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HOUSE BILL 1402

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Morris, Holland, Wang, Wynne, Van Luven, Ogden and Fraser.

Read first time January 28, 1991. Referred to Committee on Revenue.

1            AN ACT Relating to excise tax penalties and interest; amending RCW  
2 82.32.050, 82.32.060, and 82.32.090; providing an effective date; and  
3 declaring an emergency.

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

5            **Sec. 1.** RCW 82.32.050 and 1989 c 378 s 19 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 at the rate of nine percent per annum from the last  
12 day of the year in which the deficiency is incurred until date of  
13 payment or July 1, 1991, whichever is the earliest. From July 1, 1991,  
14 until the date of payment, the rate of interest shall be variable and  
15 adjusted as provided by subsection (2) of this section. The department

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

11 (2) For the purposes of this section, the rate of interest to be  
12 charged the taxpayer shall be an average of short-term federal rates  
13 plus two percentage points. The rate shall be computed by taking an  
14 arithmetical average to the nearest percentage point of the short-term  
15 federal rates for the months of January, April, July, and October as  
16 published by the United States secretary of the treasury. That  
17 computed interest rate shall be applicable to the next calendar year  
18 beginning January 1 of each year, except for the year 1991 when it  
19 shall be applicable starting July 1, 1991.

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

27 **Sec. 2.** RCW 82.32.060 and 1990 c 69 s 1 are each amended to read  
28 as follows:

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

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

23        Any such refunds shall be made by means of vouchers approved by the  
24 department and by the issuance of state warrants drawn upon and payable  
25 from such funds as the legislature may provide. However, taxpayers who  
26 are required to pay taxes by electronic funds transfer under RCW  
27 82.32.080 shall have any refunds paid by electronic funds transfer.

28        Any judgment for which a recovery is granted by any court of  
29 competent jurisdiction, not appealed from, for tax, penalties, and  
30 interest which were paid by the taxpayer, and costs, in a suit by any

1 taxpayer shall be paid in like manner, upon the filing with the  
2 department of a certified copy of the order or judgment of the court.  
3 Except as to the credits in computing tax authorized by RCW 82.04.435,  
4 interest at the rate of three percent per annum shall be allowed by the  
5 department and by any court on the amount of any refund or recovery  
6 allowed to a taxpayer for taxes, penalties, or interest paid by the  
7 taxpayer.

8 For interest on refunds for time periods beginning after July 1,  
9 1991, the rate of interest shall be the average of short-term federal  
10 rates as computed for assessments under RCW 82.32.050, plus one  
11 percentage point.

12 **Sec. 3.** RCW 82.32.090 and 1987 c 502 s 9 are each amended to read  
13 as follows:

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

22 (2) If payment of a tax assessed by the department of revenue is  
23 not received by the department by the due date specified in the notice,  
24 or an extension thereof, the department shall add a penalty of ten  
25 percent of the amount of the additional tax found due.

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

1       (~~Notwithstanding the foregoing,~~) (4) If the department finds that  
2 all or a part of a deficiency resulted from the knowing disregard of  
3 specific written instructions as to reporting or tax liabilities, the  
4 department shall add a penalty of twenty-five percent of the amount of  
5 the additional tax found due because of the failure to follow such  
6 instructions. A taxpayer acts with knowing disregard where the  
7 department of revenue has informed the taxpayer in writing of its tax  
8 obligations and the taxpayer fails to act in accordance with those  
9 instructions. Such instructions may be given as a part of tax  
10 assessment, audit, determination, closing agreement, or through written  
11 correspondence to a taxpayer.

12       (5) If the department finds that all or a part of the deficiency  
13 resulted from an intent to evade the tax payable under this section, a  
14 further penalty of fifty percent of the additional tax found to be due  
15 shall be added.

16       (6) The aggregate of penalties imposed under this (~~chapter~~)  
17 section for failure to file a return, late payment of any tax,  
18 increase, or penalty, or issuance of a warrant shall not exceed  
19 (~~twenty-five~~) thirty-five percent of the tax due, or (~~seven~~) twenty  
20 dollars, whichever is greater.

21       (7) The aggregate of penalties imposed under this section for  
22 failure to file a return, late payment of any tax, increase, or  
23 penalty, issuance of a warrant, failure to follow written instructions,  
24 or evasion, shall not exceed eighty-five percent of the tax due, or  
25 fifty dollars, whichever is greater.

26       NEW SECTION. Sec. 4. If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 5.**    This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect July 1, 1991.