

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 and to repeal R.S. 47:337.74, relative to the
4 penalties; to provide for certain civil penalties; to provide for the waiver of penalties;
5 to provide for effectiveness; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),
8 1603(A)(2) and (3), 1604.1, and 1604.2 are hereby amended and reenacted to read as follows:

9 §105. Payment of tax

10 * * *

11 H. ~~Bad checks~~ Insufficient funds. The provisions of R.S. 47:1604.2, in
12 addition to any other penalties provided by law, shall apply in the event ~~If any check,~~
13 ~~or money order, bank draft, credit card, electronic funds transfer, credit or debit card~~
14 payment, or any other authorized form of payment submitted as in ~~payment of any~~
15 ~~amount receivable under this Chapter is not duly paid, in addition to any other~~
16 ~~penalties provided by law, there shall be paid in the same manner as tax by the~~
17 ~~person who tendered such check, upon demand by the collector, a penalty equal to~~
18 ~~1 percent of the amount of such check, except that if the amount of such check is less~~
19 ~~than \$500, the penalty under this Section shall be \$5 or the amount of such check,~~
20 ~~whichever is the lesser. This Section shall not apply where it is established to the~~

1 ~~satisfaction of the collector that the person tendering such check was in good faith~~
2 ~~and did so with reasonable cause to believe that it would be duly paid.~~

3 * * *

4 §114. Returns and payment of tax

5 * * *

6 F. Penalty provision.

7 * * *

8 (3) If the failure to timely submit the annual return is attributable, not to the
9 negligence of the taxpayer, but to other causes set forth in written form and
10 considered reasonable by the secretary, the secretary may remit or waive payments
11 of the whole or any part of the specific penalty provided for such failure. ~~In~~ Until
12 December 31, 2015, in any case where the penalty exceeds twenty-five thousand
13 dollars, it can be waived by the secretary only after approval by the Board of Tax
14 Appeals. Beginning on January 1, 2016, a complete record of all waivers of
15 penalties exceeding fifty thousand dollars shall be kept by the secretary, open to
16 public inspection, and, notwithstanding the provisions of R.S. 47:1508 and 1508.41,
17 each such waiver shall be published in the department's annual report. This
18 provision shall not apply to any penalty the secretary remits or waives in accordance
19 with rules and regulations promulgated pursuant to the Administrative Procedure Act
20 concerning the remittance or waiver of penalties under the department of revenue's
21 voluntary disclosure program.

22 * * *

23 §295. Tax imposed on individuals; administration

24 * * *

25 C. The secretary of the Department of Revenue shall administer and enforce
26 this Part. He may adopt, prescribe, and from time to time alter and enforce
27 reasonable rules, orders, and regulations for the purpose of implementing this Part.
28 He may, upon making a record of his reasons therefor, waive, reduce, or compromise
29 any of the taxes, penalties, or interest or other amounts provided by this Part. ~~In~~

1 Until December 31, 2015, in any case when the penalty exceeds twenty-five
2 thousand dollars, it can be waived by the secretary only after approval by the Board
3 of Tax Appeals. Beginning on January 1, 2016, a complete record of all waivers of
4 penalties exceeding fifty thousand dollars shall be kept by the secretary, open to
5 public inspection, and, notwithstanding the provisions of R.S. 47:1508 and 1508.41,
6 each such waiver shall be published 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 concerning the remittance or waiver of penalties under the department of revenue's
10 voluntary disclosure program.

11 * * *

12 §309. Dealers required to keep records

13 * * *

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

17 * * *

18 §1602. Penalty for failure to make timely return

19 A.

20 * * *

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

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

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

5 * * *

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

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

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

18 * * *

19 §1603. Waiver of penalty for delinquent filing or delinquent payment

20 A.

21 * * *

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

26 (b) Notwithstanding any provision of law to the contrary, in any case where
27 the secretary and the taxpayer have entered into a valid and enforceable voluntary
28 disclosure agreement, the ~~The~~ secretary may, pursuant to the ~~rules and regulations~~

1 ~~referenced in Subparagraph (a) of this Paragraph~~ , remit or waive the payment of the
2 whole or any part of the penalties provided for in this Subtitle.

3 * * *

4 (3) ~~in~~ Until December 31, 2015, in any case when the penalty exceeds
5 twenty-five thousand dollars, it can be waived by the secretary only after approval
6 by the Board of Tax Appeals. Beginning on January 1, 2016, a complete record of
7 all waivers of penalties exceeding fifty thousand dollars shall be kept by the
8 secretary, shall be open to public inspection, and, notwithstanding the provisions of
9 R.S. 47:1508 and 1508.41, each such waiver shall be published in the department's
10 annual report. This provision shall not apply to any penalty the secretary remits or
11 waives in accordance with rules and regulations promulgated pursuant to the
12 Administrative Procedure Act concerning the remittance or waiver of penalties
13 under the department of revenue's voluntary disclosure program.

14 * * *

15 §1604.1. Negligence penalty

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

24 A. Finding of negligence. For negligent failure to comply with any
25 provisions of this Part, or rules issued pursuant thereto, applies, without intent to
26 defraud, the secretary may assess a penalty equal to ten percent of the deficiency due
27 to the negligence.

28 B. Large individual income tax deficiency. In the case of individual income
29 tax, if a taxpayer understates taxable income, by any means, by an amount equal to

1 twenty-five percent or more of gross income or has otherwise demonstrated a
2 reckless disregard for the tax laws of the state of Louisiana, the secretary shall assess
3 a penalty equal to twenty five percent of the deficiency. For purposes of this
4 subsection, "gross income" means gross income as defined in Section 61 of the
5 Internal Revenue Code.

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

11 §1604.2. Insufficient funds check, ~~or~~ electronic debit, or any other form of payment
12 in payment of taxes; penalty

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

1 two-year period, the secretary of the Department of Revenue may require payment
2 of the taxes, interest, penalties, or fees due by the taxpayer to be paid by certified
3 check, money order, or cash.

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

5 Section 4. This Act shall become effective on July 1, 2015; if vetoed by the governor
6 and subsequently approved by the legislature, this Act shall become effective on July 1,
7 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 Original

2015 Regular Session

Ivey

Abstract: Provides for penalties and fees assessed by the Department of Revenue.

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 eliminates the requirement of approval by the Board of Tax Appeals for waiver of penalties exceeding \$25,000 on December 31, 2015 and requires, beginning January 1, 2016, the secretary to maintain complete records of all penalty waivers in excess of \$50,000 and provides for public inspection and publication of such waivers.

Present law establishes penalty for failure to keep adequate records by dealers at \$500.

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

Present law establishes the penalty for failure to fully remit the tax due at the time of filing a return and calculates the penalty on the additional amount due when a payment of 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 applies the penalty provision whenever a 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; Repeals R.S.47:337.74)