

be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the (~~expiration of the time period for filing a~~) date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

Passed the Senate April 28, 1985.

Passed the House April 12, 1985.

Approved by the Governor May 16, 1985.

Filed in Office of Secretary of State May 16, 1985.

CHAPTER 315

[Substitute Senate Bill No. 4189]

INDUSTRIAL INSURANCE TAX ASSESSMENT ACTIONS—APPELLATE JURISDICTION—STATUTE OF LIMITATIONS

AN ACT Relating to appellate jurisdiction in industrial insurance tax assessment actions; amending RCW 51.16.060, 51.16.150, 51.16.155, 51.16.160, 51.16.190, 51.48.120, 51.48.140, and 51.52.050; adding a new section to chapter 51.48 RCW; and repealing RCW 51.48.130.

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

Sec. 1. Section 13, chapter 260, Laws of 1981 and RCW 51.16.060 are each amended to read as follows:

Every employer not qualifying as a self-insurer, shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workers were employed by it during the preceding calendar quarter, the total amount paid to such workers during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay its premium thereon to the appropriate fund. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter. The sufficiency of such statement shall be subject to the approval of the director: PROVIDED, That the director may in his or her discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual worker, his or her hours worked, his or her rate of pay and the class or classes in which such work was performed: PROVIDED FURTHER, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: PROVIDED FURTHER, That the department may promulgate rules and

regulations in accordance with chapter 34.04 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the department, and also subject to appropriate periodic adjustments made by the department based on actual payroll: AND PROVIDED FURTHER, That a temporary help company which provides workers on a temporary basis to its customers shall be considered the employer for purposes of reporting and paying premiums and assessments under this title according to the appropriate rate classifications as determined by the department: PROVIDED, That the employer shall be liable for paying premiums and assessments, should the temporary help company fail to pay the premiums and assessments under this title.

Sec. 2. Section 51.16.150, chapter 23, Laws of 1961 as amended by section 15, chapter 43, Laws of 1972 ex. sess. and RCW 51.16.150 are each amended to read as follows:

If any employer shall default in any payment to any fund, the sum due ((shall)) may be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, there shall also be collected a penalty equal to twenty-five percent of the amount of the defaulted payment or payments, and the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished.

Sec. 3. Section 87, chapter 289, Laws of 1971 ex. sess. and RCW 51.16.155 are each amended to read as follows:

In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater.

Sec. 4. Section 51.16.160, chapter 23, Laws of 1961 as amended by section 78, chapter 289, Laws of 1971 ex. sess. and RCW 51.16.160 are each amended to read as follows:

~~((All actions for the recovery of delinquent premiums, assessments, contributions, and penalties therefor due any of the funds under this title shall be brought in the superior court and))~~ In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact.

Sec. 5. Section 27, chapter 323, Laws of 1977 ex. sess. and RCW 51.16.190 are each amended to read as follows:

(1) "Action" means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action, other than in cases of fraud, to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum became due.

~~((2) Any claim by an employer for adjustment, recomputation, or alteration of any premium, assessment, contribution, penalty, or other sum thereto collected or claimed by the department shall be deemed waived if not made in writing to the supervisor of industrial insurance within three years of the date any such sum became due.))~~

(3) Any claim for refund or adjustment by an employer of any premium, assessment, contribution, penalty, or other sum collected by the department shall be made in writing to the department within three years of the date the sum became due.

Sec. 6. Section 32, chapter 43, Laws of 1972 ex. sess. and RCW 51.48.120 are each amended to read as follows:

If any employer should default in any payment due to the state fund the director or his designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by registered mail to his last known address, accompanied by an affidavit of service by mailing, or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that ~~((a petition for review must be filed with the superior court within thirty days of the date of service of the notice of assessment))~~ an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

NEW SECTION. Sec. 7. A new section is added to chapter 51.48 RCW to read as follows:

A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due. The burden of proof rests upon the employer to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140, and the department has the same right of review from the board's decisions as do employers.

Sec. 8. Section 34, chapter 43, Laws of 1972 ex. sess. and RCW 51.48.140 are each amended to read as follows:

~~((If a petition for review is not filed with the clerk of the superior court and served upon the director within thirty days from the date of service of the notice of assessment, as indicated in the affidavit of service by mailing of the department, or in the event of a final decree of any court in favor of the department in a petition for review, which is not appealed within the time allowed by law, the amount of the notice of assessment))~~ If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.030 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.04.130, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final ((and established)) and the director or ((his)) the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. 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 judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk.

Sec. 9. Section 51.52.050, chapter 23, Laws of 1961 as last amended by section 4, chapter 109, Laws of 1982 and RCW 51.52.050 are each amended to read as follows:

Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award,

shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

~~((Nothing in this section shall be construed to permit an appeal to the board from a notice of assessment issued pursuant to RCW 51.48.120.))~~

NEW SECTION. Sec. 10. Section 33, chapter 43, Laws of 1972 ex. sess., section 3, chapter 109, Laws of 1982 and RCW 51.48.130 are each repealed.

Passed the Senate April 22, 1985.

Passed the House April 26, 1985.

Approved by the Governor May 16, 1985.

Filed in Office of Secretary of State May 16, 1985.

CHAPTER 316

[Senate Bill No. 3812]

WATER POLLUTION CONTROL PENALTIES—REVISIONS

AN ACT Relating to water pollution control; amending RCW 90.48.144, 90.48.120, 90.48.340, 90.48.315, 90.48.142, and 90.48.350; and creating a new section.

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

NEW SECTION. Sec. 1. By January 1, 1986, the department of ecology shall report to the legislature all enforcement actions initiated from 1983 through November, 1985 regarding the protection of Puget Sound water quality. The report shall include the number and type of complaints received, the number of inspections conducted, the number of violations cited, the number of variances granted, the amount of penalties collected, the number of times maximum fines were collected, the number of penalties that were rescinded, and the number of criminal actions that were taken. The department of ecology shall also hold public hearings in December, 1985 in accordance with the administrative procedure act, chapter 34.04 RCW, regarding the adequacy of current enforcement activities. A report