

Regular Session, 2012

SENATE BILL NO. 545

BY SENATOR RISER

TAX/INCOME/PERSONAL. Provides relative to withholding taxes on individual income tax returns. (6/30/12)

1 AN ACT

2 To amend and reenact R.S. 47:114, relative to the Department of Revenue; to provide for the
3 quarterly filing of income tax returns with respect to withholding returns; to provide
4 for due dates of payment; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:114 is hereby amended and reenacted to read as follows:

7 §114. Returns and payment of tax

8 A. Quarterly returns. ~~Except as otherwise provided in this Section, e~~Every
9 employer required to deduct and withhold any tax under this Sub-part and every
10 person who deducts and withholds any amount from any wage payments under the
11 authority of this Sub-part shall make a calendar quarterly return to the ~~collector~~
12 secretary on a form prescribed by him and shall pay ~~therewith the tax required to be~~
13 ~~paid under this Sub-part for each calendar quarter, which payment shall in no event~~
14 ~~be less than the amount actually withheld.~~

15 B. ~~Return for periods less than a calendar quarter. Every employer required~~
16 ~~to deduct and withhold any tax under this Subpart and every person who deducts and~~
17 ~~withholds any amount from any wage under the authority of this Subpart shall make~~

1 returns and shall pay the tax as follows:

2 (1) ~~When the amount deducted or withheld any calendar month from the~~
3 ~~combined wages of all employees is an amount equal to or greater than five hundred~~
4 ~~dollars but less than two thousand dollars, the return shall be filed monthly with the~~
5 ~~secretary on a form prescribed by him and the amount withheld shall be paid~~
6 ~~therewith.~~

7 (2) ~~When the amount deducted or withheld within any calendar month from~~
8 ~~the combined wages of all employees is an amount equal to or greater than two~~
9 ~~thousand dollars, the return shall be filed semimonthly with the secretary on a form~~
10 ~~prescribed by him, and the amount withheld during the semimonthly period shall be~~
11 ~~paid therewith; the secretary shall have the authority to determine, in his discretion,~~
12 ~~whether an employer or other person required to make returns under this Subpart~~
13 ~~shall file returns on a monthly, semimonthly, or quarterly basis. At the request of an~~
14 ~~employer, the secretary may permit the employer to make returns on a monthly or~~
15 ~~semimonthly basis. **Date for filing quarterly returns. The due date for filing**~~
16 ~~**quarterly returns required under this Subpart shall be the last day of the month**~~
17 ~~**following the close of the calendar quarterly reporting period.**~~

18 C. Annual return, estimated tax. The collector may permit a withholding tax
19 return to be submitted on a calendar year basis under the following conditions:

20 (1) ~~The employer reasonably estimates that tax to be withheld during the~~
21 ~~calendar year will be less than one hundred dollars and,~~

22 (2) ~~The employer was required to withhold less than one hundred dollars~~
23 ~~during the preceding calendar year and,~~

24 (3) ~~All required withholding returns for the preceding calendar year were~~
25 ~~timely filed and,~~

26 (4) ~~The employer remits the tax estimated to be due for the ensuing calendar~~
27 ~~year to the collector not later than February 28 of such year.~~

28 ~~Tax due in excess of the amount previously paid by estimate will be remitted~~
29 ~~with the calendar year return.~~

1 ~~The collector is authorized to issue a refund to the employer for any excess~~
2 ~~of payment by estimate over tax liability as finally determined for the calendar year.~~

3 **Payment. Every employer required to deduct and withhold any tax under this**
4 **Subpart and every person who deducts and withholds any amount from any**
5 **wage under the authority of this Subpart shall pay the tax shown due on the**
6 **return as prescribed by the secretary. The tax paid shall in no event be less than**
7 **the amount actually withheld.**

8 ~~D. Date for filing returns. (1) The due date for filing the returns required~~
9 ~~under this Subpart other than those required under Subsection E shall be as follows:~~

10 ~~(a) Returns required or permitted to be filed on a calendar quarterly basis or~~
11 ~~a calendar year basis are due on the last day of the month following the close of the~~
12 ~~reporting period:~~

13 ~~(b) Returns required or permitted to be filed on a monthly basis are due on~~
14 ~~the last day of the month following the close of the monthly period:~~

15 ~~(c) Returns required or permitted to be filed on a semimonthly basis are due~~
16 ~~on the fifteenth day of the calendar month for taxes withheld on wages paid during~~
17 ~~the period between the sixteenth day and the last day of the previous calendar month,~~
18 ~~and due on the last day of the calendar month for taxes withheld on wages paid~~
19 ~~during the first fifteen days of the same calendar month:~~

20 ~~(2) All funds not timely remitted shall bear interest at the rate provided for~~
21 ~~in R.S. 47:1601 from the due date for filing until paid. **Annual returns.**~~

22 **(1) Every employer shall also be required to file an annual return on a**
23 **form prescribed by the secretary. The annual return shall consist of a**
24 **reconciliation of all previously filed quarterly returns for the calendar year and**
25 **copies of the receipts required to be furnished under R.S. 47:112(L) for that**
26 **reporting period.**

27 **(2) The secretary may grant a reasonable extension of time, not exceeding**
28 **thirty days, for filing the aforesaid annual return.**

29 **(3) The reporting requirements may be waived by the secretary for an**

1 **employer if hardship is shown by the employer in a request for waiver.**

2 ~~E. Jeopardy returns. If the collector in any case believes that the collection~~
3 ~~of the tax required to be withheld under this Sub-part is in jeopardy for any reason,~~
4 ~~he may require the employer to make a return and pay the required tax at any time.~~

5 **Date for filing annual returns. On or before the first business day following**
6 **February 27 of each year for the preceding calendar year, an employer shall file**
7 **with the secretary of the Department of Revenue, an annual return.**

8 ~~F. Annual or final returns. (1) On or before the first business day following~~
9 ~~February 27 of each year for the preceding calendar year or on or before the thirtieth~~
10 ~~day after the date on which the final payment of wages is made by an employer who~~
11 ~~has ceased to pay wages, an employer shall file with the secretary of the Department~~
12 ~~of Revenue an annual or a final return, as the case may be, on a form prescribed by~~
13 ~~him, to which return shall be attached copies of the receipts required to be furnished~~
14 ~~under R.S. 47:112(L) for the period covered thereby. The secretary may grant a~~
15 ~~reasonable extension of time, not exceeding thirty days, for filing the aforesaid~~
16 ~~annual or final return.~~

17 ~~(2)(a)(i) The secretary may require all employers who must submit copies of~~
18 ~~two hundred fifty or more receipts to file the forms on magnetic media or other~~
19 ~~electronic means.~~

20 ~~(ii) The secretary may require the following employers to file both their~~
21 ~~annual or final returns and their receipts on magnetic media or by other electronic~~
22 ~~means at the following times:~~

23 ~~(aa) For returns and receipts due on or after January 1, 2008, those employers~~
24 ~~who are required to file returns with two hundred fifty or more receipts.~~

25 ~~(bb) For returns and receipts due on or after January 1, 2010, those employers~~
26 ~~who are required to file returns with two hundred or more receipts.~~

27 ~~(cc) For returns and receipts due on or after January 1, 2012, those employers~~
28 ~~who are required to file returns with one hundred fifty or more receipts.~~

29 ~~(dd) For returns and receipts due on or after January 1, 2014, those employers~~

1 who are required to file returns with one hundred or more receipts.

2 (cc) For returns and receipts due on or after January 1, 2016, those employers
3 who are required to file returns with fifty or more receipts.

4 (b) The secretary may prescribe the types of media and record layout to be
5 used in the submission of the returns and receipts consistent with the Internal
6 Revenue Code requirements.

7 (c) These reporting requirements may be waived by the secretary for an
8 employer if hardship is shown by the employer in a request for waiver.

9 (3) A penalty of five dollars for each receipt required to be furnished under
10 R.S. 47:112(L) and required to be submitted with the annual or final return shall be
11 imposed for the delinquent submission of or the failure to submit the annual or final
12 return and receipts in the form required by the secretary. The total penalty imposed
13 pursuant to this Subsection shall not exceed seven thousand five hundred dollars for
14 each annual or final return. This penalty shall be an obligation to be collected and
15 accounted for in the same manner as if it were part of the tax due, and can be
16 enforced either in a separate action or in the same action for the collection of the tax.
17 If the failure to timely submit the annual or final return before the deadline is
18 attributable, not to the negligence of the taxpayer, but to other cause set forth in
19 written form and considered reasonable by the secretary, the secretary may remit or
20 waive payments of the whole or any part of the specific penalty provided for such
21 failure. In any case where the penalty exceeds five thousand dollars, it can be waived
22 by the secretary only after approval by the Board of Tax Appeals. **Penalty**
23 **Provision.**

24 **(1) With regard to quarterly returns, annual returns, and receipts**
25 **required to be furnished under R.S. 112(L) provided for in this Section, a**
26 **penalty shall be imposed for the delinquent submission of, the failure to submit,**
27 **or the failure to submit any of the aforementioned items in a form prescribed**
28 **by the Secretary.**

29 **(2) The penalty provided for in this Subsection shall be five dollars for**

1 each quarterly return, annual return, or receipt required to be furnished under
2 R.S. 47:112(L). The total penalty imposed pursuant to this Subsection shall not
3 exceed seven thousand five hundred dollars for each annual period. This
4 penalty shall be an obligation to be collected and accounted for in the same
5 manner as if it were part of the tax due and can be enforced either in a separate
6 action or in the same action for the collection of the tax.

7 (3) If the failure to timely submit the annual return is attributable, not
8 to the negligence of the taxpayer, but to other causes set forth in written form
9 and considered reasonable by the secretary, the secretary may remit or waive
10 payments of the whole or any part of the specific penalty provided for such
11 failure. In any case where the penalty exceeds five thousand dollars, it may be
12 waived by the secretary only after approval by the Board of Tax Appeals.

13 G. ~~Repealed by Acts 1972, No. 30, §1.~~ Jeopardy returns. If the collector
14 in any case believes that the collection of the tax required to be withheld under
15 this Subpart is in jeopardy for any reason, he may require the employer to
16 make a return and pay the required tax at any time.

17 H. Use of prescribed forms. The ~~collector~~ secretary shall prescribe the forms
18 to be used in compliance with the provisions of this Sub-part. The secretary shall
19 also promulgate rules and regulations to prescribe the forms and any
20 alternative technological, mathematical, or date driven methods, for filing,
21 signing, and submitting any return, report, statement, or other document
22 required under this statute. The secretary may also prescribe the types of media
23 and record layout to be used in the submission of the returns and receipts
24 consistent with the Internal Revenue Code requirements.

25 I. Governmental employers. If the employer is the United States, a state,
26 territory, or political subdivision thereof, or any agency or instrumentality of any one
27 or more of the foregoing, the return of the amount deducted and withheld upon any
28 wages may be made by any officer or employee of the United States, or of such state,
29 territory, or political subdivision, or of such agency or instrumentality, as the case

1 may be, having control of the payment of such wages or appropriately designated for
2 that purpose.

3 J. Withholding from federal employees. The collector is hereby designated
4 as the proper official to make requests for and enter into agreements with the
5 Secretary of the Treasury of the United States to provide for the compliance with this
6 Sub-part by the head of the department or agency of the United States in withholding
7 of state income taxes from wages of federal employees and paying the same to this
8 State. The collector is hereby authorized, empowered, and directed to make requests
9 for and to enter into such agreements.

10 ~~K. Certain information returns not required. On and after January 1, 1962, the~~
11 ~~annual returns or reports required by the collector under the provisions of this~~
12 ~~Sub-part shall be in lieu of such returns required under R.S. 47:164A as would~~
13 ~~furnish identical information.~~

14 Section 2. This Act shall become effective on June 30, 2012; if vetoed by the
15 governor and subsequently approved by the legislature, this Act shall become effective on
16 June 30, 2012, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Danielle Doiron.

DIGEST

Present law provides for the filing of withholding income tax returns quarterly, monthly, and semi-monthly returns depending on the amount withheld.

Proposed law requires the filing of withholding income tax returns on any amount withheld to be filed quarterly and deletes all monthly and semi-monthly requirements.

Proposed law further provides for the filing due date for quarterly returns to be submitted to the Dept. of Revenue by the last day of the month following the close of the calendar quarterly reporting period.

Proposed law provides for payment of quarterly returns. Further provides that the tax paid shall not be less than the amount withheld.

Proposed law requires every employer to file an annual return in addition to the quarterly return on a form prescribed by the secretary. Further provides for the content of the annual return to consist of a reconciliation of all previously filed quarterly returns for the calendar year and copies of receipts required for that reporting period.

Proposed law provides that the secretary may grant a reasonable extension of time, not exceeding 30 days, for filing the annual return. Further provides for the secretary to waive

reporting requirements if an employer has shown hardship and submits a request to the secretary.

Proposed law requires an employer to file the annual return with the Dept. of Revenue before the first business day following February 27 of each year for the preceding calendar year.

Proposed law provides for a penalty for delinquent submission, or failure to submit quarterly returns, annual returns, or receipts required to be furnished by law to the Dept. of Revenue. Further provides that the penalty shall be \$5.00 for each quarterly return, annual return, or receipt required not submitted or delinquent. Further provides the total penalty imposed shall not exceed \$7,500.00 for each annual period, and shall be collected and accounted for in the same manner as the tax due and can be enforced in the same action or a separate action for the collection of the tax.

Proposed law allows the secretary to remit or waive payments of whole or part of the specific penalty for failure to timely submit the annual return if the reason is attributable, not to the negligence of the taxpayer, but to other causes set forth in written form and considered reasonable by the secretary. Further provides that in any case where the penalty exceeds \$5,000.00 the secretary can only waive the whole or part of the penalty if approved first by the Board of Tax Appeals.

Proposed law provides for jeopardy returns to the Dept. of Revenue. Further provides any collector may require an employer to make a return and pay the required tax at any time he believes the tax required to be withheld is in jeopardy.

Proposed law requires the secretary shall prescribe the forms to be used for the quarterly, annual, and jeopardy returns. Further requires the secretary to promulgate rules and regulations consistent with the Internal Revenue Code requirements.

Effective June 30, 2012.

(Amends R.S. 47:114)