

HOUSE BILL NO. 117  
INTRODUCED BY C. KAUFMANN  
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY CLARIFYING THE UNEMPLOYMENT INSURANCE TAX LAWS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY ISSUE SUMMONS PENALTIES FOR FAILURE OF AN EMPLOYER TO SUBMIT WAGE INFORMATION OR PAY WITHHOLDING TAXES ON TIME; CLARIFYING THE DETERMINATION OF PENALTIES AND INTEREST FOR FAILURE OF AN EMPLOYER TO FILE UNEMPLOYMENT INSURANCE REPORTS OR MAKE PAYMENTS; AMENDING SECTIONS 15-30-209, 39-51-1206, AND 39-51-1301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 15-30-209, MCA, is amended to read:

**"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.

(4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.

(5) (a) A ~~subpoena~~ summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a ~~subpoena~~ summons pursuant to ~~15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703~~ 15-1-301.

(b) If an employer fails to honor the ~~subpoena~~ summons provided in subsection (5)(a), an additional \$100

penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure with a minimum of \$50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.

(11) All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

**Section 2.** Section 39-51-1206, MCA, is amended to read:

**"39-51-1206. Department to provide for notification of employers of their classification and contribution rate.** (1) The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. ~~Such~~ Except as provided in subsection (2), ~~the notification shall be~~ is final for all purposes unless and until ~~such~~ the employer files a written request with the department for a redetermination or hearing ~~thereon~~ on the classification and rate of contribution within 30 days after receipt of ~~such~~ the notice.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error."

**Section 3.** Section 39-51-1301, MCA, is amended to read:

**"39-51-1301. Penalty and interest on past-due reports and taxes.** (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by ~~15-1-216~~ 15-30-209.

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in 15-30-250 and must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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