





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~~ **Accuracy-related** penalty

6           A.**(1)** Finding of negligence. For negligent failure to comply with any  
7           provisions of this Part **Subtitle** or any rules and regulations of the department, when  
8           ~~the 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          **(2)(a) A penalty equal to the amount of the penalty that would be due**  
13          **pursuant to Paragraph (1) of this Subsection shall be presumed to apply if the**  
14          **taxpayer understates tax liability by ten percent or more but did not**  
15          **demonstrate a willful disregard of the tax laws of this state.**

16          **(b) The penalty provided for pursuant to this Paragraph shall not be**  
17          **applicable if a taxpayer's understatement was due, not to the negligence of the**  
18          **taxpayer, but to other reasonable cause where the taxpayer acted in good faith.**

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

1 C. Other large tax deficiency. In the case of a tax other than individual  
2 income tax, if a taxpayer understates tax liability by twenty-five percent or more, ~~or~~  
3 ~~has otherwise demonstrated a willful intent to disregard the tax laws of this state,~~ the  
4 secretary may assess a penalty ~~equal to twenty percent of the deficiency~~ **of ten**  
5 **percent of the deficiency in addition to any penalty provided for in Subsection**  
6 **A of this Section.** ~~However, in the case of a tax other than individual income tax, if~~  
7 ~~a taxpayer understates tax liability by twenty-five percent or more, but the secretary~~  
8 ~~finds that the taxpayer did not have willful intent to disregard the tax laws of this~~  
9 ~~state, the secretary may assess a penalty of fifteen percent of the deficiency.~~

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

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

16 E. **Definitions.** For purposes of this Section, the following terms shall have  
17 the following meanings unless the context clearly indicates otherwise:

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

20 (2) **"Negligent failure" means any failure to make a reasonable attempt**  
21 **to comply with the tax laws of this state, or a careless or reckless disregard for**  
22 **the tax laws of this state.**

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

29 \* \* \*

1 §1608. Disposition of penalties and self-generated revenue

2 A. Beginning July 1, 2022, the disposition of all state taxes, interest, and  
3 penalties collected by or on behalf of the Department of Revenue pursuant to  
4 the provisions of this Title shall be governed by the following:

5 (1) State taxes and interest. Beginning July 1, 2022, an amount equal to  
6 one percent of all taxes and interest collected by or on behalf of the secretary of  
7 the Department of Revenue pursuant to the provisions of Chapters 1, 2, 2-A,  
8 2-B, or 5 of Subtitle II of this Title, shall be designated as self-generated revenue  
9 of the Department of Revenue.

10 (2) Penalties. Beginning July 1, 2022, the full amount of penalties  
11 collected by the secretary of the Department of Revenue pursuant to Part IV of  
12 Chapter 18 of Subtitle II of this Title, shall be transferred to the state treasury  
13 for deposit into the state general fund, provided that only the compensatory  
14 expenses and fees collected pursuant to R.S. 47:1602.1, 1604.2, 1605, and 1606  
15 shall be designated as self-generated revenue of the Department of Revenue.

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

23 \* \* \*

24 §1624. Interest on refunds

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

1 overpayment is claimed, or the date the tax was paid.

2 **(b) Except as otherwise provided in Subparagraph (2)(a) of this**  
3 **Subsection, and notwithstanding any other provision of law to the contrary,**  
4 **beginning January 1, 2022, on all refunds or credits, the secretary shall compute**  
5 **and allow as part of the refund or credit interest at the rate established for tax**  
6 **obligations in R.S. 47:1601(A)(2) from ninety days after the later of the due date**  
7 **of the return, the filing date of the return or claim for refund on which the**  
8 **overpayment is claimed, or the date the tax was paid.**

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

15 (2) Notwithstanding any provision of this Section, or any other provision of  
16 law to the contrary, interest on a refund of an overpayment of severance tax to an  
17 operator whose well qualifies for the severance tax suspension pursuant to R.S.  
18 47:633(7)(c)(iii) or (9)(d)(v) for new horizontal or deep wells shall be paid as  
19 follows:

20 \* \* \*

21 (b) Interest on refunds made pursuant to this Subsection that are made after  
22 the one hundred eightieth day after a properly filed claim for refund or an amended  
23 return has been submitted to the department shall be the interest rate provided for in  
24 Subparagraph (a) of this Paragraph for the first one hundred eighty days and at the  
25 rate ~~established in R.S. 13:4202~~ **established for refunds of overpayments in R.S.**  
26 **47:1624(A)(1)(b)** for any period of time in excess of one hundred eighty days in  
27 accordance with the provisions of Subsection A of this Section.

28 \* \* \*

29 **F. Notwithstanding any provision of this Section, or any other provision**

1           **of law to the contrary, the accrual of interest shall be suspended during any**  
 2           **period of time that a delay in the issuance of a refund is attributable to the**  
 3           **taxpayer's failure to provide information or documentation required by statute**  
 4           **or regulation.**

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

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

15          Section 4. This Section and Sections 2, 3, and 5 of this Act shall become effective  
 16          upon the signature of the governor or, if not signed by the governor, upon expiration of the  
 17          time for bills to become law without signature by the governor, as provided by Article III,  
 18          Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently  
 19          approved by the legislature, this Section and Sections 2, 3, and 5 of this Act shall become  
 20          effective on the day following such approval.

21          Section 5. Section 1 of this Act shall become effective January 1, 2021. If vetoed by  
 22          the governor and subsequently approved by the legislature, this Act shall become effective  
 23          on January 1, 2021.

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The original instrument was prepared by Leonore Heavey. The following  
 digest, which does not constitute a part of the legislative instrument, was  
 prepared by Jerry G. Jones.

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DIGEST

SB 334 Re-Reengrossed                      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 (Section 1 of Act) 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) Accuracy related (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.

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 from others.

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, 2022, the disposition of state taxes, interest, and penalties collected by or on behalf of the Dept. of Revenue shall be governed by the following. 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. With respect to penalties collected by DOR, from July 1, 2022, and thereafter, 100% of penalties are to be deposited into the state general fund. DOR will retain any compensatory fees and expenses they collect. Self-generated revenues are 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 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.

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, 2022.

Proposed law (Section 2 of Act) 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 (Section 3 of Act) 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.

Proposed law provides that Section 1 of this Act shall become effective on Jan. 1, 2021. Sections 2 and 3 shall become effective upon signature of governor or lapse of time for gubernatorial action.

(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.

Senate Floor Amendments to reengrossed bill

1. Technical.
2. Revised applicable dates and effective dates.
3. Provided relative to penalties and definitions.