SLS 22RS-429

REENGROSSED

2022 Regular Session

SENATE BILL NO. 242

BY SENATOR ALLAIN

TAX/LOCAL. Provides relative to interest and penalties applicable to local sales and use tax. (8/1/22)

1	AN ACT
2	To amend and reenact R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2),
3	and 337.80(A)(4)(b) and (B) and to enact R.S. 47:337.69(C) and 337.70(A)(4),
4	relative to interest and penalties applicable to local sales and use tax; to provide for
5	remittance of tax under protest; to provide for a limitation on the maximum interest
6	rate on unpaid taxes; to equalize interest rates for taxes due, taxes paid under protest,
7	and refunds of overpayments; to provide for the calculation of late filing and
8	payment penalties; and to provide for related matters.
9	Be it enacted by the Legislature of Louisiana:
10	Section 1. R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2), and
11	337.80(A)(4)(b) and (B) are hereby amended and reenacted and R.S. 47:337.69(C) and
12	337.70(A)(4) are hereby enacted to read as follows:
13	§337.63. Remittance of tax under protest; suits to recover
14	A. * * * *
15	(3) To the extent the taxpayer prevails, the collector shall refund the amount
16	to the claimant, with interest at the rate established pursuant to R.S. 47:337.80 R.S.
17	47:337.69(C), except as provided in Subsection E of this Section. To the extent the

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1	collector prevails, the taxpayer shall pay the collector additional interest
2	calculated on the disputed amount at the same rate established for tax
3	obligations pursuant to R.S. 47:337.69(C), except as provided in Subsection E
4	of this Section.
5	* * *
6	D.(1) Upon request of a taxpayer and upon proper showing by such taxpayer
7	that the principle of law involved in an additional assessment is already pending
8	before the courts for judicial determination or before the Board of Tax Appeals, the
9	taxpayer, upon agreement to abide by the decision of the courts, the Board of Tax
10	Appeals, or by a final judgment of a court upon a timely appeal of a decision of the
11	Board of Tax Appeals, may remit the additional assessment under protest, but need
12	not file an additional suit or petition. In such cases, the tax so paid under protest shal
13	be placed in an escrow account and held by the collector until the question of law
14	involved has been determined by the courts, the Board of Tax Appeals, or by a fina
15	judgment of a court upon a timely appeal of a decision of the Board of Tax Appeals
16	and shall then be disposed of as therein provided.
17	(2) Upon request of a collector and if a principle of law involved in a
18	refund claim filed by a taxpayer is already pending before the collector at the
19	administrative stage, before the courts for judicial determination, or before the
20	Board of Tax Appeals, the taxpayer may, upon agreement to abide by the
21	decision of the courts, the Board of Tax Appeals, or by a final judgment of a
22	court upon a timely appeal of a decision from the collector, the courts, or the
23	Board of Tax Appeals, remit the taxes involving the same principle of law for
24	all current and future tax periods under protest, but need not file an additiona
25	suit or petition. The tax paid under protest pursuant to this Paragraph shall be
26	placed in an escrow account and held by the collector until the principle of law
27	involved has been determined by the courts, the Board of Tax Appeals, or by a
28	final judgment of a court upon a timely appeal of a decision of the Board of Tax
29	Appeals.

1	E.(1) When the collector has pursued collection of taxes pursuant to any
2	remedy provided for in R.S. 47:337.45(A)(2) or (3) and the taxpayer has made a
3	timely payment under protest concerning the same tax obligation, and if the collector
4	has deposited the monies into an interest-bearing account in accordance with this
5	Section, the interest to be paid on the tax obligation to the party or parties adjudged
6	to be entitled to the interest shall be that interest actually earned and received by the
7	collector on the payment.
8	(2) When the taxpayer has pursued an appeal remedy provided for in
9	R.S. 47:337.81 and the collector and the taxpayer have entered into an
10	agreement to abide for current and future tax periods, the interest to be paid
11	on the tax obligation to the party or parties adjudged to be entitled to the
12	interest shall be only that interest actually earned and received by the collector
13	on the payments.
14	* * *
15	§337.69. Interest on unpaid taxes
16	* * *
17	B. Notwithstanding any provision of law to the contrary, for all taxes
18	that become due on or after January 1, 2023, the rate of interest on any amount
19	of outstanding tax shall not exceed one percent per month.
20	B.(C) Notwithstanding any provision of this Section or of this Chapter, the
21	interest on any amount of tax outstanding on a specific date shall be computed at the
22	rate applicable on such date.
23	§337.70. Penalty for failure to make timely return
24	A.(1) When any taxpayer fails to make and file any return required to be
25	made under the provisions of this Chapter before the time that the return becomes
26	delinquent or when any taxpayer fails to timely remit to the collector the total
27	amount of tax that is due on a return which he has filed, there shall be imposed, in
28	addition to any other penalties provided, a specific penalty to be added to the tax in
29	the amount of five percent of the tax owed for each and every thirty-day period

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1	after the return was required to be filed or the tax was required to be remitted,
2	subject to the limitations of this Paragraph.
3	(2) In the case of the filing of a return without remittance of the full amount
4	due, the specific penalty imposed by this Paragraph in the amount of five percent
5	of the tax owed for each thirty-day period shall be calculated only on the additional
6	amount due from the taxpayer after the deduction of payments timely submitted, or
7	submitted during any preceding thirty-day period, subject to the limitations of this
8	Paragraph. The penalty provided by this Paragraph shall not be imposed for any
9	thirty-day period for which a penalty for failure to file a tax return or for filing after
10	the return becomes delinquent is assessed.
11	* * *
12	(4) The penalties for delinquent returns and failure to remit the total
13	amount of tax due shall accrue beginning the day after the due date subject to
14	the limitations of this Subsection.
15	* * *
16	§337.80. Interest on refunds or credits
17	A. * * *
18	(4) * * *
19	(b)(i) Interest shall be at the average prime or reference rate as computed by
20	the commissioner of financial institutions pursuant to R.S. 13:4202(B), per year, but
21	without the addition of one percentage point to the average prime or reference rate
22	and without regard to the limitations contained in R.S. 13:4202(B).
23	(ii) Notwithstanding any provision of law to the contrary, all taxes that
24	become due on or after January 1, 2023, interest shall be computed at the same
25	rate established for tax obligations pursuant to R.S. 47:337.69(C).
26	* * *
27	B. No interest on refunds or credits shall be allowed if it is determined that
28	a person <u>taxpayer</u> has deliberately overpaid a tax in order to derive the benefit of the
29	interest allowed by this Section or if a taxpayer has not entered into an agreement

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1	to abide authorized by R.S. 47:337.63(D)(2) and the same principle of law is
2	involved . Payments of interest authorized by this Section shall be made from funds
3	derived from current collections of the tax to be refunded or credited.
4	* * *

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

DIGEST SB 242 Reengrossed 2022 Regular Session Allain

<u>Present law</u> provides for the remittance of taxes paid under protest and authorizes interest on refunds in a suit to recover as provided for in <u>present law</u>.

<u>Proposed law</u> authorizes interest on refunds in a suit to recover if a taxpayer prevails computed at the interest rate applicable on that date, except for payments paid under protest or an agreement to abide.

<u>Proposed law</u> requires a taxpayer to pay the collector additional interest calculated on the disputed amount computed at the interest rate applicable on that date in suits to recover if the collector prevails, except for payments paid under protest or an agreement to abide.

<u>Proposed law</u> authorizes a taxpayer, upon request of a collector and upon an agreement to abide, to remit the taxes involving the same principle of law for all current and future tax periods under protest, without requiring an additional suit or petition.

<u>Proposed law</u> requires the tax paid under protest to be placed in an escrow account and held by the collector until the principle of law involved has been determined by the courts, the Board of Tax Appeals, or by a final judgment of a court upon a timely appeal of a decision of the Board of Tax Appeals.

<u>Proposed law</u> limits the interest paid on the tax obligation to the interest that is actually earned and received by the collector on the payment when the taxpayer has pursued an appeal and the collector and the taxpayer have entered into an agreement to abide.

<u>Present law</u> authorizes interest to be added to the amount of local sales and use tax due when a taxpayer fails to pay all or part of the tax due on or before the due date.

<u>Proposed law</u> provides for a maximum rate of interest for local sales and use tax of one percent per month for taxes that become due on or after Jan. 1, 2023.

<u>Present law</u> authorizes penalties for the late filing of local sales and use tax returns and the late payment of local sales and use tax.

<u>Proposed law</u> provides for a specific penalty of 5% of the tax owed for each 30 day period after the return was required to be filed or the tax was required to be remitted.

<u>Proposed law</u> provides that the penalties for late filing and late payment accrue from the due date of the return until the return is filed and from the due date of the tax until the tax is paid.

<u>Present law</u> authorizes interest to be added to refunds of local sales and use tax when a taxpayer overpays the tax.

Page 5 of 6 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions. <u>Proposed law</u> provides that the interest rate for refunds of overpayments of local sales and use tax for taxes that become due on or after Jan. 1, 2023, will be the same rate charged on tax obligations set forth in proposed law.

<u>Present law</u> prohibits interest on refunds if it is determined that a taxpayer has deliberately overpaid a tax in order to derive the benefit of the interest.

<u>Proposed law</u> retains <u>present law</u> and further prohibits interest on refunds if it is determined that a taxpayer has not entered into an agreement to abide and the same principle of law in involved.

Effective August 1, 2022.

(Amends R.S. 47:337.63(A)(3), (D), and (E), 337.69(B), 337.70(A)(1) and (2), and 337.80(A)(4)(b) and (B); adds R.S. 47:337.69(C) and 337.70(A)(4))

Summary of Amendments Adopted by Senate

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

- 1. Adds provisions relative to the remittance of taxes paid under protest and authorizing interest on refunds in suits to recover.
- 2. Limits the interest paid on the tax obligation to the interest that is actually earned and received by the collector on the payment when the taxpayer has pursued an appeal and the collector and the taxpayer have entered into an agreement to abide.
- 3. Authorizes a specific penalty of 5% of the tax owed for each 30-day period after the return was required to be filed or the tax was required to be remitted.
- 4. Prohibits interest on refunds if it is determined that a taxpayer has not entered into an agreement to abide and the same principle of law is involved.
- 5. Provides for technical changes.

Senate Floor Amendments to engrossed bill

1. Makes technical correction.