Regular Session, 2011

HOUSE BILL NO. 209

BY REPRESENTATIVE ROBIDEAUX

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

REVENUE DEPARTMENT: Provides with respect to the use of managed and sampling audits of tax returns

AN ACT

To amend and reenact R.S. 47:1541(B) and to enact R.S. 47:1541(D) and 1601(A)(2)(e), relative to the Department of Revenue; to provide relative to the audit of taxpayer records by the department; to provide the purposes for which sampling audits may be utilized; to authorize the use of management audits at the secretary's discretion under certain circumstances; to authorize agreements regarding managed audits; to provide for definitions; to provide for limitations; to authorize the discretionary waiver of interest; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1541(B) is hereby amended and reenacted and R.S. 47:1541(D) and 1601(A)(2)(e) are hereby enacted to read as follows:

§1541. Secretary's duty to determine correct tax

* * *

B. The taxpayer and the secretary or his designee may enter into a binding agreement to use a sampling procedure as a basis for projecting audit findings, which may result in either an underpayment or overpayment of tax. Sampling audit methods are appropriate if:

(1) The taxpayer's records are so detailed, complex, or voluminous that an audit of all detailed records would be unreasonable or impractical; or

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(2) The taxpayer's records are inadequate or insufficient to the extent that a competent audit of the period in question is not otherwise possible; or

(3) The cost to the taxpayer or the state for an audit of all detailed records will be unreasonable in relation to the benefits derived and sampling procedures are expected to produce a reasonable result.

* * *

D. (1) The secretary may, in a written agreement, authorize a taxpayer to conduct a managed audit pursuant to this Subsection. The agreement shall specify the period to be audited and the procedure to be followed, and shall be signed by an authorized representative of the secretary and the taxpayer.

(2) For purposes of this Subsection, the term "managed audit" shall mean a review and analysis of invoices, checks, accounting records, or other documents or information to determine the correct amount of tax. A managed audit may be limited to certain categories of liability under this Chapter, including tax on:

(a) Sales of one or more types of taxable items;

(b) Purchases of assets;

(c) Purchases of expense items;

(d) Purchases under a direct payment permit; or

(e) Any other category specified in an agreement authorized by this Subsection.

(3) The decision to authorize a managed audit rests solely with the secretary. In determining whether to authorize a managed audit, the secretary may consider, in addition to other facts the secretary may consider relevant, any of the following:

(a) The taxpayer's history of tax compliance;

(b) The amount of time and resources the taxpayer has available to dedicate to the audit;

(c) The extent and availability of the taxpayer's records; and

(d) The taxpayer's ability to pay any expected liability.

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(4) The secretary may examine records and perform reviews that he determines are necessary before the audit is finalized to verify the results of the audit. Unless the audit or information reviewed by the secretary discloses fraud or willful evasion of the tax, the secretary may not assess a penalty and may waive all or a part of the interest that would otherwise accrue on any amount identified to be due in a managed audit. This Paragraph does not apply to any amount collected by the taxpayer that was a tax or represented to be a tax, but that was not remitted to the state.

(5) The taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit under this Subsection and in accordance with R.S. 47:1621.

* * *

§1601. Interest on unpaid taxes

A.

* * *

(2)

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(e) Waiver of interest when a management audit is performed as agreed to by the secretary and the taxpayer. The secretary may waive all or a part of the interest that would otherwise accrue on any amount identified to be due in a managed audit performed under the provisions of R.S. 47:1541(D).

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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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)]

Robideaux HB No. 209

Abstract: Regarding the audit of tax returns by the secretary of the Dept. of Revenue, provides for the conditions under which a sampling audit may be utilized, and authorizes and establishes the procedure for the use of managed audits.

Present law provides for the duties of the secretary of the Dept. of Revenue, hereinafter "secretary", to review tax returns and determine the correct amount of tax due. Present law further authorizes the use of sampling audits pursuant to binding agreements between the secretary and the taxpayer.

Proposed law retains present law and adds the conditions under which the use of sampling audits is appropriate. These include taxpayer records which are complex, voluminous, insufficient, or potentially more costly to audit than any benefit that might be derived from an audit.

Proposed law provides for the procedure for and use of managed audits of tax returns. The secretary is authorized to enter into a written agreement with a taxpayer relative to the use of a managed audit of his tax return. The agreement shall specify the period to be audited and the procedure to be followed, and shall be signed by an authorized representative of the secretary and the taxpayer.

Proposed law specifies factors to be considered by the secretary regarding the decision to authorize a management audit, including: the taxpayer's history of tax compliance, the amount of time and resources the taxpayer has available to dedicate to the audit, the extent and availability of the taxpayer's records, and the taxpayer's ability to pay any expected liability.

Proposed law authorizes the waiver of interest on any amounts found to be due through a managed audit. The secretary is prohibited from assessing a penalty unless the audit or other information reviewed discloses fraud or willful tax evasion. A taxpayer is entitled to a refund of any tax overpayment disclosed by a managed audit.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:1541(B); Adds R.S. 47:1541(D) and 1601(A)(2)(e))

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