

2016 Second Extraordinary Session

SENATE BILL NO. 2

BY SENATORS MORRELL AND THOMPSON

TAX/TAXATION. Provides for interest paid on refunds of tax overpayments. (Item No. 45)
(7/1/16)

1 AN ACT

2 To amend and reenact R.S. 47:115(A)(3) and (C) and 1624 and to repeal R.S. 47:287.657,
3 617, and 1624.1, relative to interest on refunds of tax overpayments; to provide
4 relative to netting of corporate income and franchise tax for purposes of interest
5 computation; to provide relative to interest on certain severance tax overpayments;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:115(A)(3) and (C) and 1624 are hereby amended and reenacted
9 to read as follows:

10 §115. Refunds and credits

11 A. Employee refunds and credits.

12 * * *

13 (3) To the extent that the ~~aforsaid~~ credit **for withholding provided in**
14 **Subsection A of this Section**, together with other credits allowed by law, is in
15 excess of the employee's income tax liability for ~~said~~ **the** taxable year, as shown on
16 an income tax return filed by ~~such~~ **the** employee for that year, ~~such~~ **the** overpayment
17 shall be considered as taxes erroneously paid to be credited or refunded as ~~herein~~

1 provided **in this Subsection**. ~~Such~~ **The** overpayment shall be credited to ~~such~~ **the**
2 person's estimated or income tax liability for the succeeding taxable year unless ~~such~~
3 **the** person shall claim a refund therefor except that overpayment of one dollar or less
4 shall be refunded or credited only upon the receipt by the secretary of a written
5 demand for ~~such~~ **the** refund from the taxpayer; however, the collector is authorized
6 to consider any final return showing an overpayment as a claim for refund. ~~An~~
7 ~~overpayment shall bear no interest if credit is given therefor; amounts refunded as~~
8 ~~overpayments shall bear interest at the rate established pursuant to R.S. 13:4202 per~~
9 ~~year computed from ninety days after the filing date of the final return showing the~~
10 ~~overpayment, or from the due date of such final return, whichever is later.~~

11 * * *

12 C. Other refunds and credits. To the extent a taxpayer's payments, together
13 with other credits allowed by law, is in excess of his income tax liability shown on
14 a return filed for the taxable year, ~~such~~ **the** overpayment shall be considered as taxes
15 erroneously paid to be credited or refunded as herein provided. ~~Such~~ **The**
16 overpayment shall be credited to the taxpayer's estimated or income tax liability for
17 the succeeding taxable year unless a claim for refund is made. Notwithstanding any
18 provision of this Subsection to the contrary, an overpayment of one dollar or less
19 shall be refunded or credited only upon the receipt by the secretary of a written
20 demand for ~~such~~ **the** refund from the taxpayer. The secretary is authorized to
21 consider any final return showing an overpayment as a claim for refund. ~~An~~
22 ~~overpayment shall bear no interest if credit is given. Amounts refunded as~~
23 ~~overpayments shall bear interest at the rate established pursuant to R.S. 13:4202~~
24 ~~computed from ninety days after the filing date of the final return showing the~~
25 ~~overpayment or from the due date of the final return, whichever is later. No interest~~
26 ~~on refunds shall be allowed if, the secretary proves by clear and convincing evidence~~
27 ~~that a person has deliberately overpaid a tax in order to derive the benefit of the~~
28 ~~interest allowed by this Section. Payments of interest authorized by this Section shall~~
29 ~~be made from funds derived from current collections of the tax to be refunded.~~

* * *

§1624. Interest on refunds ~~or credits~~

A. ~~(1) Notwithstanding~~ **Except as provided in Paragraph (2) of this Subsection, notwithstanding** any other provision of law to the contrary, on all refunds ~~or credits~~ **of overpayments** the secretary shall compute and allow as part of the refund ~~or credit~~, interest at the annual rate established in R.S. 13:4202 from ~~the date the return was due, the date the first return for that tax period was filed, or the date the tax was paid, whichever is later~~ **ninety days after the later of the due date of the return, the filing date of the return or claim for refund on which the overpayment is claimed, or the date the tax was paid.** An overpayment shall bear no interest if it is credited to the taxpayer's account. No interest on refunds or credits shall be allowed if; the secretary proves by clear and convincing evidence that a person has deliberately overpaid a tax in order to derive the benefit of the interest allowed by this Section. Payments of interest authorized by this Section shall be made from funds derived from current collections of the tax to be refunded or credited.

(2) Notwithstanding any provision of this Section, or any other provision of law to the contrary, interest on a refund of an overpayment of severance tax to an operator whose well qualifies for the severance tax suspension pursuant to R.S. 47:633(7)(c)(iii) or (9)(d)(v) for new horizontal or deep wells shall be paid as follows:

(a) For refunds issued on or before the one hundred eightieth day after a properly filed claim for refund or an amended return for the new horizontal or deep well has been submitted to the department with all supporting documentation, interest shall be the rate for the year ascertained by the department, which shall be the U.S. Treasury Yield Curve Constant Maturity 6-Month Treasury rate on the first business day of October of the preceding year and published on or before the following January first.

(b) Interest on refunds made pursuant to this Subsection that are made

1 after the one hundred eightieth day after a properly filed claim for refund or an
2 amended return has been submitted to the department shall be the interest rate
3 provided for in Subparagraph (a) of this Paragraph for the first one hundred
4 eighty days and at the rate established in R.S. 13:4202 for any period of time in
5 excess of one hundred eighty days in accordance with the provisions of
6 Subsection A of this Section.

7 B. As of the date a person files a petition for relief under the uniform
8 bankruptcy laws of the United States as provided in ~~Title 11 USC 101~~ 11 U.S.C. 101
9 et seq., no interest shall be allowed to accrue as a part of any ~~refund or credit which~~
10 overpayment that relates to a pre-petition tax period. ~~A person filing a petition for~~
11 ~~relief prior to June 17, 1988, shall be entitled to the accrual of interest prior to the~~
12 ~~effective date of this Subsection.~~

13 C. The provisions of this Section shall govern the calculation of interest
14 on all refunds resulting from the collection of any tax or administration of any
15 provision by or on behalf of the secretary of the Department of Revenue
16 pursuant to any provision contained in Title 26, Title 47, or Title 51 or
17 elsewhere in the Louisiana Revised Statutes of 1950, as amended, provided,
18 however, that the provisions of this Section shall not be applicable to the
19 calculation of interest on refunds issued pursuant to the International Fuel Tax
20 Agreement.

21 D. The secretary may offset any overpayments of estimated corporate
22 income tax or corporate franchise tax against the corporation's income tax or
23 franchise tax for the purpose of determining the interest due pursuant to the
24 provisions of R.S. 47:1601 and any interest payable pursuant to the provisions
25 of this Section.

26 E. No refund of franchise tax shall be paid by the secretary until any
27 claims of offset filed by the office of unemployment insurance administration
28 of the Louisiana Workforce Commission against the taxpayer under R.S.
29 23:1733 have been satisfied.

- 1 Section 2. R.S. 47:287.657, 617, and 1624.1 are hereby repealed.
- 2 Section 3. The provisions of this Act shall apply to any refunds claimed on or after
- 3 July 1, 2016, notwithstanding the tax period to which the refund claim relates.
- 4 Section 4. The provisions of this Act shall become effective July 1, 2016.

The original instrument was prepared by Leonore F. Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by J. W. Wiley.

DIGEST

SB 2 Reengrossed

2016 Second Extraordinary Session

Morrell

Present law provides for the payment of interest on refunds of tax overpayments at the judicial rate of interest.

Present law provides that refund interest begins to accrue immediately on the later of the filing date of the return or due date of the return for all taxes other than individual income tax.

Present law provides that individual income tax refund interest does not begin to accrue until 90 days after the later of the filing date of the return or due date of the return.

Present law provides a reduced interest rate for the first 180 days after receipt of the refund claim for refunds of overpayments of severance tax to an operator whose well qualifies for the severance tax suspension for new horizontal or deep wells.

Proposed law changes the refund interest accrual date to 90 days after the later of the filing date of the return or claim for refund, or due date of the return for all taxes, but retains the 180 day reduced interest rate for severance tax refunds associated with new horizontal or deep wells.

Present law allows netting of corporate income and corporate franchise tax for purposes of interest calculation.

Proposed law retains present law and consolidates tax refund interest provisions into one section of law.

Effective July 1, 2016.

(Amends R.S. 47:115(A)(3) and (C) and 1624; repeals R.S. 47:287.657, 617, and 1624.1)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Adds the filing date of the claim for refund to the 90 day refund interest accrual date provision.