

for the year in which the assessment is made without penalty or interest.

[R.C.W. 84.40.080 was derived from R.R.S. § 11142.]

Passed the House March 31, 1951.

Passed the Senate April 4, 1951.

Approved by the Governor April 12, 1951.

CHAPTER 9.

[H. B. 4.]

RELATING TO REVENUE AND TAXATION.

AN ACT relating to revenue and taxation; amending certain sections of Title 82, R.C.W.; and declaring an emergency and an effective date.

Be it enacted by the Legislature of the State of Washington:

Amendment.

SECTION 1. Section 82.04.440, R.C.W., as derived from section 2, chapter 5, Laws of 1950, Extraordinary Session, is amended to read as follows:

Business and occupations tax; persons taxable on multiple activities.

Every person engaged in activities which are within the purview of the provisions of two or more of sections 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in: *Provided*, That persons taxable under 82.04.250 or 82.04.270 shall not be taxable under 82.04.230, 82.04.240, or paragraph (2) of 82.04.260 with respect to extracting or manufacturing of the products so sold, and that persons taxable under 82.04.240 shall not be taxable under 82.04.230 with respect to extracting the ingredients of the product so manufactured:

Vetoed.

Provided further, That no person, firm or corporation, licensed in any class under chapter 66.24, R.C.W., nor any agent or employee of such person, firm or corporation, shall have any interest, direct or indirect, and whether as owner, mortgagee, pledgee, consignee, or bailee, in any coin-operated

amusement device or machine, other than a device or machine maintained and operated on the premises under license to such person, firm or corporation, or maintained and operated exclusively for charitable purposes. } Vetoed.

[R.C.W. 82.04.440 was derived from sec. 2, ch. 5, L. 1950 Ex. Sess.; Rem. Supp. 1949 § 8370-6.]

[R.C.W. 82.04.230 to 82.04.290 were derived from subsections of section 1, chapter 5, Laws of 1950 Ex. Sess. as follows: 82.04.230 is subsec. (a), 82.04.240 is subsec. (b), 82.04.250 is subsec. (c), 82.04.260 is subsec. (d), 82.04.270 is subsec. (e), 82.04.280 is subsec. (f), 82.04.290 is subsec. (g).]

[Chapter 66.24, R.C.W., is entitled "Alcoholic Beverage Control; Licenses—Stamp Taxes."]

SEC. 2. Section 82.08.030, R.C.W., as derived from section 5, chapter 228, Laws of 1949, is amended to read as follows: Amendment.

The tax hereby levied shall not apply to the following sales: Retail sales tax; exemptions.

(a) Casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under chapters 82.04, 82.16, or 82.28: *Provided*, That the exemption provided by this paragraph shall not be construed as providing any exemption from the tax imposed by chapter 82.12; Casual and isolated sales.

(b) Sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under chapter 82.16, when the gross proceeds from such sales must be included in the measure of the tax imposed under said chapter; Certain sales taxed under ch. 82.16, R.C.W.

(c) The distribution and newsstand sale of newspapers; Sale of newspapers.

(d) Sales which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States; Sale where tax prohibited by constitution.

(e) Sales of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes and sales of motor vehicle fuel taxable under chapter 82.36: *Provided*, That the use of any such fuel upon which a refund of the Sales of motor vehicle fuel.

motor vehicle fuel tax has been obtained shall be subject to the tax imposed by chapter 82.12;

Sale of public utility.

(f) Sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any business defined in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), or (k) of section 82.16.010;

Certain farm auction sales.

(g) Auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise;

Sales to certain relief organizations incorporated under act of congress.

(h) Sales to corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same;

Sales of livestock for breeding.

(i) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association;

Sales of property for use by carrier in interstate or foreign commerce.

(j) Sales of tangible personal property (other than the type referred to in subdivision (k) hereof) for use by the purchaser in connection with the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce: *Provided*, That any actual use of such property in this state shall, at the time of such actual use, be subject to the tax imposed by chapter 82.12;

(k) Sales of airplanes, locomotives, railroad cars, or water craft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state; also sales of tangible personal property which becomes a component part of such airplanes, locomotives, railroad cars, or water craft, and of motor vehicles or trailers used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving;

(l) Sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce: *Provided*, That the purchaser must be the holder of a carrier permit issued by the Interstate Commerce Commission, and that the vehicles will first move upon the highways of this state from the point of delivery in this state to a point outside of this state under the authority of a one-transit permit issued by the director of licenses pursuant to the provisions of section 46.16.100;

One-transit permit.

(m) Sales of motor vehicles and trailers to non-residents of this state for use outside of this state, even though delivery be made within this state, but only when (1) the vehicles or trailers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a one-transit permit issued by the director of licenses pursuant to the provisions of section 46.16.100, or (2) said motor vehicles and trailers will be registered and licensed immediately under the laws of the

Sales of motor vehicles and trailers to non-residents for use out of state.

state of the purchaser's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

[R.C.W. 82.08.030 was derived from Rem. Supp 1949 § 8370-19.]

[Chapter 82.04 R.C.W. was derived from Rem. Supp. 1949 §§ 8370-4 and 8370-6 (as amended by ch. 5, L. 1950 Ex. Sess.); Rem. Supp. 1949 §§ 8370-5 and 8370-7; Rem. Supp 1941 § 8370-8a; Rem. Supp. §§ 8370-9 and 8370-10; Rem. Supp. 1945 §§ 8370-11, 8370-12; Rem. Supp. 8370-13 to 8370-15 incl.]

[Chapter 82.12 was derived from Rem. Supp. 1949 §§ 8370-31, 8370-32; Rem. Supp. 1945 § 8370-33; Rem. Supp. § 8370-34; Rem. Supp. 1941 § 8370-34a; Rem. Supp. 1949 § 8370-35.]

[Chapter 82.16 R.C.W. was derived from Rem. Supp. 1949 § 8370-37; Rem. Supp. §§ 8370-38 and 8370-39; Rem. Supp 1949 § 8370-40; Rem. Supp. § 8370-41 to 8370-43 incl.]

[Chapter 82.28 R.C.W. was derived from Rem. Supp. § 8370-36; Rem. Supp. 1949 § 8370-96; Rem. Supp. 1941 §§ 8370-97, 8370-98; Rem. Supp. 1949 § 8370-99; Rem. Supp. 1941 §§ 8370-100, 8370-101.]

[Chapter 82.36 R.C.W. was derived from Rem. Supp. §§ 8327-1 to 8327-23 incl., as amended.]

[R.C.W. 82.16.010 was derived from Rem. Supp. 1949 § 8370-37.]

[R.C.W. 46.16.100 was derived from Rem. Supp. 1949 § 6312-17 part (2nd from last para.); same language also appears in next to last paragraph of ch. 15, L. 1950 Ex. Sess.]

Amendment.

SEC. 3. Section 82.12.010, R.C.W., as derived from section 9, chapter 228, Laws of 1949, is amended to read as follows:

For the purposes of this chapter:

Use tax; definitions. "Value of the article used."

(a) "Value of the article used" shall mean the consideration, whether money, credit, rights, or other property, expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the article of tangible personal property, the use of which is taxable under this chapter. The term includes, in addition to the consideration paid or given or contracted to be paid or given, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used

shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules and regulations as the tax commission may prescribe;

(b) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within this state;

"Use,"
"used,"
"using" and
"put to use."

(c) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08;

"Taxpayer"
and
"purchaser."

(d) "Retailer" means every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter;

"Retailer."

(e) The meaning ascribed to words and phrases in chapters 82.04 and 82.08, in so far as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter.

Application
of definitions
contained in
chs. 82.04 and
82.08 R.C.W.

[R.C.W. 82.12.010 was derived from Rem. Supp. 1949 § 8370-35.]

[For derivation of chapter 82.04 R.C.W., see 2nd note to sec. 2, *supra*.]

[Chapter 82.08 R.C.W. was derived from Rem. Supp §§ 8370-16 to 8370-28 incl., as amended, and § 8370-30. Rem. Supp. 8370-29 is codified as R.C.W. 82.32.270.]

SEC. 4. Section 82.12.030, R.C.W., as derived from section 8, chapter 228, Laws of 1949, is amended to read as follows:

Amendment.

The provisions of this chapter shall not apply:

Use tax;
exemptions.
Property of
non-
residents.

(a) In respect to the use of any article of tangible personal property brought into the state by a non-resident thereof for his use or enjoyment while temporarily within the state unless such property is used in conducting a non-transitory business ac-

tivity within the state; or in respect to the use by a non-resident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than three months, and which is not required to be registered or licensed under the laws of this state; or in respect to the use of household goods, personal effects and private automobiles by a *bona fide* resident of this state, if such articles were acquired by such person in another state while a *bona fide* resident thereof and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial;

Property
already
taxed.

(b) In respect to the use of any article of tangible personal property purchased at retail or acquired by lease or by gift if the sale thereof to, or the use thereof by, the present user or his lessor or donor has already been subjected to tax under chapter 82.08 or 82.12 and such tax has been paid by the present user or by his lessor or donor;

Property
taxable
under ch.
82.16 R.C.W.

(c) In respect to the use of any article of tangible personal property the sale of which is specifically taxable under chapter 82.16;

Property
primarily
used in
interstate
or foreign
commerce
transport.

(d) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce

Commission of any motor vehicle used primarily for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licenses pursuant to section 46.16.100 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state;

(e) In respect to the use of any article of tangible personal property which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States;

Use where tax prohibited by constitution.

(f) In respect to the use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes and motor vehicle fuel taxable under chapter 82.36: *Provided*, That the use of such fuel upon which a refund of the motor vehicle fuel tax is obtained shall not be exempt, and the director of licenses shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the tax commission;

Use of motor vehicle fuel.

(g) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), or (k) of section 82.16.010;

Public utilities.

Farm
auctions.

(h) In respect to the use of tangible personal property (including household goods) which have been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise;

Use by
certain relief
organizations
incorporated
under act of
congress.

(i) In respect to the use of tangible personal property by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same;

Livestock
for breeding
purposes.

(j) In respect to use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association;

Use of fuel
by extractor
or manufac-
turer.

(k) In respect to the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same;

High school
driver
training
autos.

(l) In respect to the use of motor vehicles, equipped with dual controls, which are loaned to school districts and used by such districts exclusively in connection with their high school driver training program.

[R.C.W. 82.12.030 was derived from Rem. Supp. 1949 § 8370-32.] [For derivation of chapter 82.08 R.C.W. see note to sec. 3, *supra*; for derivation of chapters 82.12, 82.16, and 82.36 R.C.W., and of R. C. W. 46.16.100 and 82.16.010, see notes to section 2, *supra*.]

Amendment.

SEC. 5. Section 82.32.050, R.C.W., as derived from section 20, chapter 225 [228], Laws of 1949, is amended to read as follows:

If, upon examination of any returns or from other information obtained by the tax commission

it appears that a tax or penalty has been paid less than that properly due, the commission shall assess against the taxpayer such additional amount found to be due and may add thereto interest at the rate of not more than six per cent *per annum* from the respective due dates of such additional amount until date of such assessment. The commission shall notify the taxpayer by mail of the additional amount and the same shall become due and shall be paid within ten days from the date of the notice, or within such further time as the commission may provide. If payment is not received by the commission by the due date specified in the notice, the commission may add a penalty of ten per cent of the amount of the additional tax found due. If the commission finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty per cent of the additional tax found to be due may be added.

Deficiency;
assessment
of additional
tax due.

Interest.

Notice.

Penalties.

No assessment or correction of an assessment for additional taxes due may be made by the commission more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter, (2) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (3) where a taxpayer has executed a written waiver of such limitation.

Time
limitation.

[R.C.W. 82.32.050 was derived from Rem. Supp. 1949 § 8370-188.]

SEC. 6. Section 82.32.060, R.C.W., as derived from section 21, chapter 228, Laws of 1949, is amended to read as follows:

If, upon application by a taxpayer for a refund or for an audit of his records, or upon an examination of the returns or records of any taxpayer, it is determined by the tax commission that within the two years immediately preceding the receipt of the commission of the application by the taxpayer for a refund or for an audit, or, in the absence of such

Taxes paid
in excess.

an application, within the two years immediately preceding the commencement by the commission of such examination, a tax has been paid in excess of that properly due, the excess amount paid within such period of two years shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at his option. No refund or credit shall be allowed with respect to any payments made to the commission more than two years before the date of such application or examination. Where a refund or credit may not be made because of the lapse of said two year period, the amount of the refund or credit which would otherwise be allowable for the portion of the statutory assessment period preceding the two year period may be offset against the amount of any tax deficiency which may be determined by the commission for such preceding period. Notwithstanding the foregoing, no refund or credit shall be granted with respect to taxes paid prior to May 1, 1950, but where a refund or credit may not be made because the tax was paid prior to May 1, 1950, the amount of the refund or credit which would otherwise be allowable for the portion of the statutory assessment period preceding May 1, 1950, may be offset against the amount of any tax deficiency which may be determined by the commission for such preceding period.

Credit or
refund.

Time
limitation.

Offset
against
deficiency.

Taxes paid
prior to
May 1, 1950.

Taxpayers
performing
United States
contracts;
refund or
credit.

Notwithstanding the foregoing limitations there shall be refunded or credited to taxpayers engaged in the performance of United States government contracts or sub-contracts the amount of any tax paid, measured by that portion of the amounts received from the United States, which taxpayer is required by contract or applicable federal statute to refund or credit to the United States, if claim for such refund is filed by the taxpayer with the tax commission within one year of the date that the amount of the refund or credit due to the United States is finally determined and filed within four

years of the date on which the tax was paid: *Provided*, That no interest shall be allowed on such refund.

Any such refunds shall be made by means of vouchers approved by the tax commission and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide.

Refunded by warrants.

Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in like manner, upon the filing with the tax commission of a certified copy of the order or judgment of the court. Interest at the rate of three per cent *per annum* shall be allowed by the tax commission and by any court on the amount of any refund or recovery allowed to a taxpayer for taxes, penalties, or interest paid by him after May 1, 1949, and interest at the same rate shall be allowed on any judgment recovered by a taxpayer for taxes, penalties, or interest paid after such date.

Judgments.

Interest.

[R.C.W. 82.32.060 was derived from Rem. Supp. 1949 § 8370-189.]

SEC. 7. Section 82.32.070, R.C.W., as derived from section 190, chapter 180, Laws of 1935, is amended to read as follows:

Amendment.

Every person liable for any fee or tax imposed by the preceding chapters shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the commission. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such

Persons liable for fee or tax; preservation of records.

Examination.

Out-of-state persons; compliance.

books and records as shall be required by the commission, or bears the cost of examination by an agent authorized or designated by the commission at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceeding, the correctness of any assessment of taxes made by the commission based upon any period for which such books, records, and invoices have not been so kept and preserved.

Failure to comply; effect.

[R.C.W. 82.32.070 was derived from Rem. Supp. § 8370-190.]

Amendment.

SEC. 8. Section 82.32.080, R.C.W., as derived from section 22, chapter 228, Laws of 1949, is amended to read as follows:

Payment of tax by check.

Payment of the tax may be made by uncertified check under such regulations as the commission shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Return or remittance deemed filed on post-marked date.

A return or remittance which is transmitted to the tax commission by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it.

Returns; extension of time for.

The tax commission, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension and any extension in excess of thirty days shall be conditional on payment of interest of one-half of one per cent of the amount of the tax for each thirty days or portion thereof from the date upon which such tax became due.

Interest.

The commission shall keep full and accurate records of all funds received and disbursed by it.

Commission;
records of
funds.

The commission may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, the taxpayer shall be deemed to have failed or refused to file a return, and shall be subject to the penalties provided in 82.32.100. In any such case, the taxpayer shall, in the discretion of the commission, be subject to a penalty in the amount of ten per cent of the tax or of one dollar, plus interest thereon at the rate of one per cent per month, even though the remittance, transmitted separately, is received by the commission before or at the same time as the return was received, and even though such remittance is received before the due date of the tax.

Return
without
remittance.

Penalties.

[R.C.W. 82.32.080 was derived from Rem. Supp. 1949 § 8370-191.]

[R.C.W. 82.32.100 appears, *infra*, as section 10 of this chapter.]

SEC. 9. Section 82.32.090, R.C.W., as derived from section 23, chapter 228, Laws of 1949, is amended to read as follows:

Amendment.

If payment of any tax due is not received by the tax commission within ten days of the due date thereof, there may be added to the tax a penalty of ten per cent of the amount of the tax; and if the tax is not received within forty days of the due date, there may be added an additional penalty of five per cent of the amount of the tax; and if the tax is not received within seventy days of the due date, there may be added an additional penalty of five per cent of the amount of the tax; but none of the penalties so added shall be less than one dollar.

Late returns;
penalties.

If a warrant be issued by the tax commission for the collection of taxes, increases, and penalties, there may be added thereto a penalty of five per cent of the amount of the tax, but not less than one dollar.

Failure to file return, etc.; maximum aggregate penalty.

Notwithstanding the foregoing, the aggregate of penalties imposed under this chapter for failure to file a return, late payment of any tax, increase, or penalty, or issuance of a warrant shall not exceed twenty-five per cent of the tax due, but shall in no case be less than the minimum penalties prescribed herein.

[R.C.W. 82.32.090 was derived from Rem. Supp. 1949 § 8370-192.]

Amendment.

SEC. 10. Section 82.32.100, R.C.W., as derived from section 24, chapter 228, Laws of 1949, is amended to read as follows:

Failure or refusal to make return; power of tax commission.

If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the tax commission shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the commission may examine the books, records, and papers of any such person and may take evidence, on oath, of any person, relating to the subject of inquiry.

Assessment on commission's determination.

As soon as the commission procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and penalties due, but such action shall not deprive such person from appealing to the superior court as hereinafter provided. To the assessment the commission may add, in addition to the

Appeal preserved.

Penalty.

Failure to file where no tax due.

penalty provided in 82.32.090, a further penalty of ten per cent of the amount of the tax for failure or refusal to make a return. If any taxpayer fails to file any return within ten days of the date provided for filing such return, and it appears that there was no tax due or paid for the period for which no return was filed, the commission may assess against such taxpayer a penalty not to exceed three dollars for such failure. The commission shall notify the tax-

Penalty.

Notice.

payer by mail of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within ten days from the date of such notice.

No assessment or correction of an assessment may be made by the commission more than four years after the close of the tax year, except (1) against a taxpayer who has not registered as required by this chapter, (2) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer, or (3) where a taxpayer has executed a written waiver of such limitation. Time limitation.

[R.C.W. 82.32.100 was derived from Rem. Supp. 1949 § 8370-193.] [R.C.W. 82.32.090 appears, *supra*, as section 9 of this chapter.]

SEC. 11. Section 82.32.170, R.C.W., as derived from section 29, chapter 225, Laws of 1939, is amended to read as follows: Amendment.

Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the tax commission, within the time limitation for refund provided in this chapter, by petition in writing for a hearing and correction of the amount paid, in which petition he shall set forth the reasons why the hearing should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The commission shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail thereof forthwith; if a hearing is granted, the commission shall notify the petitioner by mail of the time and place fixed therefor. After the hearing the commission may make such order as may appear to it just and lawful, and shall mail a copy of its order to the petitioner. Hearing and correction of amount of tax.

[R.C.W. 82.32.170 was derived from Rem. Supp. § 8370-199, part (2nd para.).] Notice.

Amendment. SEC. 12. Section 82.32.180, R.C.W., as derived from section 29, chapter 225, Laws of 1939, is amended to read as follows:

Appeal
to superior
court.

Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston County, within the time limitation for a refund provided in this chapter, or within thirty days after the date of the notice denying a hearing, or within thirty days after the date of the order provided in the preceding section. In the appeal the taxpayer shall set forth the amount of the tax imposed upon him which he concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the tax commission within the time herein specified and by filing the original thereof with proof of service with the clerk of the superior court of Thurston County. Within ten days after filing notice of appeal, the taxpayer shall file with the clerk of the superior court a good and sufficient surety bond payable to the state in the sum of two hundred dollars, conditioned to diligently prosecute the appeal and pay the state all costs that may be awarded if the appeal of the taxpayer is not sustained.

Bond.

Trial.

The trial in the superior court on the appeal shall be *de novo* and without the necessity of any pleadings other than the notice of appeal. The burden shall rest upon the taxpayer to prove that the tax as paid by him is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evi-

dence that is competent, relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either party shall be allowed to appeal to the supreme court in the same manner as other civil actions are appealed to that court.

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

Protest,
etc., not
necessary.

Other
proceedings
prohibited.

[R.C.W. 82.32.180 was derived from Rem. Supp. § 8370-199, part (3rd para.).] [Chapter 82.24 R.C.W. was derived from Rem. Supp. §§ 8370-82 to 8370-95 incl., as amended.]

SEC. 13. Section 82.32.210, R.C.W., as derived from section 25, chapter 228, Laws of 1949, is amended to read as follows:

Amendment.

If any tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the tax commission may issue a warrant under its official seal directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and/or personal property of the taxpayer found within his county, or so much thereof as may be necessary, for the payment of the amount of such warrant, together with interest thereon at the rate of one per cent of the amount of such warrant, for each thirty days or portion thereof after the date of such warrant, plus the cost of executing the warrant, and return the warrant to the commission and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. If, however, the commission believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which taxes or penalties might be satisfied and that any tax or

Tax
delinquency;
issuance
of tax
commission
warrant.

Levy and
sale.

Tax declared
immediately
due; when.

penalty will not be paid when due, it may declare the tax or penalty to be immediately due and payable and may issue a warrant immediately.

Failure to pay warrant; revocation of certificate of registration.

If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, the tax commission may by order issued under its official seal, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if such order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the commission have been entered, and until the taxpayer has deposited with the commission such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the commission may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer.

Reinstatement.

[R.C.W. 82.32.210 was derived from Rem. Supp. 1949, § 8370-202, part (1st para.).]

Amendment.

SEC. 14. Section 82.32.220, R.C.W., as derived from section 25, chapter 228, Laws of 1949, is amended to read as follows:

Docketing of warrants; lien on taxpayer's property.

The sheriff shall file with the clerk of the superior court of his county a copy of the warrant, and thereupon the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the tax or portion thereof and any increases and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a specific lien upon

all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom such warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of such personal property shall in any way affect such lien. The lien shall not be superior, however, to *bona fide* interests of third persons which had vested prior to the filing of the warrant when such third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiving of a regular rental on equipment. The amount of such warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of such clerk, and the sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court. Such warrants so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

Certain interests declared superior to lien.

Lien on all property.

Lien same as civil judgment.

Writs of garnishment.

The sheriff shall be entitled to fees as provided by law for his services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee of one dollar, which shall be added to the amount of the warrant.

Sheriff's fees.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied

Proceeds of sale credited on amount due.

and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant.

Surplus to taxpayer or lien holder.

Deficiency.

[R.C.W. 82.32.220 was derived from Rem. Supp. 1949, § 8370-202, part (2nd para.); the 3rd para. of Rem. Supp. 1949, § 8370-202 is codified in R.C.W. 82.32.230.]

Sec. 1; retro-spective effect.

SEC. 15. Section one of this act shall have retro-spective effect to August 1, 1950, as well as have prospective effect.

Vetoed.

SEC. 16. Section six of this act shall have retro-spective as well as prospective effect.

Emergency.

SEC. 17. This act is necessary for the immediate support of the state government and its existing public institutions and shall take effect May 1, 1951.

Passed the House April 5, 1951.

Passed the Senate April 4, 1951.

Approved by the Governor April 13, 1951, with the exception of the last unnumbered item of section 1, and section 16, which are vetoed.