



## Revenue and Transportation Interim Committee

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### 62nd Montana Legislature

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September 16, 2011

TO: Revenue and Transportation Committee

FROM: Jeff Martin, Legislative Research Analyst

SUBJECT: Possible request for legislation dealing with uniform penalty and interest

Two bills were considered last session dealing with uniform penalty and interest provisions under 15-1-216, MCA. Senate Bill No. 199, introduced by Sen. Joe Balyeat, would have revised the penalty for not paying a tax when due and would have revised the interest charged for not paying individual income taxes when due. Senate Bill No. 411, introduced by Sen. Ron Erickson, was requested by the Senate Taxation Committee. The bill was promoted as a companion bill to SB 199 for the redesign of penalty and interest provisions under Montana law.

SB 199 was vetoed by the Governor and SB 411 (Ch. 353, L. 2011) was rendered void because of the veto. The veto override failed 84-47.

At the June 2011 meeting of the Revenue and Transportation Interim Committee, Sen. Ron Erickson suggested that the committee may want to consider requesting legislation to combine the two bills.

The purpose of this memo is to highlight the provisions of each bill. The committee may discuss whether it wants to request legislation as suggested by Sen. Erickson.

Section 15-1-216, MCA, provides for the uniform assessment of penalty and interest for violation of tax provisions for most state taxes.

Section 15-1-216(2)(a), MCA, provides that a person who fails to pay a tax when due is assessed a late penalty of 1.2% a month or fraction of a month on the unpaid tax, not to exceed 12% of the tax due.

Section 15-1-216(2)(b), MCA, provides that a person who fails to pay a tax when due under Title 15, chapter 30, part 25 (withholding taxes), chapter 53 (retail telecommunications excise tax), chapter 65 (lodging facility use tax), or chapter 68 (sales tax on accommodations and rental cars) must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax, not to exceed 15% of the tax due. The penalty is higher for these taxes because they are collected by the taxpayer and held in trust for the state.

Senate Bill No. 199 would have reduced the late payment penalty under 15-1-216(2)(a), MCA, to 0.5% a month, not to exceed 12% of the tax due. An individual income taxpayer would not be subject to penalty if the taxpayer paid the tax and interest within 30 days of receiving notice from the Department of Revenue of the amount due or if the taxpayer has paid at least 90% of the tax for the current year.

The bill did not change the late penalty for taxes held in trust, but it would have provided that interest would accrue daily for late penalty under 15-1-216(2)(a) and (2)(b), MCA.

Section 15-1-216(4)(a)(i), MCA, provides that the interest rate on individual income taxes not paid when due is equal to the underpayment rate for individual taxpayers established by the Secretary of the United States Department of the Treasury under section 6621 of the Internal Revenue Code for the fourth quarter of the preceding year or 8%, whichever is greater.<sup>1</sup> Interest accrues daily. Senate Bill No. 199 would have made the interest rate equal to the federal underpayment rate.

The bill would also have established a procedure for determining the amount, if any, of a taxpayer's federal individual income tax refund that is included in the taxpayer's adjusted gross income under 15-30-2110, MCA. The procedure is contained in ARM 42.15.205, effective for tax years beginning after 2005.

Finally, the bill would have provided that underpayment interest on estimated individual income taxes is not required if the taxpayer pays 100% of last year's tax or 90% of the current year tax through payment of estimated tax in four installments or through a combination of withholding and estimated tax payment as provided in 15-30-2512, MCA.

SB 411 would have allowed the Department of Revenue to waive interest not to exceed \$500 (previously \$100) due in a tax period under 15-1-206, MCA. It also would have allowed the department to waive an additional \$100 of interest in a tax period if the taxpayer made a payment under a payment plan for delinquent taxes, interest, and penalties.

Section 15-1-216(1), MCA, provides that the amount of the penalty for failure to file a return or other report to the department is \$50 or the amount of the tax due, whichever is less. SB 411 would have increased the failure to file penalty to 5% of the net amount of tax due for each month or fraction of a month during which there is failure to file up to 25% of the tax due. The House Taxation Committee amended the bill to reduce the penalty by the amount of the penalty imposed under 15-1-216(2)(a) or (2)(b). The committee also amended the bill to provide that a penalty would not be imposed under these two subsections if the taxpayer demonstrated there was reasonable cause for the unpaid amount.

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<sup>1</sup>The interest rate for late payment of other taxes is 12%.

The bill would have imposed substantial penalties for the substantial underpayment of a tax due under Title 15 equal to 20% of the understatement. The amount of the understatement would have been determined separately for individual income taxes and for all other taxes. The House Taxation Committee amended the bill that would have allowed for reduction of the understatement amount under certain conditions.

The bill would have imposed significant penalties on a person who:

- purposely or knowingly failed to file a return or report under Title 15 (15% a month, up to 75% of the tax due).
- filed a fraudulent return or report under Title 15 (75% of the tax due on the underpayment attributable to the fraudulent amount).
- filed a frivolous return or report under Title 15 (\$2,500).

The changes to penalties and interest provisions in SB 411 were based on federal law, but scaled back to account for the state's tax structure.

The House of Representatives passed Senate Bill No. 411, as amended, on third reading by a 75-25 vote, and the Senate accepted the House amendments on third reading by a 38-12 vote. The Senate passed Senate Bill No. 199 on third reading by 29-20, and the House passed the bill by 95-1.

In the veto message to SB 199 (May 12, 2011), Governor Brian Schweitzer said the bill would diminish state revenue by \$3.82 million in the 2013 biennium and indicated that an effective date in line with SB 411 was needed to delay its implementation until revenue from SB 411 is realized.

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