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**SUBSTITUTE HOUSE BILL 1402**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Revenue (originally sponsored by Representatives Morris, Holland, Wang, Wynne, Van Luven, Ogden and Fraser; by request of Department of Revenue).

Read first time January 31, 1991.

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

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

4            **Sec. 1.** RCW 82.32.050 and 1989 c 378 s 19 are each amended to read  
5 as follows:

6            (1) If upon examination of any returns or from other information  
7 obtained by the department it appears that a tax or penalty has been  
8 paid less than that properly due, the department shall assess against  
9 the taxpayer such additional amount found to be due and shall add  
10 thereto interest at the rate of nine percent per annum from the last  
11 day of the year in which the deficiency is incurred until date of  
12 payment for tax liabilities arising before January 1, 1992. For tax  
13 liabilities arising on or after January 1, 1992, until the date of  
14 payment, the rate of interest shall be variable and computed as  
15 provided in subsection (2) of this section. The rate so computed shall

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

12 (2) For the purposes of this section, the rate of interest to be  
13 charged to the taxpayer shall be an average of the federal short-term  
14 rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points.  
15 The rate shall be computed by taking an arithmetical average to the  
16 nearest percentage point of the federal short-term rate, compounded  
17 annually, for the months of January, April, July, and October of the  
18 immediately preceding calendar year as published by the United States  
19 secretary of the treasury.

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. For refunds of amounts paid after January 1, 1992, the rate  
8 of interest shall be the rate as computed for assessments under RCW  
9 82.32.050(2), less one percentage point.

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

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

20 (2) If payment of any tax assessed by the department of revenue is  
21 not received by the department by the due date specified in the notice,  
22 or any extension thereof, the department shall add a penalty of ten  
23 percent of the amount of the additional tax found due. No penalty so  
24 added shall be less than five dollars.

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

1       (~~Notwithstanding the foregoing,~~) (4) If the department finds that  
2 all or any part of a deficiency resulted from the disregard of specific  
3 written instructions as to reporting or tax liabilities, the department  
4 shall add a penalty of twenty-five percent of the amount of the  
5 additional tax found due because of the failure to follow such  
6 instructions. A taxpayer disregards specific written instructions when  
7 the department of revenue has informed it in writing of its tax  
8 obligations and the taxpayer fails to act in accordance with those  
9 instructions unless the department has not issued final instructions  
10 because the matter is under appeal pursuant to this chapter or  
11 departmental regulations. Specific written instructions may be given  
12 as a part of a tax assessment, audit, determination, closing agreement,  
13 or through written correspondence to a taxpayer. Any specific written  
14 instructions by the department of revenue shall be clearly identified  
15 as such and shall inform the taxpayer that failure to follow the  
16 instructions may be subject to the penalties imposed by this  
17 subsection.

18       (5) If the department finds that all or any part of the deficiency  
19 resulted from an intent to evade the tax payable hereunder, a further  
20 penalty of fifty percent of the additional tax found to be due shall be  
21 added.

22       (6) The aggregate of penalties imposed under this (~~chapter~~)  
23 section for failure to (~~file~~) pay a tax due on a return, late payment  
24 of any tax, increase, or penalty, or issuance of a warrant shall not  
25 exceed (~~twenty-five~~) thirty-five percent of the tax due, or (~~seven~~)  
26 twenty dollars, whichever is greater.

27       (7) The department of revenue may not impose both the evasion  
28 penalty and the penalty for disregarding written instructions on the  
29 same tax found to be due.

1        NEW SECTION.    **Sec. 4.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 5.**    This act shall take effect January 1, 1992.