

HOUSE BILL REPORT

ESSB 6169

As Passed House:

April 23, 2009

Title: An act relating to enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

Brief Description: Enhancing tax collection tools for the department of revenue in order to promote fairness and administrative efficiency.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Prentice).

Brief History:

Committee Activity:

Finance: 4/22/09 [DP].

Floor Activity

Passed House: 4/23/09, 52-43.

Brief Summary of Engrossed Substitute Bill

- Allows the Department of Revenue to recover unpaid delinquent taxes from bank accounts by electronically delivering a list of delinquent taxpayers and amounts due to financial institutions.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, Santos and Springer.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Condotta.

Staff: Rick Peterson (786-7150)

Background:

Excise Tax Administration.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Revenue (DOR) collects the major state excise taxes, such as the retail sales tax, use tax, business and occupation (B&O) tax, and the public utility tax (PUT). The general administrative provisions for the collection of excise taxes are provided in chapter 82.32 RCW, including payment schedules, payment types, assessments, notice, and collection provisions.

Sales Tax.

The sales tax is imposed by the state, counties, and cities on retail sales of most items of tangible personal property and some services, including construction and repair services. The state sales rate is 6.5 percent and the local rates vary by location. The combined state/local rate is between 7 and 9.5 percent, depending on location.

Sales Tax Held in Trust.

The buyer pays the sales tax and the seller collects the tax and remits it to the state. Sellers hold sales taxes in trust until paid to the DOR, and any seller who appropriates or converts the tax collected to any purpose other than the payment of the tax is guilty of a gross misdemeanor. Further, if a seller fails to collect or pay the sales tax, that seller is personally liable for the tax regardless of whether the nonpayment resulted from conditions beyond the seller's control.

If the seller is a corporation or a limited liability corporation (LLC), there may be personal liability for unpaid sales tax trust funds for the following persons: officers, members, managers, or other persons having control or supervision of sales tax funds; or persons charged with the responsibility for the filing of returns or tax payments. There are additional requirements for personal liability for unpaid sales tax trust funds to attach in the corporate or LLC context: the business must be terminated, dissolved, or abandoned; the failure to pay must be willful as a result of an intentional, conscious, and voluntary course of action; and the DOR must determine that there are no reasonable means of collecting the unpaid sales tax funds held directly from the corporation.

There is no similar personal liability for other unpaid excise taxes, such as the use tax, B&O tax, and the PUT.

Notice and Order to Withhold and Deliver.

If taxes are 15 days past due, the DOR may issue a tax warrant and file a copy of the warrant with the superior court of any county in which real and/or personal property of the taxpayer may be found and the warrant is entered as a judgment against the taxpayer and acts as a lien upon property.

To collect on a tax warrant, the DOR may seek property held by third parties, such as banks or other financial institutions, by serving notices and orders to them to withhold and deliver property. Under current law, the DOR must serve the third party a separate notice and order to withhold and deliver for each taxpayer either through in-person service (by a sheriff, sheriff's deputy, or an authorized DOR representative) or by certified mail and return receipt. The third party must respond within 20 days after receipt of the notice and order and must deliver property subject to the tax warrant or a sufficient bond for the property.

Summary of Bill:

In addition to existing methods, the DOR is authorized to issue notices and orders to withhold and deliver to any financial institution by providing a full or partial list of unsatisfied tax warrants for which no payment agreement has been made. Such lists may be delivered electronically and if delivered electronically, the DOR must allow the financial institution to answer electronically in a format provided or approved by the DOR. Only one such list may be served on a single financial institution each month. "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law. Enhanced levies must provide Federal Taxpayer Identification Numbers. A financial institution may be relieved of the enhanced levies upon request to the DOR. The DOR must consider size, customer base, and geographic location of the financial institution when considering whether to provide relief. The time for a financial institution to answer to an enhanced levy is increased to 30 days (from 20). Financial institutions may answer an enhanced levy in aggregate, but must answer with specificity. Existing law is also amended to provide clarifications and updated language.

The DOR is directed to work with interested financial institutions to develop policies regarding the frequency of service of levies in the form of a listing of unpaid tax warrants and under what circumstances such a levy will contain only a partial list of unpaid tax warrants eligible to be included in the notice and order to withhold and deliver. The DOR is also directed to develop a policy regarding the information to be contained in a notice and order to withhold and deliver to ensure that financial institutions can accurately match their records with the names of tax debtors. The DOR must report to the fiscal committees of the Legislature on the implementation of the notice and order to withhold and deliver by serving financial institutions with lists of unsatisfied tax warrants by January 1, 2012, describing the policies developed, any difficulties encountered, and any of the DOR suggestions to improve the effectiveness and reduce the burden on financial institutions in complying.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill represents a more efficient method for getting information and assets from financial institutions for people who owe back taxes. The DOR will send out an automated list to all financial institutions so that they can then see if they have any matches. The DOR is planning on regionalizing the system for greater efficiency.

(Neutral) Washington bankers were opposed to the original bill; however, they are now neutral on the bill as amended. This bill will bring additional administrative burden on financial institutions, especially community banks, but the Washington Bankers Association is willing to work with the DOR to create an efficient system.

(With concerns) The community bankers appreciate the DOR's willingness to work with them; however, they still have some operational issues that need to be worked out.

(Opposed) None.

Persons Testifying: (In support) Drew Shrik, Department of Revenue.

(Neutral) Denny Eliason, Washington Bankers Association.

(With concerns) Brad Tower, Community Bankers of Washington.

Persons Signed In To Testify But Not Testifying: None.