

2016 Second Extraordinary Session

HOUSE BILL NO. 29

BY REPRESENTATIVE PRICE

REVENUE DEPARTMENT: Provides relative to the calculation of interest on certain overpayments (Item #45)

1 AN ACT

2 To amend and reenact R.S. 47:115(A)(3) and (C) and 1624(A), to enact R.S. 47:1624(C)

3 through (E), and to repeal R.S. 47:287.657, 617, and 1624.1, relative to the payment

4 of interest on certain overpayments; to provide for the calculation of interest on

5 certain overpayments; to provide for the authority of the secretary of the Department

6 of Revenue to pay interest on overpayments; to provide for certain limitations and

7 requirements; to provide for effectiveness; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:115(A)(3) and (C) and 1624(A) are hereby amended and  
10 reenacted and R.S. 47:1624(C) through (E) are hereby enacted to read as follows:

11 §115. Refunds and credits

12 A. Employee refunds and credits.

13 \* \* \*

14 (3) To the extent that the ~~aforesaid credit~~ credit provided for in Paragraph (1)

15 of this Subsection, together with other credits allowed by law, is in excess of the

16 employee's income tax liability for ~~said~~ the taxable year, as shown on an income tax

17 return filed by such employee for that year, such overpayment shall be considered

18 as taxes erroneously paid to be credited or refunded as herein provided. Such

19 overpayment shall be credited to such person's estimated or income tax liability for

1 the succeeding taxable year unless such person shall claim a refund therefor except  
 2 that overpayment of one dollar or less shall be refunded or credited only upon the  
 3 receipt by the secretary of a written demand for such refund from the taxpayer;  
 4 however, the collector is authorized to consider any final return showing an  
 5 overpayment as a claim for refund. ~~An overpayment shall bear no interest if credit~~  
 6 ~~is given therefor; amounts refunded as overpayments shall bear interest at the rate~~  
 7 ~~established pursuant to R.S. 13:4202 per year computed from ninety days after the~~  
 8 ~~filing date of the final return showing the overpayment, or from the due date of such~~  
 9 ~~final return, whichever is later.~~

\* \* \*

11 C. Other refunds and credits. To the extent a taxpayer's payments, together  
 12 with other credits allowed by law, is in excess of his income tax liability shown on  
 13 a return filed for the taxable year, such overpayment shall be considered as taxes  
 14 erroneously paid to be credited or refunded as herein provided. Such overpayment  
 15 shall be credited to the taxpayer's estimated or income tax liability for the succeeding  
 16 taxable year unless a claim for refund is made. Notwithstanding any provision of  
 17 this Subsection to the contrary, an overpayment of one dollar or less shall be  
 18 refunded or credited only upon the receipt by the secretary of a written demand for  
 19 such refund from the taxpayer. The secretary is authorized to consider any final  
 20 return showing an overpayment as a claim for refund. ~~An overpayment shall bear~~  
 21 ~~no interest if credit is given. Amounts refunded as overpayments shall bear interest~~  
 22 ~~at the rate established pursuant to R.S. 13:4202 computed from ninety days after the~~  
 23 ~~filing date of the final return showing the overpayment or from the due date of the~~  
 24 ~~final return, whichever is later. No interest on refunds shall be allowed if, the~~  
 25 ~~secretary proves by clear and convincing evidence that a person has deliberately~~  
 26 ~~overpaid a tax in order to derive the benefit of the interest allowed by this Section.~~  
 27 ~~Payments of interest authorized by this Section shall be made from funds derived~~  
 28 ~~from current collections of the tax to be refunded.~~

\* \* \*

1 §1624. Interest on refunds or credits

2 A.(1) Notwithstanding any other provision of law to the contrary, on all  
3 refunds or credits the secretary shall compute and allow as part of the refund or  
4 credit, interest at the annual rate established in R.S. 13:4202 from ~~the date the return~~  
5 ~~was due, the date the first return for that tax period was filed, or the date the tax was~~  
6 ~~paid, whichever is later~~ ninety days after the later of the due date of the return, the  
7 filing date of the return on which the overpayment is claimed, or the date the tax was  
8 paid. An overpayment shall bear no interest if it is credited to the taxpayer's account.  
9 No interest on refunds or credits shall be allowed if; the secretary proves by clear and  
10 convincing evidence that a person has deliberately overpaid a tax in order to derive  
11 the benefit of the interest allowed by this Section. Payments of interest authorized  
12 by this Section shall be made from funds derived from current collections of the tax  
13 to be refunded or credited.

14 (2) Notwithstanding any other provision of law to the contrary, interest on  
15 a refund of an overpayment of severance tax to an operator whose well qualifies for  
16 the severance tax suspension pursuant to R.S. 47:633(7)(c)(iii) or (9)(d)(v) for new  
17 horizontal or deep wells shall be computed from ninety days after a properly filed  
18 claim for refund or an amended return for the new horizontal or deep well has been  
19 submitted to the department with all supporting documentation.

20 \* \* \*

21 C. The provisions of this Section shall govern the calculation of interest on  
22 all refunds or credits resulting from the collection of any tax or administration of any  
23 provision by or on behalf of the secretary of the Department of Revenue pursuant to  
24 any provision contained in Title 26, Title 47, Title 51, or any other provision  
25 contained in the Louisiana Revised Statutes of 1950. However, the provisions of this  
26 Section shall not govern for the purposes of calculating any interest on refunds  
27 granted pursuant to the International Fuel Tax Agreement.

1           D. The secretary may offset any overpayments of estimated corporate  
 2           income tax against the corporation's income tax or franchise tax for the purpose of  
 3           determining the interest due under the provisions of R.S. 47:1601.

4           E. No refund of franchise tax shall be paid by the secretary until any claim  
 5           of offset filed by the office of unemployment insurance administration of the  
 6           Louisiana Workforce Commission against the taxpayer under R.S. 23:1733 has been  
 7           satisfied.

8           Section 2. R.S. 47:287.657, 617, and 1624.1 are hereby repealed in their entirety.

9           Section 3. The provisions of this Act shall apply to any refunds issued on or after  
 10          September 1, 2016, notwithstanding the tax period to which the claim relates.

11          Section 4. This Act shall become effective on July 1, 2016.

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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 29 Reengrossed

2016 Second Extraordinary Session

Price

**Abstract:** Requires interest on all refunds or credits by the Dept. of Revenue to be calculated 90 days after the date the return was due, the claim of overpayment was filed, or the tax was paid, whichever is later.

Present law provides for the refunds of overpayments of specific taxes. Refunds bear interest at the rate of judicial interest from 90 days after the filing date of the return showing the overpayment or the due date of such return, whichever is later.

Present law, for all refunds or credits issued by the secretary of the Dept. of Revenue (the secretary), requires the secretary to compute and allow as part of a refund or credit, interest at the rate of judicial interest beginning to accrue at the date the return was due, the first return for that tax period was filed, or the tax was paid, whichever is later.

Proposed law changes present law to provide that interest begins to accrue 90 days after the date the return was due, the return claiming overpayment was filed, or the tax was paid, whichever is later. Proposed law governs the calculation of interest on all refunds or credits by or on behalf of the secretary pursuant to Title 26 (Liquors - Alcoholic Beverages), Title 47 (Revenue and Taxation), Title 51 (Trade and Commerce), or any other revised statute, except interest on refunds granted pursuant to the International Fuel Tax Agreement.

Present law (R.S. 47:1624.1) provides for the payment of interest on the overpayment of severance tax to an operator whose new horizontal or deep well qualifies for a severance tax suspension. For the first 180 days after a properly filed claim for refund or an amended return is submitted, the rate of interest is the U.S. Treasury Yield Curve Constant Maturity 6-Month Treasury Rate. Any interest after the first 180 days is calculated at the judicial interest rate.

Proposed law repeals present law but provides that interest shall be computed from 90 days after a properly filed claim or amended return has been submitted.

Present law authorizes the secretary to net any overpayments of franchise tax against corporate income taxes due in determining the amount of interest the corporation owes on the unpaid taxes. Further authorizes the secretary to net any overpayments of corporate income tax against franchise taxes due.

Proposed law repeals present law and instead authorizes the secretary to offset any overpayments of estimated corporate income tax or franchise tax against the estimated corporate income tax in determining the amount of interest the corporation owes.

Present law prohibits the payment of a franchise tax refund until any claims of offset by the office of unemployment insurance administration has been satisfied.

Proposed law retains present law.

Applicable to any refunds issued on or after Sept. 1, 2016, notwithstanding the tax period to which the claim relates.

Effective July 1, 2016.

(Amends R.S. 47:115(A)(3) and (C) and 1624(A); Adds R.S. 47:1624(C) - (E); Repeals R.S. 47:287.657, 617, and 1624.1)

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Authorize the secretary to "offset" instead of "net" overpayments of corporate income tax against corporation income tax or franchise tax for determining the interest due.