

1 2680.E AMS WM S4317.1

2 EHB 2680 - S COMM AMD
3 By Committee on Ways & Means

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 82.04.170 and 1985 c 135 s 1 are each amended to read
8 as follows:

9 "Tuition fee" includes library, laboratory, health service and
10 other special fees, and amounts charged for room and board by an
11 educational institution when the property or service for which such
12 charges are made is furnished exclusively to the students or faculty of
13 such institution. "Educational institution," as used in this section,
14 means only those institutions created or generally accredited as such
15 by the state, or defined as a degree granting institution under RCW
16 (~~(28B.05.030(10))~~) 28B.85.010(3) and accredited by an accrediting
17 association recognized by the United States secretary of education, and
18 offering to students an educational program of a general academic
19 nature or those institutions which are not operated for profit and
20 which are privately endowed under a deed of trust to offer instruction
21 in trade, industry, and agriculture, but not including specialty
22 schools, business colleges, other trade schools, or similar
23 institutions."

24 "Sec. 2. RCW 82.08.050 and 1986 c 36 s 1 are each amended to read
25 as follows:

26 The tax hereby imposed shall be paid by the buyer to the seller,
27 and each seller shall collect from the buyer the full amount of the tax

1 payable in respect to each taxable sale in accordance with the schedule
2 of collections adopted by the department pursuant to the provisions of
3 RCW 82.08.060. The tax required by this chapter, to be collected by
4 the seller, shall be deemed to be held in trust by the seller until
5 paid to the department, and any seller who appropriates or converts the
6 tax collected to his or her own use or to any use other than the
7 payment of the tax to the extent that the money required to be
8 collected is not available for payment on the due date as prescribed in
9 this chapter shall be guilty of a gross misdemeanor.

10 In case any seller fails to collect the tax herein imposed or
11 having collected the tax, fails to pay it to the department in the
12 manner prescribed by this chapter, whether such failure is the result
13 of his or her own acts or the result of acts or conditions beyond his
14 or her control, he or she shall, nevertheless, be personally liable to
15 the state for the amount of the tax.

16 The amount of tax, until paid by the buyer to the seller or to the
17 department, shall constitute a debt from the buyer to the seller and
18 any seller who fails or refuses to collect the tax as required with
19 intent to violate the provisions of this chapter or to gain some
20 advantage or benefit, either direct or indirect, and any buyer who
21 refuses to pay any tax due under this chapter shall be guilty of a
22 misdemeanor. The tax required by this chapter to be collected by the
23 seller shall be stated separately from the selling price in any sales
24 invoice or other instrument of sale. On all retail sales through
25 vending machines, the tax need not be stated separately from the
26 selling price or collected separately from the buyer. For purposes of
27 determining the tax due from the buyer to the seller and from the
28 seller to the department it shall be conclusively presumed that the
29 selling price quoted in any price list, sales document, contract or
30 other agreement between the parties does not include the tax imposed by

1 this chapter, but if the seller advertises the price as including the
2 tax or that the seller is paying the tax, the advertised price shall
3 not be considered the selling price.

4 Where a buyer has failed to pay to the seller the tax imposed by
5 this chapter and the seller has not paid the amount of the tax to the
6 department, the department may, in its discretion, proceed directly
7 against the buyer for collection of the tax, in which case a penalty of
8 ten percent may be added to the amount of the tax for failure of the
9 buyer to pay the same to the seller, regardless of when the tax may be
10 collected by the department; and all of the provisions of chapter 82.32
11 RCW, including those relative to interest and penalties, shall apply in
12 addition; and, for the sole purpose of applying the various provisions
13 of chapter 82.32 RCW, the ((fifteenth)) twenty-fifth day of the month
14 following the tax period in which the purchase was made shall be
15 considered as the due date of the tax."

16 "Sec. 3. RCW 82.32.090 and 1991 c 142 s 11 are each amended to
17 read as follows:

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

27 (2) If payment of any tax assessed by the department of revenue is
28 not received by the department by the due date specified in the notice,
29 or any extension thereof, the department shall add a penalty of ten

1 percent of the amount of the additional tax found due. No penalty so
2 added shall be less than five dollars.

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

7 (4) If the department finds that all or any part of a deficiency
8 resulted from the disregard of specific written instructions as to
9 reporting or tax liabilities, the department shall add a penalty of ten
10 percent of the amount of the additional tax found due because of the
11 failure to follow the instructions. A taxpayer disregards specific
12 written instructions when the department of revenue has informed the
13 taxpayer in writing of the taxpayer's tax obligations and the taxpayer
14 fails to act in accordance with those instructions unless the
15 department has not issued final instructions because the matter is
16 under appeal pursuant to this chapter or departmental regulations. The
17 department shall not assess the penalty under this section upon any
18 taxpayer who has made a good faith effort to comply with the specific
19 written instructions provided by the department to that taxpayer.
20 Specific written instructions may be given as a part of a tax
21 assessment, audit, determination, or closing agreement, provided that
22 such specific written instructions shall apply only to the taxpayer
23 addressed or referenced on such documents. Any specific written
24 instructions by the department of revenue shall be clearly identified
25 as such and shall inform the taxpayer that failure to follow the
26 instructions may subject the taxpayer to the penalties imposed by this
27 subsection.

28 (5) If the department finds that all or any part of the deficiency
29 resulted from an intent to evade the tax payable hereunder, a further

1 penalty of fifty percent of the additional tax found to be due shall be
2 added.

3 (6) The aggregate of penalties imposed under this section for
4 failure to pay a tax due on a return by the due date, late payment of
5 any tax, increase, or penalty, or issuance of a warrant shall not
6 exceed thirty-five percent of the tax due, or twenty dollars, whichever
7 is greater.

8 (7) The department of revenue may not impose both the evasion
9 penalty and the penalty for disregarding specific written instructions
10 on the same tax found to be due."

11 **"Sec. 4.** RCW 82.32.180 and 1989 c 378 s 23 are each amended to
12 read as follows:

13 Any person, except one who has failed to keep and preserve books,
14 records, and invoices as required in this chapter and chapter 82.24
15 RCW, having paid any tax as required and feeling aggrieved by the
16 amount of the tax may appeal to the superior court of Thurston county,
17 within the time limitation for a refund provided in chapter 82.32 RCW
18 or, if an application for refund has been made to the department within
19 that time limitation, then within thirty days after rejection of the
20 application, whichever time limitation is later. In the appeal the
21 taxpayer shall set forth the amount of the tax imposed upon the
22 taxpayer which the taxpayer concedes to be the correct tax and the
23 reason why the tax should be reduced or abated. The appeal shall be
24 perfected by serving a copy of the notice of appeal upon the department
25 within the time herein specified and by filing the original thereof
26 with proof of service with the clerk of the superior court of Thurston
27 county. (~~Within ten days after filing the notice of appeal, the~~
28 ~~taxpayer shall file with the clerk of the superior court a good and~~
29 ~~sufficient surety bond payable to the state in the sum of two hundred~~

1 dollars, conditioned to diligently prosecute the appeal and pay the
2 state all costs that may be awarded if the appeal of the taxpayer is
3 not sustained.))

4 The trial in the superior court on appeal shall be de novo and
5 without the necessity of any pleadings other than the notice of appeal.
6 The burden shall rest upon the taxpayer to prove that the tax as paid
7 by the taxpayer is incorrect, either in whole or in part, and to
8 establish the correct amount of the tax. In such proceeding the
9 taxpayer shall be deemed the plaintiff, and the state, the defendant;
10 and both parties shall be entitled to subpoena the attendance of
11 witnesses as in other civil actions and to produce evidence that is
12 competent, relevant, and material to determine the correct amount of
13 the tax that should be paid by the taxpayer. Either party may seek
14 appellate review in the same manner as other civil actions are appealed
15 to the appellate courts.

16 It shall not be necessary for the taxpayer to protest against the
17 payment of any tax or to make any demand to have the same refunded or
18 to petition the director for a hearing in order to appeal to the
19 superior court, but no court action or proceeding of any kind shall be
20 maintained by the taxpayer to recover any tax paid, or any part
21 thereof, except as herein provided.

22 The provisions of this section shall not apply to any tax payment
23 which has been the subject of an appeal to the board of tax appeals
24 with respect to which appeal a formal hearing has been elected."

25 "Sec. 5. RCW 67.28.183 and 1988 c 61 s 2 are each amended to read
26 as follows:

27 (1) The ((tax)) taxes levied ((by RCW 67.28.180 and 67.28.182))
28 under this chapter shall not apply to emergency lodging provided for
29 homeless persons for a period of less than thirty consecutive days

1 under a shelter voucher program administered by an eligible
2 organization.

3 (2) For the purposes of this exemption, an eligible organization
4 includes only cities, towns, and counties, or their respective
5 agencies, and groups providing emergency food and shelter services."

6 "Sec. 6. RCW 82.29A.050 and 1975-'76 2nd ex.s. c 61 s 5 are each
7 amended to read as follows:

8 (1) The leasehold excise taxes provided for in RCW 82.29A.030 and
9 82.29A.040 shall be paid by the lessee to the lessor and the lessor
10 shall collect such tax and remit the same to the department of revenue.
11 The tax shall be payable at the same time as payments are due to the
12 lessor for use of the property from which the leasehold interest
13 arises, and in the case of payment of contract rent to a person other
14 than the lessor, at the time of payment. The tax payment shall be
15 accompanied by such information as the department of revenue may
16 require. In the case of prepaid contract rent the payment may be
17 prorated in accordance with instructions of the department of revenue
18 and the prorated portion of the tax shall be due, one-half not later
19 than May 31 and the other half not later than November 30 each year.

20 (2) The lessor receiving taxes payable under the provisions of this
21 chapter shall remit the same together with a return provided by the
22 department, to the department of revenue on or before the ((fifteenth))
23 last day of the month following the month in which the tax is
24 collected. The department may relieve any taxpayer or class of
25 taxpayers from the obligation of filing monthly returns and may require
26 the return to cover other reporting periods, but in no event shall
27 returns be filed for a period greater than one year. The lessor shall
28 be fully liable for collection and remittance of the tax. The amount
29 of tax until paid by the lessee to the lessor shall constitute a debt

1 from the lessee to the lessor. The tax required by this chapter shall
2 be stated separately from contract rent, and if not so separately
3 stated for purposes of determining the tax due from the lessee to the
4 lessor and from the lessor to the department, the contract rent does
5 not include the tax imposed by this chapter. Where a lessee has failed
6 to pay to the lessor the tax imposed by this chapter and the lessor has
7 not paid the amount of the tax to the department, the department may,
8 in its discretion, proceed directly against the lessee for collection
9 of the tax: PROVIDED, That taxes due where contract rent has not been
10 paid shall be reported by the lessor to the department and the lessee
11 alone shall be liable for payment of the tax to the department.

12 (3) Each person having a leasehold interest subject to the tax
13 provided for in this chapter arising out of a lease of federally owned
14 or federal trust lands shall report and remit the tax due directly to
15 the department of revenue in the same manner and at the same time as
16 the lessor would be required to report and remit the tax if such lessor
17 were a state public entity."

18 "NEW SECTION. Sec. 7. RCW 82.32.040 and 1971 ex.s. c 299 s 15
19 & 1961 c 15 s 82.32.040 are each repealed."

20 "NEW SECTION. Sec. 8. This act shall take effect July 1,
21 1992."

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4 On page 1, line 2 of the title, after "taxes;" strike the remainder
5 of the title and insert "amending RCW 82.04.170, 82.08.050, 82.32.090,
6 82.32.180, 67.28.183, and 82.29A.050; repealing RCW 82.32.040; and
7 providing an effective date."