

2015 Regular Session

HOUSE BILL NO. 721

BY REPRESENTATIVE IVEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

REVENUE SECRETARY: Provides relative to penalties collected by the Department of Revenue

1 AN ACT

2 To amend and reenact R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),
3 1603(A)(2) and (3), 1604.1, and 1604.2, to enact R.S. 47:1508(B)(37), and to repeal
4 R.S. 47:337.74, relative to the penalties; to provide for certain civil penalties; to
5 provide for the waiver of penalties; to require the publication of certain information
6 by the Department of Revenue; to provide for effectiveness; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),
10 1603(A)(2) and (3), 1604.1, and 1604.2 are hereby amended and reenacted and R.S.
11 47:1508(B)(37) is hereby enacted to read as follows:

12 §105. Payment of tax

13 * * *

14 H. ~~Bad checks~~ Insufficient funds. The provisions of R.S. 47:1604.2, in
15 addition to any other penalties provided by law, shall apply in the event ~~If any check,~~
16 ~~or money order, bank draft, credit card, electronic funds transfer, credit or debit card~~
17 payment, or any other authorized form of payment submitted as in ~~in~~ payment of any
18 amount receivable under this Chapter is not duly paid, ~~in addition to any other~~
19 ~~penalties provided by law, there shall be paid in the same manner as tax by the~~

1 ~~person who tendered such check, upon demand by the collector, a penalty equal to~~
 2 ~~1 percent of the amount of such check, except that if the amount of such check is less~~
 3 ~~than \$500, the penalty under this Section shall be \$5 or the amount of such check,~~
 4 ~~whichever is the lesser. This Section shall not apply where it is established to the~~
 5 ~~satisfaction of the collector that the person tendering such check was in good faith~~
 6 ~~and did so with reasonable cause to believe that it would be duly paid.~~

7 * * *

8 §114. Returns and payment of tax

9 * * *

10 F. Penalty provision.

11 * * *

12 (3) If the failure to timely submit the annual return is attributable, not to the
 13 negligence of the taxpayer, but to other causes set forth in written form and
 14 considered reasonable by the secretary, the secretary may remit or waive payments
 15 of the whole or any part of the specific penalty provided for such failure. ~~In~~ Until
 16 December 31, 2015, in any case where the penalty exceeds twenty-five thousand
 17 dollars, it can be waived by the secretary only after approval by the Board of Tax
 18 Appeals. Notwithstanding the provisions of R.S. 47:1508, beginning January 1,
 19 2016, a complete record of all waivers of penalties exceeding fifty thousand dollars
 20 shall be kept by the secretary, shall be open to public inspection, and shall be
 21 published in the department's annual report. Approval of a waiver of penalties
 22 exceeding fifty thousand dollars by the secretary shall be conditioned on the
 23 taxpayer's consent to publication of information the secretary deems necessary
 24 regarding the waiver in the department's annual report. This provision shall not
 25 apply to any penalty the secretary remits or waives in accordance with rules and
 26 regulations promulgated pursuant to the Administrative Procedure Act regarding the
 27 remittance or waiver of penalties under the department's voluntary disclosure
 28 program.

29 * * *

1 §295. Tax imposed on individuals; administration

2 * * *

3 C. The secretary of the Department of Revenue shall administer and enforce
4 this Part. He may adopt, prescribe, and from time to time alter and enforce
5 reasonable rules, orders, and regulations for the purpose of implementing this Part.
6 He may, upon making a record of his reasons therefor, waive, reduce, or compromise
7 any of the taxes, penalties, or interest or other amounts provided by this Part. ~~In~~
8 Until December 31, 2015, in any case when the penalty exceeds twenty-five
9 thousand dollars, it can be waived by the secretary only after approval by the Board
10 of Tax Appeals. Notwithstanding the provisions of R.S. 47:1508, beginning January
11 1, 2016, a complete record of all waivers of penalties exceeding fifty thousand
12 dollars shall be kept by the secretary, shall be open to public inspection, and shall be
13 published in the department's annual report. Approval of a waiver of penalties
14 exceeding fifty thousand dollars by the secretary shall be conditioned on the
15 taxpayer's consent to publication of information the secretary deems necessary
16 regarding the waiver in the department's annual report. This provision shall not
17 apply to any penalty the secretary remits or waives in accordance with rules and
18 regulations promulgated pursuant to the Administrative Procedure Act regarding the
19 remittance or waiver of penalties under the department's voluntary disclosure
20 program.

21 * * *

22 §309. Dealers required to keep records

23 * * *

24 B. Any dealer subject to the provisions of this Chapter who violates the
25 provisions of this Section shall be fined not more than five ~~hundred~~ thousand dollars
26 or imprisoned for not more than sixty days, or both, for any such offense.

27 * * *

28 §1508. Confidential character of tax records

29 * * *

1 B. Nothing herein contained shall be construed to prevent:

2 * * *

3 (37) Beginning January 1, 2016, the sharing, furnishing, or publishing of a
4 complete record of all waivers of penalties granted by the secretary that exceed fifty
5 thousand dollars in the department's annual report. Any taxpayer who accepts the
6 remittance or waiver of penalties shall be deemed to have consented to the
7 publication of the complete record of the remittance or waiver of penalty in the
8 department's annual report. This provision shall not apply to any penalty the
9 secretary remits or waives in accordance with rules and regulations promulgated
10 pursuant to the Administrative Procedure Act regarding the remittance or waiver of
11 penalties under the department's voluntary disclosure program.

12 * * *

13 §1602. Penalty for failure to make timely return

14 A.

15 * * *

16 (2)(a) Except as provided in Paragraph (3), in the case of the filing of a
17 return without remittance of the full amount due, the specific penalty shall be five
18 percent of the unremitted tax if the failure to remit continues for not more than thirty
19 days, with an additional five percent for each additional thirty days or fraction during
20 which the failure to remit continues. The penalty imposed by this Paragraph for each
21 thirty-day period shall be calculated only on the additional amount due from the
22 taxpayer after the deduction of payments timely submitted, or submitted during any
23 preceding thirty-day period when:

24 ~~(i) At least ninety percent of the total tax due on the return is not previously~~
25 ~~paid on or before the due date of the return.~~

26 ~~(ii) The the return and payments are not received within the time prescribed~~
27 ~~determined with regard to any extension of time.~~

28 * * *

1 (3)(a) In the case of individual income tax, if the full amount of tax due on
2 the return is not paid on or before the due date prescribed for payment of such tax,
3 the specific penalty shall be one-half of one percent of the unremitted tax if the
4 failure to remit continues for not more than thirty days, with an additional one-half
5 of one percent for each additional thirty days or fraction during which the failure to
6 remit continues. The penalty imposed by this Paragraph for each thirty-day period
7 shall be calculated only on the additional amount due from the taxpayer, when:

8 (i) ~~At least ninety percent of the total tax due on the return is not previously~~
9 ~~paid through employer withholdings, estimated tax payments, or any other payments~~
10 ~~made on or before the due date of the return, or~~

11 (ii) ~~The~~ the return and payments are not received within the time prescribed
12 determined with regard to any extension of time.

13 * * *

14 §1603. Waiver of penalty for delinquent filing or delinquent payment

15 A.

16 * * *

17 (2)(a) In order to promote the effective administration of the tax laws of this
18 state, the secretary may ~~also~~ promulgate rules and regulations pursuant to the
19 Administrative Procedure Act concerning the waiver of penalties, including but not
20 limited to the establishment of a voluntary disclosure program.

21 (b) Notwithstanding any provision of law to the contrary, in any case where
22 the secretary and the taxpayer have entered into a valid and enforceable voluntary
23 disclosure agreement, the ~~The~~ secretary may, ~~pursuant to the rules and regulations~~
24 ~~referenced in Subparagraph (a) of this Paragraph,~~ remit or waive the payment of the
25 whole or any part of the penalties provided for in this Subtitle.

26 * * *

27 (3) ~~In~~ Until December 31, 2015, in any case when the penalty exceeds
28 twenty-five thousand dollars, it can be waived by the secretary only after approval
29 by the Board of Tax Appeals. Notwithstanding the provisions of R.S. 47:1508,

1 beginning January 1, 2016, a complete record of all waivers of penalties exceeding
 2 fifty thousand dollars shall be kept by the secretary, shall be open to public
 3 inspection, and shall be published in the department's annual report. Approval of a
 4 waiver of penalties exceeding fifty thousand dollars by the secretary shall be
 5 conditioned on the taxpayer's consent to publication of information the secretary
 6 deems necessary regarding the waiver in the department's annual report. This
 7 provision shall not apply to any penalty the secretary remits or waives in accordance
 8 with rules and regulations promulgated pursuant to the Administrative Procedure Act
 9 regarding the remittance or waiver of penalties under the department's voluntary
 10 disclosure program.

11 * * *

12 §1604.1. Negligence penalty

13 ~~If any taxpayer fails to make any return required by this Sub-title or makes~~
 14 ~~an incorrect return, and the circumstances indicate wilful negligence or intentional~~
 15 ~~disregard of rules and regulations, but no intent to defraud, there shall be imposed,~~
 16 ~~in addition to any other penalties provided, a specific penalty of 5% of the tax or~~
 17 ~~deficiency found to be due, or ten dollars, whichever is the greater. This specific~~
 18 ~~penalty shall be an obligation to be collected and accounted for in the same manner~~
 19 ~~as if it were a part of the tax due, and can be enforced either in a separate action or~~
 20 ~~in the same action for the collection of the tax.~~

21 A. Finding of negligence. For negligent failure to comply with any
 22 provisions of this Part or any rules and regulations of the department, when the
 23 secretary finds that a taxpayer did not have intent to defraud the state, the secretary
 24 may assess a penalty equal to ten percent of the tax deficiency found to be due as a
 25 result of the taxpayer's negligence.

26 B. Large individual income tax deficiency. In the case of individual income
 27 tax, if a taxpayer understates taxable income, by any means, by an amount equal to
 28 twenty-five percent or more of gross income or has otherwise demonstrated a
 29 reckless disregard for the tax laws of this state, the secretary shall assess a penalty

1 equal to twenty-five percent of the deficiency. For purposes of this Subsection,
2 "gross income" means gross income as defined in Section 61 of the Internal Revenue
3 Code.

4 C. Other large tax deficiency. In the case of a tax other than individual
5 income tax, if a taxpayer understates tax liability by twenty-five percent or more, or
6 has otherwise demonstrated a reckless disregard for the tax laws of this state, the
7 secretary shall assess a penalty equal to twenty-five percent of the deficiency.

8 §1604.2. Insufficient funds check, ~~or~~ electronic debit, or any other form of payment
9 in payment of taxes; penalty

10 In the event a check, ~~or~~ electronic debit, or any other form of payment used
11 to make payment of a tax, interest, penalty, or fee due under this Subtitle is returned
12 unpaid by the bank on which it is drawn for any reason related to the account on
13 which the check, ~~or~~ electronic debit, or other form of payment is written, such shall
14 constitute a failure to pay the tax, interest, penalty, or fee due and a specific penalty
15 shall be imposed on the taxpayer in addition to all other penalties provided by law;
16 provided however, upon sufficient proof being furnished to the secretary by the bank
17 that the bank was at fault for the nonpayment of the check, ~~or~~ electronic debit, or
18 other form of payment, the secretary shall waive the penalty provided for in this
19 Section. This specific penalty shall be an obligation to be collected and accounted
20 for in the same manner as if it were part of the tax, interest, penalty, or fee that is due
21 in payment of which the check, ~~or~~ electronic debit, or other form of payment was
22 given and may be enforced in a separate action or in any action instituted for the
23 collection of the tax, interest, penalty, or fee. The specific penalty imposed under
24 this Section shall be an amount equal to the greater of one percent of the check, ~~or~~
25 electronic debit, or other form of payment or ~~twenty~~ thirty-five dollars. After receipt
26 of three insufficient fund checks, ~~or~~ electronic debits, or other payments during any
27 two-year period, the secretary of the Department of Revenue may require payment
28 of the taxes, interest, penalties, or fees due by the taxpayer to be paid by certified
29 check, money order, or cash.

1 Section 3. R.S. 47:337.74 is hereby repealed in its entirety.

2 Section 4. This Act shall become effective on July 1, 2015; if vetoed by the governor
3 and subsequently approved by the legislature, this Act shall become effective on July 1,
4 2015, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 721 Engrossed

2015 Regular Session

Ivey

Abstract: Provides for penalties and fees assessed by the Dept. of Revenue and adds requirements for the publication of the waiver of penalties in excess of \$50,000.

Present law establishes separate penalties for dishonored checks or money orders in payment of income taxes.

Proposed law applies the penalties established in the administrative provisions of present law to the dishonored payments of income taxes in present law.

Present law provides for waiver by the secretary of penalties exceeding \$25,000 only after approval by the Board of Tax Appeals.

Proposed law maintains the requirement for the Board of Tax Appeals to approve the waiver of penalties which exceed \$25,000 until Dec. 31, 2015. Beginning Jan. 1, 2016, the secretary is required to maintain complete records of all penalty waivers in excess of \$50,000. Further provides that approval of a waiver of penalties exceeding \$50,000 by the secretary shall be conditioned on the taxpayer's consent to publication of information the secretary deems necessary regarding the waiver in the department's annual report.

Proposed law further requires penalty waivers in excess of \$50,000 to be open to public inspection and shall be published in the department's annual report. Exempts penalties remitted or waived by the secretary from the provisions of proposed law if the penalties are waived pursuant to the department's voluntary disclosure program.

Present law provides that the records and files of the Dept. of Revenue or records and files maintained pursuant to tax ordinances shall be confidential and privileged and shall not be disclosed except in the administration and enforcement of tax laws or in other limited, specific circumstances.

Proposed law retains present law but adds authorization, beginning Jan. 1, 2016, for the department to publish a complete record of all waivers of penalties in excess of \$50,000 granted by the secretary in the department's annual report. Further provides that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report. Proposed law exempts waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

Present law provides for a penalty of \$500 for dealers which fail to keep adequate records.

Proposed law increases the penalty for failure to keep adequate records from \$500 to \$5,000.

Present law provides for a penalty for failure to fully remit the tax due when filing a tax return and calculates the penalty on the additional amount due when at least 90% of the total tax due is not paid on or before the date due and the return and payment are not received within the prescribed time, including any extensions.

Proposed law retains present law as it relates to the amount of the penalty but extends the penalty provision in cases where the return and full payment are not received within the prescribed time, including any extensions.

Present law provides for the waiver of penalty for delinquent filing or delinquent payment.

Proposed law applies these waiver provisions to cases where the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

Present law establishes a negligence penalty of 5% of the tax due or \$10, whichever is greater.

Proposed law changes the negligence penalty from 5% of the tax due or \$10, whichever is greater, to separate penalties for negligence and large tax deficiencies as follows:

- | | | |
|-----|---------------------------------|-------------------|
| (1) | Negligence | 10% of deficiency |
| (2) | Large individual tax deficiency | 25% of deficiency |
| (3) | Other large tax deficiency | 25% of deficiency |

Present law establishes the penalty for dishonored payments at \$20.

Proposed law increases the penalty for dishonored payments from \$20 to \$35.

Present law establishes a separate penalty for dishonored payments of local taxes.

Proposed law repeals present law.

Effective July 1, 2015.

(Amends R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2) and (3), 1604.1, and 1604.2; Adds R.S. 47:1508(B)(37); Repeals R.S. 47:337.74)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Make technical amendments to the bill.
2. Add a requirement that approval of a waiver of penalties in excess of \$50,000 shall be conditioned on the taxpayer's consent to publication of information in the department's annual report.
3. Add authorization, beginning Jan. 1, 2016, for the department to publish a complete record of all waivers of penalties in excess of \$50,000 granted by the secretary in the department's annual report.
4. Add provision that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report.

5. Exempt waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.