

CONFERENCE COMMITTEE REPORT

HB 721

2015 Regular Session

Ivey

June 11, 2015

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 721 by Representative Ivey, recommend the following concerning the Reengrossed bill:

1. That the set of Senate Committee Amendments proposed by the Senate Committee on Revenue and Fiscal Affairs and adopted by the Senate on June 5, 2015, be adopted.
2. That the Reengrossed bill be amended as follows:

AMENDMENT NO. 1

On page 3, line 13, after "to the" and before "of the" delete "publication" and insert "submission"

AMENDMENT NO. 2

On page 3, line 14, after "penalty" and before the period "." delete "in the department's annual report" and insert "to the House Ways and Means and the Senate Revenue and Fiscal Affairs Committees"

AMENDMENT NO. 3

On page 6, line 4, after "willful" and before "the tax" delete "disregard for" and insert "intent to disregard"

AMENDMENT NO. 4

On page 6, line 12, after "willful" and before "the tax" delete "disregard for" and insert "intent to disregard"

AMENDMENT NO. 5

On page 6, delete lines 22 through 26 in their entirety and insert the following:

"(2) "Willful" means voluntarily and intentionally acting in violation of the tax laws of this state. The secretary shall use this definition of "willful" when determining whether a penalty shall be imposed for the willful intent to defraud this state or willful intent to disregard the tax laws of this state."

Respectfully submitted,

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Representative Barry Ivey

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Senator Neil Riser

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Representative Joel C. Robideaux

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Senator Robert Adley

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Representative Julie Stokes

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Senator Daniel R. Martiny

## 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)]

## CONFERENCE COMMITTEE REPORT DIGEST

HB 721

2015 Regular Session

Ivey

**Keyword and oneliner of the instrument as it left the House**

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

**Report adopts Senate amendments to:**

1. Authorize the Dept. of Revenue (DOR) to share or furnish information with the Office of the Inspector General, the La. Attorney General's office, or a local District Attorney's office in connection with or related to an ongoing criminal investigation pursuant to a court-ordered subpoena.
2. Authorize DOR to share or furnish information with the U.S. Attorney's office in connection with or related to an ongoing criminal investigation pursuant to a court-ordered subpoena or in connection with a grand jury subpoena.
4. Change the mandatory imposition of the penalties included in proposed law to the permissive imposition of these penalties.

**Report amends the bill to:**

1. Clarify that the complete record of remittance or waiver of penalties is submitted to the House Ways and Means and Revenue and Fiscal Affairs Committees rather than published in DOR's annual report.
2. Deletes the definition of "willful disregard" in favor of defining "willful" for purposes of the secretary determining whether a penalty may be imposed for the willful intent to defraud this state or willful intent to disregard the tax laws of this state.

**Digest of the bill as proposed by the Conference Committee**

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. Further provides that beginning Jan. 1, 2016, approval of a waiver of penalties exceeding \$25,000 shall be subject to oversight by the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

Proposed law 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 share or furnish a complete record of all waivers of penalties in excess of \$25,000 with the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee. Further provides that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the submission of the information to the committees. Proposed law exempts waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

Proposed law further authorizes the sharing or furnishing of information by the Dept. of Revenue in response to a court-ordered subpoena requested by the Office of the Inspector General, the La. Attorney General's office, a local District Attorney's office, or a U. S. Attorney's office in connection with or related to an ongoing criminal investigation or a criminal proceeding.

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

Proposed law changes the penalty in present law from a mandatory penalty to a permissive one and increases the amount of 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 changes the penalty in present law from a mandatory penalty to a permissive one and 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 in present law from a mandatory penalty to a permissive penalty and increases the amount of 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 - If the secretary finds the taxpayer did not have willful intent to defraud the state, the secretary may assess a penalty equal to 10% of the tax deficiency resulting from the taxpayer's negligence.
- (2) Large individual tax deficiency - If a taxpayer understates tax table income by an amount equal to 25% or more of adjusted gross income or has demonstrated a willful intent to disregard the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not have willful intent to disregard the laws of this state, the secretary may assess a penalty of 15% of the tax deficiency.
- (3) Large tax deficiency for taxes other than individual income tax - If a taxpayer understates tax liability by 25% or more or has otherwise demonstrated a willful intent to disregard the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not

have willful intent to disregard the laws of this state, the secretary may assess a penalty of 15% of the tax deficiency.

Effective July 1, 2015.

(Amends R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2) and (3), and 1604.1; Adds R.S. 47:1508(B)(37), (38), and (39))