

SENATE BILL REPORT

SB 5121

As Reported By Senate Committee On:
Ways & Means, February 27, 1997

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

Brief Description: Waiving or cancelling interest or penalties for certain estate tax returns.

Sponsors: Senators Johnson, Newhouse and Winsley.

Brief History:

Committee Activity: Ways & Means: 2/20/97, 2/27/97 [DPS].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5121 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Brown, Fraser, Hochstatter, Kohl, Long, Loveland, McDonald, Rossi, Schow, Snyder, Spanel, Swecker, Thibaudeau, Winsley and Zarelli.

Staff: Terry Wilson (786-7433)

Background: The state imposes a tax on the transfer of property at death. The tax is equal to the amount of tax authorized as a credit against the federal estate tax. As a result, the tax would be paid to the federal government if the state did not impose it. Because the tax is tied to the federal credit, it only applies to estates valued at more than \$600,000 (or \$1,200,000 for a community property couple). The state tax return is due when the federal tax return is due, which is usually nine months after the date of death.

The executor is required to file the federal estate tax return and is subject to a penalty under state law for failure to file. The penalty is equal to 5 percent of the tax due for each month that the return is late, not to exceed 25 percent of the tax due. This penalty is in addition to interest charged on the amount of tax due at 2 percent above the average federal short term rate.

With respect to excise taxes, the Department of Revenue is required to waive penalties when the delinquency is due to circumstances beyond the control of the taxpayer. The department has adopted rules that provide for waivers if:

- o A return was inadvertently mailed to the wrong agency.
- o Delay was caused by death or illness in the taxpayer's or accountant'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 taxpayer received erroneous written information from the department that caused the delinquency.
- o The department was late in getting forms to the taxpayer.

Current law also requires waiver of penalties if the taxpayer requests the waiver for a tax return that is filed on a regular basis and the taxpayer has timely filed all tax returns with the tax due for the previous 24 months.

Summary of Substitute Bill: The Department of Revenue is required to waive penalties when the 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 original bill provided a limit on the maximum penalty for failure to file an estate tax return of \$10,000.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill requires a penalty waiver like the excise tax penalty waiver. There are no circumstances under which the department can currently waive penalties. Being one day late on an estate with \$1 million in tax liability results in a \$50,000 penalty. An executor filing a tax return may only do this once in his life. It is not like the penalty is needed to prevent future returns from being filed late. A \$10,000 penalty is still a significant penalty.

Testimony Against: None.

Testified: George Mastrodonato, WA State Bar Assn. Taxation Section (pro).