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(10) which is not considered taxable by the Internal Revenue Code of ~~1954~~
1986 as amended.

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E. Misclassified employee. For purposes of this Subpart the term "misclassified employee" means an individual who is an employee as defined herein receiving wages from an employer, but from whom no tax was deducted or withheld as required by R.S. 47:112 due to the employer's failure to properly classify the individual as an employee.

F. Number of withholding exemptions and withholding credits for dependents claimed. For purposes of this Subpart, the term "number of withholding exemptions and withholding credits for dependents claimed" means the number of withholding exemptions and withholding credits for dependents claimed in a withholding exemption certificate in effect under R.S. 47:112(F), except that if no such certificate is in effect, the number of withholding exemptions and withholding credits for dependents claimed shall be considered to be zero.

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§113. Liability of employer

A. An employer shall be liable for the payment to the ~~collector~~ **secretary** of the amounts required to be withheld under R.S. 47:112, and an employer who has withheld and paid such amounts to the ~~collector~~ **secretary** shall not otherwise be liable to any person for the amounts of any such payments. Any sums withheld in accordance with the provisions of this Sub-part shall be deemed to be held in trust for the ~~collector~~ **secretary**.

B. Upon failure of an employer to pay as provided in R.S. 47:114 any amounts withheld or required to be withheld under this Chapter, he shall become personally liable for any such tax. The tax, interest, penalties, and attorney fees shall be payable as provided generally in the Subtitle, and the amount thereof may be determined, computed and collected by any method generally provided for in this

1 Subtitle.

2 C. Notwithstanding any provision in this Subtitle to the contrary the
3 liability due by an employer under Subsections A or B of this Section who fails
4 to withhold the amounts required to be withheld pursuant to R.S. 47:112 from
5 a misclassified employee, shall be calculated by applying the highest Louisiana
6 individual income tax rate to the total wages paid to the misclassified employee
7 during the period. The total wage component of this calculation may be
8 reduced by any portion of the wages that have been reported by the
9 misclassified employee on a properly filed Louisiana individual income tax
10 return and the resulting tax liability paid as of the date of assessment against
11 the employer.

12 §113.1. Liability of contractor

13 A. Beginning January 1, 2021, a contractor who knew or had reason to
14 know that amounts paid to its subcontractor included labor costs of
15 misclassified employees shall be subject to a penalty equal to twenty-five
16 percent of the amounts due by the subcontractor under R.S. 47:113(C). This
17 penalty may be enforced in the same manner provided by law for the collection
18 of a tax.

19 B. In addition to the secretary's authority to impose a penalty pursuant
20 to this Section, in the event of subsequent offenses by a contractor under this
21 Section, the secretary may order the State Licensing Board for Contractors to
22 immediately suspend the contractor's license.

23 §114. Returns and payment of tax

24 * * *

25 F. Penalty provision. * * *

26 (2) The penalty described in this Subsection shall be twenty-five dollars for
27 each quarterly return, annual return, or receipt required to be furnished under R.S.
28 47:112(L). The total penalty imposed pursuant to this Subsection shall not exceed
29 thirty-seven thousand five hundred dollars for each annual period. This penalty shall

1 be an obligation to be collected and accounted for in the same manner as if it were
2 part of the tax due and can be enforced either in a separate action or in the same
3 action for the collection of the tax.

4 (3) **Beginning January 1, 2021, if the failure to submit quarterly returns,**
5 **annual returns, and receipts required to be furnished under 47:112(L) or the**
6 **failure to remit the amount required to be withheld is due to the**
7 **misclassification of an employee, a specific penalty equal to twenty-five percent**
8 **of the amount due under R.S. 47:113(C) shall be imposed. This penalty shall be**
9 **an obligation to be collected and accounted for in the same manner as if it were**
10 **part of the tax due, and can be enforced either in a separate action or in the**
11 **same action for the collection of the tax.**

12 (4) 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. 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, waivers of all penalties exceeding twenty-five thousand dollars shall be subject
20 to oversight by the House Committee on Ways and Means and the Senate Committee
21 on Revenue and Fiscal Affairs. This provision shall not apply to any penalty the
22 secretary remits or waives in accordance with rules and regulations promulgated
23 pursuant to the Administrative Procedure Act regarding the remittance or waiver of
24 penalties under the department's voluntary disclosure program.

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26 Section 2. This Act shall become effective on January 1, 2021.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 76 Original

2020 Second Extraordinary Session

Luneau

Present law provides for withholding of taxes on wages paid for services performed by an employee for his employer.

Proposed law defines "misclassified employee" an employee from whom no tax was deducted or withheld as required by present law due to the employer's failure to properly classify the individual as an employee.

Proposed law provides for a penalty for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee. The penalty is determined by multiplying the highest Louisiana individual income tax rate (currently 6%) by the total wages paid to the misclassified employee during the period. However, the penalty may be reduced if the misclassified employee paid Louisiana income tax on these wages.

Proposed law provides for a penalty for contractors who knew or had reason to know that amounts paid to its subcontractor included labor costs of misclassified employees equal to 25% of the penalty for employers who fail to withhold the amounts required to be withheld due to the misclassification of an employee.

Present law requires every employer who withholds taxes to file a quarterly withholding return and an annual reconciliation report for all employees for whom taxes are withheld and provides for a five dollar per return penalty for late returns or reports with an overall annual maximum penalty of \$7,500.

Proposed law retains present law reporting requirements and increases the late filing penalty from \$5 to \$25 for each late return, report, or receipt and increases the annual maximum penalty from \$7,500 to \$37,500.

Proposed law provides a specific penalty for nonfiling of withholding returns, reports, and receipts or failure to remit withholding where the failure to file or remit is due to the misclassification of an employee. The penalty is equal to 25% of the amount of withholding tax that should have been remitted.

Effective January 1, 2021.

(Amends R.S. 47:111(A)(10) and (E), 113, and 114(F)(2) and (3); adds R.S. 47:111(F), 113.1, and 114(F)(4))