

2015 Regular Session

HOUSE BILL NO. 721

BY REPRESENTATIVE IVEY

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), (38), and (39),  
4 relative to the penalties; to provide for certain civil penalties; to provide for the  
5 waiver of penalties; to authorize the disclosure of certain information by the  
6 Department of Revenue; to provide for effectiveness; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2)  
10 and (3), and 1604.1 are hereby amended and reenacted and R.S. 47:1508(B)(37), (38), and  
11 (39) are hereby enacted to read as follows:

12 §114. Returns and payment of tax

13 \* \* \*

14 F. Penalty provision.

15 \* \* \*

16 (3) If the failure to timely submit the annual return is attributable, not to the  
17 negligence of the taxpayer, but to other causes set forth in written form and  
18 considered reasonable by the secretary, the secretary may remit or waive payments  
19 of the whole or any part of the specific penalty provided for such failure. ~~In~~ Until  
20 December 31, 2015, in any case where the penalty exceeds twenty-five thousand  
21 dollars, it can be waived by the secretary only after approval by the Board of Tax  
22 Appeals. Notwithstanding the provisions of R.S. 47:1508, beginning January 1,  
23 2016, waivers of all penalties exceeding twenty-five thousand dollars shall be subject  
24 to oversight by the House Committee on Ways and Means and the Senate Committee

1 on Revenue and Fiscal Affairs. This provision shall not apply to any penalty the  
 2 secretary remits or waives in accordance with rules and regulations promulgated  
 3 pursuant to the Administrative Procedure Act regarding the remittance or waiver of  
 4 penalties under the department's voluntary disclosure program.

5 \* \* \*

6 §295. Tax imposed on individuals; administration

7 \* \* \*

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

22 \* \* \*

23 §309. Dealers required to keep records

24 \* \* \*

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

28 \* \* \*

29 §1508. Confidential character of tax records

30 \* \* \*

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

2 \* \* \*

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

13 (38) The sharing or furnishing, in the discretion of the secretary, of  
14 information in response to a court-ordered subpoena requested by the Louisiana  
15 Office of the Inspector General, the Louisiana Attorney General's office or a  
16 Louisiana District Attorney's Office in connection with or related to an ongoing  
17 criminal investigation being conducted and/or a criminal proceeding pending in a  
18 court of competent jurisdiction in the State of Louisiana.

19 (39) The sharing or furnishing, in the discretion of the secretary, of  
20 information in response to a court-ordered subpoena requested by a United States  
21 Attorney's Office in connection with or related to an ongoing criminal proceeding  
22 pending in a court of competent jurisdiction in the State of Louisiana. This provision  
23 shall also include the sharing or furnishing of information requested by a United  
24 States' Attorney's Office in connection with a federal grand jury subpoena.

25 \* \* \*

26 §1602. Penalty for failure to make timely return

27 A.

28 \* \* \*

29 (2)(a) Except as provided in Paragraph (3), in the case of the filing of a  
30 return without remittance of the full amount due, the specific penalty ~~shall~~ may be

1 five percent of the unremitted tax if the failure to remit continues for not more than  
 2 thirty days, with an additional five percent for each additional thirty days or fraction  
 3 during which the failure to remit continues. The penalty imposed by this Paragraph  
 4 for each thirty-day period shall be calculated only on the additional amount due from  
 5 the taxpayer after the deduction of payments timely submitted, or submitted during  
 6 any preceding thirty-day period when:

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

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

11 \* \* \*

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

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

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

24 \* \* \*

25 §1603. Waiver of penalty for delinquent filing or delinquent payment

26 A.

27 \* \* \*

28 (2)(a) In order to promote the effective administration of the tax laws of this  
 29 state, the secretary may ~~also~~ promulgate rules and regulations pursuant to the

1 Administrative Procedure Act concerning the waiver of penalties, including but not  
2 limited to the establishment of a voluntary disclosure program.

3 (b) Notwithstanding any provision of law to the contrary, in any case where  
4 the secretary and the taxpayer have entered into a valid and enforceable voluntary  
5 disclosure agreement, the ~~The secretary may, pursuant to the rules and regulations~~  
6 ~~referenced in Subparagraph (a) of this Paragraph,~~ remit or waive the payment of the  
7 whole or any part of the penalties provided for in this Subtitle.

8 \* \* \*

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

19 \* \* \*

20 §1604.1. Negligence penalty

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

29 A. Finding of negligence. For negligent failure to comply with any  
30 provisions of this Part or any rules and regulations of the department, when the

1 secretary finds that a taxpayer did not have willful intent to defraud the state, the  
2 secretary may assess a penalty equal to ten percent of the tax deficiency found to be  
3 due as a result of the taxpayer's negligence.

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

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. However,  
17 in the case of a tax other than individual income tax, if a taxpayer understates tax  
18 liability by twenty-five percent or more, but the secretary finds that the taxpayer did  
19 not have willful intent to disregard the tax laws of this state, the secretary may assess  
20 a penalty of fifteen percent of the deficiency.

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

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

25 (2) "Willful" means voluntarily and intentionally acting in violation of the  
26 tax laws of this state. The secretary shall use this definition of "willful" when  
27 determining whether a penalty shall be imposed for the willful intent to defraud this  
28 state or willful intent to disregard the tax laws of this state.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_