

SENATE BILL NO. 334

BY SENATOR ALLAIN

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AN ACT

To amend and reenact R.S. 47:1451, 1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) and (2)(b) and to enact R.S. 47:1602(A)(5), 1608, and 1624(F), relative to the Department of Revenue and tax administration; to provide for the funding of the Department of Revenue; to provide for the disposition of certain taxes, penalties, and interest collected by the department; to provide for certain requirements and limitations; to equalize the tax deficiency and refund interest rates; to provide for the calculation of interest on certain overpayments; to provide for the waiver of certain penalties by certain collectors; to provide for penalties for failure to file a tax return; to provide for penalties for fraud, negligence, substantial understatement of tax, and willful disregard of tax laws; to provide for definitions; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1451, 1602(A)(4), 1603(A)(1), 1604, 1604.1, and 1624(A)(1) and (2)(b) are hereby amended and reenacted and R.S. 47:1602(A)(5), 1608, and 1624(F) are hereby enacted to read as follows:

§1451. Waiver of penalties

A. Except as otherwise provided by law, whenever **authorized by R.S. 47:1603 or any other provision of law**, the state collector ~~determines to~~ **may** waive or remit the whole or any part of the **any** penalty provided for ~~failure to file any return at the time it became due, 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 pursuant to applicable law, it shall approve the action of the collector. Otherwise the board shall reject the proposal to waive or remit, and it shall then be~~ **mandatory upon the collector to assess and collect the penalty taxes administered**

1 by the state collector.

2 B. Nothing in this Section shall be construed to expand the jurisdiction of the
3 board to reconsider or review a waiver of penalties or any other discretionary
4 functions of a local collector.

5 C. Nothing in this Section shall be construed to expand the jurisdiction
6 of the board to reconsider or review the state collector's discretionary functions
7 related to penalties, including the denial of the waiver of any penalty due,
8 provided that nothing in this Section shall constrain the board's jurisdiction in
9 a matter pursuant to R.S. 47:1431 concerning whether a penalty is actually due
10 under the relevant facts and applicable law.

11 * * *

12 §1602. Penalty for failure to make timely return; penalties related to nonpayment
13 or underpayment

14 A. * * *

15 (4)(a) When any taxpayer files a return required to be made under the
16 provisions of this Subtitle and pays the amount shown on the face of the return,
17 but fails to pay the full amount of tax actually due for the period within thirty
18 calendar days from the date of notice and demand therefor pursuant to R.S.
19 47:1562(B), the specific penalty may be one-half of one percent of the additional
20 tax due. If the failure to pay the additional tax due continues for more than
21 thirty days, an additional one-half of one percent shall be imposed for each
22 additional thirty days or fraction during which the failure to pay continues.

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

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

29 * * *

30 §1603. Waiver of penalty for delinquent filing or delinquent payment

1 the taxpayer acted in good faith.

2 B. Large individual income tax deficiency. In the case of individual income
3 tax, if a taxpayer understates tax table income, by any means, by an amount equal to
4 twenty-five percent or more of adjusted gross income ~~or has otherwise demonstrated~~
5 ~~a willful intent to disregard the tax laws of this state~~, the secretary may assess a
6 penalty equal to twenty percent of the deficiency. However, in the case of individual
7 income tax, if a taxpayer understates tax table income by an amount equal to
8 twenty-five percent or more of adjusted gross income but the secretary finds that the
9 taxpayer did not have willful intent to disregard the tax laws of this state, the
10 secretary may assess a penalty of fifteen percent of the deficiency **of ten percent of**
11 **the deficiency in addition to any penalty provided for in Subsection A of this**
12 **Section.**

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

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

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

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

30 (1) "Adjusted gross income" means gross income as defined in Section 62 of

1 the Internal Revenue Code.

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

5 (3) "Willful disregard" means voluntarily and intentionally acting in
 6 violation of the tax laws of this state. The secretary shall use this definition of
 7 "willful disregard" when determining whether a penalty shall be imposed for the
 8 ~~willful intent to defraud this state or willful intent to disregard~~ of the tax laws of this
 9 state. Willful disregard shall be presumed when a taxpayer fails to timely remit
 10 tax withheld or collected from others, absent a showing of good cause.

11 * * *

12 §1608. Disposition of penalties and self-generated revenue

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

16 (1) State taxes and interest. Beginning July 1, 2022, an amount equal to
 17 one percent of all taxes and interest collected by or on behalf of the secretary of
 18 the Department of Revenue pursuant to the provisions of Chapters 1, 2, 2-A,
 19 2-B, or 5 of Subtitle II of this Title, shall be designated as self-generated revenue
 20 of the Department of Revenue.

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

27 B. Subject to appropriation by the legislature, monies designated as
 28 self-generated revenues pursuant to the provisions of this Section, together with
 29 any other revenues otherwise self-generated by the secretary, shall be used by
 30 the Department of Revenue for the administration and collection of taxes, the

1 operation of the department, and fulfilling of the department's obligations
 2 related to the costs of tax adjudication, and may be retained by the secretary
 3 and carried forward for such purposes.

4 * * *

5 §1624. Interest on refunds

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

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

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

25 (2) Notwithstanding any provision of this Section, or any other provision of
 26 law to the contrary, interest on a refund of an overpayment of severance tax to an
 27 operator whose well qualifies for the severance tax suspension pursuant to R.S.
 28 47:633(7)(c)(iii) or (9)(d)(v) for new horizontal or deep wells shall be paid as
 29 follows:

30 * * *

1 (b) Interest on refunds made pursuant to this Subsection that are made after
 2 the one hundred eightieth day after a properly filed claim for refund or an amended
 3 return has been submitted to the department shall be the interest rate provided for in
 4 Subparagraph (a) of this Paragraph for the first one hundred eighty days and at the
 5 rate ~~established in R.S. 13:4202~~ **established for refunds of overpayments in R.S.**
 6 **47:1624(A)(1)(b)** for any period of time in excess of one hundred eighty days in
 7 accordance with the provisions of Subsection A of this Section.

8 * * *

9 **F. Notwithstanding any provision of this Section, or any other provision**
 10 **of law to the contrary, the accrual of interest shall be suspended during any**
 11 **period of time that a delay in the issuance of a refund is attributable to the**
 12 **taxpayer's failure to provide information or documentation required by statute**
 13 **or regulation.**

14 Section 2. Beginning January 1, 2021, any collection action taken by the secretary
 15 shall be subject to the provisions concerning penalties provided for in this Act for all tax
 16 periods, and no penalty shall be due pursuant to the provisions of R.S. 47:1602(A) for
 17 actions subject to penalty pursuant to Paragraph (4) of that Subsection except as provided
 18 for pursuant to that Paragraph.

19 Section 3. Notwithstanding any provision of law to the contrary, no refund shall be
 20 due to any taxpayer for any penalty paid pursuant to the laws of the state existing prior to
 21 January 1, 2021, if the refund is based on a claim that no penalty would be due pursuant to
 22 the provisions of this Act, nor if based on the claim that penalties paid pursuant to R.S.
 23 47:1602(A) prior to January 1, 2021, should not have been paid on the underpayment of tax
 24 actually due.

25 Section 4. The provisions of this Act amending R.S. 47:1451 and 1603 shall be
 26 procedural and interpretive.

27 Section 5. This Section and Sections 2, 3, 4, and 6 of this Act shall become effective
 28 upon the signature of the governor or, if not signed by the governor, upon expiration of the
 29 time for bills to become law without signature by the governor, as provided by Article III,
 30 Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently

1 approved by the legislature, this Section and Sections 2, 3, 4 and 6 of this Act shall become
2 effective on the day following such approval.

3 Section 6. Section 1 of this Act shall become effective January 1, 2021. If vetoed by
4 the governor and subsequently approved by the legislature, Section 1 of this Act shall
5 become effective on January 1, 2021.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____