

CERTIFICATION OF ENROLLMENT
SUBSTITUTE HOUSE BILL 1401

52nd Legislature
1991 Regular Session

Passed by the House April 28, 1991
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 28, 1991
Yeas 46 Nays 2

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1401** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1401

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Revenue (originally sponsored by Representatives Wang, Wynne, Ballard, D. Sommers, Winsley, Cooper, Vance, Mielke, Van Luven, Moyer, Miller, Brumsickle, Bowman, Horn, Paris, May, Betrozoff, Inslee, R. Meyers, Pruitt, Zellinsky, Bray, Franklin, Ogden, Phillips, Valle, H. Myers, Rasmussen, Fraser, Sprenkle, Heavey, Scott, Tate, Dellwo, Silver, Jacobsen, Hine, Brekke and Peery; by request of Department of Revenue).

Read first time January 31, 1991.

1 AN ACT Relating to taxpayer rights and responsibilities; amending
2 RCW 82.32.050, 82.32.060, and 82.32.090; adding a new chapter to Title
3 82 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** This chapter shall be known and cited as
6 "Washington taxpayers' rights and responsibilities."

7 NEW SECTION. **Sec. 2.** (1) The legislature finds that taxes are
8 one of the most sensitive points of contact between citizens and their
9 government, and that there is a delicate balance between revenue
10 collection and taxpayers' rights and responsibilities. The rights,
11 privacy, and property of Washington taxpayers should be protected
12 adequately during the process of the assessment and collection of
13 taxes.

1 (2) The legislature further finds that the Washington tax system is
2 based largely on voluntary compliance and that taxpayers have a
3 responsibility to inform themselves about applicable tax laws. The
4 legislature also finds that the rights of the taxpayers and their
5 attendant responsibilities are best implemented where the department of
6 revenue provides accurate tax information, instructions, forms,
7 administrative policies, and procedures to assist taxpayers to
8 voluntarily comply with the provisions of the revenue act, Title 82
9 RCW, and where taxpayers cooperate in the administration of these
10 provisions.

11 NEW SECTION. **Sec. 3.** The department of revenue shall
12 administer this chapter. The department of revenue shall adopt or
13 amend rules as may be necessary to fully implement this chapter and the
14 rights established under this chapter.

15 NEW SECTION. **Sec. 4.** The taxpayers of the state of Washington
16 have:

17 (1) The right to a written explanation of the basis for any tax
18 deficiency assessment, interest, and penalties at the time the
19 assessments are issued;

20 (2) The right to rely on specific, official written advice and
21 written tax reporting instructions from the department of revenue to
22 that taxpayer, and to have interest, penalties, and in some instances,
23 tax deficiency assessments waived where the taxpayer has so relied to
24 their proven detriment;

25 (3) The right to redress and relief where tax laws or rules are
26 found to be unconstitutional by the final decision of a court of record
27 and the right to prompt administrative remedies in such cases;

1 (4) The right to confidentiality and protection from public inquiry
2 regarding financial and business information in the possession of the
3 department of revenue in accordance with the requirements of RCW
4 82.32.330;

5 (5) The right to receive, upon request, clear and current tax
6 instructions, rules, procedures, forms, and other tax information; and

7 (6) The right to a prompt and independent administrative review by
8 the department of revenue of a decision to revoke a tax registration,
9 and to a written determination that either sustains the revocation or
10 reinstates the registration.

11 NEW SECTION. **Sec. 5.** To ensure consistent application of the
12 revenue laws, taxpayers have certain responsibilities under chapter
13 82.32 RCW, including, but not limited to, the responsibility to:

14 (1) Register with the department of revenue;

15 (2) Know their tax reporting obligations, and when they are
16 uncertain about their obligations, seek instructions from the
17 department of revenue;

18 (3) Keep accurate and complete business records;

19 (4) File accurate returns and pay taxes in a timely manner;

20 (5) Ensure the accuracy of the information entered on their tax
21 returns;

22 (6) Substantiate claims for refund;

23 (7) Timely pay all taxes after closing a business and request
24 cancellation of registration number; and

25 (8) Timely respond to communications from the department of
26 revenue.

27 NEW SECTION. **Sec. 6.** The director of revenue shall appoint a
28 taxpayer rights advocate. The advocate shall be responsible for

1 directly assisting taxpayers and their representatives to assure their
2 understanding and utilization of the policies, processes, and
3 procedures available to them in the resolution of problems.

4 NEW SECTION. **Sec. 7.** The department of revenue shall maintain
5 a taxpayer services program consisting of, but not limited to:

6 (1) Providing taxpayer assistance in the form of information,
7 education, and instruction in person, by telephone, or by
8 correspondence;

9 (2) Conducting tax workshops at locations most conveniently
10 accessible to the majority of taxpayers affected; and

11 (3) Publishing written bulletins, instructions, current revenue
12 laws, rules, court decisions, and interpretive rulings of the
13 department of revenue.

14 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
15 constitute a new chapter in Title 82 RCW.

16 **Sec. 9.** RCW 82.32.050 and 1989 c 378 s 19 are each amended to read
17 as follows:

18 (1) If upon examination of any returns or from other information
19 obtained by the department it appears that a tax or penalty has been
20 paid less than that properly due, the department shall assess against
21 the taxpayer such additional amount found to be due and shall add
22 thereto interest at the rate of nine percent per annum from the last
23 day of the year in which the deficiency is incurred until date of
24 payment for tax liabilities arising before January 1, 1992. For tax
25 liabilities arising after December 31, 1991, until the date of payment,
26 the rate of interest shall be variable and computed as provided in
27 subsection (2) of this section. The rate so computed shall be adjusted

1 on the first day of January of each year. The department shall notify
2 the taxpayer by mail of the additional amount and the same shall become
3 due and shall be paid within thirty days from the date of the notice,
4 or within such further time as the department may provide. (~~If~~
5 ~~payment is not received by the department by the due date specified in~~
6 ~~the notice, or any extension thereof, the department shall add a~~
7 ~~penalty of ten percent of the amount of the additional tax found due.~~
8 ~~If the department finds that all or any part of the deficiency resulted~~
9 ~~from an intent to evade the tax payable hereunder, a further penalty of~~
10 ~~fifty percent of the additional tax found to be due shall be added.~~)

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

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

26 **Sec. 10.** RCW 82.32.060 and 1990 c 69 s 1 are each amended to read
27 as follows:

28 If, upon receipt of an application by a taxpayer for a refund or
29 for an audit of the taxpayer's records, or upon an examination of the

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

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

21 Any such refunds shall be made by means of vouchers approved by the
22 department and by the issuance of state warrants drawn upon and payable
23 from such funds as the legislature may provide. However, taxpayers who
24 are required to pay taxes by electronic funds transfer under RCW
25 82.32.080 shall have any refunds paid by electronic funds transfer.

26 Any judgment for which a recovery is granted by any court of
27 competent jurisdiction, not appealed from, for tax, penalties, and
28 interest which were paid by the taxpayer, and costs, in a suit by any
29 taxpayer shall be paid in like manner, upon the filing with the
30 department of a certified copy of the order or judgment of the court.

1 Except as to the credits in computing tax authorized by RCW 82.04.435,
2 interest at the rate of three percent per annum shall be allowed by the
3 department and by any court on the amount of any refund or recovery
4 allowed to a taxpayer for taxes, penalties, or interest paid by the
5 taxpayer before January 1, 1992. For refunds of amounts paid or other
6 recovery allowed to a taxpayer after December 31, 1991, the rate of
7 interest shall be the rate as computed for assessments under RCW
8 82.32.050(2), less one percentage point.

9 **Sec. 11.** RCW 82.32.090 and 1987 c 502 s 9 are each amended to read
10 as follows:

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

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

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

1 (~~Notwithstanding the foregoing,~~) (4) If the department finds that
2 all or any part of a deficiency resulted from the disregard of specific
3 written instructions as to reporting or tax liabilities, the department
4 shall add a penalty of ten percent of the amount of the additional tax
5 found due because of the failure to follow the instructions. A
6 taxpayer disregards specific written instructions when the department
7 of revenue has informed the taxpayer in writing of the taxpayer's tax
8 obligations and the taxpayer fails to act in accordance with those
9 instructions unless the department has not issued final instructions
10 because the matter is under appeal pursuant to this chapter or
11 departmental regulations. The department shall not assess the penalty
12 under this section upon any taxpayer who has made a good faith effort
13 to comply with the specific written instructions provided by the
14 department to that taxpayer. Specific written instructions may be
15 given as a part of a tax assessment, audit, determination, or closing
16 agreement, provided that such specific written instructions shall apply
17 only to the taxpayer addressed or referenced on such documents. Any
18 specific written instructions by the department of revenue shall be
19 clearly identified as such and shall inform the taxpayer that failure
20 to follow the instructions may subject the taxpayer to the penalties
21 imposed by this subsection.

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

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

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

4 NEW SECTION. Sec. 12. If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. Sec. 13. Sections 9 through 11 of this act shall
9 take effect January 1, 1992.