

# HOUSE BILL REPORT

## SHB 2099

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### As Passed Legislature

**Title:** An act relating to 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.

**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:** House Committee on Finance (originally sponsored by Representatives Berg, Frame and Sutherland; by request of Department of Revenue).

**Brief History:**

**Committee Activity:**

Finance: 2/1/22, 2/7/22 [DPS].

**Floor Activity:**

Passed House: 2/26/22, 86-9.

Passed Senate: 3/10/22, 47-2.

Passed Legislature.

### Brief Summary of Substitute Bill

- Provides for the calculation of interest when the Department of Revenue grants a filing extension for any return.
- 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.

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### HOUSE COMMITTEE ON FINANCE

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

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Frame, Chair; Berg, Vice Chair; Walen, Vice Chair; Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary and Thai.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Dufault, Assistant Ranking Minority Member; Young.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Chase and Vick.

**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 will be considered timely if filed on the next business day. If payment is not made by the due date of the notice, additional interest will 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.

#### Fraudulent Returns and Sales Suppression Software.

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 Substitute 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 will 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 will 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 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:** Available.

**Effective Date:** This bill takes effect on January 1, 2023, except for section 4, relating to the statute of limitations change, which takes effect 90 days after final adjournment of the session in which it is passed.

**Staff Summary of Public Testimony:**

(In support) This is a DOR-request bill that codifies its voluntary compliance agreement (VDA) program, addresses the calculation of interest when an extension is granted, and lengthens the statute of limitations in cases involving significant tax crimes. The DOR's VDA program helps ease the burden of compliance for persons who have not obtained a business license. It incentivizes the persons to come forward and cure their licensing and tax mistakes. In addition, the DOR and the Office of the Attorney General have found that additional time is warranted to assist in prosecuting significant tax crimes such as fraud and the use of sales suppression software, also known as zappers.

(Opposed) None.

(Other) The language around the notice to affiliates in the VDA section is concerning. The language expands the discretion of the DOR while making it unclear which and when affiliates may have notice of the DOR's contact. There are many scenarios that would leave a taxpayer exposed to allegations of wrongdoing when entering into a VDA, including liability for newly acquired entities. More work needs to be done to address the unintended consequences and make the VDA truly workable.

**Persons Testifying:** (In support) Representative April Berg, prime sponsor; and Steve Ewing, Department of Revenue.

(Other) Tommy Gantz, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.