

2020 Regular Session

SENATE BILL NO. 334

BY SENATOR ALLAIN

REVENUE DEPARTMENT. Provides for the funding of the operations of the Department of Revenue. (2/3 - CA7s2.1(A)) (7/1/20)

1 AN ACT

2 To amend and reenact R.S. 47:1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) and

3 to enact R.S. 47:1602(A)(5) and 1608, relative to the Department of Revenue and tax

4 administration; to provide for the funding of the Department of Revenue; to provide

5 for the disposition of certain taxes, penalties, and interest collected by the

6 department; to provide for certain requirements and limitations; to equalize the tax

7 deficiency and refund interest rates; to provide for penalties for failure to file a tax

8 return; to provide for penalties for fraud, negligence, substantial understatement of

9 tax, and willful disregard of tax laws; to provide for definitions; to provide for an

10 effective date; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) are hereby

13 amended and reenacted and R.S. 47:1602(A)(5) and 1608 are hereby enacted to read as

14 follows:

15 §1602. Penalty for failure to make timely return

16 A. * * *

17 **(4)(a) When any taxpayer files a return required to be made under the**

1 provisions of this Subtitle and pays the amount shown on the face of the return,
 2 but fails to pay the full amount of tax actually required to be shown on the
 3 return within thirty calendar days from the date of notice and demand therefor
 4 pursuant to R.S. 47:1562(B), the specific penalty may be one-half of one percent
 5 of the additional tax due. If the failure to pay the additional tax due continues
 6 for more than thirty days, an additional one-half of one percent shall be
 7 imposed for each additional thirty days or fraction during which the failure to
 8 pay continues.

9 (b) The penalty imposed by this Paragraph for each thirty-day period
 10 shall be calculated only on the additional amount due from the taxpayer, and
 11 shall not be imposed for any thirty-day period for which the penalty provided
 12 by Paragraphs (1), (2), or (3) of this Subsection is due.

13 (5) The penalties provided for by this Subsection shall not exceed twenty-five
 14 percent of the tax in the aggregate.

15 * * *

16 §1603. Waiver of penalty for delinquent filing or delinquent payment

17 A.(1) If the ~~failure to make any return at the time such return becomes due~~
 18 ~~or the filing of a return without remittance of the full amount due,~~ **action or failure**
 19 **to act resulting in a penalty pursuant to R.S. 47:1602 or 1602.1** is attributable, not
 20 to the negligence of the taxpayer, but to other cause set forth in written form and
 21 considered reasonable by the secretary of the Department of Revenue, the secretary
 22 may remit or waive payment of the whole or any part of the specific penalty
 23 provided for such failure.

24 * * *

25 §1604. Penalty for false or fraudulent return

26 When the taxpayer files a return that is false or fraudulent or grossly incorrect
 27 and the circumstances indicate that the taxpayer had intent to defraud the ~~State of~~
 28 ~~Louisiana~~ **state** of any tax due under this ~~Sub-title~~ **Subtitle**, there shall be imposed,
 29 in addition to any other penalties provided, a specific penalty of ~~fifty per centum~~

1 ~~(50%)~~ **seventy-five percent** of the tax found to be due. This specific penalty shall
2 be an obligation to be collected and accounted for in the same manner as if it were
3 a part of the tax due, and can be enforced either in a separate action or in the same
4 action for the collection of the tax.

5 §1604.1. Negligence penalty

6 A. ~~Finding of negligence~~: For negligent failure to comply with any provisions
7 of this ~~Part~~ **Subtitle** or any rules and regulations of the department, when ~~the~~
8 ~~secretary finds that a taxpayer did not have willful intent to defraud the state,~~ **the**
9 **provisions of R.S. 47:1604 and Subsection D of this Section do not apply** the
10 secretary may assess a penalty equal to ~~ten~~ **twenty** percent of the tax deficiency
11 found to be due as a result of the taxpayer's negligence.

12 B. Large individual income tax deficiency. In the case of individual income
13 tax, if a taxpayer understates tax table income, by any means, by an amount equal to
14 twenty-five percent or more of adjusted gross income ~~or has otherwise demonstrated~~
15 ~~a willful intent to disregard the tax laws of this state,~~ the secretary may assess a
16 penalty equal to ~~twenty percent of the deficiency.~~ However, in the case of individual
17 ~~income tax, if a taxpayer understates tax table income by an amount equal to~~
18 ~~twenty-five percent or more of adjusted gross income but the secretary finds that the~~
19 ~~taxpayer did not have willful intent to disregard the tax laws of this state, the~~
20 ~~secretary may assess a penalty of fifteen percent of the deficiency~~ **of ten percent of**
21 **the deficiency in addition to any penalty provided for in Subsection A of this**
22 **Section.**

23 C. Other large tax deficiency. In the case of a tax other than individual
24 income tax, if a taxpayer understates tax liability by twenty-five percent or more, ~~or~~
25 ~~has otherwise demonstrated a willful intent to disregard the tax laws of this state,~~ the
26 secretary may assess a penalty ~~equal to twenty percent of the deficiency~~ **of ten**
27 **percent of the deficiency in addition to any penalty provided for in Subsection**
28 **A of this Section.** However, in the case of a tax other than individual income tax, if
29 a taxpayer understates tax liability by twenty-five percent or more, but the secretary

1 ~~finds that the taxpayer did not have willful intent to disregard the tax laws of this~~
2 ~~state, the secretary may assess a penalty of fifteen percent of the deficiency.~~

3 D.(1) Willful disregard for Louisiana tax laws. If a taxpayer has
4 demonstrated a willful disregard of the tax laws of this state, the secretary may
5 assess a penalty of forty percent of the tax deficiency found to be due.

6 (2) If the penalty under this Subsection applies, then the penalty due
7 pursuant to the provisions of Subsections A, B, or C of this Section shall not be
8 applicable.

9 E. For purposes of this Section, the following terms shall have the following
10 meanings unless the context clearly indicates otherwise:

11 (1) "Adjusted gross income" means gross income as defined in Section 62 of
12 the Internal Revenue Code.

13 (2) "Negligent failure" means any failure to make a reasonable attempt
14 to comply with the tax laws of this state, or a careless or reckless disregard for
15 the tax laws of this state. Negligent failure shall be presumed in any instance
16 where the taxpayer understates tax liability by ten percent or more but did not
17 demonstrate a willful disregard of the tax laws of this state.

18 (3) "Willful" means voluntarily and intentionally acting in violation of the tax
19 laws of this state. The secretary shall use this definition of "willful" when
20 determining whether a penalty shall be imposed for the willful intent to defraud this
21 state or willful intent to disregard the tax laws of this state.

22 * * *

23 §1608. Disposition of penalties and self-generated revenue

24 A. The disposition of all state taxes, interest, and penalties collected by
25 or on behalf of the Department of Revenue pursuant to the provisions of Title
26 47 of the Louisiana Revised Statutes of 1950, as amended, shall be governed by
27 the following:

28 (1) State taxes and interest. Beginning July 1, 2020, an amount equal to
29 one percent of all taxes and interest collected by or on behalf of the secretary of

1 the Department of Revenue pursuant to the provisions of Chapters 1, 2, 2-A,
2 2-B, or 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, shall
3 be designated as self-generated revenue of the Department of Revenue.

4 (2) Penalties. Beginning July 1, 2020, the full amount of penalties
5 collected by the secretary of the Department of Revenue pursuant to Part IV of
6 Chapter 18 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950,
7 shall be transferred to the state treasury for deposit into the state general fund,
8 provided that only the pass through expenses and fees collected pursuant to R.S.
9 47:1602.1, 1604.2, 1605, and 1606 shall be designated as self-generated revenue
10 of the Department of Revenue.

11 B. Subject to appropriation by the legislature, monies designated as
12 self-generated revenues pursuant to the provisions of this Section, together with
13 any other revenues otherwise self-generated by the secretary, shall be used by
14 the Department of Revenue for the administration and collection of taxes, the
15 operation of the department, and fulfilling of the department's obligations
16 related to the costs of tax adjudication, and may be retained by the secretary
17 and carried forward for such purposes.

18 * * *

19 §1624. Interest on refunds

20 A.(1) ~~Notwithstanding~~ (a) Except as otherwise provided in this Section
21 and notwithstanding any other provision of law to the contrary, on all refunds or
22 credits the secretary shall compute and allow as part of the refund or credit, interest
23 at the annual rate established in R.S. 13:4202 from ninety days after the later of the
24 due date of the return, the filing date of the return or claim for refund on which the
25 overpayment is claimed, or the date the tax was paid.

26 (b) Beginning January 1, 2021, on all refunds or credits, interest shall
27 accrue at three percentage points above the annual rate established in R.S.
28 13:4202 from ninety days after the later of the due date of the return, the filing
29 date of the return or claim for refund on which the overpayment is claimed, or

Present law provides for penalties for fraud, negligence, and large tax deficiencies of 25% or more.

Proposed law changes the penalty rates for fraud, negligence, and large tax deficiencies as follows:

- (1) Fraud (R.S. 47:1604), from 50% to 75% of deficiency.
- (2) Negligence (R.S. 47:1604.1(A)), from 10% to 20% of deficiency.
- (3) Large individual tax deficiency (R.S. 47:1601.1(B)), from a maximum of 20% to 10% of deficiency.
- (4) Other large tax deficiency (R.S. 47:1601.1(C)), from a maximum of 20% to 10% of deficiency.

Proposed law defines negligent failure as any failure to make a reasonable attempt to comply with the tax laws of this state or a careless or reckless disregard for the tax laws of the state.

Proposed law creates a presumption of negligent failure where there is an understatement of tax liability of 10% or more and there is no indication of willful disregard of the state's tax laws.

Proposed law authorizes an additional penalty for willful disregard of the state's tax laws of 40% of the deficiency and retains present law definition of willful as "voluntarily and intentionally acting in violation of the tax laws of this state."

Proposed law provides that beginning July 1, 2020, an amount equal to 1% of the state taxes and interest collected by or on behalf of the Dept. of Revenue (DOR) shall be designated as self-generated revenue of the department.

Proposed law requires, with respect to penalties collected by DOR, that from July 1, 2020, and thereafter, 100% of penalties be deposited into the state general fund.

Proposed law requires the self-generated revenues to be used by DOR for the administration and collection of taxes and for operation of the department, subject to appropriation by the legislature.

Proposed law requires that beginning July 1, 2020, any collection action taken by the secretary shall apply the penalties provided for in this Act for all tax periods.

Proposed law prohibits refunds of penalties paid before the effective date of this Act if the claim for refund is that no penalties would be due under the provisions of this Act.

Present law provides for interest on unpaid taxes at three percentage points above the judicial interest rate and interest on refunds of overpaid taxes at the judicial interest rate.

Proposed law equalizes the interest rates on refunds and unpaid taxes by increasing the interest rate on refunds to three points above the judicial interest rate beginning Jan. 1, 2021.

Effective July 1, 2020.

(Amends R.S. 47:1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1); adds R.S. 47:1602(A)(5) and 1608)