DIGEST

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HB 721 Reengrossed 2015 Regular Session Ivey

Abstract: Provides for penalties and fees assessed by the Dept. of Revenue and adds requirements for the publication of the waiver of penalties in excess of $50,000.

Present law provides for waiver by the secretary of penalties exceeding $25,000 only after approval by the Board of Tax Appeals.

Proposed law maintains the requirement for the Board of Tax Appeals to approve the waiver of penalties which exceed $25,000 until Dec. 31, 2015. Beginning Jan. 1, 2016. Further provides that approval of a waiver of penalties exceeding $25,000 shall be subject to oversight by the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

Proposed law exempts penalties remitted or waived by the secretary from the provisions of proposed law if the penalties are waived pursuant to the department's voluntary disclosure program.

Present law provides that the records and files of the Dept. of Revenue or records and files maintained pursuant to tax ordinances shall be confidential and privileged and shall not be disclosed except in the administration and enforcement of tax laws or in other limited, specific circumstances.

Proposed law retains present law but adds authorization, beginning Jan. 1, 2016, for the department to share or furnish a complete record of all waivers of penalties in excess of $25,000 with the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee. Further provides that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report. Proposed law exempts waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

Present law provides for a penalty of $500 for dealers which fail to keep adequate records.

Proposed law increases the penalty for failure to keep adequate records from $500 to $5,000.

Present law provides for a penalty for failure to fully remit the tax due when filing a tax return and calculates the penalty on the additional amount due when at least 90% of the total tax due is not paid on or before the date due and the return and payment are not received within the prescribed time, including any extensions.

Proposed law retains present law as it relates to the amount of the penalty but extends the penalty provision in cases where the return and full payment are not received within the prescribed time, including any extensions.

Present law provides for the waiver of penalty for delinquent filing or delinquent payment.

Proposed law applies these waiver provisions to cases where the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

Present law establishes a negligence penalty of 5% of the tax due or $10, whichever is greater.

Proposed law changes the negligence penalty from 5% of the tax due or $10, whichever is greater, to separate penalties for negligence and large tax deficiencies as follows:

(1) Negligence - If the secretary finds the taxpayer did not have willful intent to defraud the state, the secretary may assess a penalty equal to 10% of the tax deficiency resulting from the taxpayer's negligence.

(2) Large individual tax deficiency - If a taxpayer understates tax table income by an amount equal to 25% or more of adjusted gross income or has demonstrated a willful disregard for the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not have willful intent to disregard the laws of this state, the secretary shall assess a penalty of 15% of the tax deficiency.

(3) Large tax deficiency for taxes other than individual income tax - If a taxpayer understates tax liability by 25% or more or has otherwise demonstrated a willful disregard for the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not have willful intent to disregard the laws of this state, the secretary shall assess a penalty of 15% of the tax deficiency.

Effective July 1, 2015.

(Amends R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2) and (3), and 1604.1; Adds R.S. 47:1508(B)(37))

Summary of Amendments Adopted by House

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

1. Make technical amendments to the bill.

2. Add a requirement that approval of a waiver of penalties in excess of $50,000 shall be conditioned on the taxpayer's consent to publication of information in the department's annual report.

3. Add authorization, beginning Jan. 1, 2016, for the department to publish a complete record of all waivers of penalties in excess of $50,000 granted by the secretary in the department's annual report.

4. Add provision that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report.

5. Exempt waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

<u>The House Floor Amendments to the engrossed bill:</u>

1. Delete provisions relative to penalties for payment of amounts owed to the Dept. of Revenue with a check, money order, credit card, and other forms of payment that is declined for insufficient funds.

2. Change the authorization, beginning Jan. 1, 2016, that the Dept. of Revenue publish a complete record of waiver of penalties in excess of $50,000 in the department's annual report <u>to</u> a requirement that waiver of penalties in excess of $25,000 be subject to oversight by the House Ways and Means and Senate Revenue and Fiscal Affairs Committees.

3. Delete requirement that the waiver of penalties be conditioned on the taxpayer's consent to publication of information the secretary deems necessary regarding the waiver in the department's annual report.

4. Add authorization that if the secretary of the department finds that a taxpayer had willful intent to defraud the state, the secretary may assess a penalty of 10% of the tax deficiency.

6. Change the requirement with respect to the assessment of a penalty on a taxpayer understating tax liability <u>from</u> reckless intent to disregard the laws of this state <u>to</u> willful intent to disregard the laws of this state.

7. Make technical changes to the bill.