
DIGEST

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Broadwater

HB No. 629

Abstract: Establishes the office of debt recovery within the Dept. of Revenue which shall aid in the collection of delinquent debts on behalf of state agencies which do not have debt collection contracts with the attorney general's office.

Present law provides for the establishment and organization of the Department of Revenue (DOR) and all of the offices that are part of the department.

Present law provides that if the failure to make any return at the time such return becomes due or the filing of a return without remittance of the full amount due, is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary of DOR, the secretary may remit or waive payment of the whole or any part of the specific penalty provided for such failure; however, when the penalty exceeds \$5,000, it can be waived by the secretary only after approval by the board of tax appeals.

Proposed law deletes authority of the secretary of DOR to waive a penalty in excess of \$5,000 only after approval of the board of tax appeals but adds authority of the secretary to promulgate rules and regulations to establish a voluntary disclosure program and the remittance or waiver of any portion of penalties provided for in present law.

Proposed law retains present law and adds the office of debt recovery, hereinafter "office", within DOR which shall be responsible for the collection of tax payable to DOR and may be responsible for the collection of delinquent debts, accounts, or claims due on behalf of all other state agencies refer delinquent debt to the office for collection.

Proposed law requires all debts owed to the state to be referred to either the attorney general's office or to the office of debt recovery for collection. However, all state agencies which do not have a contract with the attorney general's office for debt collection on or before July 1, 2013, shall refer all delinquent debts to the office for collection when the debt is final and has been delinquent for 60 days. All agencies which do not have collection contracts with the attorney general's office shall begin to refer delinquent debts to the office no later than Jan. 1, 2014. Defines "debt" as any legally collectible, liquidated sum due and owing an agency, or due and owing a person and collectible by any agency, or a judgment, order of the court, or bond forfeiture which is properly certified by the clerk and which orders the payment of a fine or other court ordered penalty. However, debt shall not include any legally collectible, liquidated sum due and owing to an agency pursuant to certain federal programs, state tax debt collected under present law and overpaid unemployment compensation benefits or unpaid contributions or

reimbursements pursuant to Louisiana Security Law.

Proposed law requires that all debts be final and authenticated by the state agency prior to being referred to either the office or the attorney general. Further requires the office to comply with all state and federal law applicable to the collection of the debt and for the state to assume all liability for its actions without recourse to the agency or political subdivision owed the debt.

Proposed law permits the office to collect delinquent debts owed to political subdivisions which are not statewide political subdivisions pursuant to a formal agreement with the department.

Proposed law authorizes the secretary to contract with the attorney general's office or a third-party collection contractor for the collection of delinquent debt on behalf of the office; however, any contract entered into by the secretary for the collection of delinquent debt shall be subject to review by the Cash Management Review Board and audit by the Legislative Auditor.

Proposed law provides that if, in the course of collecting delinquent debt, the secretary determines that the office requires the additional assistance of legal counsel, the secretary shall first seek assistance from the Attorney General. If the Attorney General is unable to or declines to offer legal counsel, the secretary may contract with a third-party for such services. However, any contract entered into by the secretary for legal services shall be subject to review by the Cash Management Review Board and audit by the Legislative Auditor.

Proposed law authorizes the office to use a participating agency's or political subdivision's statutory collection authority to collect delinquent debts. The office may also use authority granted in present law regarding offset from income tax refunds or other accounts payable by the state for any delinquent debt transferred by state agencies or political subdivisions. Grants the secretary discretion to determine which collection method or combination of methods is most suitable to collect the delinquent debt.

Proposed law authorizes the office to exercise authority granted pursuant to present law relative to the suspension or denial of drivers' licenses, the suspension, revocation, or denial of hunting or fishing licenses, or to withhold, offset, levy, garnish, or seize payments of progressive slot machine annuities and cash gaming winnings in collecting delinquent debt. Further authorizes the office to suspend, revoke, deny, or request the suspension, revocation, or denial of any license, professional license, or permit issued, granted, or renewed by the state due to a debtor owing the state a delinquent debt.

Proposed law authorizes the department and the office to establish and use an electronic financial institution data match system for comparison of certain account information held by financial institutions with the department and office's databases of state tax and state non-tax debtors against whom an assessment or judgment for debt owed to the state has become final.

Proposed law requires the department to charge the debtor a fee not to exceed 25% of the total delinquent debt liability. Fees collected according to the provisions of proposed law shall be retained by the office after the debt is collected and shall be divided equally between the office

and the Attorney General after all of the expenses incurred in the initial establishment of the office and initial establishment of debt collection in the Attorney General's office are paid. Requires monies collected by the office for delinquent debt to be deposited into the Debt Recovery Fund within 30 days after the end of the month in which the monies were collected.

Proposed law authorizes state agencies to transmit data to the office deemed necessary to aid in the collection efforts of the office. Requires the secretary to establish and maintain centralized electronic debt registry to compile the information provided by state agencies and participating political subdivisions. The data compiled in the registry shall be available for cross-referencing and for the identification of debtors necessary for the collection of delinquent debt; however, all data, records, and files utilized for debt collection shall be deemed confidential and privileged, and no person shall divulge or disclose any information obtained from such records and files except in the administration and enforcement of these provisions.

Proposed law provides that compilation of tax data in the electronic registry by the department shall not be a violation of present law relative to confidentiality of tax records, and any information or data gathered by the department and the office may be used for purposes of collecting tax and non-tax debt.

Proposed law requires the department to promulgate rules and regulations in accordance with the APA to implement the provisions of proposed law. Further provides that any rule promulgated by the department shall be construed in favor of the secretary.

Proposed law authorizes the secretary to enter into reciprocal collection and offset of indebtedness agreements with the federal government.

Proposed law requires the office to evaluate and recommend any uncollectible debt for sale or securitization in accordance with present law after the office exercises and employs its collection methods and tools.

Proposed law requires that the operations of the office be subject to annual review by the Cash Management Board.

Proposed law establishes the "Debt Recovery Fund", hereinafter fund, as a special treasury fund. After satisfying the requirements of present constitution relative to the Bond Security and Redemption Fund, the state treasurer shall annually deposit into the fund an amount equal to the monies collected pursuant to proposed law for the collection of delinquent debt. Further requires that monies in the fund be appropriated by the legislature and utilized solely as provided for in proposed law. A portion of the monies in the fund shall be appropriated to any state agency which referred its delinquent debt to the office of debt recovery for collection to be used solely for purposes of federal reimbursements. However, in no case shall the amount of monies appropriated to any state agency exceed the actual amount of delinquent debt monies collected by the office on behalf of the state agency.

Proposed law requires a financial institution or its processor to provide to the department or the

office, the name, record address, social security number or other taxpayer identification number, any other identifying information, and an average daily account balance for the most recent 30 day period, for each calendar quarter for each account owner who maintains an account at such institution and who the office purports is a tax or non-tax debtor.

Proposed law provides that if a financial institution or its processor has a current data match system developed or used to comply with the child support data match system, the financial institution or its processor may use that system to comply with the provisions of proposed law.

Proposed law provides that for La. domiciled financial institutions having no branch offices outside the state, the office or its data match vendor shall ensure that compliance with proposed law and present law may be accomplished with a single data match file. Louisiana domiciled institutions having no branch offices outside the state, or their processor, shall not be required to process multiple data match files.

Proposed law provides that a financial institution may, but is not required to, disclose to its depositors or account holders that the department or the office has the authority to request and receive certain identifying information for state tax and non-tax debt collection purposes.

Proposed law prohibits a financial institution, including its directors, officers, employees, or other agents, from incurring liability to any person as a result of providing account information to the department or office in compliance with a request that conforms to the provisions of proposed law. Further prohibits a financial institution, including any of its directors, officers, employees, or other agents, from incurring civil or criminal liability for any disclosure of information made in accordance with proposed law.

Proposed law requires the department or office to pay a participation fee to each financial institution that actually receives a data match request file. The participation fee shall be for actual costs incurred for conducting the data match. However, in order to receive the participation fee, the financial institution must be FDIC insured and the financial institution must show it has incurred costs under present law and proposed law. The department or office may require a financial institution to submit paperwork such as invoices and other documentation to substantiate the costs that have been incurred. After actual costs are established by a financial institution, the office shall automatically remit payment to the financial institution on a quarterly basis without the financial institution having to resubmit additional paperwork each quarter thereafter.

Proposed law provides that if a financial institution assesses a fee to its customer for processing a state tax or state non-tax levy received from the office or the department, the fee shall be collected by the financial institution from the proceeds of the customer's account before any account proceeds are remitted to the office or the department to satisfy the state tax or state non-tax levy.

Proposed law provides that any fees paid according to the provisions of proposed law shall not be comprised of or constitute any amounts due to a financial institution for its compliance with

present law. The department or office shall be responsible for the reconciliation and tracking of data and information regarding the number of sent data match request files, received completed data match accounts, and amounts paid. The department shall also be responsible for tracking and reporting all statistical information regarding financial data match activities to the Commissioner of Administration or his designee every six months and to report the information to the Joint Legislative Committee on the Budget every session prior to the last day of each legislative session.

Proposed law requires the department, office, and their designated vendor for the data match program, to keep all information received from financial institutions confidential, and any employee, agent or representative of the department, office, and their designated vendor is prohibited from disclosing that information to any other third party.

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

(Amends R.S. 36:451(C) and R.S. 47:1603(A); Adds R.S. 36:458(H) and R.S. 47:1676, 1676.1, and 1677)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added authorization for the office to exercise authority pursuant to present law relative to the suspension or denial of drivers' licenses, the suspension, revocation, or denial of hunting or fishing licenses, or to withhold, offset, levy, garnish, or seize payments of progressive slot machine annuities and cash gaming winnings in collecting delinquent debt.
2. Added authorization for the office to withhold, offset, levy, or garnish gaming winnings in collecting delinquent debt.
3. Added federal or state taxpayer identification numbers to the information a referring agency must certify before send the delinquent debt to the office or the attorney general for collection.
4. Required the office to evaluate and recommend any uncollectible debt for sale or securitization after the office exercises its collection methods and tools.

House Floor Amendments to the engrossed bill.

1. Deletes requirement for the secretary of the Dept. of Revenue to waive penalties which exceed \$5,000 receive approval of the board of tax appeals.
2. Adds authority for the secretary of the Dept. of Revenue to promulgates rules in accordance with the APA including the establishment of a voluntary disclosure program and the remittance or waiver of any portion of penalties provided by present law.
3. Changes the date in which state agencies have to enter into contracts with the Attorney General's office for debt collection in order to avoid sending delinquent debt to the office of debt collection from January 1, 2013 to July 1, 2013.
4. Adds provision that the term "debt" shall not include legally collectible liquidated sum due and owing pursuant to certain federal programs, state tax debt, or sums due on account of overpayment of certain unemployment compensation.
5. Adds requirement that contracts entered into by the secretary for the collection of delinquent debt on behalf of the state shall be subject to review by the Cash Management Review Board and subject to audit by the Legislative Auditor.
6. Adds provision that if the secretary determines the office requires the assistance of additional legal counsel, the secretary shall first seek assistance from the the Attorney General. If the Attorney General declines to offer assistance, the secretary may contract with a third-party for such services. However, the contract shall be subject to review by the Cash Management Review Board and subject to audit by the Legislative Auditor.
7. Establishes the "Debt Recovery Fund", as a special treasury fund for the deposit of monies collected pursuant to proposed law for the collection of delinquent debt. Further requires that a portion of the monies in the fund be appropriated to any state agency which referred its delinquent debt to the office for collection to be used solely for purposes of federal reimbursements.
8. Provides that compilation of tax data in the electronic registry by the department shall not be a violation of present law relative to confidentiality of tax records, and any information or data gathered by the department and the office may be used for purposes of collecting tax and non-tax debt.
9. Authorizes the establishment of an electronic financial institution data match system for comparison of certain account information held by financial institutions with the databases of the department and the office of state tax and non-tax debtors.
10. Adds provision that a financial institution may, but is not required to, disclose to its

depositors or account holders that the department or the office has the authority to request and receive certain identifying information for state tax and non-tax debt collection purposes.

11. Adds prohibition that a financial institution, including its directors, officers, employees, or other agents, incur liability to any person as a result of providing account information to the department or office in compliance with a request that conforms to the provisions of proposed law. Further prohibits a financial institution, including any of its directors, officers, employees, or other agents, from incurring civil or criminal liability for any disclosure of information made in accordance with proposed law.
12. Adds requirement that the department or office to pay a participation fee to each financial institution that actually receives a data match request file. The participation fee shall be for actual costs incurred for conducting the data match.