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**SENATE BILL 5542**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senator Hill; by request of Department of Revenue

AN ACT Relating to providing reasonable tools for the effective administration of the public utility district privilege tax; amending RCW 54.28.030, 54.28.040, 54.28.050, 54.28.055, 82.32.050, 82.32.060, 82.32.070, 82.32.100, 82.32.105, 82.32.160, and 82.32.350; and adding a new section to chapter 54.28 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 54.28 RCW to read as follows:

The following provisions of chapter 82.32 RCW apply with respect to the taxes imposed under this chapter and collected by the department of revenue, unless the context clearly requires otherwise: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, 82.32.105, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.240, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, and any other provision of chapter 82.32 RCW specifically referenced in the statutes listed in this section. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

**Sec.**  RCW 54.28.030 and 1977 ex.s. c 366 s 3 are each amended to read as follows:

(1) On or before the fifteenth day of March of each year, each district subject to this tax ((~~shall~~))must file with the department of revenue a report verified by the affidavit of its manager or secretary on forms prescribed by the department of revenue. Such report ((~~shall~~))must state ((~~(1)~~))(a) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; ((~~(2)~~))(b) the gross revenues derived by the district from the sale of self-generated energy for resale; ((~~(3)~~))(c) the amount of all generated energy distributed from each of the facilities subject to taxation by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; ((~~(4)~~))(d) the total cost of all generating facilities and the cost of acquisition of land and land rights for such facilities or for reservoir purposes in each county; and ((~~(5)~~))(e) such other and further information as the department of revenue reasonably may require in order to administer the provisions of this chapter.

(2) In case of failure by a district to file such report, the department may proceed to determine the information, which determination ((~~shall be~~))is contestable by the district ((~~only for actual fraud~~))as provided under RCW 82.32.100(2).

(3)(a) Beginning January 1, 2016, reports due under this section must be filed electronically in a form or manner provided or authorized by the department. However, the department, upon request or its own initiative, may relieve any district from the electronic filing requirement under this subsection for good cause as determined by the department.

(b) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the district from electronically filing the report due under this section; or

(ii) The department determines that relief from the electronic filing requirement under this subsection supports the efficient or effective administration of this chapter.

**Sec.**  RCW 54.28.040 and 1996 c 149 s 16 are each amended to read as follows:

(1)(a) Before May 1st, the department of revenue ((~~shall~~))must compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which ((~~shall be~~))is payable on or before the following June 1st.

(b) Beginning January 1, 2016, districts must remit payments due under this section by electronic funds transfer or other form of electronic payment acceptable to the department. However, the department, upon request or its own initiative, may relieve any district from the electronic payment requirement under this subsection for good cause as determined by the department.

(c) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the department's judgment, prevents the district from remitting payments due under this section electronically; or

(ii) The department determines that relief from the electronic payment requirement under this subsection supports the efficient or effective administration of this chapter.

(2)(a) If payment of any tax is not received by the department on or before the due date, ((~~there shall be assessed~~)) a penalty of five percent of the amount of the tax is assessed; if the tax is not received within one month of the due date, ((~~there shall be assessed~~)) a total penalty of ten percent of the amount of the tax is assessed; and if the tax is not received within two months of the due date, ((~~there shall be assessed~~)) a total penalty of twenty percent of the amount of the tax is assessed.

(b) If a district fails to file any report electronically or fails to pay electronically any taxes due under a report, the department must assess a penalty equal to five percent of the amount of the tax payable under the report, unless the department has granted a waiver of the electronic filing and payment requirements. Total penalties assessed under this subsection (2)(b) may not exceed five percent of the tax payable under the report and are in addition to any applicable penalties assessed under (a) of this subsection (2).

(3) Upon receipt of the amount of each tax imposed the department of revenue ((~~shall~~))must deposit the same with the state treasurer, who ((~~shall~~))must deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and ((~~shall~~))must distribute the remainder in the manner hereinafter set forth. The state treasurer ((~~shall~~))must send a duplicate copy of each transmittal to the department of revenue.

**Sec.**  RCW 54.28.050 and 1982 1st ex.s. c 35 s 21 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after computing the tax imposed by RCW 54.28.020(1), the department of revenue ((~~shall~~))must instruct the state treasurer, after placing thirty-seven and six-tenths percent in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW 54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1) (b) and (c) as follows((~~:~~)).

(a) If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located.

(b) If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission.

(c) If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance ((~~shall~~))must be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if ((~~said~~))the powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance ((~~shall~~))must be distributed to the county in which the facilities are located.

(2) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county’s proportionate share of amounts previously distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(3) The provisions of this section ((~~shall~~))do not apply to the distribution of taxes collected under RCW 54.28.025.

**Sec.**  RCW 54.28.055 and 1986 c 189 s 1 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, after computing the tax imposed by RCW 54.28.025(1), the department of revenue ((~~shall~~))must instruct the state treasurer to distribute the amount collected as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district, and library district((~~shall~~))must receive a percentage of the amount for distribution to counties, cities, fire protection districts, and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries ((~~as defined in RCW 27.12.010(4)~~)), rural county library districts ((~~as defined in RCW 27.12.010(5)~~)), intercounty rural library districts ((~~as defined in RCW 27.12.010(6)~~)), and island library districts as those terms are defined in RCW 27.12.010((~~(7)~~)). The population of a library district, for purposes of such a distribution, ((~~shall~~))may not include any population within the library district and the impact area that also is located within a city or town.

(3) Distributions under this section must be adjusted as follows:

(a) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share ((~~shall~~))must be prorated among the state and remaining local districts.

(b) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county’s, city’s, fire protection district’s, and library district’s proportionate share of amounts previously distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(4) All distributions directed by this section to be made on the basis of population ((~~shall~~))must be calculated in accordance with data to be provided by the office of financial management.

**Sec.**  RCW 82.32.050 and 2008 c 181 s 501 are each amended to read as follows:

(1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department ((~~shall~~))must assess against the taxpayer such additional amount found to be due and ((~~shall~~))must add thereto interest on the tax only. The department ((~~shall~~))must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount ((~~shall~~)) becomes due and ((~~shall~~))must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest ((~~shall be~~))is computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest ((~~shall be~~))is variable and computed as provided in subsection (2) of this section. The rate so computed ((~~shall~~))must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest ((~~shall be~~))is variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed ((~~shall~~))must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer ((~~shall be~~))is an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year ((~~shall~~))must be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average ((~~shall~~))must be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver ((~~shall~~)) also extends the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date, including reports required under RCW 54.28.030.

**Sec.**  RCW 82.32.060 and 2009 c 176 s 4 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW.

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

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

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

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

**Sec.**  RCW 82.32.070 and 2013 c 23 s 322 are each amended to read as follows:

(1) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW ((~~shall~~)), or any other chapter to which this statute or chapter is specifically made applicable, must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which ((~~he or she~~))such person may be liable, which records ((~~shall~~))must include copies of all federal income tax and state tax returns and reports made by ((~~him or her~~))such person. All ((~~his or her~~)) books, records, and invoices ((~~shall~~))of such persons must be open for examination at any time by the department ((~~of revenue~~)). In the case of an out-of-state person or concern ((~~which~~))that does not keep the necessary books and records within this state, it ((~~shall be~~))is sufficient if it produces within the state such books and records as ((~~shall be~~)) required by the department ((~~of revenue~~)), or permits the examination by an agent authorized or designated by the department ((~~of revenue~~)) at the place where such books and records are kept. Any person who fails to comply with the requirements of this section ((~~shall be~~))is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department ((~~of revenue~~)) based upon any period for which such books, records, and invoices have not been so kept and preserved.

(2) A person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW ((~~shall~~))must obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the director, but not to exceed two hundred fifty dollars. The department ((~~shall~~))must notify the taxpayer and collect the penalty in the same manner as penalties under RCW 82.32.100.

**Sec.**  RCW 82.32.100 and 2007 c 111 s 107 are each amended to read as follows:

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department ((~~shall~~))will proceed, in ((~~such~~))the manner ((~~as~~)) it ((~~may~~)) deems best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it ((~~shall~~))must proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action ((~~shall~~))may not deprive ((~~such~~))the person from appealing the assessment as provided in this chapter. The department ((~~shall~~))must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the total amount of such tax, penalties, and interest, and the total amount ((~~shall~~)) becomes due and ((~~shall~~))must be paid within thirty days from the date of such notice.

(3) No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, or three years after June 1st of the year in which the report is due for taxes imposed under chapter 54.28 RCW, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver ((~~shall~~)) also extends the period for making a refund or credit as provided in RCW 82.32.060(2).

**Sec.**  RCW 82.32.105 and 1998 c 304 s 13 are each amended to read as follows:

(1) If the department ((~~of revenue~~)) finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department ((~~of revenue shall~~))must waive or cancel any penalties imposed under this chapter, or under the chapter in which the tax is imposed, with respect to such tax.

(2) The department ((~~shall~~))must waive or cancel the penalty imposed under RCW 82.32.090(1) or 54.28.040(2)(a) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086, or for the report due under chapter 54.28 RCW; and

(b)(i) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty‑four months immediately preceding the period covered by the return for which the waiver is being requested.

(ii) For purposes of the state taxes imposed under chapter 54.28 RCW, a taxpayer will be deemed to have met the requirements for a penalty waiver in this subsection (2)(b) if:

(A) By the due dates, the taxpayer has filed the reports required under RCW 54.28.030 and paid the full amount of taxes as computed by the department for the two tax years immediately preceding the tax year for which a penalty waiver is requested; and

(B) The taxpayer has complied with the electronic filing and payment requirements in RCW 54.28.040 for the tax year for which a penalty waiver is requested and the two tax years immediately preceding that tax year, absent a waiver granted by the department.

(3) The department ((~~shall~~))must waive or cancel interest imposed under this chapter, or under the chapter in which the tax is imposed, if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department ((~~of revenue shall~~))must adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

**Sec.**  RCW 82.32.160 and 2007 c 111 s 110 are each amended to read as follows:

(1) Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, or notice of state taxes due under chapter 54.28 RCW, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment. The petition ((~~shall~~))must set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department ((~~shall~~))must promptly consider the petition and may grant or deny it. If denied, the petitioner ((~~shall~~))must be notified by mail, or electronically as provided in RCW 82.32.135((~~, thereof forthwith~~)). If a conference is granted, the department ((~~shall~~))must fix the time and place therefor and notify the petitioner thereof by mail or electronically as provided in RCW 82.32.135. After the conference the department may make such determination as may appear to it to be just and lawful and ((~~shall~~))must mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. If no such petition is filed within the thirty-day period the assessment covered by the notice ((~~shall~~)) becomes final.

(2) The procedures provided ((~~for herein shall~~))in this section apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmental rules and regulations as may be necessary to accommodate a claim for exemption or credit.

**Sec.**  RCW 82.32.350 and 1971 ex.s. c 299 s 23 are each amended to read as follows:

The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title, or any tax in respect to which this section is specifically made applicable, for any taxable period or periods.

**--- END ---**