

HOUSE BILL REPORT

ESHB 2540

As Passed Legislature

Title: An act relating to modifying the penalty for taxpayers that do not submit an annual survey or report.

Brief Description: Modifying the penalty for taxpayers that do not submit an annual survey or report.

Sponsors: House Committee on Finance (originally sponsored by Representatives Nealey, Tharinger, Harris, Walsh, Ryu, Griffey, Hayes, Manweller, Pike, Smith, Stokesbary, MacEwen, Van De Wege, Johnson, Magendanz, Wilson, McBride, Hargrove, Schmick, Pollet and Van Werven).

Brief History:

Committee Activity:

Finance: 2/2/16, 2/8/16 [DPS].

Floor Activity:

Passed House: 2/16/16, 98-0.

Passed Senate: 3/2/16, 47-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Reduces the penalty for failure to submit an Annual Tax Incentive Survey (Survey) or an Annual Tax Incentive Report (Report) from 100 percent of the tax preference claimed to 35 percent the first time a taxpayer is assessed a penalty for failing to submit the Survey or Report; with an additional 15-percent penalty for failure to submit any future Survey or Report for the same tax preference.
- Clarifies that any taxpayer who has filed an appeal regarding taxes, penalties, and interest for failure to file a Survey before January 1, 2016, and the appeal is pending before the Department of Revenue or Washington State Board of Tax Appeals as of the effective date of the bill, is only assessed a 35-percent penalty for any calendar year included in an appeal.
- Eliminates the authorization to apply interest on penalties assessed for failure to submit a Survey or Report.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Changes the due date for both the Survey and Report from April 30 to May 31.
- Changes the due date for the Department of Revenue annual descriptive statistics report from December 1 to December 31.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Lytton, Chair; Robinson, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Frame, Manweller, Pollet, Reykdal, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

Staff: Dominique Meyers (786-7150).

Background:

Over the last 10 years, the Legislature has required taxpayers to file the Annual Tax Incentive Survey (Survey) or the Annual Tax Incentive Report (Report) in order to qualify for a variety of new economic development-related tax preferences, or in some cases, when extending existing economic development-related preferences. There are currently 32 economic development-related tax preferences that require one of these supplemental filings. While the Report and the Survey are similar in that both documents require the annual reporting of employment and wage information, there are differences in some of the required information that must be provided by a taxpayer. Both the Report and Survey are due on April 30, unless a taxpayer is granted an extension.

A taxpayer that qualifies for a preference but does not submit the Survey or Report is subject to a penalty of 100 percent of the tax preference claimed. In addition to the penalty, interest applies.

Summary of Engrossed Substitute Bill:

The penalty for failure to submit a Survey or Report is reduced from 100 percent of the tax preference claimed to 35 percent for the first time a taxpayer is assessed a penalty for failing to submit the Survey or Report; with an additional 15-percent penalty for failure to submit any future Survey or Report for the same tax preference. For a taxpayer who has filed an appeal regarding taxes, penalties, and interest for failure to file a Survey or Report, before January 1, 2016, and the appeal is pending before the Department of Revenue (DOR) or Washington State Board of Tax Appeals (State Board) as of the effective date of the bill, the penalty is 35 percent of the amount of tax preference claimed for any calendar year in which an annual Survey or Report was not submitted for the same tax preference.

The authorization for the DOR to apply interest to penalties for failure to submit a Survey or Report is removed.

The due date for submitting the annual Survey or Report is May 31. The due for the DOR descriptive statistics report is December 31.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect July 1, 2016.

Staff Summary of Public Testimony:

(In support) The DOR did not catch the taxpayer error but the taxpayer came forward to the DOR when they found the error. The DOR is still required to assess the 100-percent penalty, even when a taxpayer comes forward on their own. The penalty and behavior do not match up. Taxpayers that purposefully evade taxes only have a 50-percent penalty, but taxpayers that pay taxes but do not file the Survey or Report are assessed a 100-percent penalty. The bill will provide clarity and certainty for taxpayers that qualify for incentives. The intent of the incentive is working. A mistake was found and Reser's Fine Foods, Inc. worked to comply by filing the missed Surveys. Once an audit occurred, Reser's Fine Foods, Inc. had no other assessment other than the 100-percent penalty for not filing the Survey. It is odd that taxpayers that willfully avoid paying taxes have a penalty of only 50 percent and the mistake made by not filing Surveys has a 100-percent penalty. The 100-percent penalty is punitive and unnecessarily severe.

The DOR's hands are tied and the DOR has no authority to help a taxpayer that inadvertently didn't file, we are required to assess the 100 percent penalty.

(Opposed) None.

(Other) The 100 percent seems too high as a penalty, but the concern lies with the 10-percent penalty not being high enough to ensure taxpayers file the Surveys and Reports as required. There could be some taxpayers that think of a 10 percent penalty as the cost of doing business and stop filing reports and just pay the penalty. Continued work on finding the right flexibility for the DOR along with the right penalty rate is needed and appreciated.

Persons Testifying: (In support) Eric Lohnes, Association of Washington Business; and Paul Leavy, Reser's Fine Foods, Inc.

(Other) Drew Shirk, Department of Revenue; and Nick Federici, Revenue Coalition.

Persons Signed In To Testify But Not Testifying: None.