

2020 Regular Session

HOUSE BILL NO. 632

BY REPRESENTATIVE DWIGHT

REVENUE DEPARTMENT: Provides for certain penalties imposed by the Department of Revenue and provides for the disposition of the monies collected from penalties and the self-generated revenue of the department

1 AN ACT

2 To amend and reenact R.S. 47:1602(A)(2)(a) and (4), 1603(A)(1), 1604, and 1604.1 and to  
3 enact R.S. 47:1602(A)(5) and 1608, relative to the Department of Revenue and tax  
4 administration; to provide for the funding of the Department of Revenue; to provide  
5 for the disposition of certain taxes, penalties, and interest collected by the  
6 department; to provide for certain requirements and limitations; to provide for  
7 penalties for failure to file a tax return; to provide for penalties for fraud, negligence,  
8 substantial understatement of tax, and willful disregard of tax laws; to provide for  
9 definitions; to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:1602(A)(2)(a) and (4), 1603(A)(1), 1604, and 1604.1 are hereby  
12 amended and reenacted and R.S. 47:1602(A)(5) and 1608 are hereby enacted to read as  
13 follows:

14 §1602. Penalty for failure to make timely return

15 A.

16 \* \* \*

17 (2)(a) Except as provided in ~~Paragraph (3)~~ Paragraphs (3) and (4) of this  
18 Subsection, in the case of the filing of a return without remittance of the full amount  
19 due, the specific penalty may be five percent of the unremitted tax if the failure to

1 remit continues for not more than thirty days, with an additional five percent for each  
2 additional thirty days or fraction during which the failure to remit continues. The  
3 penalty imposed by this Paragraph for each thirty-day period shall be calculated only  
4 on the additional amount due from the taxpayer after the deduction of payments  
5 timely submitted, or submitted during any preceding thirty-day period when the  
6 return and payments are not received within the time prescribed determined with  
7 regard to any extension of time.

8 \* \* \*

9 (4)(a)When any taxpayer files a return required to be made under the  
10 provisions of this Subtitle and pays the amount shown on the face of the return, but  
11 fails to pay the full amount of tax actually required to be shown on the return within  
12 thirty calendar days from the date of notice and demand therefor pursuant to R.S.  
13 47:1562(B), the specific penalty may be one-half of one percent of the additional tax  
14 due. If the failure to pay the additional tax due continues for more than thirty days,  
15 an additional one-half of one percent shall be imposed for each additional thirty days  
16 or fraction during which the failure to pay continues.

17 (b) The penalty imposed by this Paragraph for each thirty-day period shall be  
18 calculated only on the additional amount due from the taxpayer, and shall not be  
19 imposed for any thirty-day period for which the penalty provided by Paragraphs (1),  
20 (2), or (3) of this Subsection is due.

21 (5) The penalties provided for by this Subsection shall not exceed twenty-  
22 five percent of the tax in the aggregate.

23 \* \* \*

24 §1603. Waiver of penalty for delinquent filing or delinquent payment

25 A.(1) ~~If the failure to make any return at the time such return becomes due~~  
26 ~~or the filing of a return without remittance of the full amount due, action or failure~~  
27 to act resulting in a penalty pursuant to R.S. 47:1602 or 1602.1 is attributable, not to  
28 the negligence of the taxpayer, but to other cause set forth in written form and  
29 considered reasonable by the secretary of the Department of Revenue, the secretary



1 the deficiency in addition to any penalty provided for in Subsection A of this Section.

2 C. Other large tax deficiency. In the case of a tax other than individual  
3 income tax, if a taxpayer understates tax liability by twenty-five percent or more, ~~or~~  
4 ~~has otherwise demonstrated a willful intent to disregard the tax laws of this state, the~~  
5 secretary may assess a penalty ~~equal to twenty percent of the deficiency~~ of ten  
6 percent of the deficiency in addition to any penalty provided for in Subsection A of  
7 this Section. ~~However, in the case of a tax other than individual income tax, if a~~  
8 ~~taxpayer understates tax liability by twenty-five percent or more, but the secretary~~  
9 ~~finds that the taxpayer did not have willful intent to disregard the tax laws of this~~  
10 ~~state, the secretary may assess a penalty of fifteen percent of the deficiency.~~

11 D. Willful disregard for Louisiana tax laws. (1) If a taxpayer has  
12 demonstrated a willful disregard of the tax laws of this state, the secretary may assess  
13 a penalty of forty percent of the tax deficiency found to be due.

14 (2) If the penalty under this Subsection applies, then the penalty due pursuant  
15 to the provisions of Subsections A, B, or C of this Section shall not be applicable.

16 E. Definitions. For purposes of this Section, the following terms shall have  
17 the following meanings unless the context clearly indicates otherwise:

18 (1) "Adjusted gross income" means gross income as defined in Section 62  
19 of the Internal Revenue Code.

20 (2) "Negligent failure" means any failure to make a reasonable attempt to  
21 comply with the tax laws of this state, or a careless or reckless disregard for the tax  
22 laws of this state. Negligent failure shall be presumed in any instance where the  
23 taxpayer understates tax liability by ten percent or more but did not demonstrate a  
24 willful disregard of the tax laws of this state.

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

29 \* \* \*

1        §1608. Disposition of penalties and self-generated revenue

2                A. The disposition of all state taxes, interest, and penalties collected by or  
3        behalf of the Department of Revenue pursuant to the provisions of Title 47 of the  
4        Louisiana Revised Statutes of 1950, as amended, shall be governed by the following:

5                (1) Beginning July 1, 2020, an amount equal to one percent of all taxes and  
6        interest collected by or on behalf of the secretary of the Department of Revenue  
7        pursuant to the provisions of Chapters 1, 2, 2-A, 2-B, or 5 of Subtitle II of Title 47  
8        of the Louisiana Revised Statutes of 1950 shall be designated as self-generated  
9        revenue of the Department of Revenue.

10              (2) Beginning July 1, 2020, the full amount of penalties collected by the  
11        secretary of the Department of Revenue pursuant to Part IV of Chapter 18 of Subtitle  
12        II of Title 47 of the Louisiana Revised Statutes of 1950, shall be transferred to the  
13        state treasury for deposit into the state general fund, provided that only the pass  
14        through expenses and fees collected pursuant to R.S. 47:1602.1, 1604.2, 1605, and  
15        1606 shall be designated as self-generated revenue of the Department of Revenue.

16              B. Subject to appropriation by the legislature, monies designated as  
17        self-generated revenues pursuant to the provisions of this Section, together with any  
18        other revenues otherwise self-generated by the secretary, shall be used by the  
19        Department of Revenue for the administration and collection of taxes, the operation  
20        of the department, and fulfilling of the department's obligations related to the costs  
21        of tax adjudication, and may be retained by the secretary and carried forward for  
22        such purposes.

23        Section 2. Beginning July 1, 2020, any collection action taken by the secretary shall  
24        apply the penalties provided for in this Act for all tax periods, and no penalty shall be due  
25        pursuant to the provisions of R.S. 47:1602(A) for actions subject to penalty pursuant to  
26        Paragraph (4) of that Subsection except as provided for pursuant to that Paragraph.

27        Section 3. Notwithstanding any provision of law to the contrary, no refund shall be  
28        due to any taxpayer for any penalty paid pursuant to the laws of the state existing prior to  
29        the effective date of this Act if the refund is based on a claim that no penalty would be due

1 pursuant to the provisions of this Act, nor if based on the claim that penalties paid pursuant  
2 to R.S. 47:1602(A) prior to the effective date of this Act should not have been paid on the  
3 underpayment of tax actually due.

4 Section 4. This Act shall become effective on July 1, 2020; if vetoed by the governor  
5 and subsequently approved by the legislature, this Act shall become effective on July 1,  
6 2020, or on the day following such approval by the legislature, whichever is later.

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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)]

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HB 632 Original

2020 Regular Session

Dwight

**Abstract:** Changes the amount of certain penalties that may be imposed by the Dept. of Revenue and provides for the disposition of penalties and self-generated revenue of the department.

Present law establishes separate penalties for the failure to make timely return and for the failure to pay the full amount of tax due shown on the return.

Proposed law retains present law failure to file and failure to pay penalties but reduces the penalty for when a taxpayer fails to pay the full amount due that was required to be shown on the return from 5% per month to ½ of 1% per month.

Proposed law retains present law maximum of 25% of the tax for the combined failure to file and failure to pay penalties.

Present law provides for penalties for fraud, negligence, large tax deficiencies of 25% or more.

Proposed law changes the penalty rates for fraud, negligence, large tax deficiencies as follows:

- (1) Fraud (R.S. 47:1604), from 50% to 75% of deficiency.
- (2) Negligence (R.S. 47:1604.1(A), from 10% to 20% of deficiency.
- (3) Large individual tax deficiency (R.S. 47:1601.1(B), from a maximum of 20% to 10% of deficiency.
- (4) Other large tax deficiency (R.S. 47:1601.1(C), from a maximum of 20% to 10% of deficiency.

Proposed law defines negligent failure as any failure to make a reasonable attempt to comply with the tax laws of this state or a careless or reckless disregard for the tax laws of the state.

Proposed law creates a presumption of negligent failure where there is an understatement of tax liability of 10% or more and there is no indication of willful disregard of the state's tax laws.

Proposed law authorizes an additional penalty for willful disregard of the state's tax laws of 40% of the deficiency and retains present law definition of willful as "voluntarily and intentionally acting in violation of the tax laws of this state."

Proposed law provides that beginning July 1, 2020, an amount equal to 1% of the state taxes and interest collected by or on behalf of the Dept. of Revenue (DOR) shall be designated as self-generated revenue of the department.

Proposed law requires, with respect to penalties collected by DOR, that from July 1, 2020, and thereafter, 100% of penalties be deposited into the state general fund.

Proposed law requires the self-generated revenues to be used by DOR for the administration and collection of taxes and for operation of the department, subject to appropriation by the legislature.

Proposed law requires that beginning July 1, 2020, any collection action taken by the secretary shall apply the penalties provided for in proposed law for all tax periods.

Proposed law prohibits refunds of penalties paid before the effective date of proposed law if the claim for refund is that no penalties would be due under the provisions of proposed law.

Effective July 1, 2020.

(Amends R.S. 47:1602(A)(2)(a) and (4), 1603(A)(1), 1604, and 1604.1; adds R.S. 47:1602(A)(5), and 1608)