

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7117

BILL NUMBER: SB 234

NOTE PREPARED: Apr 9, 2021

BILL AMENDED: Mar 25, 2021

SUBJECT: Withholding Tax Remittance.

FIRST AUTHOR: Sen. Rogers

FIRST SPONSOR: Rep. Miller D

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill requires the Department of State Revenue (DOR) to provide written notice, by electronic means, to each employer that is registered in the DOR's online INTIME program and whose employer's Form WH-1 monthly withholding tax report or withholding tax remittance is past due.

The bill requires each payroll service provider to annually register with the DOR beginning January 1, 2022. It specifies the contents of the annual registration form. It defines "payroll service provider" and "responsible person" for purposes of these provisions. The bill provides that the DOR may charge an annual payroll service provider registration fee for purposes of the registration program. The bill provides that a provider shall be permitted to retain any income generated on business client (client) funds while held in a provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the provider complies with certain rules.

The bill provides that a payroll service provider contract must include a provision that specifies that if the payroll service provider fails to deposit or remit a business client's employer withholding taxes when due, and the failure is caused by an error or omission of the payroll service provider and not by the business client, the payroll service provider shall be required to reimburse the business client for the business client's payment of any penalties or interest assessed by the DOR as a result of the failure. It provides that, if a provider knowingly or intentionally fails to remit taxes withheld, the provider is liable and responsible persons shall be personally liable for such taxes that were withheld and not remitted, along with penalties and interest. It provides that a responsible person of the provider who knowingly or intentionally fails to remit taxes that were withheld commits a Class A misdemeanor, and increases the penalty depending on the amount of taxes that were not remitted. The bill provides that the liability shall not be construed to relieve the liability of the employer or any person otherwise with a duty to withhold.

The bill provides that the employer's address shall be the address of record with the DOR for withholding tax purposes and that a payroll service provider may not change the address of record with the DOR.

Effective Date: July 1, 2021; January 1, 2022.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR should be able to implement the bill's provisions within existing resources. However, any additional costs to administer the payroll service provider registration program may be offset by fees deposited into the Payroll Service Provider Registration Fee Account.

Penalty Provision: A responsible person of a payroll service provider who knowingly or intentionally fails to remit taxes withheld commits either a Level 6 felony or Level 5 felony. The level of offense depends on the amount of taxes not remitted. A Level 6 felony is punishable by a prison term ranging from 6 to 30 months, with an advisory sentence of 1 year. A Level 5 felony is punishable by a prison term ranging from 1 to 6 years, with an advisory sentence of 3 years. The sentence depends on mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,524 annually, or \$9.66 daily, per prisoner. However, any additional expenditures are likely to be small.

Explanation of State Revenues: *Payroll Service Provider Registration Program:* The bill allows the DOR to charge an annual registration fee for the payroll service provider registration program. The bill does not provide specific fee amounts, but it establishes guidelines for the DOR to consider when setting the fee. The amount of fees collected is indeterminable. The precise amount will depend on whether the DOR charges a fee, the number of payroll service providers, and the cost to administer the program. The fee revenue is deposited into a General Fund account, Payroll Service Provider Registration Fee Account. The money in the account is annually appropriated to the DOR to administer the program.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000, and the maximum fine for all felonies is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Penalty Provision:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. In addition, a Class A misdemeanor is punishable by up to one year in jail. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of State Revenue; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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