



PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)
(Implements RCW 34.05.310)**

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STATE OF WASHINGTON
FILED

DATE: March 18, 2020

TIME: 9:15 AM

WSR 20-07-111

Agency: Department of Revenue

Subject of possible rule making: WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment

Statutes authorizing the agency to adopt rules on this subject: RCW 83.100.200.

Reasons why rules on this subject may be needed and what they might accomplish: Part VI of SSB 5358 (2017) clarified and updated the penalties associated with the late filing of an estate tax return. The Department is considering updating the rule to clarify these areas as well as possibly other parts of the rule based on comments received

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: None.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) Parties interested in this rule making may contact the individual listed below. The public may also participate by providing written comments throughout this rule making or by giving oral testimony at the public meeting or public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Darius Massoudii

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(If necessary)

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Additional comments:

Written comments may be submitted by mail or email and should be directed to Darius Massoudi using one of the contact methods above. Written and oral comments will be accepted at the Public Meeting.

Date: April 15, 2020 **Time:** 10:00 am

Public Meeting Location:

6400 Linderson Way SW
Tumwater, Washington 98501

Date: March 18, 2020	Signature: 
Name: Atif Aziz	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

WAC 458-57-135 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver. The estate tax rule on the estate tax return etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-035.

(2) **Estate tax return.** The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's website at (~~http://www.dor.wa.gov/~~ under the heading titled forms. The return and instructions can also be obtained by calling the estate tax section at 360-570-3265, option 2) https://www.dor.wa.gov. They may also be requested by emailing estates@dor.wa.gov.

(3) **Filing the state return—Payment of the tax due.**

(a) The Washington estate tax return (state return) ((referred to in RCW 83.100.050)) must be filed with the Washington state department of revenue (department) if the gross estate of a decedent equals or exceeds the applicable exclusion amount described in RCW 83.100.020(1) and WAC 458-57-105 (3)(b). The state return and payment is due nine months after the date of the decedent's death. A granted extension of time to file will extend the time to file the return, but the payment is still due nine months after the date of the decedent's death. The state return must be signed by the person required to file. The following ((is the list of documents that)) items must accompany the state return:

(i) All applicable state return schedules and addendums, if any;

(ii) If the person required to file the state return is also required to file a federal return or has filed a federal return, a copy of the filed federal tax return (Form 706 ((United States Estate (and Generation-skipping Transfer))), Form 706-NA, or Form 706-QDT) ((Tax Return(s))), signed by the person required to file, including all applicable schedules and statements;

((ii)) (iii) One copy of all supporting documentation for completed ((federal)) state return schedules. If federal return schedules differ from state return schedules, provide an explanation for differences;

((iii) If applicable, a copy of an approved Form 4768 Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-skipping Transfer) Taxes;

(iv) Copy(ies) of any Washington schedules that differ from the federal form schedules, along with supporting documentation;

(v) Photocopy) (iv) A copy of any previously filed extension request(s). If a federal Form 4768 extension request has been filed, provide an Internal Revenue Service approved copy;

(v) A copy of the decedent's death certificate;

(vi) ~~((Photocopy))~~ A copy of the letters testamentary or the letters of administration, if any;

(vii) A copy of the decedent's will, if any, and a copy of all trust agreements that pertain to the decedent, if any;

(viii) A copy of ~~((either))~~ state estate or inheritance return(s) filed with any other state, and proof of ~~((payment(s)))~~ payment of the estate or inheritance tax owed to another state(s), if any; and

(ix) ~~Payment ~~((, if tax is due.~~~~

~~The tax due with the state return must be paid on or before the due date.~~

~~(b) In any case where a federal return must be filed under the current Internal Revenue Code (IRC) or in the year 2009 and thereafter, if the gross estate of a decedent exceeds two million dollars,) of the Washington estate tax due, if any.~~

~~(b) A state return must be filed with the ~~((Washington state))~~ department ~~((of revenue (department)))~~ on or before the date that the federal return is required or would have been required to be filed. ~~((This may include a federally granted extension of time for filing. See subsection (2)(b).))~~ That date is typically nine months after the date of the decedent's death, as specified in section 6075 of the ~~((IRC requires that the federal return be filed within nine months after the date of the decedent's death))~~ Internal Revenue Code (IRC). The due date for filing the state return may be extended, as described in (c) of this subsection.~~

(c) Extensions to file or extensions for payment of tax.

(i) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension or installment approval with the department on or before the original due date, or within thirty days of the issuance of the federal extension or installment approval, whichever is later. RCW 83.100.050~~((+2))~~. If the personal representative fails to do so, the department may ~~((require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted))~~ deny the extension request.

(ii) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax ~~((on the date that the federal tax would have been due had the federal extension not been granted))~~ immediately.

(iii) **Extensions to file for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request a one-time automatic six-month extension to file. The request must be in writing and acknowledge that interest will begin to accrue from the original due date of the state return on any outstanding tax. The written request for the extension must be made prior to the date the state return is due.

(iv) **Extension to pay tax owed for estates that are not required to file a federal estate tax return.** For those estates that are not required to file a federal return, the personal representative may request an extension of time for paying the tax owed when payment of the tax would cause an undue hardship upon the estate or for a payment plan for closely held businesses. The granting of an extension of time to pay the tax owed or for a payment plan for closely held business will not operate to prevent the running of interest. RCW 83.100.070.

(v) Hardship extensions to pay.

(A) In any case in which the department finds that payment, on the due date prescribed, or any part of a deficiency would impose undue hardship upon the estate, the department may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the original due date of payment.

(B) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax owed at the date payment is due. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

(C) An application for such an extension must be in writing and must contain, or be supported by, information in a written (~~statement declaring that it is~~) declaration made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the department. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the personal representative will be notified. The department will not consider an application for such an extension unless it is applied for on or before the due date for payment. If the personal representative desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension.

(D) The amount of tax owed for which an extension is granted, along with interest as determined by RCW 83.100.070, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the department.

~~((+))~~ **(vi) Payment plans for closely held businesses.** The department will ~~((abide by))~~ apply the provisions of section 6166 of the 2005 IRC for the granting of payment plans for closely held businesses. For estates with an approved payment plan with the Internal Revenue Service, the department will follow the same terms as granted with the federal return.

(4) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the return may be subject to a late filing penalty.

(a) **When does the penalty apply?** The late filing penalty applies if the person required to file the return has not timely filed the state return with the department prior to being notified by the department, in writing, of the necessity to file the state return. ~~((The late payment penalty is equal to five percent of the tax due for each~~

~~month during which the state return has not been filed, not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070.)~~

(b) **How is the penalty computed?** ~~The late filing penalty is ((the equivalent of)) equal to five percent of the tax due for each month ((, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it)) during which the state return has not been filed, inclusive of the filing date, and not to exceed the lesser of twenty-five percent of the tax or one thousand five hundred dollars. RCW 83.100.070. The penalty is calculated on a daily basis for periods less than a month by first taking the five percent monthly rate and dividing it by the total number of days ((from the beginning of the month through the date the return is filed, including)) for that month. For instance, in a common (nonleap) year, the five percent monthly rate must be divided by twenty-eight to arrive at a daily rate of 1.7857 percent for the month of February. After arriving at this daily rate, it is multiplied by the number of delinquent days, inclusive of the filing date.~~

~~((For example,)) (i) **Example.** The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.~~

~~A state return is due on February 3rd, in a common (nonleap) year, but is not filed until April 20th of the same year. The state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000.~~

~~((i)) (ii) The penalty is computed as follows:~~

Feb 4-Feb 28	\$10,000 tax at ((5% per month)) <u>0.17857% x 25 days</u>	\$446.43
Mar 1-Mar 31	\$10,000 tax at 5% per month	\$500.00
Apr 1-Apr 20	\$10,000 tax at <u>0.1667% x 20</u> days	\$(333.34) <u>333.40</u>
Total delinquent penalty due on April 20th filing date		\$(1,297.77) <u>1,279.83</u>

~~((ii)) In this example, the first month (February) is a partial month. Since February ((has)) would have twenty-eight days, the five percent monthly rate is divided by twenty-eight days to arrive at a daily rate of 0.0017857 (or 0.17857 percent). The daily rate is then multiplied by the twenty-five days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.0017857 x 25 days = .044643 or 4.4643 percent). The second calendar month (March) is complete and incurs the full five percent penalty. ((The last portion of a month is a total of seventeen days, including both April 4th and April 20th.)) Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or 0.1667 percent). The daily rate is then multiplied by the twenty days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (0.001667 x 20 days = .03334 or 3.334 percent).~~

(5) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after ~~((December 31, 1996))~~ January 1, 1997, will be com-

puted at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January ((1)) 2, 1997, will be computed at the rate of twelve percent per annum.

(6) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the ((department's special programs division)) department. The person responsible bears the burden of establishing that the circumstances were beyond their control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person not having reasonable time or opportunity to obtain an extension of their due date (see subsection ((2)(b))) (3)(a) of this rule) or to otherwise timely file the state return. Circumstances beyond the control include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent them from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(7) **Waiver or cancellation of interest.** Title 83 RCW (Estate taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (6) of this section).

(8) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

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