

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5571

Chapter 176, Laws of 2009

61st Legislature
2009 Regular Session

TAXES--USE OF ELECTRONIC METHODS

EFFECTIVE DATE: 07/26/09

Passed by the Senate March 10, 2009
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 9, 2009
YEAS 98 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 22, 2009, 11:46 a.m.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5571** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 23, 2009

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5571

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Oemig and Kohl-Welles; by request of Department of Revenue)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to requiring the use of electronic methods for
2 taxes administered by the department of revenue, including filing of
3 taxes, payment of taxes, assessment of taxes, and other taxpayer
4 information; and amending RCW 82.32.135, 82.32.080, 82.32.085,
5 82.32.060, and 82.32.087.

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

7 **Sec. 1.** RCW 82.32.135 and 2007 c 111 s 113 are each amended to
8 read as follows:

9 (1) Except as otherwise provided in this subsection, whenever the
10 department is required to send any assessment, notice, or any other
11 information to persons by regular mail, the department (~~may~~) must
12 instead provide the assessment, notice, or other information
13 electronically (~~if the following conditions are met:~~

14 ~~(a) The person entitled to receive the information has authorized~~
15 ~~the department in writing, electronically or otherwise, to provide the~~
16 ~~assessment, notice, or other information electronically; and~~

17 ~~(b))~~). The department may implement the requirement in this
18 subsection in phases. The department, for good cause, may waive the

1 requirement in this subsection for any taxpayer. In the discretion of
2 the department, a waiver under this subsection may be made temporary or
3 permanent, and may be made on the department's own motion.

4 (2) If the assessment, notice, or other information is subject to
5 the confidentiality provisions of RCW 82.32.330, the department must
6 use methods reasonably designed to protect the information from
7 unauthorized disclosure. The provisions of this subsection (~~((1)(b))~~)
8 (2) may be waived by a taxpayer. The waiver must be in writing and may
9 be provided to the department electronically. A person may provide a
10 waiver with respect to a particular item of information or may give a
11 blanket waiver with respect to any item of information or certain items
12 of information to be provided electronically. A blanket waiver will
13 continue until revoked in writing by the taxpayer. Such revocation may
14 be provided to the department electronically in a manner provided or
15 approved by the department.

16 ~~((2) A person may authorize the department under subsection (1)(a)
17 of this section to provide a particular item of information
18 electronically or may give blanket authorization to provide any item of
19 information or certain items of information electronically. Such
20 blanket authorization will continue until revoked in writing by the
21 taxpayer. Such revocation may be provided to the department
22 electronically in a manner provided or approved by the department.))~~

23 (3) Any assessment, notice, or other information provided by the
24 department electronically to a person is deemed to be received by the
25 taxpayer on the date that the department electronically sends the
26 information to the person or electronically notifies the person that
27 the information is available to be accessed by the person.

28 (4) This section also applies to any information that is not
29 expressly required by statute to be sent by regular mail, but is
30 customarily sent by the department using regular mail, to persons
31 entitled to receive the information.

32 (5)(a) For purposes of this section, "good cause" includes the
33 inability of the department to comply with this section for any reason,
34 including lacking information necessary to send information to a person
35 electronically or to electronically notify a person that information is
36 available to be accessed by the person.

37 (b) "Good cause" also includes the inability of a person to receive

1 or otherwise obtain information from the department electronically
2 because:

3 (i) The person does not have the equipment or software necessary to
4 enable the person to receive or otherwise obtain information from the
5 department electronically;

6 (ii) The equipment or software necessary to enable the person to
7 receive or otherwise obtain information from the department
8 electronically is not functioning properly;

9 (iii) The person does not have access to the internet using the
10 person's own equipment; or

11 (iv) Some other circumstance or condition exists that, in the
12 department's judgment, prevents the taxpayer from receiving or
13 otherwise obtaining information from the department electronically.

14 **Sec. 2.** RCW 82.32.080 and 2008 c 181 s 502 are each amended to
15 read as follows:

16 (1) When authorized by the department, payment of the tax may be
17 made by uncertified check under such (~~regulations~~) rules as the
18 department (~~shall~~) prescribes, but, if a check so received is not
19 paid by the bank on which it is drawn, the taxpayer, by whom such check
20 is tendered, (~~shall~~) will remain liable for payment of the tax and
21 for all legal penalties, the same as if such check had not been
22 tendered.

23 (2)(a) Except as otherwise provided in this subsection, payment of
24 the tax (~~shall~~) must be made by electronic funds transfer, as defined
25 in RCW 82.32.085, (~~if the amount of the tax due in a calendar year is~~
26 one million eight hundred thousand dollars or more. The department may
27 by rule provide for tax thresholds between two hundred forty thousand
28 dollars and one million eight hundred thousand dollars for mandatory
29 use of electronic funds transfer) if the taxpayer is required to file
30 and remit its taxes on a monthly basis. As an alternative to
31 electronic funds transfer, the department may authorize other forms of
32 electronic payment, such as credit card and e-check. All taxes
33 administered by this chapter are subject to this requirement except the
34 taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and
35 84.33 RCW. It is the intent of this (~~section~~) subsection to require
36 electronic (~~funds transfer~~) payment for those taxes reported on the
37 department's combined excise tax return or any successor return. The

1 mandatory electronic payment requirement in this subsection also
2 applies to taxpayers who meet the threshold for filing and remitting
3 taxes on a monthly basis as established by rule of the department but
4 for whom the department has authorized a less frequent reporting
5 frequency, when such authorization became effective on or after the
6 effective date of this section.

7 (b) The department, for good cause, may waive the electronic
8 payment requirement in this subsection for any taxpayer. In the
9 discretion of the department, a waiver under this subsection may be
10 made temporary or permanent, and may be made on the department's own
11 motion.

12 (c) The department is authorized to accept payment of taxes by
13 electronic funds transfer or other acceptable forms of electronic
14 payment from taxpayers that are not subject to the mandatory electronic
15 payment requirements in this subsection.

16 ~~(3) ((A return or remittance which is transmitted to the department~~
17 ~~by United States mail shall be deemed filed or received on the date~~
18 ~~shown by the post office cancellation mark stamped upon the envelope~~
19 ~~containing it, except as otherwise provided in this chapter. The~~
20 ~~department is authorized to allow electronic filing of returns or~~
21 ~~remittances from any taxpayer. A return or remittance which is~~
22 ~~transmitted to the department electronically shall be deemed filed or~~
23 ~~received according to procedures set forth by the department.)) (a)~~
24 Except as otherwise provided in this subsection, returns must be filed
25 electronically using the department's online tax filing service, if the
26 taxpayer is required to file and remit its taxes on a monthly basis.
27 The mandatory electronic filing requirement in this subsection also
28 applies to taxpayers who meet the threshold for filing and remitting
29 taxes on a monthly basis as established by rule of the department but
30 for whom the department has authorized a less frequent reporting
31 frequency, when such authorization became effective on or after the
32 effective date of this section.

33 (b) The department, for good cause, may waive the electronic filing
34 requirement in this subsection for any taxpayer. In the discretion of
35 the department, a waiver under this subsection may be made temporary or
36 permanent, and may be made on the department's own motion.

37 (c) The department is authorized to accept payment of taxes by

1 electronic funds transfer or other acceptable forms of electronic
2 payment from taxpayers that are not subject to the mandatory electronic
3 payment requirements in this subsection.

4 (4)(a)(i) The department, for good cause shown, may extend the time
5 for making and filing any return, and may grant such reasonable
6 additional time within which to make and file returns as it may deem
7 proper, but any permanent extension granting the taxpayer a reporting
8 date without penalty more than ten days beyond the due date, and any
9 extension in excess of thirty days (~~shall~~) must be conditional on
10 deposit with the department of an amount to be determined by the
11 department which shall be approximately equal to the estimated tax
12 liability for the reporting period or periods for which the extension
13 is granted. In the case of a permanent extension or a temporary
14 extension of more than thirty days the deposit (~~shall~~) must be
15 deposited within the state treasury with other tax funds and a credit
16 recorded to the taxpayer's account which may be applied to taxpayer's
17 liability upon cancellation of the permanent extension or upon
18 reporting of the tax liability where an extension of more than thirty
19 days has been granted.

20 (ii) The department (~~shall~~) must review the requirement for
21 deposit at least annually and may require a change in the amount of the
22 deposit required when it believes that such amount does not approximate
23 the tax liability for the reporting period or periods for which the
24 extension is granted.

25 (b) During a state of emergency declared under RCW 43.06.010(12),
26 the department, on its own motion or at the request of any taxpayer
27 affected by the emergency, may extend the time for making or filing any
28 return as the department deems proper. The department may not require
29 any deposit as a condition for granting an extension under this
30 subsection (4)(b).

31 (5) The department (~~shall~~) must keep full and accurate records of
32 all funds received and disbursed by it. Subject to the provisions of
33 RCW 82.32.105 and 82.32.350, the department (~~shall~~) must apply the
34 payment of the taxpayer first against penalties and interest, and then
35 upon the tax, without regard to any direction of the taxpayer.

36 (6) The department may refuse to accept any return (~~which~~) that
37 is not accompanied by a remittance of the tax shown to be due thereon
38 or that is not filed electronically as required in this section. When

1 such return is not accepted, the taxpayer (~~shall be~~) is deemed to
2 have failed or refused to file a return and (~~shall be~~) is subject to
3 the procedures provided in RCW 82.32.100 and to the penalties provided
4 in RCW 82.32.090. The above authority to refuse to accept a return
5 (~~shall~~) may not apply when a return is timely filed electronically
6 and a timely payment has been made by electronic funds transfer or
7 other form of electronic payment as authorized by the department.

8 (7) Except for returns and remittances required to be transmitted
9 to the department electronically under this section and except as
10 otherwise provided in this chapter, a return or remittance that is
11 transmitted to the department by United States mail is deemed filed or
12 received on the date shown by the post office cancellation mark stamped
13 upon the envelope containing it. A return or remittance that is
14 transmitted to the department electronically is deemed filed or
15 received according to procedures set forth by the department.

16 (8)(a) For purposes of subsections (2) and (3) of this section,
17 "good cause" means the inability of a taxpayer to comply with the
18 requirements of subsection (2) or (3) of this section because:

19 (i) The taxpayer does not have the equipment or software necessary
20 to enable the taxpayer to comply with subsection (2) or (3) of this
21 section;

22 (ii) The equipment or software necessary to enable the taxpayer to
23 comply with subsection (2) or (3) of this section is not functioning
24 properly;

25 (iii) The taxpayer does not have access to the internet using the
26 taxpayer's own equipment;

27 (iv) The taxpayer does not have a bank account or a credit card;

28 (v) The taxpayer's bank is unable to send or receive electronic
29 funds transfer transactions; or

30 (vi) Some other circumstance or condition exists that, in the
31 department's judgment, prevents the taxpayer from complying with the
32 requirements of subsection (2) or (3) of this section.

33 (b) "Good cause" also includes any circumstance that, in the
34 department's judgment, supports the efficient or effective
35 administration of the tax laws of this state, including providing
36 relief from the requirements of subsection (2) or (3) of this section
37 to any taxpayer that is voluntarily collecting and remitting this

1 state's sales or use taxes on sales to Washington customers but has no
2 legal requirement to be registered with the department.

3 **Sec. 3.** RCW 82.32.085 and 2006 c 256 s 4 are each amended to read
4 as follows:

5 (1) "Electronic funds transfer" means any transfer of funds, other
6 than a transaction originated by check, drafts, or similar paper
7 instrument, which is initiated through an electronic terminal,
8 telephonic instrument, or computer or magnetic tape so as to order,
9 instruct, or authorize a financial institution to debit or credit an
10 account.

11 (2)(a) Except as provided in (b) of this subsection, the electronic
12 funds transfer is to be completed so that the state receives
13 collectible funds on or before the next banking day following the due
14 date.

15 (b) A remittance made using the automated clearinghouse debit
16 method will be deemed to be received on the due date if the electronic
17 funds transfer is initiated on or before 11:59 p.m. pacific time on the
18 due date with an effective payment date on or before the next banking
19 day following the due date.

20 (3)((+a)) The department ((shall)) must adopt rules necessary to
21 implement the provisions of RCW 82.32.080 and this section. The rules
22 ((shall)) must include but are not limited to: ((+i)) (a)
23 Coordinating the filing of tax returns with payment by electronic funds
24 transfer or other form of electronic payment as authorized by the
25 department; ((+ii)) (b) form and content of electronic funds transfer;
26 ((+iii)) (c) voluntary use of electronic funds transfer with
27 permission of the department for those taxpayers that are not subject
28 to the mandatory electronic payment requirement in RCW 82.32.080;
29 ((+iv)) (d) use of commonly accepted means of electronic funds
30 transfer; ((+v)) (e) means of crediting and recording proof of
31 payment; and ((+vi)) (f) means of correcting errors in transmission.

32 ((+b) ~~Any changes in the threshold of tax shall be implemented with~~
33 ~~a separate rule making procedure.~~)

34 **Sec. 4.** RCW 82.32.060 and 2004 c 153 s 306 are each amended to
35 read as follows:

36 (1) If, upon receipt of an application by a taxpayer for a refund

1 or for an audit of the taxpayer's records, or upon an examination of
2 the returns or records of any taxpayer, it is determined by the
3 department that within the statutory period for assessment of taxes,
4 penalties, or interest prescribed by RCW 82.32.050 any amount of tax,
5 penalty, or interest has been paid in excess of that properly due, the
6 excess amount paid within, or attributable to, such period (~~shall~~)
7 must be credited to the taxpayer's account or (~~shall~~) must be
8 refunded to the taxpayer, at the taxpayer's option. Except as provided
9 in subsection (2) of this section, no refund or credit (~~shall~~) may be
10 made for taxes, penalties, or interest paid more than four years prior
11 to the beginning of the calendar year in which the refund application
12 is made or examination of records is completed.

13 (2)(a) The execution of a written waiver under RCW 82.32.050 or
14 82.32.100 (~~shall~~) will extend the time for making a refund or credit
15 of any taxes paid during, or attributable to, the years covered by the
16 waiver if, prior to the expiration of the waiver period, an application
17 for refund of such taxes is made by the taxpayer or the department
18 discovers a refund or credit is due.

19 (b) A refund or credit (~~shall~~) must be allowed for an excess
20 payment resulting from the failure to claim a bad debt deduction,
21 credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037,
22 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26
23 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less
24 than four years prior to the beginning of the calendar year in which
25 the refund application is made or examination of records is completed.

26 (3) Any such refunds (~~shall~~) must be made by means of vouchers
27 approved by the department and by the issuance of state warrants drawn
28 upon and payable from such funds as the legislature may provide.
29 However, taxpayers who are required to pay taxes by electronic funds
30 transfer under RCW 82.32.080 (~~shall~~) must have any refunds paid by
31 electronic funds transfer if the department has the necessary account
32 information to facilitate a refund by electronic funds transfer.

33 (4) Any judgment for which a recovery is granted by any court of
34 competent jurisdiction, not appealed from, for tax, penalties, and
35 interest which were paid by the taxpayer, and costs, in a suit by any
36 taxpayer (~~shall~~) must be paid in the same manner, as provided in
37 subsection (3) of this section, upon the filing with the department of
38 a certified copy of the order or judgment of the court.

1 (a) Interest at the rate of three percent per annum (~~shall~~) must
2 be allowed by the department and by any court on the amount of any
3 refund, credit, or other recovery allowed to a taxpayer for taxes,
4 penalties, or interest paid by the taxpayer before January 1, 1992.
5 This rate of interest (~~shall apply~~) applies for all interest allowed
6 through December 31, 1998. Interest allowed after December 31, 1998,
7 (~~shall~~) must be computed at the rate as computed under RCW
8 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
9 first day of January of each year for use in computing interest for
10 that calendar year.

11 (b) For refunds or credits of amounts paid or other recovery
12 allowed to a taxpayer after December 31, 1991, the rate of interest
13 (~~shall~~) must be the rate as computed for assessments under RCW
14 82.32.050(2) less one percent. This rate of interest (~~shall apply~~)
15 applies for all interest allowed through December 31, 1998. Interest
16 allowed after December 31, 1998, (~~shall~~) must be computed at the rate
17 as computed under RCW 82.32.050(2). The rate so computed (~~shall~~)
18 must be adjusted on the first day of January of each year for use in
19 computing interest for that calendar year.

20 (5) Interest allowed on a credit notice or refund issued after
21 December 31, 2003, (~~shall~~) must be computed as follows:

22 (a) If all overpayments for each calendar year and all reporting
23 periods ending with the final month included in a notice or refund were
24 made on or before the due date of the final return for each calendar
25 year or the final reporting period included in the notice or refund:

26 (i) Interest (~~shall~~) must be computed from January 31st following
27 each calendar year included in a notice or refund; or

28 (ii) Interest (~~shall~~) must be computed from the last day of the
29 month following the final month included in a notice or refund.

30 (b) If the taxpayer has not made all overpayments for each calendar
31 year and all reporting periods ending with the final month included in
32 a notice or refund on or before the dates specified by RCW 82.32.045
33 for the final return for each calendar year or the final month included
34 in the notice or refund, interest (~~shall~~) must be computed from the
35 last day of the month following the date on which payment in full of
36 the liabilities was made for each calendar year included in a notice or
37 refund, and the last day of the month following the date on which

1 payment in full of the liabilities was made if the final month included
2 in a notice or refund is not the end of a calendar year.

3 (c) Interest included in a credit notice (~~((shall))~~) must accrue up
4 to the date the taxpayer could reasonably be expected to use the credit
5 notice, as defined by the department's rules. If a credit notice is
6 converted to a refund, interest (~~((shall))~~) must be recomputed to the
7 date the refund is issued, but not to exceed the amount of interest
8 that would have been allowed with the credit notice.

9 **Sec. 5.** RCW 82.32.087 and 2001 c 188 s 2 are each amended to read
10 as follows:

11 (1) The director may grant a direct pay permit to a taxpayer who
12 demonstrates, to the satisfaction of the director, that the taxpayer
13 meets the requirements of this section. The direct pay permit allows
14 the taxpayer to accrue and remit directly to the department use tax on
15 the acquisition of tangible personal property or sales tax on the sale
16 of or charges made for labor and/or services, in accordance with all of
17 the applicable provisions of this title. Any taxpayer that uses a
18 direct pay permit shall remit state and local sales or use tax directly
19 to the department. The agreement by the purchaser to remit tax
20 directly to the department, rather than pay sales or use tax to the
21 seller, relieves the seller of the obligation to collect sales or use
22 tax and requires the buyer to pay use tax on the tangible personal
23 property and sales tax on the sale of or charges made for labor and/or
24 services.

25 (2)(a) A taxpayer may apply for a permit under this section if:
26 (i) The ((taxpayer (i) is subject to mandatory use of electronic funds
27 transfer under RCW 82.32.080)) taxpayer's cumulative tax liability is
28 reasonably expected to be two hundred forty thousand dollars or more in
29 the current calendar year; or (ii) the taxpayer makes purchases subject
30 to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten
31 million dollars per calendar year. For the purposes of this section,
32 "tax liability" means the amount required to be remitted to the
33 department for taxes administered under this chapter, except for the
34 taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,
35 82.29A, and 84.33 RCW.

36 (b) Application for a permit must be made in writing to the

1 director in a form and manner prescribed by the department. A taxpayer
2 who transacts business in two or more locations may submit one
3 application to cover the multiple locations.

4 (c) The director (~~shall~~) must review a direct pay permit
5 application in a timely manner and shall notify the applicant, in
6 writing, of the approval or denial of the application. The department
7 (~~shall~~) must approve or deny an application based on the applicant's
8 ability to comply with local government use tax coding capabilities and
9 responsibilities; requirements for vendor notification; recordkeeping
10 obligations; electronic data capabilities; and tax reporting
11 procedures. Additionally, an application may be denied if the director
12 determines that denial would be in the best interest of collecting
13 taxes due under this title. The department (~~shall~~) must provide a
14 direct pay permit to an approved applicant with the notice of approval.
15 The direct pay permit shall clearly state that the holder is solely
16 responsible for the accrual and payment of the tax imposed under
17 chapters 82.08 and 82.12 RCW and that the seller is relieved of
18 liability to collect tax imposed under chapters 82.08 and 82.12 RCW on
19 all sales to the direct pay permit holder. The taxpayer may petition
20 the director for reconsideration of a denial.

21 (d) A taxpayer who uses a direct pay permit must continue to
22 maintain records that are necessary to a determination of the tax
23 liability in accordance with this title. A direct pay permit is not
24 transferable and the use of a direct pay permit may not be assigned to
25 a third party.

26 (3) Taxes for which the direct pay permit is used are due and
27 payable on the tax return for the reporting period in which the
28 taxpayer (a) receives the tangible personal property purchased or in
29 which the labor and/or services are performed or (b) receives an
30 invoice for such property or such labor and/or services, whichever
31 period is earlier.

32 (4) The holder of a direct pay permit (~~shall~~) must furnish a copy
33 of the direct pay permit to each vendor with whom the taxpayer has
34 opted to use a direct pay permit. Sellers who make sales upon which
35 the sales or use tax is not collected by reason of the provisions of
36 this section, in addition to existing requirements under this title,
37 (~~shall~~) must maintain a copy of the direct pay permit and any such
38 records or information as the department may specify.

1 (5) A direct pay permit is subject to revocation by the director at
2 any time the department determines that the taxpayer has violated any
3 provision of this section or that revocation would be in the best
4 interests of collecting the taxes due under this title. The notice of
5 revocation must be in writing and is effective either as of the end of
6 the taxpayer's next normal reporting period or a date deemed
7 appropriate by the director and identified in the revocation notice.
8 The taxpayer may petition the director for reconsideration of a
9 revocation and reinstatement of the permit.

10 (6) Any taxpayer who chooses to no longer use a direct pay permit
11 or whose permit is revoked by the department, (~~shall~~) must return the
12 permit to the department and immediately make a good faith effort to
13 notify all vendors to whom the permit was given, advising them that the
14 permit is no longer valid.

15 (7) Except as provided in this subsection, the direct pay permit
16 may be used for any purchase of tangible personal property and any
17 retail sale under RCW 82.04.050. The direct pay permit may not be used
18 for:

19 (a) Purchases of meals or beverages;

20 (b) Purchases of motor vehicles, trailers, boats, airplanes, and
21 other property subject to requirements for title transactions by the
22 department of licensing;

23 (c) Purchases for which a resale certificate may be used;

24 (d) Purchases that meet the definitions of RCW 82.04.050 (2)(e) and
25 (f), (3)(a) through (d), (f), and (g), and (5); or

26 (e) Other activities subject to tax under chapter 82.08 or 82.12
27 RCW that the department by rule designates, consistent with the
28 purposes of this section, as activities for which a direct pay permit
29 is not appropriate and may not be used.

Passed by the Senate March 10, 2009.

Passed by the House April 9, 2009.

Approved by the Governor April 22, 2009.

Filed in Office of Secretary of State April 23, 2009.