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HOUSE BILL 2680

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State of Washington

52nd Legislature

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By Representatives J. Kohl, Brumsickle and Fraser; by request of Department of Revenue

Read first time 01/23/92. Referred to Committee on Revenue.

1 AN ACT Relating to the improvement of the administration of the  
2 assessment and collection of taxes; amending RCW 82.04.170, 82.08.050,  
3 82.32.090, 82.32.180, 67.28.183, and 82.29A.050; repealing RCW  
4 82.32.040; and providing an effective date.

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

6 **Sec. 1.** RCW 82.04.170 and 1985 c 135 s 1 are each amended to read  
7 as follows:

8 "Tuition fee" includes library, laboratory, health service and  
9 other special fees, and amounts charged for room and board by an  
10 educational institution when the property or service for which such  
11 charges are made is furnished exclusively to the students or faculty of  
12 such institution. "Educational institution," as used in this section,  
13 means only those institutions created or generally accredited as such  
14 by the state, or defined as a degree granting institution under RCW

1 ((28B.05.030(10))) 28B.85.010(3) and accredited by an accrediting  
2 association recognized by the United States secretary of education, and  
3 offering to students an educational program of a general academic  
4 nature or those institutions which are not operated for profit and  
5 which are privately endowed under a deed of trust to offer instruction  
6 in trade, industry, and agriculture, but not including specialty  
7 schools, business colleges, other trade schools, or similar  
8 institutions.

9       **Sec. 2.** RCW 82.08.050 and 1986 c 36 s 1 are each amended to read  
10 as follows:

11       The tax hereby imposed shall be paid by the buyer to the seller,  
12 and each seller shall collect from the buyer the full amount of the tax  
13 payable in respect to each taxable sale in accordance with the schedule  
14 of collections adopted by the department pursuant to the provisions of  
15 RCW 82.08.060. The tax required by this chapter, to be collected by  
16 the seller, shall be deemed to be held in trust by the seller until  
17 paid to the department, and any seller who appropriates or converts the  
18 tax collected to his or her own use or to any use other than the  
19 payment of the tax to the extent that the money required to be  
20 collected is not available for payment on the due date as prescribed in  
21 this chapter shall be guilty of a gross misdemeanor.

22       In case any seller fails to collect the tax herein imposed or  
23 having collected the tax, fails to pay it to the department in the  
24 manner prescribed by this chapter, whether such failure is the result  
25 of his or her own acts or the result of acts or conditions beyond his  
26 or her control, he or she shall, nevertheless, be personally liable to  
27 the state for the amount of the tax.

28       The amount of tax, until paid by the buyer to the seller or to the  
29 department, shall constitute a debt from the buyer to the seller and

1 any seller who fails or refuses to collect the tax as required with  
2 intent to violate the provisions of this chapter or to gain some  
3 advantage or benefit, either direct or indirect, and any buyer who  
4 refuses to pay any tax due under this chapter shall be guilty of a  
5 misdemeanor. The tax required by this chapter to be collected by the  
6 seller shall be stated separately from the selling price in any sales  
7 invoice or other instrument of sale. On all retail sales through  
8 vending machines, the tax need not be stated separately from the  
9 selling price or collected separately from the buyer. For purposes of  
10 determining the tax due from the buyer to the seller and from the  
11 seller to the department it shall be conclusively presumed that the  
12 selling price quoted in any price list, sales document, contract or  
13 other agreement between the parties does not include the tax imposed by  
14 this chapter, but if the seller advertises the price as including the  
15 tax or that the seller is paying the tax, the advertised price shall  
16 not be considered the selling price.

17 Where a buyer has failed to pay to the seller the tax imposed by  
18 this chapter and the seller has not paid the amount of the tax to the  
19 department, the department may, in its discretion, proceed directly  
20 against the buyer for collection of the tax, in which case a penalty of  
21 ten percent may be added to the amount of the tax for failure of the  
22 buyer to pay the same to the seller, regardless of when the tax may be  
23 collected by the department; and all of the provisions of chapter 82.32  
24 RCW, including those relative to interest and penalties, shall apply in  
25 addition; and, for the sole purpose of applying the various provisions  
26 of chapter 82.32 RCW, the (~~fifteenth~~) twenty-fifth day of the month  
27 following the tax period in which the purchase was made shall be  
28 considered as the due date of the tax.

1       **Sec. 3.** RCW 82.32.090 and 1991 c 142 s 11 are each amended to read  
2 as follows:

3       (1) If payment of any tax due on a return to be filed by a taxpayer  
4 is not received by the department of revenue by the due date, there  
5 shall be assessed a penalty of five percent of the amount of the tax;  
6 and if the tax is not received within thirty days after the due date,  
7 there shall be assessed a total penalty of ten percent of the amount of  
8 the tax; and if the tax is not received within sixty days after the due  
9 date, there shall be assessed a total penalty of twenty percent of the  
10 amount of the tax. No penalty so added shall be less than five  
11 dollars.

12       (2) If payment of any tax assessed by the department of revenue is  
13 not received by the department by the due date specified in the notice,  
14 or any extension thereof, the department shall add a penalty of ten  
15 percent of the amount of the additional tax found due. No penalty so  
16 added shall be less than five dollars.

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

21       (4) If the department finds that all or any part of a deficiency  
22 resulted from the disregard of specific written instructions as to  
23 reporting or tax liabilities, the department shall add a penalty of ten  
24 percent of the amount of the additional tax found due because of the  
25 failure to follow the instructions. A taxpayer disregards specific  
26 written instructions when the department of revenue has informed the  
27 taxpayer in writing of the taxpayer's tax obligations and the taxpayer  
28 fails to act in accordance with those instructions unless the  
29 department has not issued final instructions because the matter is  
30 under appeal pursuant to this chapter or departmental regulations. The

1 department shall not assess the penalty under this section upon any  
2 taxpayer who has made a good faith effort to comply with the specific  
3 written instructions provided by the department to that taxpayer.  
4 Specific written instructions may be given as a part of a tax  
5 assessment, audit, determination, or closing agreement, provided that  
6 such specific written instructions shall apply only to the taxpayer  
7 addressed or referenced on such documents. Any specific written  
8 instructions by the department of revenue shall be clearly identified  
9 as such and shall inform the taxpayer that failure to follow the  
10 instructions may subject the taxpayer to the penalties imposed by this  
11 subsection.

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

16 (6) The aggregate of penalties imposed under this section for  
17 failure to pay a tax due on a return by the due date, late payment of  
18 any tax, increase, or penalty, or issuance of a warrant shall not  
19 exceed thirty-five percent of the tax due, or twenty dollars, whichever  
20 is greater.

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

24 **Sec. 4.** RCW 82.32.180 and 1989 c 378 s 23 are each amended to read  
25 as follows:

26 Any person, except one who has failed to keep and preserve books,  
27 records, and invoices as required in this chapter and chapter 82.24  
28 RCW, having paid any tax as required and feeling aggrieved by the  
29 amount of the tax may appeal to the superior court of Thurston county,

1 within the time limitation for a refund provided in chapter 82.32 RCW  
2 or, if an application for refund has been made to the department within  
3 that time limitation, then within thirty days after rejection of the  
4 application, whichever time limitation is later. In the appeal the  
5 taxpayer shall set forth the amount of the tax imposed upon the  
6 taxpayer which the taxpayer concedes to be the correct tax and the  
7 reason why the tax should be reduced or abated. The appeal shall be  
8 perfected by serving a copy of the notice of appeal upon the department  
9 within the time herein specified and by filing the original thereof  
10 with proof of service with the clerk of the superior court of Thurston  
11 county. (~~Within ten days after filing the notice of appeal, the  
12 taxpayer shall file with the clerk of the superior court a good and  
13 sufficient surety bond payable to the state in the sum of two hundred  
14 dollars, conditioned to diligently prosecute the appeal and pay the  
15 state all costs that may be awarded if the appeal of the taxpayer is  
16 not sustained.~~)

17 The trial in the superior court on appeal shall be de novo and  
18 without the necessity of any pleadings other than the notice of appeal.  
19 The burden shall rest upon the taxpayer to prove that the tax as paid  
20 by the taxpayer is incorrect, either in whole or in part, and to  
21 establish the correct amount of the tax. In such proceeding the  
22 taxpayer shall be deemed the plaintiff, and the state, the defendant;  
23 and both parties shall be entitled to subpoena the attendance of  
24 witnesses as in other civil actions and to produce evidence that is  
25 competent, relevant, and material to determine the correct amount of  
26 the tax that should be paid by the taxpayer. Either party may seek  
27 appellate review in the same manner as other civil actions are appealed  
28 to the appellate courts.

29 It shall not be necessary for the taxpayer to protest against the  
30 payment of any tax or to make any demand to have the same refunded or

1 to petition the director for a hearing in order to appeal to the  
2 superior court, but no court action or proceeding of any kind shall be  
3 maintained by the taxpayer to recover any tax paid, or any part  
4 thereof, except as herein provided.

5 The provisions of this section shall not apply to any tax payment  
6 which has been the subject of an appeal to the board of tax appeals  
7 with respect to which appeal a formal hearing has been elected.

8 **Sec. 5.** RCW 67.28.183 and 1988 c 61 s 2 are each amended to read  
9 as follows:

10 (1) The tax levied by RCW 67.28.180 (~~and~~), 67.28.182, 67.28.150,  
11 and 67.28.260 shall not apply to emergency lodging provided for  
12 homeless persons for a period of less than thirty consecutive days  
13 under a shelter voucher program administered by an eligible  
14 organization.

15 (2) For the purposes of this exemption, an eligible organization  
16 includes only cities, towns, and counties, or their respective  
17 agencies, and groups providing emergency food and shelter services.

18 **Sec. 6.** RCW 82.29A.050 and 1975-'76 2nd ex.s. c 61 s 5 are each  
19 amended to read as follows:

20 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and  
21 82.29A.040 shall be paid by the lessee to the lessor and the lessor  
22 shall collect such tax and remit the same to the department of revenue.  
23 The tax shall be payable at the same time as payments are due to the  
24 lessor for use of the property from which the leasehold interest  
25 arises, and in the case of payment of contract rent to a person other  
26 than the lessor, at the time of payment. The tax payment shall be  
27 accompanied by such information as the department of revenue may  
28 require. In the case of prepaid contract rent the payment may be

1 prorated in accordance with instructions of the department of revenue  
2 and the prorated portion of the tax shall be due, one-half not later  
3 than May 31 and the other half not later than November 30 each year.

4 (2) The lessor receiving taxes payable under the provisions of this  
5 chapter shall remit the same together with a return provided by the  
6 department, to the department of revenue on or before the (~~fifteenth~~)  
7 last day of the month following the month in which the tax is  
8 collected. The department may relieve any taxpayer or class of  
9 taxpayers from the obligation of filing monthly returns and may require  
10 the return to cover other reporting periods, but in no event shall  
11 returns be filed for a period greater than one year. The lessor shall  
12 be fully liable for collection and remittance of the tax. The amount  
13 of tax until paid by the lessee to the lessor shall constitute a debt  
14 from the lessee to the lessor. The tax required by this chapter shall  
15 be stated separately from contract rent, and if not so separately  
16 stated for purposes of determining the tax due from the lessee to the  
17 lessor and from the lessor to the department, the contract rent does  
18 not include the tax imposed by this chapter. Where a lessee has failed  
19 to pay to the lessor the tax imposed by this chapter and the lessor has  
20 not paid the amount of the tax to the department, the department may,  
21 in its discretion, proceed directly against the lessee for collection  
22 of the tax: PROVIDED, That taxes due where contract rent has not been  
23 paid shall be reported by the lessor to the department and the lessee  
24 alone shall be liable for payment of the tax to the department.

25 (3) Each person having a leasehold interest subject to the tax  
26 provided for in this chapter arising out of a lease of federally owned  
27 or federal trust lands shall report and remit the tax due directly to  
28 the department of revenue in the same manner and at the same time as  
29 the lessor would be required to report and remit the tax if such lessor  
30 were a state public entity.



1        NEW SECTION.    **Sec. 7.**        RCW 82.32.040 and 1971 ex.s. c 299 s 15  
2    & 1961 c 15 s 82.32.040 are each repealed.

3        NEW SECTION.    **Sec. 8.**        This act shall take effect July 1, 1992.