

Senate Select Committee on Tax Structure

Enforcement and Collection from the Delinquent Taxpayer

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Tax Study Meeting

Briefing Report

Prepared by

The Louisiana Department of Revenue

Enforcement and Collection from the Delinquent Taxpayer Committee Meeting Agenda

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2. Penalty for Underpayment of Estimated Tax

I. Penalty for underpayment of estimated income taxes

A. Statutory Requirement for Prepayment of Estimated Tax Liabilities

1. Individuals—R.S. 47:116 requires individuals to make quarterly payments of estimated tax if they can reasonably expect their tax liability, less any credit for withholding and taxes paid to another state, to exceed \$200. For calendar year individual taxpayers, the payments of estimated tax are due April 15, June 15, September 15 and January 15.
2. Corporations—R.S. 47:287.654(A) requires corporations to make quarterly payments of estimated tax if they can reasonably expect their tax liability, less all credits, to exceed \$1,000. For calendar year corporate taxpayers, the payments of estimated tax are due April 15, June 15, September 15 and December 15.
3. Penalty—The penalty is an addition to the tax at the rate of 12 percent per annum from the due date of the installment until the earlier of the date paid or the 15th day of the fourth month following the close of the taxable year (April 15 for a calendar year taxpayer).

B. Current Policy for Enforcement of the Statute

1. The Department has no computerized program for application of the penalty for underpayment of estimated tax. In extreme situations the penalty has been manually applied.
2. Voluntary Compliance—The Department has sought voluntary compliance by sending estimated payment vouchers to all income taxpayers making payments with their return exceeding \$200 for individuals or \$1,000 for corporations. Based on the tax amounts paid with the 1998 individual income tax filings, 171,000 estimated payment vouchers were sent to taxpayers who paid over \$200 with their return. Of these, 81,000 subsequently paid estimated tax for the 1999 year.
3. Enforcement Issues—Consistent application would require a computerized enforcement program, which is not currently in place.
 - a. Administrative Cost—Because of the significant administrative development costs for establishing a program, it was concluded that for the present, the opportunity cost exceeds the benefit. The reason the cost is so high is because of the complexity of the penalty calculation and the level of Information Services resources available. Extensive programming would be required to establish and maintain the penalty system, which would likely generate numerous inappropriate bills that would require additional resources to resolve.

2. Penalty for Underpayment of Estimated Tax

- b. Allocation of Agency Resources—The Department’s Information Services Division’s resources are barely sufficient to maintain the existing programs due to the high maintenance nature (in programming time) of the current system. Under the current system, the personnel would have to suspend current job assignments in order to design, implement, and maintain the penalty system.
 - c. Computer System Redesign—The computer programming issue is being addressed in the development of a new computer system, which will have more flexibility and less need for programming in order to make changes.
- C. Complexity of the penalty computation—The complexity of the penalty calculation and the inappropriate billings that would result from any computerized enforcement of the underpayment penalty are related.
- 1. The complexity results from exceptions to the penalty that are required for equity.
 - 2. Examples— The major source of inappropriate billings under any computerized system will be instances in which the taxpayer had a large increase in income, such as a gain on the sale of property or an investment, in the last quarter of the year.
 - a. no data would be available as to when the income was received during the year, so it would be assumed that the income was earned equally throughout the year.
 - b. if the gain were in the last quarter the penalties imposed for the first three-quarters would be in error.
 - 3. Resources would be required to handle the inappropriate billings and thereby reduce resources currently devoted to taxpayer assistance and the discovery of unreported tax.
- D. Statutory Exceptions to Penalty
- 1. Individual Income Tax—In the following instances the statute provides that the penalty for underpayment of estimated tax will not be applied to individuals:
 - a. If the estimated tax (including withholding tax) paid on or before the due date of the installment equals the amount which would have to be paid if the estimated tax for the year were the lesser of:
 - i. last year’s tax.
 - ii. the tax computed using this year’s rates, exemptions and filing status, but otherwise using last year’s facts.

2. Penalty for Underpayment of Estimated Tax

- iii. ninety percent of the tax computed by annualizing year-to-date income through the applicable quarter.
 - b. In addition, no penalty is due if the payments to date are at least 90 percent of the tax computed using this year's law applied to the year-to-date income through the month before the month in which the installment is required to be paid.
2. Corporations—In the following instances the statute provides that the penalty for underpayment of estimated tax will not be applicable to corporations:
- a. If the total of estimated payments by the due date of an installment equals the amount required to be paid if the estimated tax for the year were the lesser of:
 - i. last year's tax.
 - ii. the tax resulting from applying the rates for this year but otherwise using the law, income and facts of last year.
 - iii. an amount equal to 80 percent of the tax resulting from annualizing the income from the beginning of the year through the applicable installment period.

E. Other Considerations

- 1. Corporation Income Tax—There is less concern with underpayment of estimated tax by corporations because the corporate income and franchise taxes are on the same tax return and overpayments of estimated income tax can be applied against the franchise tax (which has no estimated tax requirement).
 - a. Typically, corporate taxpayers overpay the estimated income tax and take the excess payment against the franchise tax.
 - b. Unfortunately, this automatic transfer of payments between the taxes makes our computer records of payments under our current computer system useless for analytical purposes.
- 2. Individual Income Tax—The penalty for failure to pay estimated individual income tax is the most compelling issue.

2. Penalty for Underpayment of Estimated Tax

II. Analysis of Collections of Individual Income Tax For the Calendar Year 1999

Type of Payment	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Year's Total	Percent of Total
Declaration Estimate	\$58,887,000	\$71,682,000	\$47,141,000	\$12,051,000	\$189,761,000	12%
Fiduciary Tax Return	\$2,256,000	\$9,046,000	\$551,000	\$622,000	\$12,475,000	1%
Individual Tax Return	\$22,229,000	\$218,860,000	\$23,384,000	\$28,290,000	\$292,763,000	19%
Withholding Payments	\$248,720,000	\$215,951,000	\$282,053,000	\$298,865,000	\$1,045,589,000	68%
Grand Totals	\$332,092,000	\$515,539,000	\$353,129,000	\$339,828,000	\$1,540,588,000	100%
Percent of Totals	22%	33%	23%	22%	100%	

- These amounts have not been adjusted to reflect the refunds issued, which were \$682,740 for fiduciary taxes and \$207,253,000 for individual income tax.
- Approximately 1.08 million out of the 1.6 million individual income tax filers received refunds. No refunds were issued for declarations/estimated payments.
- As shown on the row labeled "Individual Tax Return," \$292,763,000 was paid by the time the individual income tax returns were filed.

III. What Other Tax Entities Do

A. Internal Revenue Service

1. The federal government has statutes for imposing a penalty for underpayment of estimated tax that are similar to those of Louisiana. In fact, our statutes were patterned after the federal statutes.
2. The federal government *does* impose the penalty. However, in many instances the proposed penalty is greater than the actual penalty due, and in a significant number of cases no penalty is due. Apparently the IRS has the resources to handle the disputes resulting from overstated penalty billings.

B. Other States—Most other states with an income tax also follow the federal estimated tax payment scheme. However, it is difficult to obtain data on the extent to which other states actively impose the underpayment penalty as those who do not impose the penalty are reluctant to publicly state they do not impose the penalty.

IV. Recommendation

Because the Department is in the process of redesigning its computer system, no new computerized enforcement programs are recommended until the new system is in place. Even then, routine enforcement of the underpayment penalty may not be the most productive use of the Department's resources.

3. Individual Income Tax Credit for Taxes Paid to Another State

I. Louisiana's Individual Income Tax system

Resident individuals are taxed on all their income from whatever source derived, unless it is specifically exempt. For example, a Louisiana resident taxpayer who earns \$20,000 in Louisiana and \$20,000 in Arkansas will be taxed by Louisiana on \$40,000. However the individual can take a tax credit for income tax paid to Arkansas on the \$20,000 earned in Arkansas that is taxable by both Louisiana and Arkansas. Louisiana requires a copy of the Arkansas return in order to validate the amount of the credit taken. If the tax rates and items of deductions and income are the same in both states, then each state will receive their appropriate share of the tax.

II. La. R.S. 47:33 Credit for taxes paid in other states

- A. According to R.S. 47:33, a taxpayer may take a credit for taxes paid in other states only if:
1. The taxpayer is a resident of Louisiana,
 2. The credit is for net income taxes imposed by another state,
 3. The credit is for net income taxes paid to another state,
 4. The net income tax is imposed on income taxable by Louisiana,
 5. The credit is for taxes paid on out-of-state income that is taxable under the other state's law irrespective of the residence or domicile of the taxpayer,
 6. The credit is for the same taxable period for which the tax was paid to another state, and
 7. If the income comes from property owned in another state, that state must allow a similar credit for Louisiana income taxes paid on income derived from property located in Louisiana.
- B. This credit is not refundable.

III. What is the problem?

- A. This credit is allowed dollar-for-dollar against the total Louisiana income tax owed. The problem is that this credit is not limited in any way. If another state has a higher income tax rate than Louisiana, there is the potential for that credit to offset not only Louisiana's tax on income taxable to another state but also the tax on income taxable to Louisiana only. Since most states' tax rates are greater than Louisiana, Louisiana subsidizes these higher rates. Also, the effective rate of Louisiana net income tax paid by resident taxpayers without such a tax credit is greater than the effective tax rate on resident taxpayers who take a tax credit for taxes paid to another state whose rate is greater than Louisiana's.

3. Individual Income Tax Credit for Taxes Paid to Another State

B. Example

Taxpayer is single and a Louisiana resident. Taxpayer's federal adjusted gross income is \$50,000. Of this amount, \$25,000 was earned in Mississippi and \$25,000 was earned in Louisiana. Before the credit is taken for taxes paid to another state, Taxpayer's Louisiana income tax is \$1,365. Taxpayer's Mississippi income tax is \$888. The credit for taxes paid to another state offsets 65 percent of Taxpayer's Louisiana income tax even though only 50 percent of Taxpayer's income was earned outside Louisiana.

IV. What the IRS and other states do

A. Federal

The Internal Revenue Code limits the credit that may be taken for foreign taxes paid to the amount of United States tax that would be imposed on a United States taxpayer's foreign-source taxable income. The limitation is calculated as follows:

$$\frac{\textit{Foreign Source Taxable Income}}{\textit{Worldwide Taxable Income}} \times \textit{U.S. Tax on Worldwide Taxable Income}$$

B. States

1. Alabama

Limitation: Credit limited to the lesser of the amount of tax due to the other state or the amount of tax that would be due if calculated at Alabama rates.

Alabama allows a credit against Alabama tax for income taxes paid in another state when the taxpayer's income is derived from sources within and without Alabama. The credit cannot exceed the amount of income tax due to the other state or the amount that would be due on the same income computed at the income tax rate in Alabama.

2. Arkansas

Limitation: Credit limited to the lesser of the amount of tax paid to the other state or the amount of tax that would be due if calculated at Arkansas rates.

Arkansas grants a credit to resident individuals for the amount of income tax paid to any other state or territory not to exceed what the tax would be on out-of-state income if added to the Arkansas income and calculated at Arkansas rates.

3. Georgia

Limitation: Credit limited to the lesser of the amount of tax paid to the other state or the amount of tax that would be payable if calculated at Georgia rates.

If a taxpayer has established businesses in another state, investments in property having a taxable status in another state, or employment in another state, the taxpayer may deduct from the tax due upon the entire net income of the resident individual the

3. Individual Income Tax Credit for Taxes Paid to Another State

tax paid upon the net income of the business, investment, or employment in another state when the business, investment, or employment is in a state that levies a tax upon net income. In no case shall the credit exceed the tax which would be payable to this state upon like amounts of taxable income.

4. Mississippi

Limitation: Credit limited to the lesser of the amount of tax paid to the other state or the amount of total tax due Mississippi.

Mississippi grants a credit against the Mississippi tax for income tax paid another state when the taxpayers' income is derived from sources within and without Mississippi, provided that credit shall not exceed the amount of income tax due Mississippi.

5. South Carolina

Limitation: Credit limited to the lesser of the amount of tax paid to the other state or the proportion of South Carolina tax attributable to income taxable by the other state.

South Carolina grants a credit for taxes paid to another state on income from personal services rendered in another state and income received through a nonresident fiduciary, provided the credit does not exceed the proportion of South Carolina's tax attributable to income taxable by the other state.

V. Recommendation

A. Legislation limiting the credit.

B. Previous Legislative Proposals

Legislation was submitted during the 2000 Regular Session that limited the credit to that proportion of the tax which the ratio that the net income taxable in the other state, to the extent that such income is also taxable in Louisiana, bears to the total net income taxable by Louisiana. House Bill No. 291 was reported favorably by the House Ways and Means Committee but was returned to the calendar by the House. The primary objection to the bill was that it cost Louisiana residents money.

C. Fiscal Effect

The total credit for taxes paid to other states is approximately \$14 million. The Department's estimate of revenue gain from the portion of HB 291 that limited the credit for taxes paid to other states is \$3.1 million.

4. Current Procedures for Collecting Taxes Due

I. Billing Procedures

- A. If a taxpayer files a return showing a tax liability, but fails to pay any or all of the amount shown to be due on the tax return or files a delinquent return and owes interest or penalty:
 - 1. A notice is issued allowing the taxpayer 10 days to pay the liability.
 - 2. After the 10 days have elapsed, a Final Notice Before Seizure is sent to the taxpayer.
- B. If the taxpayer files a return showing an amount due, but has made an error and as a result of the error, owes an additional amount or if the taxpayer fails to file an expected return and an estimate of the tax liability owed is made based on prior-period filings:
 - 1. A notice of proposed tax due is issued allowing the taxpayer 15 days to respond.
 - 2. After the 15 days have elapsed, another assessment and final notice of tax due is issued advising the taxpayer not to ignore the notice and that the assessment will become final in 60 days after which a Warrant for Distraint will be issued.
 - 3. After the 60 days have elapsed, a Final Notice Before Seizure is sent to the taxpayer.
- C. If the taxpayer's return is audited, investigated, or examined, and additional tax is determined to be due:
 - 1. A notice of proposed tax is issued allowing the taxpayer 30 days to respond.
 - 2. Consideration is given to protests and hearings are granted.
 - 3. If the determination continues to be that an additional amount is due:
 - a. the amount is assessed, or
 - b. a suit is filed, or
 - c. any other of the remedies or procedures provided by law are followed.
 - 4. After all procedures and appeals are exhausted or abandoned, and there remains an amount determined due that the taxpayer has not paid, a Final Notice Before Seizure is sent to the taxpayer.

II. Taxpayer's Point of Contact for Billing Notices

- A. The Collection Division, Compliance Section, is the taxpayer's initial point of contact in response to billing notices. This section:
 - 1. handles inquiries to telephone calls and written correspondence,
 - 2. attempts to collect the amount due or resolve the issue in the initial billing stage,
 - 3. researches account to make sure the liability is valid,
 - 4. reviews requests for penalty waivers,

4. Current Procedures for Collecting Taxes Due

5. reviews requests for installment agreements, and
6. when necessary, places temporary holds on accounts to allow taxpayers the opportunity to resolve the liability prior to enforced collections.

B. Regional Offices or the Collection Division, Enforcement Section

If the liability is not paid or cleared during the initial billing stages, the assessment updates to warrant status and a Final Notice before Seizure is sent to the taxpayer. If after this notice payment is not received, the account is assigned to a regional office or the Enforcement Section who then:

1. research the account to make sure the liability is valid,
2. investigate to determine if previous billing notices have been returned by the post office,
3. use the following systems and records to locate the taxpayer or levy sources,
 - a. Credit Bureau
 - b. Department of Labor
 - c. Public Safety
 - d. Secretary of State
4. and take one or more of the following actions if all other attempts to collect from the taxpayer are unsuccessful:
 - a. accounts receivable seizure/garnishment
 - b. assignment to collection agency (out of state only)
 - c. bank account levy
 - d. bonding company levy
 - e. cash register seizure
 - f. cease and desist
 - g. deny tax clearance
 - h. insurance payments levy
 - i. officer liability (sales and withholding taxes only)
 - j. offset state tax refund
 - k. tax lien
 - l. wage garnishment

5. Small Debt Collection

I. Small Debts

- A. Debts between \$10 and \$50 comprise five percent of the total warrant assignment but these warrants account for less than one-half percent of the total receivables.
 - 1. Most of the amounts collected on small debts are in response to billing notices.
 - 2. The average cost to collect in-house is \$4.69 per billing.
 - 3. If a debt reaches warrant status, if it is assigned in-house to the Enforcement Section the average cost to collect is \$12.62 per warrant. If it is assigned to the Regional Office personnel in the field, the average cost to collect is \$30.92 per warrant.
 - 4. Warrant assignments are prioritized according to the amount due and the number of tax periods in warrant status. Highest priority is given to accounts owing \$10,000 or more and accounts with more than three periods in warrant status.
- B. Analysis of Warrants according to the Amounts Due—See next page.

II. Recommendations for minimizing collection efforts on small debts

- 1. Increase the billing tolerance to \$19.99 for individual income tax warrants, if collected in-house (cost to collect in-house is \$12.62)
- 2. Increase the billing tolerance to \$29.99 for business warrants collected by the regional offices (cost to collect in region is \$30.92)
- 3. Shelve billing notices at warrant status until a cumulative total of \$50 has been reached, then resume collection efforts
- 4. Eliminate or increase taxes and fees that fall below the minimum billing amount, such as:
 - a. minimum corporation franchise tax, which is \$10 per year
 - b. minimum inspection and supervision fee, which is \$50 annually paid \$12.50 per quarter

5a. Timely Deposit of Funds

Business and Individual Taxes—As of July 18, 2000				
Balance Due	Number of Warrants	Percentage of Total	Total Balance Due	Percentage of Total
\$10 - \$49.99	16,801	5.11%	\$411,542	0.16%
\$50 - \$99.99	12,792	3.89%	\$820,550	0.32%
\$100 - \$499.99	74,453	22.63%	\$14,591,202	5.72%
\$500 - \$999.99	57,129	17.37%	\$21,353,109	8.37%
\$1,000 - \$9,999.99	138,661	42.15%	\$98,875,626	38.75%
\$10,000 - \$99,999.99	27,818	8.46%	\$56,820,382	22.27%
\$100,000 - \$499,999.99	1,056	0.32%	\$21,194,851	8.31%
\$500,000 and over	232	0.07%	\$41,116,090	16.11%
Total Warrants	328,942	100.00%	\$255,183,352	100.00%

Individual Taxes—As of July 18, 2000				
Balance Due	Number of Warrants	Percentage of Total	Total Balance Due	Percentage of Total
\$10 - \$49.99	9,529	5.67%	\$273,342	0.23%
\$50 - \$99.99	10,074	5.99%	\$695,105	0.59%
\$100 - \$499.99	49,300	29.31%	\$10,096,918	8.64%
\$500 - \$999.99	33,475	19.91%	\$15,473,687	13.24%
\$1,000 - \$9,999.99	61,673	36.67%	\$66,225,799	56.66%
\$10,000 - \$99,999.99	4,056	2.41%	\$18,626,043	15.94%
\$100,000 - \$499,999.99	62	0.04%	\$3,554,776	3.04%
\$500,000 and over	5	0.00%	\$1,939,305	1.66%
Total Warrants	168,174	100.00%	\$116,884,975	100.00%

Business Taxes—As of July 18, 2000				
Balance Due	Number of Warrants	Percentage of Total	Total Balance Due	Percentage of Total
\$10 - \$49.99	7,272	4.52%	\$138,200	0.10%
\$50 - \$99.99	2,718	1.69%	\$125,445	0.09%
\$100 - \$499.99	25,153	15.65%	\$4,494,284	3.25%
\$500 - \$999.99	23,654	14.71%	\$5,879,422	4.25%
\$1,000 - \$9,999.99	76,988	47.89%	\$32,649,827	23.61%
\$10,000 - \$99,999.99	23,762	14.78%	\$38,194,339	27.62%
\$100,000 - \$499,999.99	994	0.62%	\$17,640,075	12.76%
\$500,000 and over	227	0.14%	\$39,176,785	28.33%
Total Warrants	160,768	100.00%	\$138,298,377	100.00%

I. Deposit of Funds

5a. Timely Deposit of Funds

- A. Payments in response to billing notices are received from the delinquent taxpayer in either the Operations Division in the headquarters office or the regional district offices and then forwarded to the Operations division. The only exception is high dollar items (usually in excess of \$100,000 and tobacco stamp orders or inheritance tax payments), which are deposited locally and the deposit advice is then forwarded with the related tax documents for posting. The time between receipt from the taxpayer in the field or by the Operations Division and deposit of the payments can vary greatly.
- B. Payments received in the Headquarters office:
 - 1. Generally are coupon size with scanlines accompanied by remittance;
 - 2. Processing depends on mail opening time, which depends on daily volume;
 - 3. Processed within 1 to 10 days depending on time of month received;
 - 4. Processing once received by the remittance processing equipment has improved to within two days. The time consuming effort is still in the document preparation stages of mail opening, editing for complete information, and preparation steps for remittance processing.
- C. Payments received in the regional district offices:
 - 1. Require some manual intervention and screening prior to processing and before transmission to the Operations Division;
 - 2. Usually do not have coupons with scanlines;
 - 3. Receipt in Operations Division can vary widely by circumstance;
 - 4. More opportunity for error and misdirection of check and coupon;
 - 5. Large dollar amounts are deposited in local banks and deposit advice information is routed to Operations for posting to the taxpayer account.
- D. Funds Deposit Technology
 - 1. The use of scanlines on remittance documents is the most prevalent way to expedite deposit of funds using current remittance technologies. In retail operations (credit cards, utility payments, lockbox and similar applications), the amount owed by the customer is known and the scanline on the remittance voucher will normally contain all information necessary (i.e., the account number, full pay amount, and a minimum pay amount) to post the payment.
 - 2. Equipment is available that can open, extract, and prepare remittance coupons and checks for deposit without manual intervention.

5a. Timely Deposit of Funds

E. Problems Unique to Tax Collections

1. In tax processing, the amount is not as readily determined, because the amount due is dependent on when the taxpayer completes the transaction or may be readily changed by circumstances affecting the taxpayer account and more information is required to post the data accurately to the account.
2. For 1998-99, the Legislative Auditor found that, for small dollar items typically represented by payments of delinquent notices, the Department did not deposit funds timely in accordance with the 24-hour deposit standard. The implementation of a new remittance processing system, which has not yet stabilized, has prevented the development of a reasonable and achievable standard that can be used to clarify the definition of the timely deposit of smaller dollar items.

II. Plans to Expedite Funds Deposit

- A. A recent study for Business Transformation of the Collection effort recommended routing more payments from receipt in the regional offices to the headquarters office. This recommendation will be implemented in the near future.
- B. Refinements to the new remittance processing system and the mail opening and document preparation procedures continue to improve the ability of the Operations Division to deposit smaller dollar items in a more timely manner.

III. What do others do (i.e., the feds, other states)?

- A. A variety of methods are used to expedite deposits including deposit of funds in local banks, enhanced remittance processing technologies, lockbox technologies, and credit cards.
- B. Many states claim that they have 24-hour funds deposit. However, in defining the length of time it takes, one must be careful to compare “apples to apples.”
 1. Some states measure deposit of funds from the time it is received by the remittance processing equipment, and not from the time the envelopes are received in the mailroom.
 2. In other states, the priority may be *only* on the deposit of funds, and the posting of the data to the taxpayers accounts, validation of taxpayer return data and the issuance of refunds are delayed until the staff is available to complete the processing of returns.
 3. In other states, technology may be used to expedite the deposit of funds, but the technology improvements do not extend to other agency personnel for customer service initiatives or improved productivity.
 4. Priorities in states will vary, depending on legislative mandates, tradition, and tax structure.

5a. Timely Deposit of Funds

- C. Lockbox vendors have approached the Department in previous years.
1. These vendors were supplied with the information concerning our volumes, the content of the envelopes received and the cost to us to process in-house.
 2. No vendor has ever returned with a proposal for the transfer of this work to a lockbox process, which implies that it would not be profitable for the vendor, or cost effective for the state to enter into a lockbox agreement.
 3. These vendors are most effective when processing “clean” work that has the coupon with a scanline and the remittance, and that requires no additional action by the vendor.
 - a. Work that requires additional action, for example, address changes, response to correspondence, changes in the amount due and payable, installment agreements, etc. are defined as “dirty” work, and are not handled by the lockbox generally, but routed to the lockbox customer to handle.
 - b. The percentage of “dirty” work ranges from 16 to 32 percent depending on the time of filing.
- D. Other States
1. A presentation by the North Carolina Department of Revenue on Tuesday, August 15, 2000, at the Federation of Tax Administrators (FTA) Technology conference indicated that an improved equipment configuration (OPEX MPS-40 with mail opening and extraction of coupon/voucher) has been successful in reducing their document preparation window allowing deposit of similar funds received in-house to 24 hours.
 2. All money received in Tennessee regional offices is deposited locally on a daily basis, and a deposit record is forwarded to the headquarters office for posting.
 3. Florida’s focus is on remittance processing. The payment and the coupon are stripped off for processing, and the return data may take several months to capture, generating supplemental bills or refunds. In addition, their statistics concerning remittance deposit (0.62 days) generally quoted are deflated because electronic funds transfer is included with the calculation.
 4. In a recent survey by FTA, of the 37 states responding, 19 states now accept credit cards.
 5. Many states will retain envelopes only for certain taxes, or for amounts in excess of a specific dollar limit.

IV. Recommendations

- A. Expand efforts to reduce the document preparation time between mail receipt and remittance processing. The Business Transformation teams will review the practices and procedures during the next three months.
- B. Continue efforts to improve data integrity and accuracy of billing notices and expand the use of coupon and scanlines on more billing notices.
- C. Purchase additional mail sorting and extraction equipment similar to North Carolina's and upgrade the existing mail sorting and extraction equipment to be more productive.
- D. Establish standards for employees opening mail to achieve goals. This initiative is currently being worked on and should be in place by December 1, 2000.
- E. Deposit funds received by the district offices in local banks.
- F. Implement the acceptance of credit card payments and investigate the possibility of payments of delinquent notices over the Internet. The Department is actively pursuing acceptance of credit cards.
- G. Change policy and procedure to eliminate the envelope retention for collection notices, which is a significant inhibitor in the document preparation and scanner processing or enact legislation to require payment to be received by a specific date, rather than due date.
 - 1. Currently, envelopes are retained by the department on all collection notice billings and any return that is received past the due date for a specified time.
 - 2. These envelopes are used to prove the date received, which is a factor in the calculation of penalties and interest.
 - 3. By changing the policy to keep fewer envelopes, document preparation time can be reduced and deposit will be improved.
- H. Cost of Recommendation
 - 1. The estimated cost for the purchase of additional mail sorting and mail extraction equipment similar to North Carolina and New Jersey is \$540,000.
 - 2. Purchase of additional equipment will require funding. The budget request to replace a portion of the mail extraction equipment was not funded for budget year 2000-01.

6a. Cease and Desist Actions

I. Cease and Desist Actions

- A. If a taxpayer fails to pay any sales tax due, the Secretary has the authority under R.S. 47:314, to make a motion in court to cause the taxpayer to cease from further business as a dealer.
- B. Cease and Desist Actions can only be used for collection of delinquent state sales taxes. While this has assisted the Department in the collection of delinquent sales taxes, it provides no assistance in enforcing the collection of other delinquent taxes.
- C. This method of enforcement is preferable when the seizure of assets would not benefit the state due to the number of pre-existing liens already filed against the taxpayer.

II. Current Practices

- A. For all delinquencies, the Department's first attempt to collect these taxes is through the use of the usual billing process (See Section entitled *Current Procedures for Collecting Taxes Due*).
- B. After the assessment has become final and a Final Notice Before Seizure is mailed to the taxpayer and a warrant issued, collection tools include levy and garnishment of wages, bank accounts, investment accounts, royalties, dividends, and accounts receivable; seizure of funds in a business cash register; suspension of alcoholic beverage permits; seizure and sale of real property; and cease and desist actions for sales taxes. In certain cases, subpoenas can be issued in order to compel taxpayers to address these liabilities.
- C. Even with these actions, certain taxpayers are able to conceal their assets. Some examples include depositing all moneys in business accounts when personal taxes are due; depositing money in client trust accounts or children's trust accounts to avoid levy and garnishment; style bank accounts different from business name; have real property in the name of other family members; and use out-of-state bank accounts.

III. Past Problems Obtaining Cease and Desist Orders

- A. There have been instances when a hearing on the Cease and Desist action was scheduled and after the attorney presented the case, the judge realized that he has property (car, clothing, or pet) at the business that the Department is seeking to shut down. In these instances, the judge has refused to close the business and ordered another hearing a week later, allowing him the opportunity to remove his personal goods from the business.
- B. In other instances, the judge may order the business to close but the taxpayer simply refuses to cease operations. The attorney must schedule another court hearing seeking that the taxpayer is found in contempt of a court order. Generally, the court agrees that the taxpayer is in contempt, but refuses to issue sanctions. Judges are reluctant to impose jail time for contempt on tax matters.

6a. Cease and Desist Actions

- C. One of the more egregious situations occurred when the taxpayer filed a bad faith Chapter 13 bankruptcy petition to halt the cease and desist order. The Bankruptcy Court lifted the stay against the Department after realizing the bad faith filing on the part of the taxpayer. The matter went back to district court where the taxpayer was ordered to close his business. The taxpayer refused and was ordered jail time for contempt. The taxpayer then changed the name of his business to avoid arrest. The Department again sought a cease and desist, but went before another judge. This judge found the taxpayer in contempt but refused to jail him. Two years have lapsed and the taxpayer has still not paid, nor has he been punished for his contempt citations.

IV. Survey of Other States' Procedures

A recent survey of 37 other states revealed that eight states have cease and desist programs that apply to all taxes and nine states have programs limited to sales taxes only.

V. Recommendations:

- A. The cease and desist provision is found in R.S. 47:314. Although the provision provides that every violation of the cease order "shall be considered as a contempt of court, and punished according to law," the judges use their discretion in dispensing punishment. The contempt orders are found in the Code of Civil Procedure. If the tax code contained a specific contempt provision (even if the language were identical to that found in the Code of Civil Procedure) the judges would not have as much discretion to disregard enforcing the punishment.
- B. Amend our cease and desist statute, R.S. 47:314, to add a provision similar to R.S. 14:71 (A)(2), the general criminal statute dealing with NSF checks, which defines specific actions to be presumptive evidence of intent to defraud. Adding this language to R.S. 47:314 would establish the particular actions that meet the definition of "intent to defraud," which would then allow the Department to enforce other civil provisions such as the civil fraud penalty under R.S. 47:1604 or the criminal penalties under R.S. 47:1641 or 1642.
- C. Fiscal Effect of the Recommendation—The Department currently has in excess of \$125 million in taxes, interest, penalties, and fees owed by businesses which have gone through "due process." Expansion of the Cease and Desist Programs would assist in reducing these outstanding accounts and promoting greater voluntary taxpayer compliance.

6b. Suspension of Licenses

I. Suspension of Licenses to Ensure Tax Payments

- A. The number of taxpayers who are not filing tax returns or filing tax returns without proper payment is increasing.
- B. This is particularly a problem with professionals licensed under Title 37. Not only do some of these “professionals” owe substantial amounts of taxes, they are also finding new ways to conceal their assets from possible levy/garnishment action or seizure. To illustrate this problem, see Section IV.

II. Current Tax Collection Procedures

- A. For all delinquencies, the Department’s first attempt to collect these taxes is through the use of the usual billing process (see Section entitled *Current Procedures for Collecting Taxes Due*).
- B. After the assessment has become final and a Final Notice Before Seizure is mailed to the taxpayer and a warrant issued, collection tools include levy and garnishment of wages, bank accounts, investment accounts, royalties, dividends, and accounts receivable; seizure of funds in a business’ cash register; suspension of alcoholic beverage permits; seizure and sale of real property; and cease and desist actions for sales taxes. In certain cases, subpoenas can be issued in order to compel taxpayers to address these liabilities.
- C. Even with these actions, certain taxpayers are able to conceal their assets. Some examples include depositing all moneys in business accounts when personal taxes are due; depositing money in client trust accounts or children’s trust accounts to avoid levy and garnishment; style bank accounts different from business name; have real property in the name of other family members; and use out-of-state bank accounts.

III. Survey of Other States’ Procedures

- A. A survey was made of 37 states, 33 of which imposed an individual income tax, to determine whether they had a program for the suspension of “professional” licenses, drivers licenses, and recreational licenses, and suspension of license plate renewals for failure to pay state taxes.
- B. Thirteen states, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, Oklahoma, Oregon, South Carolina, Tennessee, Vermont and Wisconsin, have programs that allow for suspension or nonrenewal of certain professional licenses for nonpayment of taxes.
- C. Most participating states consider this program as a successful tool to aid in collection of delinquent taxes.

6b. Suspension of Licenses

IV. Case Examples of Professionals Who Will Not Pay Their Taxes

- A. An attorney, who owes \$58,000 in individual income tax, claims that he is not practicing law and that he lives off of his savings and cannot pay his tax liabilities. The bank will not honor our levy because the attorney's account is in conjunction with his children's trust funds. We have been unable to collect the liability.
- B. An attorney, who owes \$3,000 in personal income tax since 1993 and \$3,200 in withholding tax on his law firm since March 1998, will not respond to the Final Notice before Seizure or telephone calls. We have been unable to locate personal or business bank accounts and are unable to collect these liabilities.
- C. An attorney, who owes \$74,000 in individual income tax as a result of tax returns filed for 1995 and prior periods and assessments based on his 1996 and 1997 federal income tax return data, has been contacted on many occasions. He has indicated that he will have his CPA file the returns and he will make payments, but has only made sporadic \$2,000 payments after vigorous collection efforts. We have been unable to subpoena his records because he has closed his local office and the subpoena, which was mailed certified, was returned unclaimed. His bank account is in the name of his professional law corporation and we have been unable to seize the account because our warrant is in his name. According to the Secretary of State and the Bar Association, his charter had been revoked and he is now operating as an individual.
- D. An attorney, who owes \$46,000 in individual income tax, refused to honor our subpoena for state and federal tax returns. Only after a motion was filed in court did he produce the required records. However, he has paid none of the tax liability and his bank account is in the name of his professional law corporation, which he operates as an individual. He has been discharged from bankruptcy and claims that some of the tax periods owed were discharged but has not provided documentation to support his claim. According to our data, the tax periods in question were not discharged and the monies are still due. We have been unable to collect this liability.
- E. A physician, who has not filed a state income tax return since 1993, originally owed \$37,000 in individual income tax on \$747,000 in income for 1992, 1994, and 1995. Except for the remaining balance of \$650, all monies were collected through levies. He was registered with the Department as a Professional Corporation and a Limited Liability Company, which is taxed like a partnership, but he has closed his accounts. He defaulted on several payment agreements for both individual and business taxes and in October 1999, a subpoena was served at his business location, which he ignored. In November 1999, a contempt motion was filed. After delays, the judge issued a court subpoena to compel the physician to produce the required individual income tax documents in May 2000. In August 2000, the Department was notified that a hearing regarding the contempt motion has been set for October 2000. The case is still pending.

6b. Suspension of Licenses

- F. An attorney, who owes \$15,000 in individual income tax for tax years 1993 through 1997, for which he did not file tax returns, has defaulted on several payment agreements. In April 2000, we levied on his accounts at several financial institutions in the area and in May 2000, he called to object to one of the levies because he claimed that the funds in one of his personal accounts belonged to his client. He submitted an affidavit attesting that the funds were the sole property of his client, and as a duly authorized licensed practicing attorney he did transact business on behalf of his client. Based on the affidavit, the funds were released and at the present, all attempts to collect the monies due have been unsuccessful.
- G. An attorney owes \$25,000 in individual income tax for years 1994, 1995, and 1997, all for tax returns filed with no payment. In 1995, he requested a payment plan to pay his current tax liabilities, but made none of the payments. Levies were issued to various banks but no assets were located. In 1997, the attorney, who then owed \$7,000, again requested a payment plan and agreed to pay \$1,000 per month. Between 1997 and 2000, he made six payments, two for \$1,000 and four for \$100. After repeated efforts to contact the attorney, a meeting was finally held and he admitted he was dodging us and that he was unable to make payments and could not commit as to when he could make a payment. We obtained copies of his bank statements, client list, and account receivables and it was discovered that he had co-mingled funds between his professional account and the personal account. On two occasions levies were placed against his ex-wife's school teacher wages, but when she complained to her state representative and he contacted the Department on her behalf, the levies were released. After the first levy's release, the ex-wife promised to bring a payment from a property settlement but failed to make the payment. After the second levy, she came into our office and claimed that she could not pay more than \$50 per month because of her other obligations, which included private school and college tuition. She was married to the attorney during only one of the years that are owed. Presently, we are receiving \$50 per month from the ex-wife on a balance that exceeds \$15,000.
- H. A physician has filed no state individual income tax returns and was assessed over \$100,000 for tax years 1991-1995 based on IRS audit reports and federal tax return data obtained from the IRS. He has not filed a federal income tax return since 1996, and we have requested source of income transcripts in order to assess him for the current periods. The physician has paid no monies on his tax liabilities willingly and all amounts that have been collected were obtained using a levy against his medicaid billings.
- I. An attorney owes over \$33,000 in individual income tax. Liens have been filed and levies have been placed with all local financial institutions with no success. His records were subpoenaed but nothing was found to attach. His assets are in his wife's name and he has turned over his mother's estate to his father. A special investigation is presently under way.

6b. Suspension of Licenses

V. Recommendation

- A. Legislation that would provide for suspension of licenses under Title 37 of the Revised Statutes; suspension of driver's licenses and license plates, and suspension of all licenses issued by the Department of Wildlife and Fisheries for the nonpayment of individual income tax.
- B. The program would be followed only after the Department had exhausted all other normal collection procedures.
- C. Recommended Programs are as follows:
 - 1. Professional Licenses
 - a. Issue an order to the licensing board stating that the licensee has not paid or has not entered into and is not in compliance with an agreement with the Department to pay individual income tax due as the result of the following:
 - i. An assessment that has become final and is subject to collection by distraint and sale, or
 - ii. A judgment of a court that has become final.
 - b. The Department shall not issue this order until one year after December 31 of the year in which the assessment or judgment became final.
 - c. The Department shall not issue this order unless the total amount of tax due for all periods is \$100 or more.
 - d. Within 30 days of notification by the Department, the Licensing Board shall notify licensee/taxpayer that their license has been suspended by order of the Secretary.
 - e. If the Board does not receive notice that the liability has been paid, or an order of compliance from the Secretary, or a written protest of the suspension within 30 days of mailing of the notice, the Board shall suspend the particular license and shall deny application for issuance or renewal.
 - 2. Driver's License and Wildlife and Fisheries Licenses
 - a. The Department could either notify each agency of the suspension or could have access to their computer system in order to "flag" the particular licensee's record.
 - b. Notice would be sent to the taxpayer that his driver's license and/or Wildlife and Fisheries license was suspended. Neither agency would actually revoke the license. However, the licensee could not renew their license at its expiration.
 - 3. Vehicle License Plates—As with driver's licenses, the Department could either notify the Department of Public Safety or could have access to their computer system in

6b. Suspension of Licenses

order to “flag” the individual account, preventing the issuance of a license plate renewal.

- D. Past Legislative Proposals—In 1997, similar legislation was proposed by former Senator Tom Greene, although it did not include suspension of vehicle license plates. The proposal passed out of the Senate Committee and was amended on the Senate Floor to remove the reference to “professionals.” However, the House Committee on Ways and Means amended the proposal to add back the provision for “professionals” and passed the proposal out as amended. The proposal was tabled by the House.
- E. Fiscal Effect of Recommendation—There are currently more than \$100 million in taxes, interest, penalties, and fees owed by individuals who have gone through “due process.” Although it is not known how much of this amount is owed by “professionals,” individuals with driver’s licenses, or individuals with a license from the Department of Wildlife and Fisheries, it can be assumed that the License Suspension Program would assist in collecting these outstanding liabilities and would enhance voluntary taxpayer compliance.

6c. Tax Clearances

I. Tax Clearance Program

- A. The tax clearance program was initiated to ensure that certain businesses and taxpayers pay their proper taxes. This was in response to the apparent increase in the number of businesses that continue to operate without paying their taxes.
- B. There are currently six major programs where the Department issues tax clearances. They are:
 - 1. Alcoholic Beverage Permits,
 - 2. Video Poker Permits,
 - 3. Gaming Licenses,
 - 4. Initial Lottery Licenses,
 - 5. Resident/Nonresident Contractor Program, and,
 - 6. Boat Registration.
- C. Although requiring tax clearances for certain classes of businesses and taxpayers seems like a sound approach to ensure the proper collection of taxes, there is a point after which innocent and honest taxpayers are unduly penalized. Expansion of this program should be carefully evaluated.

II. Current Tax Clearance Programs

- A. Alcoholic Beverage Permits
 - 1. New Applicants—Each new applicant must obtain a clearance letter from the Department stating that the applicant has no outstanding sales tax liabilities. This document must accompany their application for an Alcoholic Beverage Permit. Permit applications that do not include this clearance letter are not approved. This clearance letter is also used to obtain local Alcoholic Beverage Permits.
 - 2. Renewals—The Office of Alcohol and Tobacco Control renews permits on an annual basis, staggered throughout the year. Approximately 75 days before the renewal date, a clearance letter is sent to all businesses that do not have any outstanding state sales tax liabilities. This clearance letter must accompany the permit renewal application and is also used to renew local permits.
 - 3. Businesses that have outstanding sales tax liabilities, receive a letter informing them that a clearance will not be issued until their account is paid in full. Businesses may contact the main office or any regional office for assistance in resolving their liabilities and obtaining a clearance letter.

6c. Tax Clearances

B. Video Poker Permits

1. New Applications—Each new applicant must obtain a tax clearance letter from the Department stating that they have no outstanding tax liabilities. This letter must accompany their Video Poker Permit application.
2. Renewals—Video Poker Renewals are issued by June 1st of each year. Approximately 60 days before the renewal date, a clearance letter is sent to all businesses that do not have outstanding tax liabilities. This clearance letter must accompany their renewal application.
3. For those businesses that have outstanding tax liabilities, a letter is sent notifying them that a tax clearance will not be issued until their account is paid in full.

C. Gaming Licenses

1. Background checks (clearances) are requested by the Louisiana State Police on all permitted gaming employees; manufactures, distributors and suppliers doing business with the various casinos; and gaming establishments.
2. To obtain a clearance, each individual and business must be free of any outstanding liabilities or, if they have outstanding liabilities, must have made arrangements to resolve the liabilities. These clearances are performed annually.

D. Initial Lottery Licenses

1. The Louisiana Lottery Commission forwards all new applications to the Department for review to verify that the applicant has no outstanding tax liabilities. After review, all applications are returned to the Commission with an indication of whether the applicant had outstanding liabilities.
2. Applicants who have outstanding liabilities can not obtain a Lottery License until their account is paid in full.
3. There is no tax clearance program for Lottery License renewals.

E. Resident and Nonresident Contractor Program

1. Resident Contractors—There are approximately 20 parishes that participate in Resident Contractor Program.
 - a. Under the Program, contractors submit a questionnaire to the Department for review. As a part of this review, the applicant's tax records are reviewed to determine that there are no outstanding tax liabilities.
 - b. If the applicant's tax file is current, or, if there are liabilities and the applicant has made arrangements to resolve the outstanding balances, a "Letter of Good Standing" is issued to the contractor.

6c. Tax Clearances

- c. Parishes participating in this Program will only issue permits to contractors who possess this Letter.
 - d. The initial letter is good for one year with subsequent letters good for three years.
2. Nonresident Contractors—This Program’s requirements are similar to the Resident Contractor Program, but nonresident contractors must also submit a description of the contract and post a bond equal to five percent of the total contract.
- F. Boat Registration (Title 34)
1. Anyone owning a boat in Louisiana is required to register their boat with the Department of Wildlife and Fisheries and to obtain a tax clearance letter from the Department.
 2. To obtain the clearance letter, the boat owner must provide evidence that the tax was paid at the time of purchase or that the sale met the definition of a “casual sale.” If the tax due was not paid, the boat owner can pay the taxes directly to the Department.

III. What Other States Do

Most states have programs for the suspension and revocation of operating licenses for certain classes of businesses. Programs range from suspension of one or two licenses, usually liquor and cigarettes, to the suspension of all licenses.

IV. Recommendation

Expansion of the tax clearance program in the following areas:

1. Businesses under contract to provide goods and services to state departments and agencies;
2. Renewals for businesses who have permits from the Louisiana Lottery Commission; and,
3. Expansion of other clearance programs to include all taxes.

7. Authority to Privatize Collections

I. Authority to privatize collections?

Revised Statute 47:1516 authorizes the Department to enter into contracts with collection contractors for the purpose of debt collection for out-of-state taxpayers. Liabilities must be in warrant status and the taxpayer's identifiable assets subject to distraint must be insufficient to satisfy the obligations owed.

II. Current Use of Private Collectors

We currently assign out-of-state accounts to a collection contractor, after we have exhausted all collection efforts. This means our attempts to collect from the taxpayer or locate a levy source have been unsuccessful. The contractor adds a 25 percent collection fee to the existing balance of tax, interest, penalties, and fees already due the state.

It is especially beneficial to assign out-of-state accounts because if the taxpayer does not have assets in the state, which is often the case for business taxpayers, our collection efforts are extremely limited. The Department does not have the authority to place levies or take other types of seizure actions in other states.

III. Are In-State Collection Contractors Needed?

Assigning in-state accounts to a private contractor would be beneficial to the state. However, since collection contractors do not have the authority to seize assets, liabilities should be sent to the contractor only after the Department has determined that the taxpayer has insufficient assets to satisfy the amount owed.

IV. What do other states do?

- A. Assign accounts to multiple collection contractors
 - 1. Individual and Business tax accounts are assigned to different collection agencies
 - 2. Accounts are reassigned to a second contractor if deemed uncollectible by first
- B. Send account to collection agency prior to taking seizure action
- C. File a tax lien prior to assigning to a collection agency
- D. Allow private collectors to work on-site
- E. Hire part-time collectors using "shared working environment"
 - 1. part-time collectors work after regular business hours, using Revenue office space and other resources
 - 2. after-hour collectors are successful in reaching individual taxpayers during evening hours

7a. Penalties for Tax Evasion

I. Penalty for Tax Evasion

- A. R.S. 47:1642 provides a criminal penalty for conviction of tax evasion of not more than \$1,000 and imprisonment of not more than one year, which is a misdemeanor conviction.
 - 1. This misdemeanor treatment often makes the prosecution of tax evaders more difficult because we have to convince a District Attorney that the case is worth the effort.
 - 2. A misdemeanor offense is not a sufficient deterrent to the crime. If the offense was elevated to a felony, much more severe penalties would be associated with a conviction. For example, felons suffer the loss of certain citizenship rights, loss of professional certifications and licenses, are ineligible for certain governmental jobs and benefits, plus, the offender has a criminal record that will follow him for the rest of his life.
- B. When pursuing tax evasion cases, the most serious offense that can be associated with the crime is the “Filing a false public record” offense (R.S. 14:133). This offense is not a tax violation but a general criminal offense only secondary to the actual crime of tax evasion. Tax laws are unique and it is unusual to prosecute offenses outside Title 47 because the statutes in Title 47 limit the offense of tax evasion to a misdemeanor, the Department’s enforcement efforts are hampered, thus providing an ineffective deterrent to crime.
- C. Louisiana has a very low conviction rate on tax evasion. Most cases, if accepted by a District Attorney, are plea-bargained with a general negotiated restitution payment and probation. Incarceration is rare in tax evasion offenses regardless of how blatant the offense or how large the amount of the tax violation.

II. Current Policy

- A. When tax evasion is the only offense, the Department develops the case and presents it to a local District Attorney who will prosecute it, usually on a low-priority basis. To strengthen the Department’s case, the felony charge of Filing a False Public Record is also requested. As previously mentioned, these cases are usually plea-bargained before trial.
- B. Joint Investigations—More productively, the Department has entered into joint investigations with other enforcement bodies and has added tax evasion charges to the other offenses. This has proven to be an easier avenue for conviction but less effective as an overall deterrent because this method actually makes the tax offense secondary to other “primary offenses.” Changing tax evasion to a felony would change its overall ranking to a primary offense, which would make it easier to prosecute on its own.

III. IRS and Other States

- A. IRS—tax evasion is treated as a felony with incarceration of up to five years in a federal prison and fines up to \$100,000 for individuals and \$500,000 for corporations.

7a. Penalties for Tax Evasion

- B. Other States—Many neighboring states have also adopted the IRS level of penalties and term of incarceration. Most states treat tax evasion as a felony even if the jail time is reduced and the penalties lowered.

IV. Recommendation

- A. Amend R.S. 47:1642 to enact tougher criminal penalties for tax evasion for amounts in excess of \$500 by making it consistent with the penalties in R.S. 47:1641 for failing to account for state tax monies. Tax evasion for amounts under \$500 would continue to be treated as a misdemeanor. Recommended amendments with changes indicated in strike-through and underscore are as follows:

R.S. 47:1642 Criminal penalty for evasion of tax

Any person who willfully fails to file any return or report required to be filed by the provisions of this Sub-title, or who willfully files or causes to be filed, with the ~~collector~~ secretary, any false or fraudulent return, report or statement, or who willfully fails to pay such tax, penalty, or interest, or who willfully aids or abets another in the filing with the ~~collector~~ secretary of any false or fraudulent return, report or statement, with the intent to defraud the state or evade the payment of any tax, fee, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of this Sub-title,

1. shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both when the aggregate tax, penalty, and interest exceed five hundred dollars or

2. shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both for all other violations under this Section.

B. Previous Legislative Proposals

1. In 1988, an update to the criminal statutes was proposed that paralleled the IRS statutes and made tax evasion a felony and provided for much harsher penalties. Amendments were made by the House Ways and Means and House Criminal Justice Committees, but the proposal ultimately died.
 2. In 1997, another proposal was submitted, which also substantially copied the IRS provisions and included the 1988 House Committee amendments. The bill was passed in the Senate but did not pass out of the House Committee apparently due to the harshness of the (IRS) penalties.
- C. Fiscal effect of recommended changes—increasing fines and penalties can be expected to enhance taxpayer compliance, reduce the occurrence of certain offenses, and increase tax revenues.

7b. Failure to Pay as an Element of Tax Evasion

I. Current Law

- A. R.S. 47:1642, entitled “Criminal penalty for evasion of tax,” does not include failure to pay over any tax, penalty, or interest as tax evasion. This omission limits the Department’s ability to fully address taxpayer noncompliance by individuals and businesses. More aggressive civil procedures such as Cease and Desist and Officer Liability are limited to trust taxes.
- B. Many taxpayers file returns annually but either fail to pay or only partially pay the liability. Frequently, levy or lien sources cannot be found. At this time, these individuals cannot be charged with tax evasion unless it can be established that they filed a false or fraudulent return, report, or statement. Several of the Southeastern Association of Tax Administrators (SEATA) states, including Alabama, define a pattern of failing to file or pay for multiple periods to be evidence of willful intent to evade taxes.

II. Current Situation

When all civil procedures have been pursued, the account is coded “Currently Not Collectible.” Attempts are made to establish false or fraudulent filing for the most grievous situations.

III. IRS and Other States

- A. The IRS treats “willful failure to pay” as tax evasion. Tax evasion at the federal level is a felony with incarceration of up to five years in a federal prison and fines up to \$100,000 for individuals and \$500,000 for corporations.
- B. Many neighboring states have also adopted the IRS level of penalties and terms of incarceration. Most states, even if the jail time is reduced and the penalties lowered, treat failure to pay as an element of tax evasion.

IV. Recommendation

- A. Amend R.S. 47:1642 to include failure to pay over any tax, penalty, or interest imposed by this subtitle as an element of tax evasion. Recommended amendments with changes indicated in strike-through and underscore are as follows:

R.S. 47:1642. Criminal penalty for evasion of tax

Any person who willfully fails to file any return or report required to be filed by the provisions of this Sub-title, or who willfully files or causes to be filed, with the ~~collector~~ secretary, any false or fraudulent return, report or statement, or who willfully fails to pay such tax, penalty, and interest, or who willfully aids or abets another in the filing with the ~~collector~~ secretary of any false or fraudulent return, report or statement, with the intent to defraud the state or evade the payment of any

7b. Failure to Pay as an Element of Tax Evasion

tax, fee, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of this Sub-title,

1. shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both when the aggregate tax, penalty or interest exceed five hundred dollars (\$500) or

2. shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both for all other violations under this Section.

B. Previous Legislative Proposals

1. In 1988, an update to the criminal statutes was proposed that paralleled the IRS statutes and made tax evasion a felony and provided for much harsher penalties. Amendments were made by the House Ways and Means and House Criminal Justice Committees, but the proposal ultimately died.
 2. In 1997, another proposal was submitted, which substantially copied the IRS provisions but also included the 1988 House Committee amendments. The bill was passed in the Senate but did not pass out of the House Committee apparently due to the harshness of the (IRS) penalties.
- C. Fiscal effect— making failure to pay an element of tax evasion will bolster enforcement of the tax laws and achieve greater compliance and more general revenue.

7c. Failure To File

I. Current Law

- A. Act 957 of the 1997 Regular Legislative Session amended R.S. 47:1580(C) to provide that prescription shall *only* be interrupted if the taxpayer fails to file a state income or corporate franchise tax return. The Act also repealed R.S. 47:1580(A)(5), which suspended prescription for the willful nonfiling for all taxes.
- B. Prescription is now only interrupted for failure to file income or corporate franchise tax returns. Failure to file other taxes is subject to the normal three-year prescription.
- C. Suspension of prescription for filing of a false or fraudulent return is addressed in R.S. 47:1580(A)(4).

II. Current Situation

Except for income and corporate franchise taxes, there is no method to address failure to file after the normal three-year prescription has run.

III. IRS and Other States

The IRS and most neighboring states do not have a statute of limitation (prescription) when no return is filed. Prescription does not begin to run until the return is filed.

IV. Recommendation

- A. Legislation is recommended to correct the problem caused by Acts 1997, No. 957, which repealed R.S. 47:1580(A)(5).
- B. Enact legislation for all taxes that is similar to R.S. 47:1580(C) to provide that prescription is interrupted when no return has been filed. However, in 1997, when amendments were proposed to R.S. 47:1580 providing for the interruption of prescription when taxpayers fail to file a return, concerns were expressed that this proposed legislation would interrupt prescription in perpetuity. The Department does not intend for this recommendation to interrupt prescription in perpetuity: prescription will be interrupted by the filing of a return.
- C. Recommended amendments with changes indicated in strike-through and underscore are as follows:

R.S. 47:1580. Suspension of prescription

* * *

D. The failure to file any return required by this Subtitle, except as provided in Subsection C, shall interrupt the running of prescription, and prescription shall not commence to run again until the subsequent filing of a return. Once prescription commences to run, the tax which is reported on such return shall prescribe in three years after the thirty-first day of December of the year of the filing of the return.

- D. Fiscal effect—Interrupting prescription for failure to file for all taxes would bolster enforcement of the tax laws and achieve greater compliance and more general revenue.

7d. Suspension of prescription for filing false or fraudulent returns

I. Statutory Provision for suspension of prescription for filing a false or fraudulent return

- A. R.S. 47:1580(A)(4) provides for suspension of prescription for “The filing of a false or fraudulent return...”. This provision suspends prescription until notice is given to the Secretary of the filing of a false or fraudulent return or upon the subsequent filing of a return which is not false or fraudulent.
- B. This provision is rarely used because of the vagueness of the meaning of false or fraudulent.
- C. More specific language to define the meaning of false or fraudulent return would make administration of the provision more effective. Criteria to define false or fraudulent to mean “...the omission of facts, circumstances, or conditions through concealment, camouflage, or subterfuge, which results in the material misstatement or misrepresentation of facts.”

II. Current Procedures

The Department attempts to get taxpayers to execute Waivers of Prescription when such returns come to our attention. However, when detected, these returns are usually near the end of the normal prescription period and the tax periods involved most often allowed to prescribe because of the vagueness of terms “false or fraudulent.”

III. IRS and Other States

The IRS and most neighboring states do not have a statute of limitation (prescription) when a false or fraudulent return is filed and have better definitions or examples of what is a “false or fraudulent” return.

IV. Recommendation

- A. Recommended amendments to R.S. 47:1580(A)(4) with changes indicated in strike-through and underscore are as follows:

R.S. 47:1580 Suspension and interruption of prescription

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(A)(4) The filing of a false or fraudulent return, such as one that includes omission of facts, circumstances, or conditions through concealment, camouflage, or subterfuge that results in the material misstatement or misrepresentation of facts, provided that suspended prescription shall begin to run again upon notice to the secretary of the filing of the false or fraudulent return or upon the subsequent filing of a return which is not false or fraudulent.

- B. Fiscal Effect—It is expected that the interruption of prescription for filing false or fraudulent returns would enhance taxpayer compliance, reduce the occurrence of certain offenses, and increase tax revenues.

8. Authority to Cooperate with Other States to Collect Debts

I. Reciprocal Collection of Tax Judgments

A. Reciprocal Collection Agreements with Other States

1. The Southeastern Association of Tax Administrators (SEATA) recently proposed that member states enter into reciprocity agreements to aid in collections. The proposal is for member states to enforce liens of one another.
 - a. The preliminary proposal is for member states to assist each other by collecting tax debts of those who do not have property in the state to which the debt is owed, but do have property in other member states.
 - b. The state that is owed the debt would forward its lien to the member state in which the taxpayer owns property. That member state would then enforce the lien and collect on behalf of the state that is owed the debt.
 - c. This would only apply to debts exceeding a certain threshold amount, which to date has not been decided.
2. Statutory Authority—La. C.C.P. Art. 2541 provides for the enforcement of foreign judgments. Thus, new legislation may not be required in order to take part in this reciprocity agreement. However, the need for legislation is contingent on the final agreement among the states.

B. Refund Offset with Other States

1. The SEATA is also proposing a reciprocity agreement program for refund offset among the member states. This proposal is also in its preliminary stages and will continue to be discussed among the states.
2. Statutory Authority—New legislation will be required in order to participate.

C. Refund Offset with IRS

1. Louisiana currently provides taxpayer refunds to the IRS to offset federal taxes owed.
2. Louisiana will soon begin full participation in a refund offset program on the federal level. On January 1, 2001, the IRS will begin providing taxpayer's federal refunds to Louisiana to offset Louisiana taxes owed.
3. Seven states already participate in such a program on the federal level and have collected approximately \$21,073,665 as outlined below.

Collections for States Participating in Federal Refund Offset Program January 1 through June 21, 2000
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8. Authority to Cooperate with Other States to Collect Debts

State	Amount Placed for Offset	Amount Collected	Percentage Collected
Delaware	\$9,176,758	\$737,206	8.03%
Illinois	\$86,675,797	\$7,367,021	8.50%
Iowa	\$35,654,740	\$1,532,335	4.30%
Kentucky	\$5,390,823	\$467,379	8.67%
Maryland	\$28,953,809	\$3,913,797	13.52%
Missouri	\$117,111,657	\$5,874,694	5.02%
New Jersey	\$60,726,019	\$1,181,233	1.95%
Total	\$343,689,603	\$21,073,665	6.13%