

2022 Regular Session

SENATE BILL NO. 242

BY SENATOR ALLAIN

TAX/LOCAL. Provides relative to interest and penalties applicable to local sales and use tax. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2),

3 and 337.80(A)(4)(b) and (B) and to enact R.S. 47:337.69(C) and 337.70(A)(4),

4 relative to interest and penalties applicable to local sales and use tax; to provide for

5 remittance of tax under protest; to provide for a limitation on the maximum interest

6 rate on unpaid taxes; to equalize interest rates for taxes due, taxes paid under protest,

7 and refunds of overpayments; to provide for the calculation of late filing and

8 payment penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2), and

11 337.80(A)(4)(b) and (B) are hereby amended and reenacted and R.S. 47:337.69(C) and

12 337.70(A)(4) are hereby enacted to read as follows:

13 §337.63. Remittance of tax under protest; suits to recover

14 A. * * *

15 (3) To the extent the taxpayer prevails, the collector shall refund the amount

16 to the claimant, with interest at the rate established pursuant to ~~R.S. 47:337.80~~ R.S.

17 47:337.69(C), except as provided in Subsection E of this Section. To the extent the

1 collector prevails, the taxpayer shall pay the collector additional interest
2 calculated on the disputed amount at the same rate established for tax
3 obligations pursuant to R.S. 47:337.69(C), except as provided in Subsection E
4 of this Section.

5 * * *

6 D.(1) Upon request of a taxpayer and upon proper showing by such taxpayer
7 that the principle of law involved in an additional assessment is already pending
8 before the courts for judicial determination or before the Board of Tax Appeals, the
9 taxpayer, upon agreement to abide by the decision of the courts, the Board of Tax
10 Appeals, or by a final judgment of a court upon a timely appeal of a decision of the
11 Board of Tax Appeals, may remit the additional assessment under protest, but need
12 not file an additional suit or petition. In such cases, the tax so paid under protest shall
13 be placed in an escrow account and held by the collector until the question of law
14 involved has been determined by the courts, the Board of Tax Appeals, or by a final
15 judgment of a court upon a timely appeal of a decision of the Board of Tax Appeals,
16 and shall then be disposed of as therein provided.

17 (2) Upon request of a collector and if a principle of law involved in a
18 refund claim filed by a taxpayer is already pending before the collector at the
19 administrative stage, before the courts for judicial determination, or before the
20 Board of Tax Appeals, the taxpayer may, upon agreement to abide by the
21 decision of the courts, the Board of Tax Appeals, or by a final judgment of a
22 court upon a timely appeal of a decision from the collector, the courts, or the
23 Board of Tax Appeals, remit the taxes involving the same principle of law for
24 all current and future tax periods under protest, but need not file an additional
25 suit or petition. The tax paid under protest pursuant to this Paragraph shall be
26 placed in an escrow account and held by the collector until the principle of law
27 involved has been determined by the courts, the Board of Tax Appeals, or by a
28 final judgment of a court upon a timely appeal of a decision of the Board of Tax
29 Appeals.

1 **after the return was required to be filed or the tax was required to be remitted,**
2 **subject to the limitations of this Paragraph.**

3 (2) In the case of the filing of a return without remittance of the full amount
4 due, the specific penalty imposed by this Paragraph **in the amount of five percent**
5 **of the tax owed** for each thirty-day period shall be calculated only on the additional
6 amount due from the taxpayer after the deduction of payments timely submitted, or
7 submitted during any preceding thirty-day period, **subject to the limitations of this**
8 **Paragraph.** The penalty provided by this Paragraph shall not be imposed for any
9 thirty-day period for which a penalty for failure to file a ~~tax~~ return or for filing after
10 the return becomes delinquent is assessed.

11 * * *

12 **(4) The penalties for delinquent returns and failure to remit the total**
13 **amount of tax due shall accrue beginning the day after the due date subject to**
14 **the limitations of this Subsection.**

15 * * *

16 §337.80. Interest on refunds or credits

17 A. * * *

18 (4) * * *

19 (b)(i) Interest shall be at the average prime or reference rate as computed by
20 the commissioner of financial institutions pursuant to R.S. 13:4202(B), per year, but
21 without the addition of one percentage point to the average prime or reference rate
22 and without regard to the limitations contained in R.S. 13:4202(B).

23 **(ii) Notwithstanding any provision of law to the contrary, all taxes that**
24 **become due on or after January 1, 2023, interest shall be computed at the same**
25 **rate established for tax obligations pursuant to R.S. 47:337.69(C).**

26 * * *

27 B. No interest on refunds ~~or credits~~ shall be allowed if it is determined that
28 a ~~person~~ **taxpayer** has deliberately overpaid a tax in order to derive the benefit of the
29 interest allowed by this Section **or if a taxpayer has not entered into an agreement**

Proposed law provides that the interest rate for refunds of overpayments of local sales and use tax for taxes that become due on or after Jan. 1, 2023, will be the same rate charged on tax obligations set forth in proposed law.

Present law prohibits interest on refunds if it is determined that a taxpayer has deliberately overpaid a tax in order to derive the benefit of the interest.

Proposed law retains present law and further prohibits interest on refunds if it is determined that a taxpayer has not entered into an agreement to abide and the same principle of law is involved.

Effective August 1, 2022.

(Amends R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2), and 337.80(A)(4)(b) and (B); adds R.S. 47:337.69(C) and 337.70(A)(4))

Summary of Amendments Adopted by Senate

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

1. Adds provisions relative to the remittance of taxes paid under protest and authorizing interest on refunds in suits to recover.
2. Limits the interest paid on the tax obligation to the interest that is actually earned and received by the collector on the payment when the taxpayer has pursued an appeal and the collector and the taxpayer have entered into an agreement to abide.
3. Authorizes a specific penalty of 5% of the tax owed for each 30-day period after the return was required to be filed or the tax was required to be remitted.
4. Prohibits interest on refunds if it is determined that a taxpayer has not entered into an agreement to abide and the same principle of law is involved.
5. Provides for technical changes.

Senate Floor Amendments to engrossed bill

1. Makes technical correction.