
SENATE BILL 6169

State of Washington

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By Senator Prentice

1 AN ACT Relating to enhancing tax collection tools for the
2 department of revenue in order to promote fairness and administrative
3 efficiency; amending RCW 82.32.145 and 82.32.235; creating new
4 sections; and prescribing penalties.

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

6 PART I

7 PERSONAL LIABILITY FOR AN ENTITY'S UNPAID TAX DEBTS

8 **Sec. 101.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
9 read as follows:

10 (1) (~~Upon termination, dissolution, or abandonment of a corporate~~
11 ~~or limited liability company business, any officer, member, manager, or~~
12 ~~other person having control or supervision of retail sales tax funds~~
13 ~~collected and held in trust under RCW 82.08.050, or who is charged with~~
14 ~~the responsibility for the filing of returns or the payment of retail~~
15 ~~sales tax funds collected and held in trust under RCW 82.08.050, shall~~
16 ~~be personally liable for any unpaid taxes and interest and penalties on~~
17 ~~those taxes, if such officer or other person wilfully fails to pay or~~
18 ~~to cause to be paid any taxes due from the corporation pursuant to~~

1 ~~chapter 82.08 RCW. For the purposes of this section, any retail sales~~
2 ~~taxes that have been paid but not collected shall be deductible from~~
3 ~~the retail sales taxes collected but not paid.~~

4 ~~For purposes of this subsection "wilfully fails to pay or to cause~~
5 ~~to be paid" means that the failure was the result of an intentional,~~
6 ~~conscious, and voluntary course of action.~~

7 ~~(2) The officer, member or manager, or other person shall be))~~
8 Whenever the department has issued a warrant under RCW 82.32.210 for
9 the collection of unpaid taxes from a limited liability business entity
10 and that business entity has been terminated, dissolved, or abandoned,
11 or is insolvent, the department may pursue collection of the entity's
12 unpaid taxes, including penalties and interest on those taxes, against
13 any or all of the responsible individuals. For purposes of this
14 subsection, "insolvent" means the condition that results when the sum
15 of the entity's debts exceeds the fair market value of its assets. The
16 department may presume that an entity is insolvent if the entity
17 refuses to disclose to the department the nature of its assets and
18 liabilities.

19 (2) Personal liability under this section may be imposed for state
20 and local sales and use taxes, state business and occupation taxes, and
21 any other state and local taxes collected by the department in respect
22 to which the provisions of this chapter apply, regardless of whether
23 the tax is denominated a tax, fee, charge, or some other term.

24 (3)(a) For a responsible individual who is the current or a former
25 chief executive or chief financial officer, liability under this
26 section applies regardless of fault or whether the individual was or
27 should have been aware of the unpaid tax liability of the limited
28 liability business entity.

29 (b) For any other responsible individual, liability under this
30 section applies only if he or she willfully fails to pay or to cause to
31 be paid to the department the taxes due from the limited liability
32 business entity.

33 (4)(a) Except as provided in this subsection (4)(a), a responsible
34 individual who is the current or a former chief executive or chief
35 financial officer is liable under this section only for tax liability
36 accrued during the period that he or she was the chief executive or
37 chief financial officer. However, if the responsible individual had
38 the responsibility or duty to remit payment of the limited liability

1 business entity's taxes to the department during any period of time
2 that the person was not the chief executive or chief financial officer,
3 that individual is also liable for tax liability that became due during
4 the period that he or she had the duty to remit payment of the limited
5 liability business entity's taxes to the department but was not the
6 chief executive or chief financial officer.

7 (b) All other responsible individuals are liable under this section
8 only for ((taxes collected which)) tax liability that became due during
9 the period he or she had the ((control, — supervision,))
10 responsibility((,)) or duty to ((act for the corporation described in
11 subsection (1) of this section, plus interest and penalties on those
12 taxes)) remit payment of the limited liability business entity's taxes
13 to the department.

14 ((+3)) (5) Persons ((liable under)) described in subsection
15 ((+1)) (3)(b) of this section are exempt from liability under this
16 section in situations where nonpayment of the ((retail sales tax funds
17 held in trust)) limited liability business entity's taxes is due to
18 reasons beyond their control as determined by the department by rule.

19 ((+4)) (6) Any person having been issued a notice of assessment
20 under this section is entitled to the appeal procedures under RCW
21 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

22 ((+5) This section applies only in situations where the department
23 has determined that there is no reasonable means of collecting the
24 retail sales tax funds held in trust directly from the corporation.

25 (+6)) (7) This section does not relieve the ((corporation or))
26 limited liability ((company)) business entity of ((other tax
27 liabilities)) its tax liability or otherwise impair other tax
28 collection remedies afforded by law.

29 ((+7)) (8) Collection authority and procedures prescribed in this
30 chapter apply to collections under this section.

31 (9) For purposes of this section, the following definitions apply:

32 (a) "Chief executive" means: The president of a corporation; or
33 for other entities or organizations other than corporations or if the
34 corporation does not have a president as one of its officers, the
35 highest ranking executive manager or administrator in charge of the
36 management of the company or organization.

37 (b) "Chief financial officer" means: The treasurer of a
38 corporation; or for entities or organizations other than corporations

1 or if a corporation does not have a treasurer as one of its officers,
2 the highest senior manager who is responsible for overseeing the
3 financial activities of the entire company or organization.

4 (c) "Limited liability business entity" means a type of business
5 entity that generally shields its owners from personal liability for
6 the debts, obligations, and liabilities of the entity, or a business
7 entity that is managed or owned in whole or in part by an entity that
8 generally shields its owners from personal liability for the debts,
9 obligations, and liabilities of the entity. Limited liability business
10 entities include corporations, limited liability companies, limited
11 liability partnerships, trusts, general partnerships and joint ventures
12 in which one or more of the partners or parties are also limited
13 liability business entities, and limited partnerships in which one or
14 more of the general partners are also limited liability business
15 entities.

16 (d) "Manager" has the same meaning as in RCW 25.15.005.

17 (e) "Member" has the same meaning as in RCW 25.15.005, except that
18 the term only includes members of member-managed limited liability
19 companies.

20 (f) "Officer" means any officer or assistant officer of a
21 corporation, including the president, vice-president, secretary, and
22 treasurer.

23 (g)(i) "Responsible individual" includes any current or former
24 officer, manager, member, partner, or trustee of a limited liability
25 business entity with an unpaid tax warrant issued by the department.

26 (ii) "Responsible individual" also includes any current or former
27 employee or other individual, but only if the individual had the
28 responsibility or duty to remit payment of the limited liability
29 business entity's unpaid tax liability reflected in a tax warrant
30 issued by the department.

31 (iii) Whenever any taxpayer has one or more limited liability
32 business entities as a member, manager, or partner, "responsible
33 individual" also includes any current and former officers, members, or
34 managers of the limited liability business entity or entities or of any
35 other limited liability business entity involved directly in the
36 management of the taxpayer. For purposes of this subsection
37 (9)(g)(iii), "taxpayer" means a limited liability business entity with
38 an unpaid tax warrant issued against it by the department.

1 (h) "Willfully fails to pay or to cause to be paid" means that the
2 failure was the result of an intentional, conscious, and voluntary
3 course of action.

4 **PART II**
5 **LEVIES**

6 **Sec. 201.** RCW 82.32.235 and 1987 c 208 s 1 are each amended to
7 read as follows:

8 (1) In addition to the remedies provided in this chapter the
9 department is ((hereby)) authorized to issue to any person((, or to any
10 political subdivision or department of the state)), a notice and order
11 to withhold and deliver property of any kind whatsoever when there is
12 reason to believe that there is in the possession of such person((,
13 political subdivision or department)), property which is or ((shall))
14 will become due, owing, or belonging to any taxpayer against whom a
15 warrant has been filed.

16 (2) The ((notice and order to withhold and deliver shall be served
17 by the)) sheriff of the county ((wherein)) where the service is made,
18 or ((by)) his or her deputy, or ((by)) any duly authorized
19 representative of the department((, provided that service by such
20 persons may also be made)) may personally serve the notice and order to
21 withhold and deliver upon the person to whom it is directed or may do
22 so by certified mail, with return receipt requested((, upon those
23 persons, or political subdivision or department, to whom the notice and
24 order to withhold and deliver is directed. Any person, or any
25 political subdivision or department upon whom service has been made is
26 hereby required to answer the notice within twenty days exclusive of
27 the day of service, under oath and in writing, and shall make true
28 answers to the matters inquired of in the notice)).

29 (3)(a) The department is authorized to issue a notice and order to
30 withhold and deliver to any financial institution in the form of a
31 listing of all or a portion of the unsatisfied tax warrants filed under
32 this chapter with the clerk of the superior court of a county of the
33 state, except tax warrants subject to a payment agreement, which is not
34 in default, between the department and the taxpayer.

35 (b) As an alternative to the methods of service in subsection (2)
36 of this section, the department may serve the notice and order to

1 withhold and deliver authorized under this subsection electronically.
2 The remedy in this subsection (3) is in addition to any other remedies
3 authorized by law.

4 (c) No more than one notice and order to withhold and deliver under
5 this subsection (3) may be served on the same financial institution in
6 a calendar month.

7 (d) For purposes of this subsection, "financial institution" means
8 a bank, trust company, mutual savings bank, savings and loan
9 association, or credit union authorized to do business and accept
10 deposits in this state under state or federal law.

11 (4) Any person who has been served with a notice and order to
12 withhold and deliver under subsection (1) or (3) of this section must
13 answer the notice within twenty days, exclusive of the day of service.
14 The answer must be in writing, under oath if required by the
15 department, and include true answers to the matters inquired of in the
16 notice. The department may authorize any person served electronically
17 under subsection (3) of this section to answer the notice and order to
18 withhold and deliver electronically.

19 (5) In the event there is in the possession of any (~~such~~) person
20 (~~or political subdivision or department~~) served with a notice and
21 order to withhold and deliver, any property which may be subject to the
22 claim of the department, such property (~~shall~~) must be delivered
23 (~~forthwith~~) immediately to the department of revenue or its duly
24 authorized representative upon demand (~~to be held in trust by~~). The
25 department must hold the property in trust for application on the
26 indebtedness involved or for return, without interest, in accordance
27 with final determination of liability or nonliability(~~, or in the~~
28 alternative, there shall be furnished a good and sufficient)). Instead
29 of delivering the property to the department or the department's duly
30 authorized representative, the person may furnish a bond satisfactory
31 to the department conditioned upon final determination of liability.

32 (6) Should any person (~~or political subdivision~~), having been
33 served with a notice and order to withhold and deliver, fail to
34 (~~make~~) answer (~~to an~~) the notice and order to withhold and deliver
35 within the time prescribed (~~herein, it shall be lawful for the court,~~
36 after the time to answer such order has expired, to)) in this section
37 or otherwise fail to comply with the duties imposed in this section,
38 the department may bring a proceeding, in the superior court of

1 Thurston county or of the county in which service of the notice was
2 made, to enforce the notice and order to withhold and deliver. The
3 court may render judgment by default against such person ((~~or political~~
4 subdivision)) for the full amount claimed by the department in the
5 notice and order to withhold and deliver or may grant such other relief
6 as the court deems just, together with costs.

7 (7) For purposes of this section, "person" has the same meaning as
8 in RCW 82.04.030 and also includes any agency, department, or
9 institution of the state.

10 NEW SECTION. Sec. 202. (1) The legislature finds that the state's
11 vital interest in collecting lawfully due taxes must be balanced
12 against the burden of complying with section 201(3) of this act,
13 particularly for small financial institutions.

14 (2)(a) Therefore, the legislature directs the department of revenue
15 to work with interested financial institutions to develop policies
16 regarding the frequency of service under section 201(3) of this act and
17 under what circumstances a notice and order to withhold and deliver
18 will contain only a partial list of unsatisfied tax warrants eligible
19 to be included in the notice. The policies should take into account
20 the size of a financial institution, location of a financial
21 institution, number of business accounts that a financial institution
22 has, and any other factors the department may choose to consider.

23 (b) The department is also directed to develop a policy regarding
24 the information to be contained in a notice and order to withhold and
25 deliver to ensure that financial institutions can accurately match
26 their records with the names of tax debtors.

27 (3) The department must report to the fiscal committees of the
28 legislature on the implementation of section 201(3) of this act by
29 January 1, 2012. The report should describe the policies developed by
30 the department as directed in subsection (2) of this section. The
31 report should also describe any difficulties the department encountered
32 in implementing section 201(3) of this act and any suggestions the
33 department may have to improve the effectiveness of section 201(3) of
34 this act, reduce the burden on financial institutions in complying with
35 section 201(3) of this act, or both.

