
SENATE BILL 5543

State of Washington

64th Legislature

2015 Regular Session

By Senator Hill; by request of Department of Revenue

1 AN ACT Relating to improving the administration of unclaimed
2 property laws; amending RCW 63.29.020, 63.29.140, 63.29.170,
3 63.29.180, 63.29.290, 63.29.300, and 63.29.340; reenacting and
4 amending RCW 63.29.190; adding new sections to chapter 63.29 RCW;
5 creating a new section; and providing a contingent effective date.

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

7 **Sec. 1.** RCW 63.29.020 and 2011 c 116 s 1 are each amended to
8 read as follows:

9 (1) Except as otherwise provided by this chapter, all intangible
10 property, including any income or increment derived therefrom, less
11 any lawful charges, that is held, issued, or owing in the ordinary
12 course of the holder's business and has remained unclaimed by the
13 owner for more than three years after it became payable or
14 distributable is presumed abandoned.

15 (2) Property, with the exception of unredeemed Washington state
16 lottery tickets and unpresented winning parimutuel tickets, is
17 payable and distributable for the purpose of this chapter
18 notwithstanding the owner's failure to make demand or to present any
19 instrument or document required to receive payment.

1 (3) This chapter does not apply to claims drafts issued by
2 insurance companies representing offers to settle claims unliquidated
3 in amount or settled by subsequent drafts or other means.

4 (4) This chapter does not apply to property covered by chapter
5 63.26 RCW.

6 (5) This chapter does not apply to used clothing, umbrellas,
7 bags, luggage, or other used personal effects if such property is
8 disposed of by the holder as follows:

9 (a) In the case of personal effects of negligible value, the
10 property is destroyed; or

11 (b) The property is donated to a bona fide charity.

12 (6) This chapter does not apply to a gift certificate (~~subject~~
13 ~~to the prohibition against expiration dates under RCW 19.240.020 or~~
14 ~~to a gift certificate subject to RCW 19.240.030 through 19.240.060.~~
15 ~~However, this chapter applies to~~) lawfully issued under chapter
16 19.240 RCW, except lawfully issued gift certificates presumed
17 abandoned under RCW 63.29.110. Nothing in this section limits the
18 application of chapter 19.240 RCW.

19 (7) Except as provided in RCW 63.29.350, this chapter does not
20 apply to excess proceeds held by counties, cities, towns, and other
21 municipal or quasi-municipal corporations from foreclosures for
22 delinquent property taxes, assessments, or other liens.

23 (8)(a) This chapter does not apply to a premium paid by an
24 agricultural fair by check.

25 (b) For the purposes of this subsection the following definitions
26 apply:

27 (i) "Agricultural fair" means a fair or exhibition that is
28 intended to promote agriculture by including a balanced variety of
29 exhibits of livestock and agricultural products, as well as related
30 manufactured products and arts, including: Products of the farm home
31 and educational contests, displays, and demonstrations designed to
32 train youth and to promote the welfare of farmers and rural living;
33 and

34 (ii) "Premium" means an amount paid for exhibits and educational
35 contests, displays, and demonstrations of an educational nature. A
36 "premium" does not include judges' fees and expenses; livestock sale
37 revenues; or prizes or amounts paid for promotion or entertainment
38 activities such as queen contests, parades, dances, rodeos, and
39 races.

1 **Sec. 2.** RCW 63.29.140 and 2004 c 168 s 15 are each amended to
2 read as follows:

3 (1) A gift certificate or a credit memo issued in the ordinary
4 course of an issuer's business which remains unclaimed by the owner
5 for more than three years after becoming payable or distributable is
6 presumed abandoned.

7 (2) In the case of a gift certificate, the amount presumed
8 abandoned is the price paid by the purchaser for the gift
9 certificate. In the case of a credit memo, the amount presumed
10 abandoned is the amount credited to the recipient of the memo.

11 (3) A gift certificate that is lawfully issued under chapter
12 19.240 RCW and that is presumed abandoned under this section may, but
13 need not be, included in the report as provided under RCW
14 63.29.170(4). (~~(If a gift certificate that is presumed abandoned~~
15 ~~under this section is not timely reported as provided under RCW~~
16 ~~63.29.170(4), RCW 19.240.005 through 19.240.110 apply to the gift~~
17 ~~certificate.))~~

18 **Sec. 3.** RCW 63.29.170 and 2004 c 168 s 16 are each amended to
19 read as follows:

20 (1) A person holding property presumed abandoned and subject to
21 custody as unclaimed property under this chapter (~~(shall)~~) must
22 report to the department concerning the property as provided in this
23 section.

24 (2) The report must be verified and must include:

25 (a) Except with respect to travelers checks and money orders, the
26 name, if known, and last known address, if any, of each person
27 appearing from the records of the holder to be the owner of property
28 with a value of more than fifty dollars presumed abandoned under this
29 chapter;

30 (b) In the case of unclaimed funds of more than fifty dollars
31 held or owing under any life or endowment insurance policy or annuity
32 contract, the full name and last known address of the insured or
33 annuitant and of the beneficiary according to the records of the
34 insurance company holding or owing the funds;

35 (c) In the case of the contents of a safe deposit box or other
36 safekeeping repository or in the case of other tangible property, a
37 description of the property and the place where it is held and where
38 it may be inspected by the department, and any amounts owing to the
39 holder;

1 (d) The nature and identifying number, if any, or description of
2 the property and the amount appearing from the records to be due, but
3 items with a value of fifty dollars or less each may be reported in
4 the aggregate;

5 (e) The date the property became payable, demandable, or
6 returnable, and the date of the last transaction with the apparent
7 owner with respect to the property; and

8 (f) Other information the department prescribes by rule as
9 necessary for the administration of this chapter.

10 (3) If the person holding property presumed abandoned and subject
11 to custody as unclaimed property is a successor to other persons who
12 previously held the property for the apparent owner or the holder has
13 changed his or her name while holding the property, the holder shall
14 file with the report all known names and addresses of each previous
15 holder of the property.

16 (4) The report must be filed before November 1st of each year and
17 shall include, except as provided in RCW 63.29.140(3), all property
18 presumed abandoned and subject to custody as unclaimed property under
19 this chapter that is in the holder's possession as of the preceding
20 June 30th. On written request by any person required to file a
21 report, the department may postpone the reporting date.

22 (5)(a) Beginning July 1, 2016, reports due under this section
23 must be filed electronically in a form or manner provided or
24 authorized by the department. However, the department, upon request
25 or its own initiative, may relieve any holder or class of holders
26 from the electronic filing requirement under this subsection for good
27 cause as determined by the department.

28 (b) For purposes of this subsection, "good cause" means:

29 (i) A circumstance or condition exists that, in the department's
30 judgment, prevents the holder from electronically filing the report
31 due under this section; or

32 (ii) The department determines that relief from the electronic
33 filing requirement under this subsection supports the efficient or
34 effective administration of this chapter.

35 (6) After May 1st, but before August 1st, of each year in which a
36 report is required by this section, the holder in possession of
37 property presumed abandoned and subject to custody as unclaimed
38 property under this chapter (~~shall~~) must send written notice to the
39 apparent owner at the last known address informing him or her that
40 the holder is in possession of property subject to this chapter if:

1 (a) The holder has in its records an address for the apparent
2 owner which the holder's records do not disclose to be inaccurate;

3 (b) The claim of the apparent owner is not barred by the statute
4 of limitations; and

5 (c) The property has a value of more than seventy-five dollars.

6 **Sec. 4.** RCW 63.29.180 and 2005 c 367 s 2 are each amended to
7 read as follows:

8 (1) The department (~~shall~~) must cause a notice to be published
9 not later than November 1st, immediately following the report
10 required by RCW 63.29.170 in the printed or online version of a
11 newspaper of general circulation within this state, which the
12 department determines is most likely to give notice to the apparent
13 owner of the property.

14 (2) The published notice must be entitled "Notice to Owners of
15 Unclaimed Property" and contain a summary explanation of how owners
16 may obtain information about unclaimed property reported to the
17 department.

18 (3) Not later than September 1st, immediately following the
19 report required by RCW 63.29.170, the department (~~shall~~) must mail
20 a notice to each person whose last known address is listed in the
21 report and who appears to be entitled to property with a value of
22 more than seventy-five dollars presumed abandoned under this chapter
23 and any beneficiary of a life or endowment insurance policy or
24 annuity contract for whom the department has a last known address.
25 The department is not required to mail notice under this subsection
26 if the address listed in the report appears to the department to be
27 insufficient for the purpose of the delivery of mail.

28 (4) The mailed notice must contain:

29 (a) A statement that, according to a report filed with the
30 department, property is being held to which the addressee appears
31 entitled; and

32 (b) The name of the person reporting the property and the type of
33 property described in the report.

34 (5) This section is not applicable to sums payable on travelers
35 checks, money orders, and other written instruments presumed
36 abandoned under RCW 63.29.040.

37 **Sec. 5.** RCW 63.29.190 and 2005 c 502 s 4, 2005 c 367 s 3, and
38 2005 c 285 s 2 are each reenacted and amended to read as follows:

1 (1)(a) Except as otherwise provided in subsections (2) and (3) of
2 this section, a person who is required to file a report under RCW
3 63.29.170 (~~shall~~) must pay or deliver to the department all
4 abandoned property required to be reported at the time of filing the
5 report. Beginning July 1, 2016, holders who are required to file a
6 report electronically under this chapter must remit payments under
7 this section by electronic funds transfer or other form of electronic
8 payment acceptable to the department. However, the department, upon
9 request or its own initiative, may relieve any holder or class of
10 holders from the electronic payment requirement under this subsection
11 for good cause as determined by the department.

12 (b) For purposes of this subsection, "good cause" means:

13 (i) A circumstance or condition exists that, in the department's
14 judgment, prevents the holder from remitting payments due under this
15 section electronically; or

16 (ii) The department determines that relief from the electronic
17 payment requirement under this subsection supports the efficient or
18 effective administration of this chapter.

19 (2)(a) Counties, cities, towns, and other municipal and quasi-
20 municipal corporations that hold funds representing warrants canceled
21 pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and
22 property tax overpayments or refunds may retain the funds until the
23 owner notifies them and establishes ownership as provided in RCW
24 63.29.135. Counties, cities, towns, or other municipal or quasi-
25 municipal corporations (~~shall~~) must provide to the department a
26 report of property it is holding pursuant to this section. The report
27 (~~shall~~) must identify the property and owner in the manner provided
28 in RCW 63.29.170 and the department (~~shall~~) must publish the
29 information as provided in RCW 63.29.180.

30 (b)(i) A public transportation authority that holds funds
31 representing value on abandoned fare cards may retain the funds until
32 the owner notifies the authority and establishes ownership as
33 provided in RCW 63.29.135.

34 (ii) For the purposes of this subsection (2)(b), "public
35 transportation authority" means a municipality, as defined in RCW
36 35.58.272, a regional transit authority authorized by chapter 81.112
37 RCW, a public mass transportation system authorized by chapter 47.60
38 RCW, or a city transportation authority authorized by chapter 35.95A
39 RCW.

1 (3)(a) The contents of a safe deposit box or other safekeeping
2 repository presumed abandoned under RCW 63.29.160 and reported under
3 RCW 63.29.170 (~~shall~~) must be paid or delivered to the department
4 within six months after the final date for filing the report required
5 by RCW 63.29.170.

6 (b) If the owner establishes the right to receive the abandoned
7 property to the satisfaction of the holder before the property has
8 been delivered or it appears that for some other reason the
9 presumption of abandonment is erroneous, the holder need not pay or
10 deliver the property to the department, and the property will no
11 longer be presumed abandoned. In that case, the holder (~~shall~~) must
12 file with the department a verified written explanation of the proof
13 of claim or of the error in the presumption of abandonment.

14 (4) The holder of an interest under RCW 63.29.100 (~~shall~~) must
15 deliver a duplicate certificate or other evidence of ownership if the
16 holder does not issue certificates of ownership to the department.
17 Upon delivery of a duplicate certificate to the department, the
18 holder and any transfer agent, registrar, or other person acting for
19 or on behalf of a holder in executing or delivering the duplicate
20 certificate is relieved of all liability of every kind in accordance
21 with RCW 63.29.200 to every person, including any person acquiring
22 the original certificate or the duplicate of the certificate issued
23 to the department, for any losses or damages resulting to any person
24 by the issuance and delivery to the department of the duplicate
25 certificate.

26 **Sec. 6.** RCW 63.29.290 and 1983 c 179 s 29 are each amended to
27 read as follows:

28 (1) The expiration, after September 1, 1979, of any period of
29 time specified by contract, statute, or court order, during which a
30 claim for money or property can be made or during which an action or
31 proceeding may be commenced or enforced to obtain payment of a claim
32 for money or to recover property, does not prevent the money or
33 property from being presumed abandoned or affect any duty to file a
34 report or to pay or deliver abandoned property to the department as
35 required by this chapter.

36 (2) Except as otherwise provided in this section, no action or
37 proceeding may be commenced by the department with respect to any
38 duty of a holder under this chapter more than six years after the
39 duty arose.

1 (3) No action or proceeding may be commenced by the department
2 with respect to any assessment under this chapter more than three
3 years after the later of (a) the due date for payment of the
4 assessment including any extension granted by the department or (b)
5 thirty days after the final decision on any petition for review under
6 section 10 of this act.

7 **Sec. 7.** RCW 63.29.300 and 1983 c 179 s 30 are each amended to
8 read as follows:

9 (1) The department may require any person who has not filed a
10 report to file a verified report stating whether or not the person is
11 holding any unclaimed property reportable or deliverable under this
12 chapter. Nothing in this chapter requires reporting of property which
13 is not subject to payment or delivery.

14 (2) The department, at reasonable times and upon reasonable
15 notice, may examine the records of any person to determine whether
16 the person has complied with the provisions of this chapter. The
17 department may conduct the examination even if the person believes it
18 is not in possession of any property reportable or deliverable under
19 this chapter.

20 (3) If a person is treated under RCW 63.29.120 as the holder of
21 the property only insofar as the interest of the business association
22 in the property is concerned, the department, pursuant to subsection
23 (2) of this section, may examine the records of the person if the
24 department has given the notice required by subsection (2) of this
25 section to both the person and the business association at least
26 ninety days before the examination.

27 (4) Material obtained by any person during any examination
28 authorized under this chapter, or whether the holder was, is being,
29 or will be examined or subject to an examination, is confidential
30 information and may not be disclosed to any person except as provided
31 in RCW 63.29.380.

32 (5) If an examination of the records of a person results in the
33 disclosure of property reportable and payable or deliverable under
34 this chapter, the department must assess against the person the
35 amount that should have been reported and paid as determined or
36 approved by the department. An assessment must also include a demand
37 to deliver any property that should have been reported and delivered
38 to the department under this chapter. The assessment must include
39 interest and penalties as provided in RCW 63.29.340. The department

1 may assess the cost of the examination against the holder at the rate
2 of one hundred forty dollars a day for each examiner, but in no case
3 may the charges exceed the lesser of three thousand dollars or the
4 value of the property found to be reportable and payable or
5 deliverable. No assessment (~~(shall)~~) for costs may be imposed
6 (~~(where)~~) when the person proves that failure to report and deliver
7 property was inadvertent. The cost of examination made pursuant to
8 subsection (3) of this section may be imposed only against the
9 business association.

10 (~~(+5)~~) (6) If a holder fails after June 30, 1983, to maintain
11 the records required by RCW 63.29.310 and the records of the holder
12 available for the periods subject to this chapter are insufficient to
13 permit the preparation of a report, the department may (~~(require the~~
14 ~~holder to report and pay)~~) assess such amounts as may reasonably be
15 estimated from any available records.

16 (7)(a) Except as provided in (b) of this subsection, all amounts
17 and property identified in any assessment issued by the department
18 under this section must be paid or delivered to the department within
19 thirty days of issuance.

20 (b) If a timely petition for review of an assessment is filed
21 with the department as provided in section 10 of this act, only the
22 uncontested amounts and property must be paid or delivered to the
23 department within thirty days of the issuance of the assessment.

24 **Sec. 8.** RCW 63.29.340 and 2011 c 96 s 45 are each amended to
25 read as follows:

26 (1) A person who fails to pay or deliver property (~~(within the~~
27 ~~time prescribed by this chapter shall be)~~) when due is required to
28 pay to the department interest at the rate as computed under RCW
29 82.32.050(2) from the date the property should have been paid or
30 delivered until the property is paid or delivered(~~(, unless)~~).
31 However, the department must waive or cancel interest imposed under
32 this subsection if:

33 (a) The department finds that the failure to pay or deliver the
34 property within the time prescribed by this chapter was the result of
35 circumstances beyond the person's control sufficient for waiver or
36 cancellation of interest under RCW 82.32.105;

37 (b) The failure to timely pay or deliver the property within the
38 time prescribed by this chapter was the direct result of written
39 instructions given to the person by the department; or

1 (c) The extension of a due date for payment or delivery under an
2 assessment issued by the department was not at the person's request
3 and was for the sole convenience of the department.

4 ~~(2) ((A person who willfully fails to render any report, to pay~~
5 ~~or deliver property, or to perform other duties required under this~~
6 ~~chapter shall pay a civil penalty of one hundred dollars for each day~~
7 ~~the report is withheld or the duty is not performed, but not more~~
8 ~~than five thousand dollars, plus one hundred percent of the value of~~
9 ~~the property which should have been reported, paid or delivered.~~

10 ~~(3) A person who willfully refuses after written demand by the~~
11 ~~department to pay or deliver property to the department as required~~
12 ~~under this chapter or who enters into a contract to avoid the duties~~
13 ~~of this chapter is guilty of a gross misdemeanor and upon conviction~~
14 ~~may be punished by a fine of not more than one thousand dollars or~~
15 ~~imprisonment for up to three hundred sixty four days, or both.)) If a~~
16 person fails to file any report or to pay or deliver any amounts or
17 property when due under a report required under this chapter, there
18 is assessed a penalty equal to ten percent of the amount unpaid and
19 the value of any property not delivered.

20 (3) If an examination results in an assessment for amounts unpaid
21 or property not delivered, there is assessed a penalty equal to ten
22 percent of the amount unpaid and the value of any property not
23 delivered.

24 (4) If a person fails to pay or deliver to the department by the
25 due date any amounts or property due under an assessment issued by
26 the department to the person, there is assessed an additional penalty
27 of five percent of the amount unpaid and the value of any property
28 not delivered.

29 (5) Penalties under subsections (2) through (4) of this section
30 may be waived or canceled only if the department finds that the
31 failure to pay or deliver within the time prescribed by this chapter
32 was the result of circumstances beyond the person's control
33 sufficient for waiver or cancellation of penalties under RCW
34 82.32.105.

35 (6) If a person willfully fails to file a report or to provide
36 written notice to apparent owners as required under this chapter, the
37 department may assess a civil penalty of one hundred dollars for each
38 day the report is withheld or the notice is not sent, but not more
39 than five thousand dollars.

1 (7) If a holder, having filed a report, failed to file the report
2 electronically as required by RCW 63.29.170, or failed to pay
3 electronically any amounts due under the report as required by RCW
4 63.29.190, the department must assess a penalty equal to five percent
5 of the amount payable or deliverable under the report, unless the
6 department grants the taxpayer relief from the electronic filing and
7 payment requirements. Total penalties assessed under this subsection
8 may not exceed five percent of the amount payable and value of
9 property deliverable under the report.

10 (8) The penalties imposed in this section are cumulative.

11 NEW SECTION. Sec. 9. A new section is added to chapter 63.29
12 RCW to read as follows:

13 (1)(a) If, upon receipt of an application by a holder for a
14 refund or return of property, or upon an examination of the report or
15 records of any holder, it is determined by the department that any
16 amount, interest, or penalty has been paid in excess of that properly
17 due under this chapter or that any property was delivered to the
18 department under this chapter in error, then with the exception of
19 amounts delivered by the department to a claimant under RCW
20 63.29.240, the excess amount must be refunded to the holder, or the
21 property delivered in error returned to the holder, as the case may
22 be.

23 (b)(i) Except as otherwise provided in RCW 63.29.200(2) or this
24 section, no refund or return of property may be made for any amount
25 or property paid or delivered, or for any interest or penalty paid,
26 more than six years after the end of the calendar year in which the
27 payment or delivery occurred.

28 (ii) The expiration of the limitations period in this subsection
29 will not bar a refund or the return of property if a complete
30 application for such refund or return of property was received by the
31 department before the expiration of such limitations period.

32 (2) The execution of a written waiver signed by the holder and
33 the department will extend the time for making a refund of any
34 amounts paid, or a return of property delivered in error, during, or
35 attributable to, the years covered by the waiver if, prior to the
36 expiration of the waiver period, a complete application for refund or
37 return of such amounts or property is made by the holder or the
38 department discovers a refund is due or a return of property under
39 this section is required.

1 (3) For purposes of subsections (1) and (2) of this section, an
2 application for a refund or return of property is complete if it
3 includes information the department deems sufficient to substantiate
4 the holder's claim for a refund or return of property. If the
5 department receives an incomplete application before the expiration
6 of the limitations period in subsection (1)(b)(i) of this section or
7 before the expiration of an applicable waiver period as authorized
8 under subsection (2) of this section, the department must grant the
9 holder thirty days to provide sufficient documentation to
10 substantiate the holder's claim for a refund or return of property.
11 The department may, at its sole discretion, grant a holder up to an
12 additional ninety days to substantiate its claim. If the holder
13 provides sufficient substantiation documentation to the department
14 within the additional time granted but after the expiration of the
15 limitations period in subsection (1)(b)(i) of this section or an
16 applicable waiver period as authorized under subsection (2) of this
17 section, the holder will be deemed to have provided a complete
18 application before the expiration of such limitations or waiver
19 period.

20 (4) Any such refunds must be made by means of vouchers approved
21 by the department and by the issuance of state warrants drawn upon
22 and payable from such funds as the legislature may provide. However,
23 persons who are required to pay amounts due under this chapter
24 electronically must have any refunds paid by electronic funds
25 transfer if the department has the necessary account information to
26 facilitate a refund by electronic funds transfer.

27 (5) Any judgment for which a recovery is granted by any court of
28 competent jurisdiction, not appealed from, for amounts, penalties, or
29 interest paid by the holder, and costs, in a suit by any holder must
30 be paid in the same manner, as provided in subsection (4) of this
31 section, upon the filing with the department of a certified copy of
32 the order or judgment of the court.

33 (6) Interest at the rate computed under RCW 82.32.050(2) must be
34 added to the amount of any refund allowed by the department or any
35 court. Interest must be computed from the date the department
36 received the excess payment, until the date the refund is issued.

37 NEW SECTION. **Sec. 10.** A new section is added to chapter 63.29
38 RCW to read as follows:

1 Any person having been issued an assessment by the department, or
2 a denial of an application for a refund or return of property, under
3 the provisions of this chapter is entitled to a review by the
4 department conducted in accordance with the provisions of RCW
5 34.05.410 through 34.05.494, subject to judicial review under RCW
6 34.05.510 through 34.05.598. A petition for review under this section
7 is timely if received in writing by the department before the due
8 date of the assessment, including any extension of the due date
9 granted by the department, or in the case of a refund or return
10 application, thirty days after the department rejects the application
11 in writing, regardless of any subsequent action by the department to
12 reconsider its initial decision. The period for filing a petition for
13 review under this section may be extended as provided in a rule
14 adopted by the department under chapter 34.05 RCW or upon a written
15 agreement signed by the holder and the department.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 63.29
17 RCW to read as follows:

18 (1) Any person who has paid or delivered property to the
19 department under the provisions of this chapter, except one who has
20 failed to keep and preserve records as required in this chapter,
21 feeling aggrieved by such payment or delivery, may appeal to the
22 superior court of Thurston county. The person filing a notice of
23 appeal under this section is deemed the plaintiff, and the
24 department, the defendant.

25 (2) An appeal under this section must be made within:

26 (a) The time limitation for a refund provided in section 9 of
27 this act; or

28 (b) Thirty days after the department rejects in writing an
29 application for refund or return of property, regardless of any
30 subsequent action by the department to reconsider its initial
31 decision, if:

32 (i) An application for refund or return of property has been made
33 to the department within the time limitation provided in (a) of this
34 subsection (2) or the limitation provided in RCW 63.29.200(2), as
35 applicable; and

36 (ii) The time limitation provided under this subsection (2)(b) is
37 later than the time limitation provided in (a) of this subsection
38 (2).

1 (3)(a) In an appeal filed under this section, the plaintiff must
2 set forth the amount or property, if any, payable or deliverable on
3 the report or assessment that the plaintiff is contesting, which the
4 holder concedes to be the correct amount payable or deliverable, and
5 the reason why the amount payable or deliverable should be reduced or
6 abated.

7 (b) The appeal is perfected only by serving a copy of the notice
8 of appeal upon the department and filing the original with proof of
9 service with the clerk of the superior court of Thurston county,
10 within the time specified in subsection (2) of this section.

11 (4)(a) The trial in the superior court on appeal must be de novo
12 and without the necessity of any pleadings other than the notice of
13 appeal. At trial, the burden is on the plaintiff to (i) prove that
14 the amount paid by that person is incorrect, either in whole or in
15 part, or the property in question was delivered in error to the
16 department, and (ii) establish the correct amount payable or the
17 property required to be delivered to the department, if any.

18 (b) Both parties are entitled to subpoena the attendance of
19 witnesses as in other civil actions and to produce evidence that is
20 competent, relevant, and material to determine the correct amount
21 due, if any, that should be paid by the plaintiff.

22 (c) Either party may seek appellate review in the same manner as
23 other civil actions are appealed to the appellate courts.

24 (5) An appeal may be maintained under this section without the
25 need for the plaintiff to first:

26 (a) Protest against the payment of any amount due or reportable
27 under this chapter or to make any demand to have such amount refunded
28 or returned; or

29 (b) Petition the department for a refund, return of property, or
30 a review of its action as authorized in section 10 of this act.

31 (6) No court action or proceeding of any kind may be maintained
32 by the plaintiff to recover any amount paid, delivered, or reported
33 to the department under this chapter, except as provided in this
34 section or as may be available to the plaintiff under RCW 34.05.510
35 through 34.05.598.

36 (7) No appeal may be maintained under this section with respect
37 to matters reviewed by the department under the provisions of chapter
38 34.05 RCW.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 63.29
2 RCW to read as follows:

3 (1) The department may enter into an agreement in writing with
4 any holder with respect to any duties under this chapter or any
5 property or amounts due under this chapter, including penalties and
6 interest.

7 (2) Upon its execution by all parties, the agreement is final and
8 conclusive as to the periods, property, and any other matters
9 expressly covered by the agreement. Except upon a showing of fraud or
10 malfesance, or of misrepresentation of a material fact:

11 (a) The agreement may not be reopened as to the matters agreed
12 upon, nor may the agreement be modified, by any officer, employee, or
13 agent of the state, or the holder; and

14 (b) In any suit, action, or proceeding, such agreement, or any
15 determination, assessment, collection, payment, abatement, or refund,
16 or credit made in accordance with the agreement, may not be annulled,
17 modified, set aside, or disregarded.

18 (3) No agreement under this section may affect a holder's
19 obligations to an owner or an owner's rights against a holder, except
20 as expressly provided in RCW 63.29.200.

21 (4) No agreement under this section may include any
22 indemnification of any holder for amounts or property that has not
23 been paid or delivered to the department. Nothing in this subsection
24 (4) may be construed to affect the finality and conclusiveness of any
25 agreement under this section to the extent provided in subsection (2)
26 of this section.

27 NEW SECTION. **Sec. 13.** (1) Section 1 of this act applies only
28 with respect to gift certificates issued on or after the effective
29 date of section 1 of this act.

30 (2) Section 2 of this act applies only with respect to gift
31 certificates issued on or after the effective date of section 2 of
32 this act.

33 (3) Section 6 of this act applies only with respect to original
34 assessments issued on or after the effective date of section 6 of
35 this act.

36 (4) Section 8 of this act applies only with respect to reports
37 initially due, or property initially payable or deliverable, or other
38 duties that arise initially on or after the effective date of section
39 8 of this act.

1 (5) Section 9 of this act applies only with respect to (a)
2 requests for refund or the return of property, where the request is
3 originally received by the department on or after the effective date
4 of section 9 of this act, and (b) excess payments or property
5 improperly delivered, where such excess payments or improper delivery
6 are discovered by the department on or after the effective date of
7 section 9 of this act.

8 NEW SECTION. **Sec. 14.** (1) Section 8 of this act takes effect
9 July 1, 2016, unless the department of revenue determines that it is
10 unable to efficiently and effectively implement any of the provisions
11 of section 8 of this act, in which case section 8 of this act takes
12 effect July 1, 2017.

13 (2) The department of revenue must provide written notice of the
14 effective date of section 8 of this act to the chief clerk of the
15 house of representatives, the secretary of the senate, the office of
16 the code reviser, and others as deemed appropriate by the department,
17 as well as post notice of the effective date on its public web site.
18 Such notice must be provided no later than June 1, 2016.

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