

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1342

Chapter 157, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

INTEREST AND PENALTY ADMINISTRATION OF THE DEPARTMENT OF REVENUE

EFFECTIVE DATE: 7/27/97

Passed by the House March 12, 1997
Yeas 96 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 10, 1997
Yeas 46 Nays 0

BRAD OWEN
President of the Senate

Approved April 23, 1997, with the
exception of section 5, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1342** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 23, 1997 - 4:12 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1342

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Finance (originally sponsored by Representatives B. Thomas, Dunshee and Wensman; by request of Department of Revenue)

Read first time 03/05/97.

1 AN ACT Relating to interest and penalty administration of the
2 department of revenue; and amending RCW 82.32.050, 82.32.060,
3 82.32.210, 82.45.100, 83.100.070, and 83.100.130.

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

5 **Sec. 1.** RCW 82.32.050 and 1996 c 149 s 2 are each amended to read
6 as follows:

7 (1) If upon examination of any returns or from other information
8 obtained by the department it appears that a tax or penalty has been
9 paid less than that properly due, the department shall assess against
10 the taxpayer such additional amount found to be due and shall add
11 thereto interest on the tax only. The department shall notify the
12 taxpayer by mail of the additional amount and the additional amount
13 shall become due and shall be paid within thirty days from the date of
14 the notice, or within such further time as the department may provide.

15 (a) For tax liabilities arising before January 1, 1992, interest
16 shall be computed at the rate of nine percent per annum from the last
17 day of the year in which the deficiency is incurred until the earlier
18 of December 31, 1998, or the date of payment ((for tax liabilities
19 arising before January 1, 1992)). After December 31, 1998, the rate of

1 interest shall be variable and computed as provided in subsection (2)
2 of this section. The rate so computed shall be adjusted on the first
3 day of January of each year for use in computing interest for that
4 calendar year.

5 (b) For tax liabilities arising after December 31, 1991, (~~until~~
6 ~~the date of payment,~~) the rate of interest shall be variable and
7 computed as provided in subsection (2) of this section from the last
8 day of the year in which the deficiency is incurred until the date of
9 payment. The rate so computed shall be adjusted on the first day of
10 January of each year(~~. The department shall notify the taxpayer by~~
11 ~~mail of the additional amount and the same shall become due and shall~~
12 ~~be paid within thirty days from the date of the notice, or within such~~
13 ~~further time as the department may provide)~~) for use in computing
14 interest for that calendar year.

15 (c) Interest imposed after December 31, 1998, shall be computed
16 from the last day of the month following each calendar year included in
17 a notice, and the last day of the month following the final month
18 included in a notice if not the end of a calendar year, until the due
19 date of the notice. If payment in full is not made by the due date of
20 the notice, additional interest shall be computed until the date of
21 payment. The rate of interest shall be variable and computed as
22 provided in subsection (2) of this section. The rate so computed shall
23 be adjusted on the first day of January of each year for use in
24 computing interest for that calendar year.

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

33 (3) No assessment or correction of an assessment for additional
34 taxes, penalties, or interest due may be made by the department more
35 than four years after the close of the tax year, except (a) against a
36 taxpayer who has not registered as required by this chapter, (b) upon
37 a showing of fraud or of misrepresentation of a material fact by the
38 taxpayer, or (c) where a taxpayer has executed a written waiver of such

1 limitation. The execution of a written waiver shall also extend the
2 period for making a refund or credit as provided in RCW 82.32.060(2).

3 (4) For the purposes of this section, "return" means any document
4 a person is required by the state of Washington to file to satisfy or
5 establish a tax or fee obligation that is administered or collected by
6 the department of revenue and that has a statutorily defined due date.

7 **Sec. 2.** RCW 82.32.060 and 1992 c 169 s 2 are each amended to read
8 as follows:

9 (1) If, upon receipt of an application by a taxpayer for a refund
10 or for an audit of the taxpayer's records, or upon an examination of
11 the returns or records of any taxpayer, it is determined by the
12 department that within the statutory period for assessment of taxes,
13 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
14 penalty, or interest has been paid in excess of that properly due, the
15 excess amount paid within, or attributable to, such period shall be
16 credited to the taxpayer's account or shall be refunded to the
17 taxpayer, at the taxpayer's option. Except as provided in subsections
18 (2) and (3) of this section, no refund or credit shall be made for
19 taxes, penalties, or interest paid more than four years prior to the
20 beginning of the calendar year in which the refund application is made
21 or examination of records is completed.

22 (2) The execution of a written waiver under RCW 82.32.050 or
23 82.32.100 shall extend the time for making a refund or credit of any
24 taxes paid during, or attributable to, the years covered by the waiver
25 if, prior to the expiration of the waiver period, an application for
26 refund of such taxes is made by the taxpayer or the department
27 discovers a refund or credit is due.

28 (3) Notwithstanding the foregoing limitations there shall be
29 refunded or credited to taxpayers engaged in the performance of United
30 States government contracts or subcontracts the amount of any tax paid,
31 measured by that portion of the amounts received from the United
32 States, which the taxpayer is required by contract or applicable
33 federal statute to refund or credit to the United States, if claim for
34 such refund is filed by the taxpayer with the department within one
35 year of the date that the amount of the refund or credit due to the
36 United States is finally determined and filed within four years of the
37 date on which the tax was paid: PROVIDED, That no interest shall be
38 allowed on such refund.

1 (4) Any such refunds shall be made by means of vouchers approved by
2 the department and by the issuance of state warrants drawn upon and
3 payable from such funds as the legislature may provide. However,
4 taxpayers who are required to pay taxes by electronic funds transfer
5 under RCW 82.32.080 shall have any refunds paid by electronic funds
6 transfer.

7 (5) Any judgment for which a recovery is granted by any court of
8 competent jurisdiction, not appealed from, for tax, penalties, and
9 interest which were paid by the taxpayer, and costs, in a suit by any
10 taxpayer shall be paid in the same manner, as provided in subsection
11 (4) of this section, upon the filing with the department of a certified
12 copy of the order or judgment of the court. (~~Except as to the credits~~
13 ~~in computing tax authorized by RCW 82.04.435,~~)

14 (a) Interest at the rate of three percent per annum shall be
15 allowed by the department and by any court on the amount of any refund,
16 credit, or other recovery allowed to a taxpayer for taxes, penalties,
17 or interest paid by the taxpayer before January 1, 1992. This rate of
18 interest shall apply for all interest allowed through December 31,
19 1998. Interest allowed after December 31, 1998, shall be computed at
20 the rate as computed under RCW 82.32.050(2). The rate so computed
21 shall be adjusted on the first day of January of each year for use in
22 computing interest for that calendar year.

23 (b) For refunds or credits of amounts paid or other recovery
24 allowed to a taxpayer after December 31, 1991, the rate of interest
25 shall be the rate as computed for assessments under RCW 82.32.050(2)(~~7~~
26 ~~less one percentage point)). The rate so computed shall be adjusted on~~
27 the first day of January of each year for use in computing interest for
28 that calendar year.

29 **Sec. 3.** RCW 82.32.210 and 1987 c 405 s 15 are each amended to read
30 as follows:

31 (1) If any fee, tax, increase, or penalty or any portion thereof is
32 not paid within fifteen days after it becomes due, the department of
33 revenue may issue a warrant under its official seal in the amount of
34 such unpaid sums, together with interest thereon (~~at the rate of one~~
35 ~~percent of the amount of such warrant for each thirty days or portion~~
36 ~~thereof after the date of such warrant)) from the date the warrant is
37 issued until the date of payment. If, however, the department of
38 revenue believes that a taxpayer is about to cease business, leave the~~

1 state, or remove or dissipate the assets out of which fees, taxes or
2 penalties might be satisfied and that any tax or penalty will not be
3 paid when due, it may declare the fee, tax or penalty to be immediately
4 due and payable and may issue a warrant immediately.

5 (a) Interest imposed before January 1, 1999, shall be computed at
6 the rate of one percent of the amount of the warrant for each thirty
7 days or portion thereof.

8 (b) Interest imposed after December 31, 1998, shall be computed on
9 a daily basis on the amount of outstanding tax or fee at the rate as
10 computed under RCW 82.32.050(2). The rate so computed shall be
11 adjusted on the first day of January of each year for use in computing
12 interest for that calendar year. As used in this subsection, "fee"
13 does not include an administrative filing fee such as a court filing
14 fee and warrant fee.

15 (2) The department shall file a copy of the warrant with the clerk
16 of the superior court of any county of the state in which real and/or
17 personal property of the taxpayer may be found. Upon filing, the clerk
18 shall enter in the judgment docket, the name of the taxpayer mentioned
19 in the warrant and in appropriate columns the amount of the fee, tax or
20 portion thereof and any increases and penalties for which the warrant
21 is issued and the date when the copy is filed, and thereupon the amount
22 of the warrant so docketed shall become a specific lien upon all goods,
23 wares, merchandise, fixtures, equipment, or other personal property
24 used in the conduct of the business of the taxpayer against whom the
25 warrant is issued, including property owned by third persons who have
26 a beneficial interest, direct or indirect, in the operation of the
27 business, and no sale or transfer of the personal property in any way
28 affects the lien.

29 (3) The lien shall not be superior, however, to bona fide interests
30 of third persons which had vested prior to the filing of the warrant
31 when the third persons do not have a beneficial interest, direct or
32 indirect, in the operation of the business, other than the securing of
33 the payment of a debt or the receiving of a regular rental on
34 equipment(~~(:—PROVIDED, HOWEVER, That)~~)). The phrase "bona fide
35 interests of third persons" does not include any mortgage of real or
36 personal property or any other credit transaction that results in the
37 mortgagee or the holder of the security acting as trustee for unsecured
38 creditors of the taxpayer mentioned in the warrant who executed the

1 chattel or real property mortgage or the document evidencing the credit
2 transaction.

3 (4) The amount of the warrant so docketed shall thereupon also
4 become a lien upon the title to and interest in all other real and
5 personal property of the taxpayer against whom it is issued the same as
6 a judgment in a civil case duly docketed in the office of the clerk.
7 The warrant so docketed shall be sufficient to support the issuance of
8 writs of garnishment in favor of the state in the manner provided by
9 law in the case of judgments wholly or partially unsatisfied.

10 **Sec. 4.** RCW 82.45.100 and 1996 c 149 s 5 are each amended to read
11 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 shall bear interest (~~at the rate of one percent per~~
15 ~~month~~) from the time of sale until the date of payment.

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

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

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

37 (3) If the tax imposed under this chapter is not received by the
38 due date, the transferee shall be personally liable for the tax, along

1 with any interest as provided in subsection (1) of this section,
2 unless:

3 (a) An instrument evidencing the sale is recorded in the official
4 real property records of the county in which the property conveyed is
5 located; or

6 (b) Either the transferor or transferee notifies the department of
7 revenue in writing of the occurrence of the sale within thirty days
8 following the date of the sale.

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

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

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

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

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

25 (6) Penalties collected on taxes due under this chapter under
26 subsection (2) of this section and RCW 82.32.090 (2) through (6) shall
27 be deposited in the housing trust fund as described in chapter 43.185
28 RCW.

29 **Sec. 5. RCW 83.100.070 and 1996 c 149 s 13 are each amended to*
30 *read as follows:*

31 *(1) Any tax due under this chapter which is not paid by the due*
32 *date under RCW 83.100.060(1) shall bear interest at the rate of twelve*
33 *percent per annum from the date the tax is due until the date of*
34 *payment.*

35 *(2) Interest imposed under this section for periods after January*
36 *1, 1997, shall be computed at the rate as computed under RCW*
37 *82.32.050(2). The rate so computed shall be adjusted on the first day*
38 *of January of each year.*

1 (3) If the Washington return is not filed when due under RCW
2 83.100.050, then the person required to file the federal return shall
3 pay, in addition to interest, a penalty equal to five percent of the
4 tax due for each month after the date the return is due until filed.
5 No penalty may exceed twenty-five percent of the tax.

6 (4) If the department finds that a return due under this chapter
7 has not been filed by the due date, and the delinquency was the result
8 of circumstances beyond the control of the person required to file the
9 federal return, the department shall waive or cancel any penalties
10 imposed under this chapter with respect to the filing of such a tax
11 return.

12 *Sec. 5 was vetoed. See message at end of chapter.

13 **Sec. 6.** RCW 83.100.130 and 1996 c 149 s 14 are each amended to
14 read as follows:

15 (1) Whenever the department determines that a person required to
16 file the federal return has overpaid the tax due under this chapter,
17 the department shall refund the amount of the overpayment, together
18 with interest at the then existing rate under RCW 83.100.070(1). If
19 the application for refund, with supporting documents, is filed within
20 four months after an adjustment or final determination of federal tax
21 liability, the department shall pay interest until the date the refund
22 is mailed. If the application for refund, with supporting documents,
23 is filed after four months after the adjustment or final determination,
24 the department shall pay interest only until the end of the four-month
25 period.

26 (2) Interest refunded under this section for periods after January
27 1, 1997, through December 31, 1998, shall be computed on a daily basis
28 at the rate as computed under RCW 82.32.050(2) less one percentage
29 point(~~(, and)~~). Interest allowed after December 31, 1998, shall be
30 computed at the rate as computed under RCW 82.32.050(2). Interest
31 shall be refunded from the date of overpayment until the date the
32 refund is mailed. The rate so computed shall be adjusted on the first
33 day of January of each year.

Passed the House March 12, 1997.

Passed the Senate April 10, 1997.

Approved by the Governor April 23, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 23, 1997.

1 Note: Governor's explanation of partial veto is as follows:

1 "I am returning herewith, without my approval as to section 5,
2 Substitute House Bill No. 1342 entitled:

3 "AN ACT Relating to interest and penalty administration of the
4 department of revenue;"

5 Section 5 of the bill would create a double amendment problem with
6 Substitute Senate Bill 5121.

7 For these reasons, I have vetoed section 5 of Substitute House Bill
8 No. 1342. With the exception of section 5, I am approving Substitute
9 House Bill No. 1342."