

RCW 82.32.090 Late payment—Disregard of written instructions—

Evasion—Penalties. (1) If payment of any tax due on a return to be filed by a taxpayer 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) The penalties imposed under subsections (1) through (4) 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) 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) 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. [2015 3rd sp.s. c 5 § 401; 2011 c 24 § 3; 2010 1st sp.s. c 23 § 203; 2006 c 256 § 6; 2003 1st sp.s. c 13 § 13; 2000 c 229 § 7; 1999 c 277 § 11; 1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—2015 3rd sp.s. c 5: See note following RCW 82.08.052.

Application—2011 c 24: See note following RCW 82.32.080.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.32.655.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective dates—Application—Savings—2006 c 256: See notes following RCW 82.32.045.

Application—2003 1st sp.s. c 13 § 13: "Except as otherwise provided in this section, section 13 of this act applies to all penalties imposed after June 30, 2003. The five percent penalty imposed in section 13(2) of this act applies to all assessments originally issued after June 30, 2003." [2003 1st sp.s. c 13 § 14.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 82.32.045.

Effective date—2000 c 229: See note following RCW 46.16A.030.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1981 c 7: See note following RCW 82.32.045.

Construction—1971 ex.s. c 179: "This 1971 amendatory act shall apply only to taxes becoming due and payable in June, 1971 and thereafter." [1971 ex.s. c 179 § 2.]