RÉSUMÉ DIGEST

ACT 128 (HB 721) **2015 Regular Session** **Ivey**

<u>Existing law</u> provides penalties for failure of a taxpayer to pay taxes owed. Further provides for the secretary of the Dept. of Revenue to waive the penalties under certain circumstances.

<u>Prior law</u> provided for waiver by the secretary of penalties exceeding $25,000 related to the failure to timely submit an annual employment return only after approval by the Board of Tax Appeals.

<u>New law</u> maintains the requirement for the Board of Tax Appeals to approve the waiver of penalties which exceed $25,000 until Dec. 31, 2015.

<u>New law</u> further provides that beginning Jan. 1, 2016, 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. Further exempts penalties waived pursuant to the Dept. of Revenue's voluntary disclosure program.

<u>Existing law</u> 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.

<u>New law</u> adds authorization, beginning Jan. 1, 2016, for the Dept. of Revenue 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. Exempts waivers approved pursuant to the Dept. of Revenue's voluntary disclosure program.

<u>New law</u> further authorizes the sharing or furnishing of information by the Dept. of Revenue in response to a court-ordered subpoena requested by the Office of the Inspector General, the La. Attorney General's office, a local District Attorney's office, or a U. S. Attorney's office in connection with or related to an ongoing criminal investigation or a criminal proceeding.

<u>Existing law</u> requires each dealer that pays sales tax to keep records of the required taxes.

<u>Prior law</u> provided for a penalty of $500 for dealers which fail to keep adequate records.

<u>New law</u> changes the penalty <u>from</u> a mandatory penalty <u>to</u> a permissive one and increases the amount of the penalty for failure to keep adequate records <u>from</u> $500 <u>to</u> $5,000.

<u>Existing law</u> provides for penalties for failure of a taxpayer to timely remit a complete tax return.

<u>Prior law</u> provided for a penalty for failure to fully remit the tax due when filing a tax return and calculated the penalty on the additional amount due when at least 90% of the total tax due was not paid on or before the date due and the return and payment were not received within the prescribed time, including any extensions.

<u>New law</u> changes the penalty <u>from</u> a mandatory penalty <u>to</u> a permissive one and extends the penalty provision to cases where the return and full payment are not received within the prescribed time, including any extensions.

<u>Existing law</u> provides for the waiver of penalty for delinquent filing of tax returns or delinquent payment of the full amount of taxes due.

<u>New law</u> applies these waiver provisions to cases where the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

<u>Prior law</u> established a mandatory negligence penalty of 5% of the tax due or $10, whichever was greater when a taxpayer fails to make a tax return or makes an incorrect return.

<u>New law</u> changes the negligence penalty in <u>prior law</u> <u>from</u> a mandatory penalty <u>to</u> a permissive penalty. Further changes the penalty when negligence is found <u>from</u> 5% of the

tax due or $10, whichever is greater, to separate penalties depending on the intent of the taxpayer to defraud and the understatement of tax liability:

(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 intent to disregard 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 may 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 intent to disregard 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 may 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), (38), and (39))