

FINAL BILL REPORT

ESHB 2592

C 149 L 96

Synopsis as Enacted

Brief Description: Providing consistency to penalty and interest administration of the department of revenue.

Sponsors: By House Committee on Finance (originally sponsored by Representatives B. Thomas, Morris and Boldt; by request of Department of Revenue).

House Committee on Finance
Senate Committee on Ways & Means

Background: The Department of Revenue (DOR) administers a variety of tax programs. Each program provides for the application of interest and penalties when a taxpayer does not satisfy his or her reporting or tax obligations in a timely manner, or when a taxpayer overpays the amount of tax due. The interest rates and penalties applied are not uniform across all tax programs.

There are general administrative rules applicable to most of the existing tax programs. These general rules include rules on the imposition of interest and penalties.

Interest. A taxpayer who does not pay the entire amount of a tax obligation or a penalty on the due date must pay interest on the amount of the deficiency. The interest charged is equal to an annualized average of the federal short-term rate plus two percentage points. This rate is calculated by taking an arithmetical average of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the preceding calendar year.

A taxpayer who pays taxes, penalties, or interest in excess of the amount due is entitled to a refund of the overpayment and interest on the amount of the overpayment. The interest rate applicable to refunds is equal to an annualized average of the federal short-term rate plus one percentage point.

The DOR may hold in abeyance the collection of any contested tax obligation. The taxpayer must pay interest at the rate of 0.75 percent of the amount of the tax for each 30-day period from the date the tax obligation became due. In addition, the taxpayer may obtain a stay of collection for a tax assessment under some circumstances by filing a bond. The taxpayer must pay interest on the tax assessment at the rate of 1 percent of the assessment for each 30-day period from the date the assessment became due.

Penalties. A taxpayer may be penalized for failing to pay a tax on a return when due, failing to pay an assessed tax when due, having a collection warrant issued, disregarding written instructions, or intentionally evading a tax obligation.

A taxpayer who fails to pay a tax due on a return on the date due must pay a penalty of 5 percent of the amount of the tax. A 10 percent penalty is imposed if the tax is not paid within 30 days of the date due, and a 25 percent penalty is imposed if the tax is not paid within 60 days of the date due.

A taxpayer who fails to pay the entire amount of a tax assessed by the DOR on the date due must pay a penalty of 10 percent of the additional tax obligation due.

A penalty of 5 percent of the tax due is imposed if the DOR issues a warrant for the collection of taxes, increases, and penalties.

A 10 percent penalty is imposed on any additional tax amount found to be due because of the taxpayer's disregard of specific written instructions concerning tax obligations.

A taxpayer who has failed to pay the entire tax due with intent to evade a tax liability must pay an additional penalty of 50 percent of the tax liability not paid. However, this penalty may not be imposed if the penalty for failing to comply with written instructions is imposed.

The aggregate amount of penalties that may be imposed for failure to pay a tax due on a return, for late payment of an assessed tax, or for the issuance of a warrant cannot exceed 35 percent of the tax due.

Waiver. The DOR is required to waive or cancel any interest or penalty imposed for failure to pay a tax by the date due or failure to pay the entire tax obligation if the failure to pay resulted from circumstances beyond the taxpayer's control. The DOR has the authority to prescribe rules for waiver and cancellation of interest and penalties.

The general administrative rules on interest and penalties do not apply to several tax programs. These tax programs have alternative procedures for calculating interest and imposing penalties.

Summary: General administrative rules for the calculation and imposition of interest and penalties on tax obligations are amended. Various amendments are made to provisions of specific tax programs.

General Administrative Rules. The DOR's authority to waive or cancel any interest imposed for the failure to pay a tax obligation on time when the failure to pay was the

result of circumstances beyond the control of the taxpayer is removed. The imposition of interest must be waived by the DOR if the taxpayer's failure to pay on time resulted from directions given to the taxpayer by the DOR or if the extension of a due date was not at the request of the taxpayer and was for the DOR's convenience.

Requirements for the waiver and cancellation of penalties, in addition to circumstances beyond the control of the taxpayer, are provided. At the request of the taxpayer, the DOR must waive any penalty imposed for failure to pay a tax by the due date if (1) the request for a waiver is for required tax returns for business and occupation tax, retail sales tax, use tax, local retail sales and use taxes, public utility tax, oil spill response tax, enhanced food fish tax, leasehold excise tax, and timber and forest land taxes; and (2) the taxpayer had timely filed and paid on all tax returns due for that program during the two years preceding the return period for which a waiver is requested.

If a taxpayer fails to pay the entire amount of a penalty due, interest may not be charged against the additional penalty that has not been paid. The interest rate chargeable against any tax obligation held in abeyance or stayed by the DOR after the effective date of this act is changed to an annualized average of the federal short-term rate plus two percentage points. The time periods for determining the amount of a penalty for late payment are changed from "30-day" periods to "monthly" periods. A definition of "return" is provided.

Real Estate Excise Tax. Real estate excise taxes are subject to the following general administrative penalty provisions: (1) 10 percent penalty for failure to pay a tax assessed by the DOR by the date due; (2) 5 percent penalty if a warrant is issued for the collection of taxes; (3) 10 percent penalty on additional tax due resulting from disregarding specific written instructions; (4) penalties for failure to pay a tax due on a return, failure to pay an assessed tax, and issuance of a warrant are limited to 35 percent of the tax; and (5) the DOR may not impose both an evasion penalty and the penalty for disregarding specific written instructions.

If the DOR determines that all or a portion of a real estate excise tax is unpaid, the DOR must notify the taxpayer, and the additional amount becomes due within 30 days from the date of notice.

Cigarette Tax. Interest may not be assessed against any penalty imposed for failure to affix the required stamps or pay any tax due. The interest rate that the taxpayer must pay on any seized property that is returned to the taxpayer is changed from 1 percent for each 30-day period to an annualized average of the federal short-term rate plus two percentage points.

Unclaimed Property. The interest rate applicable if a person fails to deliver unclaimed property to the DOR as required by law is changed from the maximum

amount allowed under the usury law to an annualized average of the federal short-term rate plus two percentage points.

Public Utility District Privilege Taxes. The interest rate applicable for failure to pay the public utility privilege tax by the due date is changed from 6 percent per year to an annualized average of the federal short-term rate plus two percentage points. Penalties are provided for failure to pay the tax by the due date. A 5 percent penalty applies if the tax is not paid on or before the due date. A 10 percent penalty applies if the tax is not paid within one month of the due date. A 20 percent penalty applies if tax is not paid within two months of the due date.

Estate and Transfer Tax. The interest rate applicable to taxes not paid by the due date and to tax refunds, for periods after the effective date of this act, are changed to an annualized average of the federal short-term rate plus two percentage points.

Use Tax. The period of time during which a person may apply to the DOR for a refund is changed from two years after payment of the tax to the four-year statutory period for assessment of taxes, penalties, and interest. The gross misdemeanor offense of willfully misrepresenting, or failing or refusing to declare, the value of a vehicle on an application for registration is removed.

Votes on Final Passage:

House	97	0	
Senate	44	0	(Senate amended)
House	89	0	(House concurred)

Effective: January 1, 1997