RÉSUMÉ DIGEST

ACT 348 (SB 334) **2020 Regular Session** **Allain**

Prior law established 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.

New law (Section 1 of Act) retains prior 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.

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

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

New 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.

New 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.

Prior law provided that when the state collector determined 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 found that the penalty may properly be waived or remitted, it shall approve the action of the collector. However, if the board rejected the proposal to waive or remit, the collector shall assess and collect the penalty.

New law changes prior law by removing the requirement that the penalty waiver be submitted to the board for review and approval. New law clarifies that no provision of new 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 new 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.

Prior law defined willful disregard as "voluntarily and intentionally acting in violation of the tax laws of this state". New law retains prior 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.

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

New 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 (DOR) 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 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.

New 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.

Prior law provided 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.

New 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.

New 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 new law for all tax periods.

New 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 new law.

New 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.

Effective See Act.

(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))