

SENATE BILL NO. 411

INTRODUCED BY R. ERICKSON

BY REQUEST OF THE SENATE TAXATION STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNIFORM PENALTY ASSESSMENTS ON DELINQUENT TAXES; AMENDING THE WAIVER OF INTEREST; PROVIDING THAT THE PENALTIES FOR SUBSTANTIAL UNDERSTATEMENT OF A TAX OR FOR FILING A FRAUDULENT OR FRIVOLOUS RETURN OR REPORT ARE SIMILAR TO FEDERAL PENALTIES; AMENDING SECTIONS 15-1-206 AND 15-1-216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver of penalties -- interest. (1) The department may, in its discretion, waive, for reasonable cause, any penalty assessed by the department.

(2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion, waive interest not to exceed ~~\$100 due upon the tax~~ \$500 due per tax period. In cases of a taxpayer agreeing to a payment plan to satisfy any delinquent debt, the department may waive an additional \$100 of interest per tax period provided that all terms of the payment plan have been met by the taxpayer. ~~WHEN THE DEPARTMENT ENTERS INTO A PAYMENT PLAN WITH A TAXPAYER THAT ALLOWS THE TAXPAYER TO MAKE INSTALLMENT PAYMENTS OF DELINQUENT TAXES, INTEREST, AND PENALTIES, THE DEPARTMENT MAY AGREE TO WAIVE AN ADDITIONAL \$100 OF INTEREST PER TAX PERIOD IF THE TAXPAYER MAKES EACH PAYMENT REQUIRED BY THE PLAN ON OR BEFORE THE DUE DATE OF THE PAYMENT AND COMPLIES IN A TIMELY MANNER WITH ALL OTHER TERMS OF THE PAYMENT PLAN.~~"

Section 2. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of ~~\$50 or the amount of the tax due, whichever is less~~ 5% of the tax due for each month or fraction of a month during which there is a failure to file the return or report in an amount up

1 to 25% of the tax due but not less than \$50. The late filing penalty runs for the period up to the date the
 2 department actually receives the late return or report. The penalty is computed only on the net amount of tax due
 3 as of the original due date, if any, on the return or report after credit has been given for amounts paid through
 4 withholding, estimated tax payments, and other credits claimed on the return.

5 (2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be
 6 assessed a late payment penalty of 1.2% a month or fraction of a month on the unpaid tax. The penalty may not
 7 exceed 12% of the tax due.

8 (b) A person who fails to pay a tax when due under Title 15, chapter 30, part 25, Title 15, chapter 53,
 9 Title 15, chapter 65, or Title 15, chapter 68, must be assessed a late payment penalty of 1.5% a month or fraction
 10 of a month on the unpaid tax. The penalty may not exceed 15% of the tax due.

11 (c) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original
 12 due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

13 (d) A person who makes a substantial understatement of tax imposed under Title 15 must be assessed
 14 a substantial understatement penalty in an amount equal to 20% of the understatement. As used in this
 15 subsection (2)(d), "understatement" means the amount of the tax required to be shown on the return for the tax
 16 year minus the amount of tax imposed that is shown on the return. For purposes of this subsection (2)(d):

17 (i) there is a substantial understatement of tax imposed under Title 15, chapter 30, if the understatement
 18 is the greater of 10% of the amount of tax required to be shown on the return or \$3,000; and

19 (ii) there is a substantial understatement of tax imposed for all other chapters under Title 15 if the
 20 understatement exceeds the lesser of:

21 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than
 22 \$10,000; or

23 (B) \$500,000.

24 (3) ~~(a)~~ A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return
 25 or report as required under Title 15 when due or fails to file a return or report within 60 days after receiving written
 26 notice from the department that a return must be filed is liable for an additional ~~late payment~~ penalty of not less
 27 than \$1,000 or more than \$10,000 15% a month, up to 75% of the tax due as determined by the department. The
 28 department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

29 ~~(b)~~(4) A person who files a fraudulent return or report under Title 15 is liable for ~~a~~ AN ADDITIONAL penalty
 30 of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or

1 report. The department may bring an action in the name of the state to recover the penalty, INTEREST, and any
 2 delinquent taxes.

3 ~~(e)~~(5) A person who files a frivolous return or report under Title 15 is liable, in addition to any other
 4 penalty imposed, for a penalty of \$2,500. A frivolous return or report is one THAT IS FILED BY A PERSON that omits
 5 information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based upon
 6 a frivolous position, or is based upon the taxpayer's action to impede collection of taxes. The department may
 7 bring an action in the name of the state to recover the penalty, INTEREST, and any delinquent taxes.

8 ~~(4)~~(6) (a) Interest on taxes not paid when due must be assessed by the department. The department
 9 shall determine the interest ~~rates~~ rate established under subsection ~~(4)(a)(i)~~ (6)(A)(i) for each calendar year by
 10 rule subject to the conditions of this subsection ~~(4)(a)~~ (6)(A). Interest rates on taxes not paid when due for a
 11 calendar year are as follows:

12 (i) For individual income taxes not paid when due, including delinquent taxes and deficiency
 13 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the
 14 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code,
 15 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

16 (ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and
 17 deficiency assessments, the interest rate is 12% a year.

18 (b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date
 19 of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return
 20 regardless of whether the taxpayer has received an extension of time for filing the return.

21 ~~(5)~~(7) (a) Except as provided in subsection ~~(5)(b)~~ (7)(B), this section applies to taxes, fees, and other
 22 assessments imposed under Titles 15 and 16 [and the former 85-2-276].

23 (b) This section does not apply to:

24 (i) property taxes; or

25 (ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15,
 26 chapter 70.

27 ~~(6)~~(8) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate
 28 in effect at the time the tax accrued.

29 ~~(7)~~(9) Penalty and interest must be calculated and assessed commencing with the due date of the return.

30 ~~(8)~~(10) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

