

2015 Regular Session

HOUSE BILL NO. 721

BY REPRESENTATIVE IVEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

REVENUE SECRETARY: Provides relative to penalties collected by the Department of Revenue

1 AN ACT

2 To amend and reenact R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),  
3 1603(A)(2) and (3), and 1604.1 and to enact R.S. 47:1508(B)(37), relative to the  
4 penalties; to provide for certain civil penalties; to provide for the waiver of penalties;  
5 to authorize the disclosure of certain information by the Department of Revenue; to  
6 provide for effectiveness; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2)  
9 and (3), and 1604.1 are hereby amended and reenacted and R.S. 47:1508(B)(37) is hereby  
10 enacted to read as follows:

11 §114. Returns and payment of tax

12 \* \* \*

13 F. Penalty provision.

14 \* \* \*

15 (3) If the failure to timely submit the annual return is attributable, not to the  
16 negligence of the taxpayer, but to other causes set forth in written form and  
17 considered reasonable by the secretary, the secretary may remit or waive payments  
18 of the whole or any part of the specific penalty provided for such failure. ~~It~~ Until  
19 December 31, 2015, in any case where the penalty exceeds twenty-five thousand

1 dollars, it can be waived by the secretary only after approval by the Board of Tax  
2 Appeals. Notwithstanding the provisions of R.S. 47:1508, beginning January 1,  
3 2016, waivers of all penalties exceeding twenty-five thousand dollars shall be subject  
4 to oversight by the House Committee on Ways and Means and the Senate Committee  
5 on Revenue and Fiscal Affairs. This provision shall not apply to any penalty the  
6 secretary remits or waives in accordance with rules and regulations promulgated  
7 pursuant to the Administrative Procedure Act regarding the remittance or waiver of  
8 penalties under the department's voluntary disclosure program.

9 \* \* \*

10 §295. Tax imposed on individuals; administration

11 \* \* \*

12 C. The secretary of the Department of Revenue shall administer and enforce  
13 this Part. He may adopt, prescribe, and from time to time alter and enforce  
14 reasonable rules, orders, and regulations for the purpose of implementing this Part.  
15 He may, upon making a record of his reasons therefor, waive, reduce, or compromise  
16 any of the taxes, penalties, or interest or other amounts provided by this Part. ~~In~~  
17 Until December 31, 2015, in any case when the penalty exceeds twenty-five  
18 thousand dollars, it can be waived by the secretary only after approval by the Board  
19 of Tax Appeals. Notwithstanding the provisions of R.S. 47:1508, beginning January  
20 1, 2016, waivers of all penalties exceeding twenty-five thousand dollars shall be  
21 subject to oversight by the House Committee on Ways and Means and the Senate  
22 Committee on Revenue and Fiscal Affairs. This provision shall not apply to any  
23 penalty the secretary remits or waives in accordance with rules and regulations  
24 promulgated pursuant to the Administrative Procedure Act regarding the remittance  
25 or waiver of penalties under the department's voluntary disclosure program.

26 \* \* \*

27 §309. Dealers required to keep records

28 \* \* \*

1           B. Any dealer subject to the provisions of this Chapter who violates the  
2 provisions of this Section shall be fined not more than five ~~hundred~~ thousand dollars  
3 or imprisoned for not more than sixty days, or both, for any such offense.

4   \*       \*       \*

5           §1508. Confidential character of tax records

6   \*       \*       \*

7           B. Nothing herein contained shall be construed to prevent:

8   \*       \*       \*

9           (37) Beginning January 1, 2016, the sharing or furnishing of a complete  
10 record of all waiver of penalties that exceed twenty-five thousand dollars with the  
11 House Ways and Means and Senate Revenue and Fiscal Affairs Committees. Any  
12 taxpayer who accepts the remittance or waiver of penalties shall be deemed to have  
13 consented to the publication of the complete record of the remittance or waiver of  
14 penalty in the department's annual report. This provision shall not apply to any  
15 penalty the secretary remits or waives in accordance with rules and regulations  
16 promulgated pursuant to the Administrative Procedure Act regarding the remittance  
17 or waiver of penalties under the department's voluntary disclosure program.

18   \*       \*       \*

19           §1602. Penalty for failure to make timely return

20           A.

21   \*       \*       \*

22           (2)(a) Except as provided in Paragraph (3), in the case of the filing of a  
23 return without remittance of the full amount due, the specific penalty shall be five  
24 percent of the unremitted tax if the failure to remit continues for not more than thirty  
25 days, with an additional five percent for each additional thirty days or fraction during  
26 which the failure to remit continues. The penalty imposed by this Paragraph for each  
27 thirty-day period shall be calculated only on the additional amount due from the

1 taxpayer after the deduction of payments timely submitted, or submitted during any  
2 preceding thirty-day period when:

3 ~~(i) At least ninety percent of the total tax due on the return is not previously~~  
4 ~~paid on or before the due date of the return.~~

5 ~~(ii) The~~ the return and payments are not received within the time prescribed  
6 determined with regard to any extension of time.

7 \* \* \*

8 (3)(a) In the case of individual income tax, if the full amount of tax due on  
9 the return is not paid on or before the due date prescribed for payment of such tax,  
10 the specific penalty shall be one-half of one percent of the unremitted tax if the  
11 failure to remit continues for not more than thirty days, with an additional one-half  
12 of one percent for each additional thirty days or fraction during which the failure to  
13 remit continues. The penalty imposed by this Paragraph for each thirty-day period  
14 shall be calculated only on the additional amount due from the taxpayer, when:

15 ~~(i) At least ninety percent of the total tax due on the return is not previously~~  
16 ~~paid through employer withholdings, estimated tax payments, or any other payments~~  
17 ~~made on or before the due date of the return, or~~

18 ~~(ii) The~~ the return and payments are not received within the time prescribed  
19 determined with regard to any extension of time.

20 \* \* \*

21 §1603. Waiver of penalty for delinquent filing or delinquent payment

22 A.

23 \* \* \*

24 (2)(a) In order to promote the effective administration of the tax laws of this  
25 state, the secretary may ~~also~~ promulgate rules and regulations pursuant to the  
26 Administrative Procedure Act concerning the waiver of penalties, including but not  
27 limited to the establishment of a voluntary disclosure program.

28 (b) Notwithstanding any provision of law to the contrary, in any case where  
29 the secretary and the taxpayer have entered into a valid and enforceable voluntary

1 disclosure agreement, the ~~The secretary may, pursuant to the rules and regulations~~  
2 ~~referenced in Subparagraph (a) of this Paragraph,~~ remit or waive the payment of the  
3 whole or any part of the penalties provided for in this Subtitle.

4 \* \* \*

5 (3) ~~In~~ Until December 31, 2015, in any case when the penalty exceeds  
6 twenty-five thousand dollars, it can be waived by the secretary only after approval  
7 by the Board of Tax Appeals. Notwithstanding the provisions of R.S. 47:1508,  
8 beginning January 1, 2016, waivers of all penalties exceeding twenty-five thousand  
9 dollars shall be subject to oversight by the House Committee on Ways and Means  
10 and the Senate Committee on Revenue and Fiscal Affairs. This provision shall not  
11 apply to any penalty the secretary remits or waives in accordance with rules and  
12 regulations promulgated pursuant to the Administrative Procedure Act regarding the  
13 remittance or waiver of penalties under the department's voluntary disclosure  
14 program.

15 \* \* \*

16 §1604.1. Negligence penalty

17 ~~If any taxpayer fails to make any return required by this Sub-title or makes~~  
18 ~~an incorrect return, and the circumstances indicate wilful negligence or intentional~~  
19 ~~disregard of rules and regulations, but no intent to defraud, there shall be imposed,~~  
20 ~~in addition to any other penalties provided, a specific penalty of 5% of the tax or~~  
21 ~~deficiency found to be due, or ten dollars, whichever is the greater. This specific~~  
22 ~~penalty shall be an obligation to be collected and accounted for in the same manner~~  
23 ~~as if it were a part of the tax due, and can be enforced either in a separate action or~~  
24 ~~in the same action for the collection of the tax.~~

25 A. Finding of negligence. For negligent failure to comply with any  
26 provisions of this Part or any rules and regulations of the department, when the  
27 secretary finds that a taxpayer did not have willful intent to defraud the state, the  
28 secretary may assess a penalty equal to ten percent of the tax deficiency found to be  
29 due as a result of the taxpayer's negligence.

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

10           C. Other large tax deficiency. In the case of a tax other than individual  
11           income tax, if a taxpayer understates tax liability by twenty-five percent or more, or  
12           has otherwise demonstrated a willful disregard for the tax laws of this state, the  
13           secretary shall assess a penalty equal to twenty percent of the deficiency. However,  
14           in the case of a tax other than individual income tax, if a taxpayer understates tax  
15           liability by twenty-five percent or more, but the secretary finds that the taxpayer did  
16           not have willful intent to disregard the tax laws of this state, the secretary shall assess  
17           a penalty of fifteen percent of the deficiency.

18           D. For purposes of this Section, the following terms shall have the following  
19           meanings unless the context clearly indicates otherwise:

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

22           (2) "Willful disregard" means the standard used to evaluate "willful failure  
23           to collect or pay federal tax" pursuant to Section 7202 of the Internal Revenue Code.  
24           The secretary shall use the standard of "willful disregard" when determining whether  
25           a penalty shall be imposed by the secretary for an understatement of taxable income  
26           or other tax liability by a taxpayer.

27           Section 3. This Act shall become effective on July 1, 2015; if vetoed by the governor  
28           and subsequently approved by the legislature, this Act shall become effective on July 1,  
29           2015, or on the day following such approval by the legislature, whichever is later.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 721 Reengrossed

2015 Regular Session

Ivey

**Abstract:** Provides for penalties and fees assessed by the Dept. of Revenue and adds requirements for the publication of the waiver of penalties in excess of \$50,000.

Present law provides for waiver by the secretary of penalties exceeding \$25,000 only after approval by the Board of Tax Appeals.

Proposed law maintains the requirement for the Board of Tax Appeals to approve the waiver of penalties which exceed \$25,000 until Dec. 31, 2015. Beginning Jan. 1, 2016. Further provides that approval of a waiver of penalties exceeding \$25,000 shall be subject to oversight by the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

Proposed law exempts penalties remitted or waived by the secretary from the provisions of proposed law if the penalties are waived pursuant to the department's voluntary disclosure program.

Present law provides that the records and files of the Dept. of Revenue or records and files maintained pursuant to tax ordinances shall be confidential and privileged and shall not be disclosed except in the administration and enforcement of tax laws or in other limited, specific circumstances.

Proposed law retains present law but adds authorization, beginning Jan. 1, 2016, for the department to share or furnish a complete record of all waivers of penalties in excess of \$25,000 with the House Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee. Further provides that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report. Proposed law exempts waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

Present law provides for a penalty of \$500 for dealers which fail to keep adequate records.

Proposed law increases the penalty for failure to keep adequate records from \$500 to \$5,000.

Present law provides for a penalty for failure to fully remit the tax due when filing a tax return and calculates the penalty on the additional amount due when at least 90% of the total tax due is not paid on or before the date due and the return and payment are not received within the prescribed time, including any extensions.

Proposed law retains present law as it relates to the amount of the penalty but extends the penalty provision in cases where the return and full payment are not received within the prescribed time, including any extensions.

Present law provides for the waiver of penalty for delinquent filing or delinquent payment.

Proposed law applies these waiver provisions to cases where the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

Present law establishes a negligence penalty of 5% of the tax due or \$10, whichever is greater.

Proposed law changes the negligence penalty from 5% of the tax due or \$10, whichever is greater, to separate penalties for negligence and large tax deficiencies as follows:

- (1) Negligence - If the secretary finds the taxpayer did not have willful intent to defraud the state, the secretary may assess a penalty equal to 10% of the tax deficiency resulting from the taxpayer's negligence.
- (2) Large individual tax deficiency - If a taxpayer understates tax table income by an amount equal to 25% or more of adjusted gross income or has demonstrated a willful disregard for the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not have willful intent to disregard the laws of this state, the secretary shall assess a penalty of 15% of the tax deficiency.
- (3) Large tax deficiency for taxes other than individual income tax - If a taxpayer understates tax liability by 25% or more or has otherwise demonstrated a willful disregard for the tax laws of this state, the secretary may assess a penalty equal to 20% of the deficiency. However, if the secretary finds that the taxpayer did not have willful intent to disregard the laws of this state, the secretary shall assess a penalty of 15% of the tax deficiency.

Effective July 1, 2015.

(Amends R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2) and (3), and 1604.1; Adds R.S. 47:1508(B)(37))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Make technical amendments to the bill.
2. Add a requirement that approval of a waiver of penalties in excess of \$50,000 shall be conditioned on the taxpayer's consent to publication of information in the department's annual report.
3. Add authorization, beginning Jan. 1, 2016, for the department to publish a complete record of all waivers of penalties in excess of \$50,000 granted by the secretary in the department's annual report.
4. Add provision that any taxpayer who accepts the remittance or waiver of penalties shall be deemed to have consented to the publication of the information in the department's annual report.
5. Exempt waivers approved pursuant to the department's voluntary disclosure program from the publication requirements.

The House Floor Amendments to the engrossed bill:

1. Delete provisions relative to penalties for payment of amounts owed to the Dept. of Revenue with a check, money order, credit card, and other forms of payment that is declined for insufficient funds.
2. Change the authorization, beginning Jan. 1, 2016, that the Dept. of Revenue publish a complete record of waiver of penalties in excess of \$50,000 in the department's annual report to a requirement that waiver of penalties in excess of



\$25,000 be subject to oversight by the House Ways and Means and Senate Revenue and Fiscal Affairs Committees.

3. Delete requirement that the waiver of penalties be conditioned on the taxpayer's consent to publication of information the secretary deems necessary regarding the waiver in the department's annual report.
4. Add authorization that if the secretary of the department finds that a taxpayer had willful intent to defraud the state, the secretary may assess a penalty of 10% of the tax deficiency.
6. Change the requirement with respect to the assessment of a penalty on a taxpayer understating tax liability from reckless intent to disregard the laws of this state to willful intent to disregard the laws of this state.
7. Make technical changes to the bill.