

HOUSE BILL NO. 254

INTRODUCED BY B. TSCHIDA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE FAILURE TO FILE PENALTY FOR AN
5 INDIVIDUAL OR COUPLE THAT IS ENTITLED TO AN INDIVIDUAL INCOME TAX REFUND; EXPANDING
6 RULEMAKING AUTHORITY; AMENDING SECTION 15-1-216, MCA; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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11 **Section 1.** Section 15-1-216, MCA, is amended to read:

12 **"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability**
13 **-- exceptions -- uniform provision for interest on overpayments.** (1) (a) Except as provided in subsection
14 (1)(b), a person who fails to file a required tax return or other report with the department by the due date of the
15 return or report, including any extension of time allowed for in Title 15, chapter 30 or 31, must be assessed a late
16 filing penalty. The penalty is the greater of \$50 or 5% of the tax due for each month during which there is a failure
17 to file the return or report, not to exceed an amount up to 25% of the tax due. The late filing penalty is calculated
18 from the due date or extended due date until the department actually receives the late return or report. The
19 penalty is computed only on the net amount of tax due, if any, as of the original due date or extended due date
20 provided for in Title 15, chapter 30 or 31, after credit has been given for amounts paid through withholding,
21 estimated tax payments, or other credits claimed on the return.

22 (b) Each individual or each couple permitted to file a joint return that is entitled to a refund under Title
23 15, chapter 30, for the tax year is not subject to a late filing penalty. This exception does not apply to returns or
24 reports that are required by a corporation, fiduciary, partnership, or S. corporation, as these terms are defined
25 in 15-30-2101, including any return or report that is required under Title 15, chapter 30, parts 25 and 33.

26 (2) (a) (i) Except as provided in subsections (2)(a)(ii), (2)(b), and (2)(d), a person who fails to pay a tax
27 when due must be assessed a late payment penalty of 0.5% a month on the unpaid tax. The penalty may not
28 exceed 12% of the tax due.

29 (ii) A penalty imposed under subsection (2)(a)(i) may be waived if:

30 (A) the taxpayer pays the tax and interest due with the tax return or report within 30 days following the

1 first notice from the department to the taxpayer of the amount due; or

2 (B) subject to the conditions of 15-30-2512(1)(a)(i), the taxpayer pays at least 90% of the tax, when due,
3 for the current year.

4 (b) (i) Except as provided in subsections (2)(b)(ii) and (2)(d), a person who fails to pay a tax when due
5 under Title 15, chapter 30, part 25, chapter 53, chapter 65, or chapter 68, or Title 53, chapter 19, part 3, must be
6 assessed a late payment penalty of 1.5% a month on the unpaid tax. The penalty may not exceed 15% of the tax
7 due.

8 (ii) A penalty imposed under subsection (2)(b)(i) may be waived if the taxpayer pays the tax and interest
9 due with the tax return or report within 30 days following the first notice from the department to the taxpayer of
10 the amount due.

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

14 (d) A penalty may not be imposed under subsection (2)(a) or (2)(b) on the amount of unpaid tax if the
15 taxpayer demonstrates there is reasonable cause for the failure to pay the tax.

16 (3) (a) Subject to subsection (3)(b), a person who makes a substantial understatement of tax imposed
17 under Title 15, Title 16, chapter 11, or Title 53, chapter 19, part 3, must be assessed a substantial understatement
18 penalty in an amount equal to 20% of the understatement. As used in this subsection (3), "understatement"
19 means the amount of the tax required to be shown on the return for the tax year less the amount of tax that the
20 taxpayer reported on the return. For purposes of this subsection (3):

21 (i) there is a substantial understatement of tax penalty imposed under Title 15, chapter 30, except for
22 Title 15, chapter 30, part 33, if the understatement exceeds the greater of 10% of the amount of tax required to
23 be shown on the return or \$3,000; and

24 (ii) there is a substantial understatement of tax penalty imposed for all other chapters under Title 15,
25 including Title 15, chapter 30, part 33, and for Title 16, chapter 11, and Title 53, chapter 19, part 3, if the
26 understatement exceeds the lesser of:

27 (A) 10% of the amount of tax required to be shown on the return if the understatement is greater than
28 \$10,000; or

29 (B) \$500,000.

30 (b) The amount of substantial understatement of tax penalty must be reduced by the amount of the

1 understatement that is attributable to:

2 (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for the treatment;

3 or

4 (ii) any item if the relevant facts affecting the tax treatment of the item are adequately disclosed in the
5 return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item
6 by the taxpayer.

7 (4) (a) Except as provided in ~~subsection~~ subsections (1)(b) and (4)(b), a person who purposely or
8 knowingly, as those terms are defined in 45-2-101, fails to file a return or report as required under Title 15 when
9 due or fails to file a return or report within 60 days after receiving written notice from the department that a return
10 or report must be filed is liable for an additional penalty of 15% of the tax due for each month or fraction of a
11 month during which the person purposely or knowingly fails to file a return or report, but not to exceed 75% of
12 the tax due as determined by the department. The department may bring an action in the name of the state to
13 recover the penalty and any delinquent taxes.

14 (b) A person who purposely or knowingly, as those terms are defined in 45-2-101, fails to file a return
15 or report as required under Title 15, chapter 30, part 33, when due or fails to file a return or report within 60 days
16 after receiving written notice from the department that a return or report must be filed is liable for an additional
17 penalty of \$1,000. The department may bring an action in the name of the state to recover the penalty and any
18 delinquent taxes.

19 (5) (a) A person who files a fraudulent return or report under Title 15 is liable for an additional penalty
20 of 75% of the tax due on the underpayment of tax attributable to the fraudulent amount reported on the return or
21 report. The department may bring an action in the name of the state to recover the penalty, interest, and any
22 delinquent taxes.

23 (b) A person who has no tax liability for the tax year and who files a fraudulent claim for a credit under
24 Title 15 is liable for an additional penalty of 75% of the amount attributable to the fraudulent amount of the credit
25 claimed. The department may bring an action in the name of the state to recover the penalty, interest, and amount
26 paid.

27 (6) A person who files a frivolous return or report under Title 15 is liable, in addition to any other penalty
28 imposed, for a penalty of \$2,500. A frivolous return or report is one that is filed by a person and that omits
29 information necessary to determine the taxpayer's tax liability, shows a substantially incorrect tax, is based on
30 a frivolous position, or is based on the taxpayer's action to impede collection of taxes. Frivolous positions are

1 those identified in 26 U.S.C. 6702 as those provisions may apply to provisions of Title 15. The department may
2 bring an action in the name of the state to recover the penalty, interest, and any delinquent taxes.

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

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

10 (B) Beginning January 1, 2018, for individual income taxes not paid when due, including delinquent taxes
11 and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers
12 established by the secretary of the United States department of the treasury pursuant to section 6621 of the
13 Internal Revenue Code, 26 U.S.C. 6621, for the third quarter of the preceding year.

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

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

19 (8) (a) Except as provided in subsection (8)(b), this section applies to taxes, fees, remittances, and other
20 assessments imposed under Title 15, Title 16, and Title 53, chapter 19, part 3.

21 (b) This section does not apply to:

22 (i) property taxes; or

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

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

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

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

29 (12) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or
30 delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the

1 interest rate determined in subsection (7)(a)(i). (Subsection (7)(a)(i)(A) terminates December 31, 2017--sec. 18,
2 Ch. 308, L. 2015.)"

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4 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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6 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
7 meaning of 1-2-109, to tax years beginning after December 31, 2016.

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