Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 2099

Brief Description: Improving tax administration by waiving penalties and imposing interest in certain situations involving delayed tax payments, and by extending a statute of limitations period for certain egregious tax crimes.

Sponsors: Representatives Berg, Frame and Sutherland; by request of Department of Revenue.

Brief Summary of Bill

- Codifies the Department of Revenue's voluntary disclosure agreement program for voluntary registrants
- Increases the statute of limitations for the prosecution of the class C felony of filing fraudulent or false returns and for the use of sales suppression software to six years after the date of commission or discovery.

Hearing Date: 2/1/22

Staff: Tracey Taylor (786-7152).

Background:

Delinquent Taxes.
When a taxpayer is issued a deficiency assessment, interest is added to the additional tax due. Additional amounts due must be paid within 30 days of the deficiency notice.

If the date for filing a tax return, statement, or remittance falls on a weekend or legal holiday, the filing shall be considered timely if filed on the next business day. If payment is not made by the due date of the notice, additional interest shall be computed until the date of payment.

Current tax law provides a variety of penalties related to timely and accurate filing and payment of excise taxes.

Penalties are added to the taxes due under the following circumstances: late filing of tax returns; late payment of taxes (including tax assessments and warrants); failure to register as a taxpayer; disregard of specific written instructions; failure to remit sales tax to the seller; evasion; and misuse of resale certificates or reseller permits. Penalties may be waived or cancelled only upon finding that the underpayment or failure to pay tax was the result of circumstances beyond the control of the taxpayer.

Interest is added to the amount of outstanding taxes. However, interest is not added to the amount of any penalties assessed. The rate of interest is calculated as an average of the federal short-term rate plus two percentage points. Interest may only be waived or cancelled if the failure to pay was the direct result of written instructions or if a due date was extended for the sole convenience of the Department of Revenue (DOR).

Interest is computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. For annual filers with an April 15 due date, interest is computed from the last day of April immediately following each such reporting period included in the notice, until the due date of the notice.

When taxpayers make payments, amounts are applied first to interest, then penalties, and finally to the tax due.

<u>Voluntary Compliance</u>.
The DOR has two programs to encourage the compliance of taxpayers who have engaged in taxable activities in Washington without a valid Washington business license. Under the current backdated business license process, the DOR allows a business to apply for a business license with a retroactive open date and receive an extended due date to file and pay their tax returns. If the business files and pays all returns by the extended due date delinquent penalties and, in certain circumstances, interest may be waived by the DOR.

In addition, the DOR has a voluntary disclosure agreement (VDA) program that encourages unregistered businesses to comply with Washington's tax laws by voluntarily registering with the DOR and paying prior tax obligations. Taxpayers are assessed interest, but not penalties, on the delinquent tax amounts. If a business has collected retail sales or use taxes, the penalties in RCW 82.32.050 apply to the amount of retail sales or use tax only. Participating taxpayers receive the benefits of a full or partial waiver of penalties and a reduction in the number of prior years for which delinquent taxes must be paid.

<u>Fraudulent Returns and Sales Suppression Software.</u>
It is a class C felony for any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax. In addition, it is a

class C felony to knowingly sell, purchase, install, transfer, manufacture, create, design, update, repair, use, possess, or otherwise make available, in this state, any automated sales suppression device or phantom-ware. The statute of limitations for prosecution of these violations is three years from the date of their commission.

Business Licensing.
A business is required to register with the DOR and get a business license if one of eight conditions are met:
- the business is required to get city and state endorsements;
- the business is being conducted using a name other than one's full legal name;
- the business plans on hiring employees within the next 90 days;
- the business sells a product or service that requires the collection of sales tax;
- the business has gross income of $12,000 per year or more;
- the business is required to pay taxes or fees to the DOR;
- the business is a buyer or processor of specialty wood products; or
- the business meets the nexus threshold reporting requirements.

When a business applies for a business license, it will receive a unified business identifier number. This number is unique to the business. There is a business license application fee to open or reopen a business; however, adding an additional location or adding certain endorsements may not have a cost.

Summary of Bill:

When the DOR grants additional time for filing any return and the tax was not paid in full by the extended due date, interest shall be computed from first day of the month following the statutory due date until the tax has been paid in full. If a due date is extended due to a declaration of emergency, no interest shall be computed if full payment of tax is made on or before the extended due date set by the DOR. These changes apply to extensions granted on or after January 1, 2023.

The DOR's VDA program is codified. The DOR may enter into an agreement with a voluntary registrant for taxable periods within the statute of limitations for tax assessments to receive some penalty relief. Under the VDA program, the DOR may grant to voluntary registrants a waiver of the late payment of return, substantial underpayment, and unregistered business penalties. If the Department determines that the facts differ materially from what the voluntary registrant provided, the voluntary registrant does not qualify for penalty relief.

A "voluntary registrant" is a person who engages in business with taxable activity while unregistered, submits a business license application to the DOR prior to the DOR initiating contact with the person, and discloses all taxable activity. In addition, a voluntary registrant has not engaged in fraud, evasion, or any other misrepresentation of any tax obligation. The voluntary registrant must attest to satisfying all the requirements in order to qualify.

The DOR will be considered as "initiating contact" with a person, or any of their affiliates and related entities, if the contact is for enforcement purposes, is clearly intended to reach the person and any of its affiliates or related entities and the contact requires a response from the person and its affiliates or related entities. An affiliate is defined as a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; where "control" means the possession, direct or indirect, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

The prosecution statute of limitations for filing fraudulent or false returns and for the use of sales suppression software is increased to six years from the date of commission or discovery.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: This bill takes effect on January 1, 2023, except for section 5, relating to the statute of limitations change, which takes effect 90 days after final adjournment of the session in which it is passed.