not comply with the
13 requirement to file returns or remit payment electronically as
14 provided in RCW 82.32.080, the specific written instructions must
15 provide the taxpayer with a minimum of forty-five days to come into
16 compliance with its electronic filing and/or payment obligations
17 before the department may impose the penalty authorized in this
18 subsection.

19 (6) If the department finds that all or any part of a deficiency
20 resulted from engaging in a disregarded transaction, as described in
21 RCW 82.32.655(3), the department must assess a penalty of thirty-five
22 percent of the additional tax found to be due as a result of engaging
23 in a transaction disregarded by the department under RCW
24 82.32.655(2). The penalty provided in this subsection may be assessed
25 together with any other applicable penalties provided in this section
26 on the same tax found to be due, except for the evasion penalty
27 provided in subsection (7) of this section. The department may not
28 assess the penalty under this subsection if, before the department
29 discovers the taxpayer's use of a transaction described under RCW
30 82.32.655(3), the taxpayer discloses its participation in the
31 transaction to the department.

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

36 (8) If the department does not receive a reconciliation return
37 required under RCW 82.04.462(4) and payment in full of the tax due on
38 the return by the due date, the department must assess a penalty
39 equal to the greater of \$25 or 9 percent of the unpaid tax due. The

1 department may waive or cancel this penalty as provided in RCW
2 82.32.105.

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

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

13 ~~((10))~~ (11) For the purposes of this section, "return" means
14 any document a person is required by the state of Washington to file
15 to satisfy or establish a tax or fee obligation that is administered
16 or collected by the department, and that has a statutorily defined
17 due date.

18 **Sec. 3.** RCW 82.32.105 and 2017 c 323 s 106 are each amended to
19 read as follows:

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

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

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

1 subsection (2) applies to all tax years included in the examination
2 or audit.

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

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

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

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

18 ~~((a))~~ (i) The taxpayer requests the waiver for a tax return
19 required to be filed under RCW 54.28.040, 82.32.045, 82.14B.061,
20 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

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

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

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

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

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

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

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

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

8 ~~((4))~~ (6) The department must adopt rules for the waiver or
9 cancellation of penalties and interest imposed by this chapter.

10 **Sec. 4.** RCW 82.45.100 and 2010 1st sp.s. c 23 s 211 are each
11 amended to read as follows:

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

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

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

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

37 (3) If the tax imposed under this chapter is not received by the
38 due date, the transferee is personally liable for the tax, along with
39 any interest as provided in subsection (1) of this section, unless an

1 instrument evidencing the sale is recorded in the official real
2 property records of the county in which the property conveyed is
3 located.

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

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

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

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

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

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

26 **Sec. 5.** RCW 82.45.150 and 2014 c 97 s 307 and 2014 c 58 s 26 are
27 each reenacted and amended to read as follows:

28 All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050,
29 82.32.140, 82.32.270, and 82.32.090 (1) and ~~((+10))~~ (8), applies to
30 the tax imposed by this chapter, in addition to any other provisions
31 of law for the payment and enforcement of the tax imposed by this
32 chapter. The department of revenue must by rule provide for the
33 effective administration of this chapter. The rules must prescribe
34 and furnish a real estate excise tax affidavit form verified by both
35 the seller and the buyer, or agents of each, to be used by each
36 county, or the department, as the case may be, in the collection of
37 the tax imposed by this chapter, except that an affidavit given in
38 connection with grant of an easement or right-of-way to a gas,
39 electrical, or telecommunications company, as defined in RCW

1 80.04.010, or to a public utility district or cooperative that
2 distributes electricity, need be verified only on behalf of the
3 company, district, or cooperative and except that a transfer on death
4 deed need be verified only on behalf of the transferor. The
5 department of revenue must annually conduct audits of transactions
6 and affidavits filed under this chapter.

7 NEW SECTION. **Sec. 6.** This act applies prospectively only
8 beginning with reconciliation returns initially due in 2023 for the
9 2022 tax year.

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