

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 (2)(b) and to enact R.S. 47:1602(A)(5), 1608, and 1624(F) relative to the Department
4 of Revenue and tax administration; to provide for the funding of the Department of
5 Revenue; to provide for the disposition of certain taxes, penalties, and interest
6 collected by the department; to provide for certain requirements and limitations; to
7 equalize the tax deficiency and refund interest rates; to provide for the calculation
8 of interest on certain overpayments; to provide for certain limitations and
9 requirements; to provide for penalties for failure to file a tax return; to provide for
10 penalties for fraud, negligence, substantial understatement of tax, and willful
11 disregard of tax laws; to provide for definitions; to provide for an effective date; and
12 to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) and (2)(b)
15 are hereby amended and reenacted and R.S. 47:1602(A)(5), 1608, and 1624(F) are hereby
16 enacted to read as follows:

17 §1602. Penalty for failure to make timely return

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

6 §1604.1. Negligence penalty

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

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

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

1 a taxpayer understates tax liability by twenty-five percent or more, but the secretary
 2 finds that the taxpayer did not have willful intent to disregard the tax laws of this
 3 state, the secretary may assess a penalty of fifteen percent of the deficiency.

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

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

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

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

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

19 (3) "Willful disregard" means voluntarily and intentionally acting in
 20 violation of the tax laws of this state. The secretary shall use this definition of
 21 "willful disregard" when determining whether a penalty shall be imposed for the
 22 ~~willful intent to defraud this state or willful intent to disregard of~~ the tax laws of this
 23 state. Willful disregard shall be presumed in any instance where a taxpayer fails
 24 to timely remit tax withheld or collected.

25 * * *

26 §1608. Disposition of penalties and self-generated revenue

27 A. The disposition of all state taxes, interest, and penalties collected by
 28 or on behalf of the Department of Revenue pursuant to the provisions of Title
 29 47 of the Louisiana Revised Statutes of 1950, as amended, shall be governed by

1 the following:

2 (1) State taxes and interest. Beginning July 1, 2020, an amount equal to
3 one percent of all taxes and interest collected by or on behalf of the secretary of
4 the Department of Revenue pursuant to the provisions of Chapters 1, 2, 2-A,
5 2-B, or 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, shall
6 be designated as self-generated revenue of the Department of Revenue.

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

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

21 * * *

22 §1624. Interest on refunds

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

29 (b) Except as otherwise provided in Subparagraph (2)(a) of this

1 Subsection, and notwithstanding any other provision of law to the contrary,
 2 beginning January 1, 2021, on all refunds or credits, the secretary shall compute
 3 and allow as part of the refund or credit interest at the rate established for tax
 4 obligations in R.S. 47:1601(A)(2) from ninety days after the later of the due date
 5 of the return, the filing date of the return or claim for refund on which the
 6 overpayment is claimed, or the date the tax was paid.

7 (c) An overpayment shall bear no interest if it is credited to the taxpayer's
 8 account. No interest on refunds or credits shall be allowed if the secretary proves by
 9 clear and convincing evidence that a person has deliberately overpaid a tax in order
 10 to derive the benefit of the interest allowed by this Section. Payments of interest
 11 authorized by this Section shall be made from funds derived from current collections
 12 of the tax to be refunded or credited.

13 (2) Notwithstanding any provision of this Section, or any other provision of
 14 law to the contrary, interest on a refund of an overpayment of severance tax to an
 15 operator whose well qualifies for the severance tax suspension pursuant to R.S.
 16 47:633(7)(c)(iii) or (9)(d)(v) for new horizontal or deep wells shall be paid as
 17 follows:

18 * * *

19 (b) Interest on refunds made pursuant to this Subsection that are made after
 20 the one hundred eightieth day after a properly filed claim for refund or an amended
 21 return has been submitted to the department shall be the interest rate provided for in
 22 Subparagraph (a) of this Paragraph for the first one hundred eighty days and at the
 23 rate ~~established in R.S. 13:4202~~ established for refunds of overpayments in R.S.
 24 47:1624(A)(1)(b) for any period of time in excess of one hundred eighty days in
 25 accordance with the provisions of Subsection A of this Section.

26 * * *

27 F. Notwithstanding any provision of this Section, or any other provision
 28 of law to the contrary, the accrual of interest shall be suspended during any
 29 period of time that a delay in the issuance of a refund is attributable to the

1 **taxpayer's failure to provide information or documentation required by statute**
 2 **or regulation.**

3 Section 2. Beginning July 1, 2020, any collection action taken by the secretary shall
 4 apply the penalties provided for in this Act for all tax periods, and no penalty shall be due
 5 pursuant to the provisions of R.S. 47:1602(A) for actions subject to penalty pursuant to
 6 Paragraph (4) of that Subsection except as provided for pursuant to that Paragraph.

7 Section 3. Notwithstanding any provision of law to the contrary, no refund shall be
 8 due to any taxpayer for any penalty paid pursuant to the laws of the state existing prior to
 9 the effective date of this Act if the refund is based on a claim that no penalty would be due
 10 pursuant to the provisions of this Act, nor if based on the claim that penalties paid pursuant
 11 to R.S. 47:1602(A) prior to the effective date of this Act should not have been paid on the
 12 underpayment of tax actually due.

13 Section 4. This Act shall become effective July 1, 2020. If vetoed by the governor
 14 and subsequently approved by the legislature, this Act shall become effective on
 15 July 1, 2020, or the day following such approval, whichever is later.

The original instrument was prepared by Leonore Heavey. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Curry J. Lann.

DIGEST

SB 334 Engrossed

2020 Regular Session

Allain

Present law establishes separate penalties for the failure to make timely return and for the failure to pay full amount of tax due shown on the return.

Proposed law retains present law failure to file and failure to pay penalties and provides for a reduced penalty when the taxpayer fails to pay the full amount due that was required to be shown on the return at the rate of ½ of 1% instead of 5% per month.

Proposed law retains present law maximum of 25% of the tax for the combined failure to file and failure to pay penalties.

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.

Present law defines willful as "voluntarily and intentionally acting in violation of the tax laws of this state." Proposed law retains present law and adds a presumption of willful intent to disregard in any instance where a taxpayer fails to timely remit tax withheld or collected.

Proposed law authorizes an additional penalty for willful disregard of the state's tax laws of 40% of the deficiency.

Proposed law provides that beginning July 1, 2020, an amount equal to 1% of the state sales, corporation income and franchise, and individual income 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 provides that DOR will retain any compensatory fees and expenses they collect.

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.

Proposed law suspends the accrual of interest during any period of time that a delay in the issuance of a refund is attributable to the taxpayer's failure to provide information or documentation required by statute or regulation.

Effective July 1, 2020.

(Amends R.S. 47:1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) and (2)(b); adds R.S. 47:1602(A)(5), 1608, and 1624(F))

Summary of Amendments Adopted by Senate

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

1. Adds presumption of willful intent to disregard in any instance where a taxpayer fails to timely remit tax withheld or collected.
2. Suspends the accrual of interest during any period of time that a delay in the issuance of a refund is attributable to the taxpayer's failure to provide information or documentation required by statute or regulation.
3. Makes technical corrections to the interest rate of certain severance taxes.