

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. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),  
3 1603(A)(2) and (3), 1604.1, and 1604.2 and to repeal R.S. 47:337.74, relative to the  
4 penalties; to provide for certain civil penalties; to provide for the waiver of penalties;  
5 to provide for effectiveness; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a),  
8 1603(A)(2) and (3), 1604.1, and 1604.2 are hereby amended and reenacted to read as follows:

9 §105. Payment of tax

10 \* \* \*

11 H. ~~Bad checks~~ Insufficient funds. The provisions of R.S. 47:1604.2, in  
12 addition to any other penalties provided by law, shall apply in the event ~~If any check,~~  
13 ~~or money order, bank draft, credit card, electronic funds transfer, credit or debit card~~  
14 payment, or any other authorized form of payment submitted as in ~~in~~ payment of any  
15 amount receivable under this Chapter is not duly paid, ~~in addition to any other~~  
16 ~~penalties provided by law, there shall be paid in the same manner as tax by the~~  
17 ~~person who tendered such check, upon demand by the collector, a penalty equal to~~  
18 ~~1 percent of the amount of such check, except that if the amount of such check is less~~  
19 ~~than \$500, the penalty under this Section shall be \$5 or the amount of such check,~~  
20 ~~whichever is the lesser. This Section shall not apply where it is established to the~~

1 ~~satisfaction of the collector that the person tendering such check was in good faith~~  
2 ~~and did so with reasonable cause to believe that it would be duly paid.~~

3 \* \* \*

4 §114. Returns and payment of tax

5 \* \* \*

6 F. Penalty provision.

7 \* \* \*

8 (3) If the failure to timely submit the annual return is attributable, not to the  
9 negligence of the taxpayer, but to other causes set forth in written form and  
10 considered reasonable by the secretary, the secretary may remit or waive payments  
11 of the whole or any part of the specific penalty provided for such failure. ~~In~~ Until  
12 December 31, 2015, in any case where the penalty exceeds twenty-five thousand  
13 dollars, it can be waived by the secretary only after approval by the Board of Tax  
14 Appeals. Beginning on January 1, 2016, a complete record of all waivers of  
15 penalties exceeding fifty thousand dollars shall be kept by the secretary, open to  
16 public inspection, and, notwithstanding the provisions of R.S. 47:1508 and 1508.41,  
17 each such waiver shall be published in the department's annual report. This  
18 provision shall not apply to any penalty the secretary remits or waives in accordance  
19 with rules and regulations promulgated pursuant to the Administrative Procedure Act  
20 concerning the remittance or waiver of penalties under the department of revenue's  
21 voluntary disclosure program.

22 \* \* \*

23 §295. Tax imposed on individuals; administration

24 \* \* \*

25 C. The secretary of the Department of Revenue shall administer and enforce  
26 this Part. He may adopt, prescribe, and from time to time alter and enforce  
27 reasonable rules, orders, and regulations for the purpose of implementing this Part.  
28 He may, upon making a record of his reasons therefor, waive, reduce, or compromise  
29 any of the taxes, penalties, or interest or other amounts provided by this Part. ~~In~~







1        twenty-five percent or more of gross income or has otherwise demonstrated a  
2        reckless disregard for the tax laws of the state of Louisiana, the secretary shall assess  
3        a penalty equal to twenty five percent of the deficiency. For purposes of this  
4        subsection, "gross income" means gross income as defined in Section 61 of the  
5        Internal Revenue Code.

6                C. Other large tax deficiency. In the case of a tax other than individual  
7        income tax, if a taxpayer understates tax liability by twenty five percent or more, or  
8        has otherwise demonstrated a reckless disregard for the tax laws of the state of  
9        Louisiana, the secretary shall assess a penalty equal to twenty five percent of the  
10       deficiency.

11       §1604.2. Insufficient funds check, ~~or~~ electronic debit, or any other form of payment  
12                in payment of taxes; penalty

13                In the event a check, ~~or~~ electronic debit, or any other form of payment used  
14       to make payment of a tax, interest, penalty, or fee due under this Subtitle is returned  
15       unpaid by the bank on which it is drawn for any reason related to the account on  
16       which the check, ~~or~~ electronic debit, or other form of payment is written, such shall  
17       constitute a failure to pay the tax, interest, penalty, or fee due and a specific penalty  
18       shall be imposed on the taxpayer in addition to all other penalties provided by law;  
19       provided however, upon sufficient proof being furnished to the secretary by the bank  
20       that the bank was at fault for the nonpayment of the check, ~~or~~ electronic debit, or  
21       other form of payment, the secretary shall waive the penalty provided for in this  
22       Section. This specific penalty shall be an obligation to be collected and accounted  
23       for in the same manner as if it were part of the tax, interest, penalty, or fee that is due  
24       in payment of which the check, ~~or~~ electronic debit, or other form of payment was  
25       given and may be enforced in a separate action or in any action instituted for the  
26       collection of the tax, interest, penalty, or fee. The specific penalty imposed under  
27       this Section shall be an amount equal to the greater of one percent of the check, ~~or~~  
28       electronic debit, or other form of payment or ~~twenty~~ thirty five dollars. After receipt  
29       of three insufficient fund checks, ~~or~~ electronic debits, or other payments during any

1 two-year period, the secretary of the Department of Revenue may require payment  
2 of the taxes, interest, penalties, or fees due by the taxpayer to be paid by certified  
3 check, money order, or cash.

4 Section 3. R.S.47:337.74 is hereby repealed in its entirety.

5 Section 4. This Act shall become effective on July 1, 2015; if vetoed by the governor  
6 and subsequently approved by the legislature, this Act shall become effective on July 1,  
7 2015, or on the day following such approval by the legislature, whichever is later.

### 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)]

HB 721 Original

2015 Regular Session

Ivey

**Abstract:** Provides for penalties and fees assessed by the Department of Revenue.

Present law establishes separate penalties for dishonored checks or money orders in payment of income taxes.

Proposed law applies the penalties established in the administrative provisions of present law to the dishonored payments of income taxes in present law.

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

Proposed law eliminates the requirement of approval by the Board of Tax Appeals for waiver of penalties exceeding \$25,000 on December 31, 2015 and requires, beginning January 1, 2016, the secretary to maintain complete records of all penalty waivers in excess of \$50,000 and provides for public inspection and publication of such waivers.

Present law establishes penalty for failure to keep adequate records by dealers at \$500.

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

Present law establishes the penalty for failure to fully remit the tax due at the time of filing a return and calculates the penalty on the additional amount due when a payment of 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 applies the penalty provision whenever a 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                      | 10% of deficiency |
| (2) | Large individual tax deficiency | 25% of deficiency |
| (3) | Other large tax deficiency      | 25% of deficiency |

Present law establishes the penalty for dishonored payments at \$20.

Proposed law increases the penalty for dishonored payments from \$20 to \$35.

Present law establishes a separate penalty for dishonored payments of local taxes.

Proposed law repeals present law.

Effective July 1, 2015.

(Amends R.S. 47:105(H), 114(F)(3), 295(C), 309(B), 1602(A)(2)(a) and (3)(a), 1603(A)(2) and (3), 1604.1, and 1604.2; Repeals R.S.47:337.74 )