

# SENATE BILL REPORT

## SB 6892

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As Passed Senate, December 11, 2010

**Title:** An act relating to establishing a temporary penalty and interest waiver program for certain penalties and interest on delinquent state and local sales and use taxes, state business and occupation taxes, and state public utility taxes.

**Brief Description:** Establishing a temporary penalty and interest waiver program for certain excise taxes administered by the department of revenue.

**Sponsors:** Senator Murray; by request of Department of Revenue.

**Brief History:**

**Committee Activity:** Ways & Means: 12/11/10 [DPS].

**Second Special Session:** Passed Senate: 12/11/10, 38-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6892 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Carrell, Hobbs, Honeyford, Keiser, Murray, Oemig, Parlette, Pflug, Regala, Rockefeller and Schoesler.

**Staff:** Dianne Criswell (786-7433)

**Background:** 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. The rates for calendar year 2010 and 2011

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are 3 percent. Interest may only be waived or cancelled if the failure to pay was the direct result of written instructions or a due date was extended for the sole convenience of the Department of Revenue (DOR).

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

**Summary of Bill:** DOR is authorized to waive most penalties and interest added to the following taxes which became due before February 1, 2011: state business and occupation tax (B&O), state public utility tax (PUT), state or local sales or use taxes.

To obtain an interest and penalty waiver, a taxpayer must meet the following conditions:

- By April 18, 2011, file all outstanding tax returns and any amended tax returns relating to the tax liabilities for which a penalty and interest waiver is requested;
- By April 18, 2011, complete and deliver a request form for a waiver;
- By May 1, 2011, make full payment of taxes due for which a penalty and interest waiver are requested;
- Timely file all current tax returns and make all tax payments due from January 31, 2011, and before May 1, 2011;
- By May 1, 2011, pay any penalties added for evasion or misuse of reseller permit or resale certificate; and
- The taxpayer must never have been a defendant in a criminal prosecution related to an offense involving the failure to collect or pay the proper amount of any excise tax.

Taxpayers receiving penalty or interest waivers under this legislation may not seek a refund or otherwise challenge their tax liability paid under these conditions.

DOR may not waive penalties for tax evasion or misuse of reseller permits or resale certificates.

Payments made to DOR prior to May 1, 2011, are applied first to B&O, PUT, and sales and use taxes, then to any other taxes, and then to penalties or interest.

If taxpayers are current for tax returns due as of November 25, 2010, tax liability that accrues after that date would not qualify for the temporary waiver of interest and penalties. As a condition to request a waiver of penalties and interest, a taxpayer may never have been assessed penalties for evasion or misuse of a reseller permit or resale certificate.

**Appropriation:** None.

**Fiscal Note:** Requested on December 10, 2010.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect on February 1, 2011.

**Staff Summary of Public Testimony:** PRO: During this economic climate, many businesses are struggling. Small businesses are making difficult financial choices, including in what order to make payments. Should they pay taxes or payroll first? This program is based on the expectation that 10,000 businesses will voluntarily pay back taxes. There are other states which have had amnesty programs; since Washington does not have a state income tax, comparisons on revenues to these states is difficult. However, we are confident in the estimated amount of accelerated payments. This temporary amnesty program improves the existing voluntary reporting system in our state. This is an important step after the Legislature adopted tax avoidance legislation during the regular 2010 session. This provides a good opportunity to resolve disputes. It provides a settlement situation in which all parties benefit. The best approach to amnesty is a temporary window, like this proposal includes. Other states adopting these programs have seen an acceleration of payments; Illinois is a good example where expected revenues were exceeded. We are concerned that DOR not use a waiver under this program as precedent against a taxpayer. The business community will work with DOR to get the word out about this program.

**Persons Testifying:** PRO: Tremaine Smith, DOR; Amber Carter, Association of Washington Businesses.