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ESSB 5494 - H AMD to H COMM AMD (5494-S.E AMH JUD H2693.2) **691**
FAILED 4-19-91

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By Representatives Wang, Holland and Applewick

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On page 3 of the amendment, after line 5, insert:

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"**Sec. 3.** RCW 82.32.050 and 1989 c 378 s 19 are each amended to read as follows:

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(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until date of payment for tax liabilities arising before January 1, 1992. For tax liabilities arising after December 31, 1991, until the date of payment, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year. The department shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide. ~~((If payment is not received by the department by the due date specified in the notice, or any extension thereof, the department shall add a penalty of ten percent of the amount of the additional tax found~~

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

5 (2) For the purposes of this section, the rate of interest to
6 be charged to the taxpayer shall be an average of the federal
7 short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two
8 percentage points. The rate shall be computed by taking an
9 arithmetical average to the nearest percentage point of the federal
10 short-term rate, compounded annually, for the months of January,
11 April, July, and October of the immediately preceding calendar year
12 as published by the United States secretary of the treasury.

13 (3) No assessment or correction of an assessment for
14 additional taxes due may be made by the department more than four
15 years after the close of the tax year, except ((+1)) (a) against
16 a taxpayer who has not registered as required by this chapter,
17 ((+2)) (b) upon a showing of fraud or of misrepresentation of a
18 material fact by the taxpayer, or ((+3)) (c) where a taxpayer has
19 executed a written waiver of such limitation.

20 **Sec. 4.** RCW 82.32.060 and 1990 c 69 s 1 are each amended to
21 read as follows:

22 If, upon receipt of an application by a taxpayer for a refund
23 or for an audit of the taxpayer's records, or upon an examination
24 of the returns or records of any taxpayer, it is determined by the
25 department that within the statutory period for assessment of taxes

1 prescribed by RCW 82.32.050 a tax has been paid in excess of that
2 properly due, the excess amount paid within such period shall be
3 credited to the taxpayer's account or shall be refunded to the
4 taxpayer, at the taxpayer's option. No refund or credit shall be
5 made for taxes paid more than four years prior to the beginning of
6 the calendar year in which the refund application is made or
7 examination of records is completed.

8 Notwithstanding the foregoing limitations there shall be
9 refunded or credited to taxpayers engaged in the performance of
10 United States government contracts or subcontracts the amount of
11 any tax paid, measured by that portion of the amounts received from
12 the United States, which the taxpayer is required by contract or
13 applicable federal statute to refund or credit to the United
14 States, if claim for such refund is filed by the taxpayer with the
15 department within one year of the date that the amount of the
16 refund or credit due to the United States is finally determined and
17 filed within four years of the date on which the tax was paid:
18 PROVIDED, That no interest shall be allowed on such refund.

19 Any such refunds shall be made by means of vouchers approved
20 by the department and by the issuance of state warrants drawn upon
21 and payable from such funds as the legislature may provide.
22 However, taxpayers who are required to pay taxes by electronic
23 funds transfer under RCW 82.32.080 shall have any refunds paid by
24 electronic funds transfer.

25 Any judgment for which a recovery is granted by any court of

1 competent jurisdiction, not appealed from, for tax, penalties, and
2 interest which were paid by the taxpayer, and costs, in a suit by
3 any taxpayer shall be paid in like manner, upon the filing with the
4 department of a certified copy of the order or judgment of the
5 court. Except as to the credits in computing tax authorized by RCW
6 82.04.435, interest at the rate of three percent per annum shall be
7 allowed by the department and by any court on the amount of any
8 refund or recovery allowed to a taxpayer for taxes, penalties, or
9 interest paid by the taxpayer. For refunds of amounts paid after
10 December 31, 1991, the rate of interest shall be the rate as
11 computed for assessments under RCW 82.32.050(2), less one
12 percentage point.

13 **Sec. 5.** RCW 82.32.090 and 1987 c 502 s 9 are each amended to
14 read as follows:

15 (1) If payment of any tax due on a return to be filed by a
16 taxpayer is not received by the department of revenue by the due
17 date, there shall be assessed a penalty of five percent of the
18 amount of the tax; and if the tax is not received within thirty
19 days after the due date, there shall be assessed a total penalty of
20 ten percent of the amount of the tax; and if the tax is not
21 received within sixty days after the due date, there shall be
22 assessed a total penalty of twenty percent of the amount of the
23 tax. No penalty so added shall be less than ~~((two))~~ five dollars.

24 (2) If payment of any tax assessed by the department of

1 revenue is not received by the department by the due date specified
2 in the notice, or any extension thereof, the department shall add
3 a penalty of ten percent of the amount of the additional tax found
4 due. No penalty so added shall be less than five dollars.

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

9 ((Notwithstanding the foregoing,)) (4) If the department finds
10 that all or any part of a deficiency resulted from the disregard of
11 specific written instructions as to reporting or tax liabilities,
12 the department shall add a penalty of fifteen percent of the amount
13 of the additional tax found due because of the failure to follow
14 such instructions. A taxpayer disregards specific written
15 instructions when the department of revenue has informed it in
16 writing of its tax obligations and the taxpayer fails to act in
17 accordance with those instructions unless the department has not
18 issued final instructions because the matter is under appeal
19 pursuant to this chapter or departmental regulations. The
20 department shall not issue the penalty under this section upon any
21 taxpayer who has made a good faith effort to comply with the
22 specific written instructions provided by the department. Specific
23 written instructions may be given as a part of a tax assessment,
24 audit, determination, closing agreement, or through written
25 correspondence to a taxpayer. Any specific written instructions by

1 the department of revenue shall be clearly identified as such and
2 shall inform the taxpayer that failure to follow the instructions
3 may subject the taxpayer to the penalties imposed by this
4 subsection.

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

9 (6) The aggregate of penalties imposed under this ((chapter))
10 section for failure to ((file)) pay a tax due on a return, late
11 payment of any tax, increase, or penalty, or issuance of a warrant
12 shall not exceed ((twenty-five)) thirty-five percent of the tax
13 due, or ((seven)) twenty dollars, whichever is greater.

14 (7) The department of revenue may not impose both the evasion
15 penalty and the penalty for disregarding specific written
16 instructions on the same tax found to be due.

17 NEW SECTION. Sec. 6. If any provision of this act or
18 its application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. Sec. 7. Sections 3 through 5 of this act
22 shall take effect January 1, 1992."

5494-S.E AMH WANG LONG 005r2

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2 By Representative Wang

3 On page 3, line 10 of the title amendment, strike "and 62A.3-
4 520" and insert ", 62A.3-520, 82.32.050, 82.32.060, and 82.32.090"