

HOUSE BILL REPORT

HB 1097

As Reported By House Committee On:

Law & Justice

Title: An act relating to the waiver or cancellation of penalties for certain estate tax returns.

Brief Description: Waiving penalties for certain estate tax returns.

Sponsors: Representatives Sheahan, Appelwick and Padden.

Brief History:

Committee Activity:

Law & Justice: 1/25/95, 1/31/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Padden, Chair; Delvin, Vice Chair; Hickel, Vice Chair; Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Sheahan; Smith and Veloria.

Staff: Bill Perry (786-7123).

Background: A person who is required to file a federal estate tax return form is subject to penalty under state law for failure to file a state return in a timely manner. The penalty is imposed by the Department of Revenue at the rate of 5 percent of the tax due for each month that the return is late. The penalty is in addition to interest charged on the tax amount at 12 percent per annum. The penalty may not exceed 25 percent of the tax amount due. (RCW 83.100.070)

In the case of late filings with respect to excise taxes, the Department of Revenue is given discretion to waive penalties when the delinquency is due to circumstances beyond the control of the taxpayer. (RCW 83.32.105) The department has adopted rules that provide, among other things, that taxpayer ignorance of the law will not result in a penalty waiver. (WAC 458-20-228(6)) The rules provide for waivers if:

- o A return was inadvertently mailed to the wrong agency;

- o The taxpayer received erroneous written information from the department that caused the delinquency;
- o Delay was caused by death or illness in the taxpayer's immediate family;
- o Delay was caused by the unavoidable absence of the taxpayer;
- o Delay was caused by destruction of the taxpayer's records;
- o The department was late in getting forms to the taxpayer.

Summary of Substitute Bill: Two changes are made with respect to the penalty provisions that apply to the late filing of estate tax returns.

First, an absolute cap of \$10,000 is imposed. That is, the tax is computed at the rate of 5 percent of the tax due for each month of delinquency, up to the lesser of 25 percent of the tax or \$10,000.

Second, the Department of Revenue is given explicit rule making authority to provide for the waiver or cancellation of any penalty. The department is required to waive or cancel a penalty when delinquency is "the result of circumstances beyond the control" of the person responsible for filing the estate tax return.

Substitute Bill Compared to Original Bill: The substitute bill makes a technical clarification and provides a July 1, 1995 effective date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: The current penalty provision is automatic and can be too harsh. The bill provides discretion for the Department of Revenue to waive penalties in appropriate cases.

Testimony Against: None.

Testified: Gary O'Neil, Department of Revenue (pro); and George Mastrodonato, Washington State Bar Association, Tax Section (pro).