

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

REVENUE DEPARTMENT. Establishes the office of debt recovery at the Dept. of Revenue for the collection of delinquent debts owed to certain governmental entities

DIGEST

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.

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 which refer delinquent debt to the office for collection, as well as political subdivisions which enter into formal agreements with the department.

Proposed law requires all debts owed to "agencies" [defined as entities which are authorized to perform any function of state government in the executive branch] to be referred to either the attorney general's office or to the office of debt recovery for collection. Requires all "agencies" which do not have a contract with the attorney general's office for debt collection on or before January 1, 2014, to refer all delinquent debts to the office for collection when the debt is final and has been delinquent for 60 days.

Proposed law requires "agencies" to refer "non-final delinquent debts" to the attorney general's office for collection when the debt has been delinquent for 60 days pursuant to referral guidelines established by the attorney general which are incorporated into agreements between the attorney general and other agencies or pursuant to rules promulgated by the attorney general pursuant to the Administrative Procedure Act.

"Delinquent debt" is defined as a "final" debt that is 60 days or more past due. "Final" means the amount due is no longer negotiable and that the debtor has no further right of administrative or judicial review.

"Non-final delinquent debt" is defined as any debt that an agency has notified a debtor is owed but the debt remains unpaid, due, or negotiable for a period of 60 days or more and such debt is not final and the debtor has further administrative or judicial review rights to challenge the validity of the debt or the amount owed.

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. Excludes debt due and owing to an agency pursuant to certain federal program and overpaid unemployment compensation benefits or unpaid contributions or reimbursements pursuant to Louisiana Employment Security Law.

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 are to be retained by the office after the debt is collected and be divided in accordance with an agreement between the office and the Attorney General after payment of costs set forth in the agreement.

Proposed law requires money collected by the office for delinquent debt to be used solely and exclusively each fiscal year as follows:

1. Five million dollars per fiscal year for 5 consecutive fiscal years must be appropriated by the legislature to the Office of State Police for a training academy class.

2. The remainder of the monies collected after the above appropriation must be transferred to the agencies which referred the delinquent debt to the office in proportion that the amount of the agency's debt collected bears to the total debt collected by the office within 30 days after the end of the month in which the money was collected.
3. After the 5-fiscal-year period all the money must be transferred to the referring agencies.

The money received by the agencies must be designated as self-generated revenues of the agency.

Proposed law permits the office to collect delinquent debts owed to political subdivisions pursuant to a formal agreement with the department.

Proposed law requires that all debts be final and authenticated by the agency or participating political subdivision 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 provides that if the secretary of DOR determines that the office requires the additional assistance of legal counsel, the secretary must first seek assistance from the office of the attorney general. If the attorney general is unable to or declines to offer legal counsel, the secretary is authorized to contract with a third-party for such services; however, any contract entered into by the secretary is subject to review 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 withhold, offset, levy, garnish, or seize payments of progressive slot machine annuities and cash gaming winnings in collecting delinquent debt.

Proposed law authorizes the office to submit a request for the suspension, revocation or denial of any type of professional or other license, permit, or certification to the entity or body that governs, regulates, or issues them and the office is authorized to "assume the obligation for the payment of such services in order to collect delinquent debt." The Louisiana Supreme Court is requested to consider rules and regulations relative to attorneys licensed to practice law consistent with the proposed law.

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 to the office and the attorney general 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. However, except as provided for in tax law confidentiality provisions or in "any other applicable provision of law", information concerning the identity of a debtor, the amount of the debt owed, and the amount of any collections or settlements shall be a public record subject to disclosure under the Public Records Law.

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 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.

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.

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.

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. 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.

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.

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.

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.

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.

Provides that 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. 6:333(B) and R.S. 36:451(C); Adds R.S. 6:333(F), R.S. 36:458(H), and R.S. 47:1676 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 sending 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 promulgate 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 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the reengrossed bill

1. Provides that the office of debt recovery and the office of the attorney general are to "jointly serve" as collection entities to collect delinquent state debt.
2. Deletes the requirement that the money collected for delinquent debts be deposited in a Debt Recovery Fund to be appropriated by the legislature, with a requirement that a "portion" be appropriated to any state agency which referred its delinquent debt to the office to be used solely for purposes of federal reimbursements. Instead,

requires a 5-year, \$5 million appropriation to the Office of State Police for a training academy class, and the remainder of the money to be transferred to the agencies which referred the delinquent debt to be designated as their self-generated revenue.

3. Changes the requirement that the 25% fee collected on the debts be divided equally between the office and the attorney general after all of the expenses incurred in the initial establishment of the office and of debt collection in the office of the attorney general are paid. Instead, requires the fees to be divided in accordance with an agreement between the office and the Attorney General after payment of costs set forth in the agreement.
4. Includes as "debt" subject to the proposed law state tax debt collected under Title 47.
5. Changes the date when agencies which do not have a contract with the attorney general's office for debt collection must refer all 60-day delinquent debts to the office for collection from July 1, 2013 to January 1, 2014.
6. Requires agencies to refer "non-final delinquent debts" to the attorney general's office for collection when the debt has been delinquent for 60 days. Defines "non-final delinquent debt" as any debt that an agency has notified a debtor is owed but the debt remains unpaid, due, or negotiable for a period of 60 days or more and the debt is not final and the debtor has further administrative or judicial review rights to challenge the validity of the debt or the amount owed.
7. Deletes a specific provision requiring any contract entered into by the secretary of DOR "for legal services" to be subject to review by the Cash Management Review Board, but retains a provision requiring board review of any contract entered into by the secretary "for the collection of delinquent debt on behalf of the state."
8. Restores a requirement in present law that the DOR obtain board of tax appeals approval for waivers of penalty in excess of \$5,000.
9. Deletes a provision which would have authorized the office itself 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.
10. Requests the Louisiana Supreme Court to consider rules and regulations relative to attorneys licensed to practice law consistent with the proposed law on suspension, revocation, or denial of professional licenses for debt.