

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1239

Chapter 131, Laws of 2011

62nd Legislature
2011 Regular Session

EXCISE TAXES--DELINQUENCY--LIEN

EFFECTIVE DATE: 01/01/12

Passed by the House February 25, 2011
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2011
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved April 20, 2011, 2:03 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1239** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 20, 2011

**Secretary of State
State of Washington**

HOUSE BILL 1239

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Orcutt, Hunter, Johnson, and Rivers

Read first time 01/17/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to allowing the department of revenue to issue a
2 notice of lien to secure payment of delinquent excise taxes in lieu of
3 a warrant; amending RCW 82.32.210; adding a new section to chapter
4 82.32 RCW; and providing an effective date.

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

6 **Sec. 1.** RCW 82.32.210 and 2001 c 146 s 12 are each amended to read
7 as follows:

8 (1) If any fee, tax, increase, or penalty or any portion thereof is
9 not paid within fifteen days after it becomes due, the department (~~of~~
10 ~~revenue~~) may issue a warrant in the amount of (~~such~~) the unpaid
11 sums, together with interest thereon from the date the warrant is
12 issued until the date of payment. If, however, the department (~~of~~
13 ~~revenue~~) believes that a taxpayer is about to cease business, leave
14 the state, or remove or dissipate the assets out of which fees, taxes
15 or penalties might be satisfied and that any tax or penalty will not be
16 paid when due, it may declare the fee, tax or penalty to be immediately
17 due and payable and may issue a warrant immediately.

18 (a) Interest imposed before January 1, 1999, (~~shall be~~) is

1 computed at the rate of one percent of the amount of the warrant for
2 each thirty days or portion thereof.

3 (b) Interest imposed after December 31, 1998, (~~shall be~~) is
4 computed on a daily basis on the amount of outstanding tax or fee at
5 the rate as computed under RCW 82.32.050(2). The rate so computed
6 (~~shall~~) must be adjusted on the first day of January of each year for
7 use in computing interest for that calendar year. As used in this
8 subsection, "fee" does not include an administrative filing fee such as
9 a court filing fee and warrant fee.

10 (2) Except as provided in section 2 of this act, the department
11 (~~shall~~) must file a copy of the warrant with the clerk of the
12 superior court of any county of the state in which real and/or personal
13 property of the taxpayer may be found. The clerk is entitled to a
14 filing fee under RCW 36.18.012(10). Upon filing, the clerk (~~shall~~)
15 will enter in the judgment docket, the name of the taxpayer mentioned
16 in the warrant and in appropriate columns the amount of the fee, tax or
17 portion thereof and any increases and penalties for which the warrant
18 is issued and the date when the copy is filed(~~, and thereupon~~). The
19 amount of the warrant so docketed (~~shall become~~) is a specific lien
20 upon all goods, wares, merchandise, fixtures, equipment, or other
21 personal property used in the conduct of the business of the taxpayer
22 against whom the warrant is issued, including property owned by third
23 persons who have a beneficial interest, direct or indirect, in the
24 operation of the business, and no sale or transfer of the personal
25 property in any way affects the lien.

26 (3) The lien (~~shall~~) is not (~~be~~) superior, however, to bona
27 fide interests of third persons (~~which had~~) that vested (~~prior to~~)
28 before the filing of the warrant when the third persons do not have a
29 beneficial interest, direct or indirect, in the operation of the
30 business, other than (~~the securing of the~~) to secure payment of a
31 debt or (~~the receiving of~~) to receive a regular rental on equipment.
32 The phrase "bona fide interests of third persons" does not include any
33 mortgage of real or personal property or any other credit transaction
34 that results in the mortgagee or the holder of the security acting as
35 trustee for unsecured creditors of the taxpayer mentioned in the
36 warrant who executed the chattel or real property mortgage or the
37 document evidencing the credit transaction.

1 (4) The amount of the warrant so docketed (~~(shall thereupon)~~) is
2 also (~~(become)~~) a lien upon the title to and interest in all other real
3 and personal property of the taxpayer against whom it is issued the
4 same as a judgment in a civil case duly docketed in the office of the
5 clerk. The warrant so docketed (~~(shall be)~~) is sufficient to support
6 the issuance of writs of garnishment in favor of the state (~~(in the~~
7 ~~manner)~~) as provided by law (~~(in the case of)~~) for judgments wholly or
8 partially unsatisfied.

9 NEW SECTION. Sec. 2. A new section is added to chapter 82.32 RCW
10 to read as follows:

11 (1) To secure payment of a tax warrant issued by the department
12 under RCW 82.32.210, the department may issue a notice of lien against
13 any real property in which the taxpayer against whom the warrant was
14 issued has an ownership interest, if the total amount for which the
15 warrant was issued exceeds twenty-five thousand dollars and the
16 department determines that issuing the notice of lien would best
17 protect the state's interest in collecting the amount due on the
18 warrant. The department must file the notice of lien with the
19 recording officer of the county where the real property is located.
20 The recording officer is entitled to a filing fee as provided under RCW
21 36.18.010.

22 (2)(a) Except as otherwise provided in this section, recording a
23 notice of lien as authorized in this section is in lieu of filing with
24 the clerk of the superior court a copy of the warrant secured by the
25 notice of lien.

26 (b) Notwithstanding (a) of this subsection (2), the department may
27 file with the superior court a warrant that is secured by a notice of
28 lien under this section if: (i) The department determines that filing
29 the warrant is in the best interest of collecting the amount due on the
30 tax warrant; or (ii) the warrant remains unpaid six months after the
31 notice of lien was issued.

32 (3) If a warrant has been filed with the clerk of the superior
33 court, the department may issue and record a notice of lien against
34 real property of the taxpayer and file a conditional satisfaction of
35 the warrant with the clerk of the superior court of the county in which
36 the warrant was filed, if the department determines that such actions
37 are in the best interest of collecting the amount due on the warrant.

1 (a) A warrant for which a conditional satisfaction is filed will
2 continue to accrue interest on the unpaid balance as provided in RCW
3 82.32.210.

4 (b)(i) The department may refile a warrant for which a conditional
5 satisfaction has been filed if: (A) The department determines that
6 refiling the warrant is in the best interest of collecting the amount
7 due on the warrant; or (B) the warrant remains unpaid six months after
8 the notice of lien was issued.

9 (ii) A warrant is refiled in the same manner as it was originally
10 filed.

11 (c) A warrant that is refiled as provided in this subsection (3)
12 reinstates the liens provided under RCW 82.32.210 as of the date the
13 warrant is refiled.

14 (d) For the purposes of this subsection (3), a "conditional
15 satisfaction" is a document issued by the department, which, when filed
16 with the clerk of the superior court of the county in which the warrant
17 was filed, releases the liens provided under RCW 82.32.210 without
18 prejudice to refile the warrant at a later date.

19 (4) When a taxpayer has requested the department to use the
20 collection authority under this section, in order to determine if the
21 issuance of a notice of lien would best protect the state's interest in
22 collecting the amount due on the warrant, the department may require
23 the taxpayer to:

24 (a) Provide, at the taxpayer's expense, the department with a
25 current abstract of title as defined by RCW 48.29.010 from a title
26 insurer that possesses a certificate of authority issued under Title 48
27 RCW; and

28 (b) Authorize the department to obtain the taxpayer's current
29 credit report.

30 (5) A notice of lien issued under this section must include the
31 following information:

32 (a) The name of the taxpayer who has an interest in the real
33 property against which the notice of lien is filed;

34 (b) The taxpayer's tax registration number issued as provided in
35 RCW 82.32.030;

36 (c) The number of the warrant issued by the department;

37 (d) The amount for which the warrant was issued;

1 (e) The legal description, tax parcel number assigned under RCW
2 84.40.160, and the street address, if available, of the real property
3 against which the notice of lien is issued; and

4 (f) Any other information the department determines would be
5 useful.

6 (6) The notice of lien issued under this section is superior to all
7 other liens and encumbrances, except:

8 (a) Bona fide interests of third persons that had vested prior to
9 the recording of the notice of lien, if the third persons do not have
10 a beneficial interest, direct or indirect, in the operation of the
11 taxpayer's business, other than the securing of the payment of a debt
12 or the receiving of a regular rental on equipment. For purposes of
13 this subsection, "bona fide interests of third persons" has the same
14 meaning as in RCW 82.32.210; and

15 (b) Property taxes and special assessments against the property.

16 (7) The department must release a notice of lien issued under this
17 section as soon as practicable after receipt of payment in full of the
18 amount due on the warrant secured by the notice of lien, including
19 interest accrued as provided in RCW 82.32.210(1) and all recording fees
20 claimed by the recording officer for the recording of the notice of
21 lien and the release of the lien.

22 (8) The department must release a notice of lien issued under this
23 section within fourteen days if the notice of lien was issued in error.

24 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2012.

Passed by the House February 25, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor April 20, 2011.

Filed in Office of Secretary of State April 20, 2011.