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SENATE BILL 5252

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Keiser, Kohl-Welles, Franklin and Kline

Read first time 01/15/2007.                      Referred to Committee on Labor,  
Commerce, Research & Development.

1            AN ACT Relating to personal liability for failure to pay  
2 unemployment taxes; amending RCW 50.04.080; adding a new section to  
3 chapter 50.24 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** A new section is added to chapter 50.24 RCW  
6 to read as follows:

7            (1) Upon termination, dissolution, or abandonment of a corporate or  
8 limited liability company business, any officer, member, manager, or  
9 other person having control or supervision of payment of unemployment  
10 tax contributions under RCW 50.24.010 or 50.24.014, or who is  
11 responsible for the filing of reports or the payment of contributions  
12 or payments in lieu of contributions, is personally liable for any  
13 unpaid contributions and interest and penalties on those contributions  
14 if such officer or other person willfully fails to pay or to cause to  
15 be paid any contributions due to the department from the corporation or  
16 limited liability company business under this title. For purposes of  
17 this section, "willfully fails to pay or to cause to be paid" means  
18 that the failure is the result of an intentional, conscious, and  
19 voluntary course of action.

1 (2) Persons liable under subsection (1) of this section are liable  
2 only for contributions that became due during the period he or she had  
3 the control, supervision, responsibility, or duty to act for the  
4 corporation or limited liability company, plus interest and penalties  
5 on those contributions.

6 (3) Persons liable under subsection (1) of this section are exempt  
7 from liability if the nonpayment of contributions was beyond their  
8 control as determined by the employment security department by rule.  
9 In making this determination, the department shall consider, but not be  
10 limited to, such factors as the death, illness, or personal financial  
11 situation of the person liable under subsection (1) of this section.

12 (4) Persons liable under subsection (1) of this section are exempt  
13 from liability if all of the assets of the corporation or limited  
14 liability company have been applied to its debts through bankruptcy or  
15 receivership.

16 (5) Any person having been issued a notice of assessment under this  
17 section is entitled to the appeal procedures under chapter 50.32 RCW.

18 (6) This section applies only when the employment security  
19 department determines that there is no reasonable means of collecting  
20 the contributions owed directly from the corporation or limited  
21 liability company.

22 (7) This section does not relieve the corporation or limited  
23 liability company of other tax liabilities under this title or impair  
24 other tax collection remedies afforded by law.

25 (8) Collection authority and procedures described in this chapter  
26 apply to collections under this section.

27 **Sec. 2.** RCW 50.04.080 and 1985 c 41 s 1 are each amended to read  
28 as follows:

29 "Employer" means any individual or type of organization, including  
30 any partnership, association, trust, estate, joint stock company,  
31 insurance company, limited liability company, or corporation, whether  
32 domestic or foreign, or the receiver, trustee in bankruptcy, trustee,  
33 or the legal representative of a deceased person, having any person in  
34 employment or, having become an employer, has not ceased to be an  
35 employer as provided in this title.

36 For the purposes of collection remedies available under chapter  
37 50.24 RCW, "employer," in the case of a corporation or limited

1 liability company, includes persons found personally liable for any  
2 unpaid contributions and interest and penalties on those contributions  
3 under section 1 of this act.

4 NEW SECTION. **Sec. 3.** If any part of this act is found to be in  
5 conflict with federal requirements that are a prescribed condition to  
6 the allocation of federal funds to the state or the eligibility of  
7 employers in this state for federal unemployment tax credits, the  
8 conflicting part of this act is inoperative solely to the extent of the  
9 conflict, and the finding or determination does not affect the  
10 operation of the remainder of this act. Rules adopted under this act  
11 must meet federal requirements that are a necessary condition to the  
12 receipt of federal funds by the state or the granting of federal  
13 unemployment tax credits to employers in this state.

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

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