
SUBSTITUTE HOUSE BILL 2389

State of Washington

65th Legislature

2018 Regular Session

By House Finance (originally sponsored by Representatives Sawyer, Lytton, Tarleton, Doglio, and Stonier)

1 AN ACT Relating to a tax levied and collected on the retail sale
2 of wireless devices used to access the internet; amending RCW
3 82.32.145; adding a new chapter to Title 82 RCW; and providing an
4 effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
7 internet crimes against children task force program, through the
8 United States department of justice, helps state and local law
9 enforcement agencies develop an effective response to technology-
10 facilitated child sexual exploitation and internet crimes against
11 children. This help encompasses forensic and investigative
12 components, training and technical assistance, victim services, and
13 community education. The program is a national network of sixty-one
14 coordinated task forces representing over three thousand five hundred
15 federal, state, and local law enforcement and prosecutorial agencies.

16 (2) The legislature created the Washington internet crimes
17 against children account in 2015 to support the Washington internet
18 crimes against children task force. The account is dedicated to
19 combat internet-facilitated crimes against children, promote
20 education on internet safety to the public and to minors, and rescue
21 children victims from abuse and exploitation.

1 (3) The legislature finds that perpetrators use wireless devices
2 used to access the internet to commit internet crimes against
3 children. It is the intent of the legislature to collect a forty cent
4 tax on each retail sale of wireless devices used to access the
5 internet and dedicate the revenue to the Washington internet crimes
6 against children account.

7 NEW SECTION. **Sec. 2.** (1) There is levied and collected a tax
8 equal to forty cents on each retail sale in this state of wireless
9 devices used to access the internet.

10 (2) The revenue collected under this section must be deposited in
11 the Washington internet crimes against children account.

12 (3) "Wireless devices used to access the internet" means
13 smartphones, laptops, desktops, tablets, and gaming consoles used to
14 access the internet.

15 NEW SECTION. **Sec. 3.** Chapter 82.32 RCW applies to the
16 administration of this chapter.

17 **Sec. 4.** RCW 82.32.145 and 2015 c 188 s 121 are each amended to
18 read as follows:

19 (1) Whenever the department has issued a warrant under RCW
20 82.32.210 for the collection of unpaid trust fund taxes from a
21 limited liability business entity and that business entity has been
22 terminated, dissolved, or abandoned, or is insolvent, the department
23 may pursue collection of the entity's unpaid trust fund taxes,
24 including penalties and interest on those taxes, against any or all
25 of the responsible individuals. For purposes of this subsection,
26 "insolvent" means the condition that results when the sum of the
27 entity's debts exceeds the fair market value of its assets. The
28 department may presume that an entity is insolvent if the entity
29 refuses to disclose to the department the nature of its assets and
30 liabilities.

31 (2) Personal liability under this section may be imposed for
32 state and local trust fund taxes.

33 (3)(a) For a responsible individual who is the current or a
34 former chief executive or chief financial officer, liability under
35 this section applies regardless of fault or whether the individual
36 was or should have been aware of the unpaid trust fund tax liability
37 of the limited liability business entity.

1 (b) For any other responsible individual, liability under this
2 section applies only if he or she willfully fails to pay or to cause
3 to be paid to the department the trust fund taxes due from the
4 limited liability business entity.

5 (4)(a) Except as provided in this subsection (4)(a), a
6 responsible individual who is the current or a former chief executive
7 or chief financial officer is liable under this section only for
8 trust fund tax liability accrued during the period that he or she was
9 the chief executive or chief financial officer. However, if the
10 responsible individual had the responsibility or duty to remit
11 payment of the limited liability business entity's trust fund taxes
12 to the department during any period of time that the person was not
13 the chief executive or chief financial officer, that individual is
14 also liable for trust fund tax liability that became due during the
15 period that he or she had the duty to remit payment of the limited
16 liability business entity's taxes to the department but was not the
17 chief executive or chief financial officer.

18 (b) All other responsible individuals are liable under this
19 section only for trust fund tax liability that became due during the
20 period he or she had the responsibility or duty to remit payment of
21 the limited liability business entity's taxes to the department.

22 (5) Persons described in subsection (3)(b) of this section are
23 exempt from liability under this section in situations where
24 nonpayment of the limited liability business entity's trust fund
25 taxes is due to reasons beyond their control as determined by the
26 department by rule.

27 (6) Any person having been issued a notice of assessment under
28 this section is entitled to the appeal procedures under RCW
29 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

30 (7) This section does not relieve the limited liability business
31 entity of its trust fund tax liability or otherwise impair other tax
32 collection remedies afforded by law.

33 (8) Collection authority and procedures prescribed in this
34 chapter apply to collections under this section.

35 (9) The definitions in this subsection apply throughout this
36 section unless the context clearly requires otherwise.

37 (a) "Chief executive" means: The president of a corporation; or
38 for other entities or organizations other than corporations or if the
39 corporation does not have a president as one of its officers, the

1 highest ranking executive manager or administrator in charge of the
2 management of the company or organization.

3 (b) "Chief financial officer" means: The treasurer of a
4 corporation; or for entities or organizations other than corporations
5 or if a corporation does not have a treasurer as one of its officers,
6 the highest senior manager who is responsible for overseeing the
7 financial activities of the entire company or organization.

8 (c) "Limited liability business entity" means a type of business
9 entity that generally shields its owners from personal liability for
10 the debts, obligations, and liabilities of the entity, or a business
11 entity that is managed or owned in whole or in part by an entity that
12 generally shields its owners from personal liability for the debts,
13 obligations, and liabilities of the entity. Limited liability
14 business entities include corporations, limited liability companies,
15 limited liability partnerships, trusts, general partnerships and
16 joint ventures in which one or more of the partners or parties are
17 also limited liability business entities, and limited partnerships in
18 which one or more of the general partners are also limited liability
19 business entities.

20 (d) "Manager" has the same meaning as in RCW 25.15.006.

21 (e) "Member" has the same meaning as in RCW 25.15.006, except
22 that the term only includes members of member-managed limited
23 liability companies.

24 (f) "Officer" means any officer or assistant officer of a
25 corporation, including the president, vice president, secretary, and
26 treasurer.

27 (g)(i) "Responsible individual" includes any current or former
28 officer, manager, member, partner, or trustee of a limited liability
29 business entity with an unpaid tax warrant issued by the department.

30 (ii) "Responsible individual" also includes any current or former
31 employee or other individual, but only if the individual had the
32 responsibility or duty to remit payment of the limited liability
33 business entity's unpaid trust fund tax liability reflected in a tax
34 warrant issued by the department.

35 (iii) Whenever any taxpayer has one or more limited liability
36 business entities as a member, manager, or partner, "responsible
37 individual" also includes any current and former officers, members,
38 or managers of the limited liability business entity or entities or
39 of any other limited liability business entity involved directly in
40 the management of the taxpayer. For purposes of this subsection

1 (9)(g)(iii), "taxpayer" means a limited liability business entity
2 with an unpaid tax warrant issued against it by the department.

3 (h) "Trust fund taxes" means taxes collected from purchasers and
4 held in trust under RCW 82.08.050, including taxes imposed under RCW
5 82.08.020 (~~and~~), 82.08.150, and section 2 of this act.

6 (i) "Willfully fails to pay or to cause to be paid" means that
7 the failure was the result of an intentional, conscious, and
8 voluntary course of action.

9 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act
10 constitute a new chapter in Title 82 RCW.

11 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2019.

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