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 DIGEST
 

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SB 334 Re-Reengrossed

2020 Regular Session

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Present law establishes separate penalties for the failure to make timely return and for the failure to pay the 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 .5% instead of 5% per month.

Proposed law retains the 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 provides that when the state collector determines to waive or remit all or any part of a penalty for failure to timely file a return, the collector's determination shall be submitted to the board for review. If the board finds that the penalty may properly be waived or remitted, it shall approve the action of the collector. However, if the board rejects the proposal to waive or remit, the collector shall assess and collect the penalty.

Proposed law changes present law by removing the requirement that the penalty waiver be submitted to the board for review and approval. Proposed law clarifies that no provision of proposed law is intended to expand the jurisdiction of the board to reconsider or review the state collector's discretionary functions related to penalties, including the denial of the waiver of any penalty due. Further clarifies that proposed law is not intended to constrain the board's jurisdiction in a matter concerning whether a penalty is due under the relevant facts and applicable law.

Present law defines willful disregard 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 when a taxpayer fails to timely remit tax withheld or collected from others absent a showing of good cause.

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 Jan. 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 Jan. 1, 2021, any collection action taken by the secretary shall be subject to the penalties provided for in proposed law for all tax periods.

Proposed law (Section 3 of Act) prohibits refunds of penalties paid before Jan. 1, 2021, if the claim for refund is that no penalties would be due under the provisions of proposed law.

Proposed law provides that Section 1 of this Act shall become effective on Jan. 1, 2021. Sections 2, 3, 4, 5, and 6 shall become effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:1451, 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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the re-reengrossed bill:

1. Remove requirements that the penalty waiver be submitted to the board for review and approval.

2. Clarify that proposed law is not intended to expand the jurisdiction of the board to reconsider or review the state collector's discretionary functions related to penalties or to constrain the board's jurisdiction in a matter concerning whether a penalty is due under facts and law.
3. Change the presumption of willful intent to disregard to when a taxpayer fails to timely remit tax withheld or collected from others absent a showing of good cause.
4. Change the effective date of when collection actions taken by the secretary shall be subject to the penalties provided for in proposed law from all tax periods beginning July 1, 2020, to all tax periods beginning Jan. 1, 2021.