

## 1 SENATE BILL NO. 411

2 INTRODUCED BY R. ERICKSON

3 BY REQUEST OF THE SENATE TAXATION STANDING COMMITTEE

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

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

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

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

17 (2) Whenever the department waives a penalty provided for in this title, it also may, in its discretion,  
18 waive interest not to exceed ~~\$100 due upon the tax~~ \$500 due per tax period. In cases of a taxpayer agreeing to  
19 a payment plan to satisfy any delinquent debt, the department may waive an additional \$100 of interest per tax  
20 period provided that all terms of the payment plan have been met by the taxpayer."

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

23 **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**  
24 **-- exceptions -- uniform provision for interest on overpayments.** (1) A person who fails to file a required tax  
25 return or other report with the department by the due date, including any extension of time, of the return or report  
26 must be assessed a late filing penalty of ~~\$50 or the amount of the tax due, whichever is less~~ 5% of the tax due  
27 for each month or fraction of a month during which there is a failure to file the return or report in an amount up  
28 to 25% of the tax due but not less than \$50. The late filing penalty runs for the period up to the date the  
29 department actually receives the late return or report. The penalty is computed only on the net amount of tax due  
30 as of the original due date, if any, on the return or report after credit has been given for amounts paid through

1 withholding, estimated tax payments, and other credits claimed on the return.

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

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

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

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

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

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

18 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than  
19 \$10,000; or

20 (B) \$500,000.

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

26 (b) A person who files a fraudulent return or report under Title 15 is liable for a penalty of 75% of the tax  
27 due on the underpayment of tax attributable to the fraudulent amount reported on the return or report. The  
28 department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

29 (c) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty  
30 imposed, for a penalty of \$2,500. A frivolous return or report is one that omits information necessary to determine

1 the taxpayer's tax liability, shows a substantially incorrect tax, is based upon a frivolous position, or is based upon  
2 the taxpayer's action to impede collection of taxes. The department may bring an action in the name of the state  
3 to recover the penalty and any delinquent taxes.

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

8 (i) For individual income taxes not paid when due, including delinquent taxes and deficiency  
9 assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the  
10 secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code,  
11 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

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

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

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

19 (b) This section does not apply to:

20 (i) property taxes; or

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

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

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

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

27 (9) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or  
28 delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the  
29 interest rate determined in subsection (4)(a)(i). (Bracketed language in subsection (5)(a) terminates June 30,  
30 2020--sec. 18, Ch. 288, L. 2005.)"

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NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to tax periods beginning after December 31, 2011.

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