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# HOUSE BILL No. 1208

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-10-2.1.

**Synopsis:** Penalties for failure to pay state taxes. Provides that a penalty for failure to pay state tax by the due date is reduced to 5% of the amount of tax due if the person pays the full amount of the tax owed not later than 30 days after the due date. (Current law provides for a 10% penalty on the amount of tax owed if the payment is made any time after the due date.)

**Effective:** July 1, 2010.

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### Burton, Barnes

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January 7, 2010, read first time and referred to Committee on Rules and Legislative Procedures.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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# HOUSE BILL No. 1208



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-8.1-10-2.1, AS AMENDED BY  
2 P.L.182-2009(ss), SECTION 258, IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2.1. (a) If a person:  
4 (1) fails to file a return for any of the listed taxes;  
5 (2) fails to pay the full amount of tax shown on the person's return  
6 on or before the due date for the return or payment;  
7 (3) incurs, upon examination by the department, a deficiency that  
8 is due to negligence;  
9 (4) fails to timely remit any tax held in trust for the state; or  
10 (5) is required to make a payment by electronic funds transfer (as  
11 defined in IC 4-8.1-2-7), overnight courier, or personal delivery  
12 and the payment is not received by the department by the due date  
13 in funds acceptable to the department;  
14 the person is subject to a penalty.  
15 (b) Except as provided in subsection (g), the penalty described in  
16 subsection (a) is **determined by multiplying:**  
17 (1) a penalty rate of:



1           **(A) five percent (5%), if the person pays the full amount of**  
 2           **the tax due not later than thirty (30) days after the due**  
 3           **date; or**  
 4           **(B) ten percent (10%), ~~or~~ if clause (A) does not apply; by**  
 5           **(2) the amount on which the penalty is based, which is:**  
 6           ~~(1)~~ **(A) the full amount of the tax due if the person failed to file**  
 7           **the return;**  
 8           ~~(2)~~ **(B) the amount of the tax not paid, if the person filed the**  
 9           **return but failed to pay the full amount of the tax shown on the**  
 10           **return;**  
 11           ~~(3)~~ **(C) the amount of the tax held in trust that is not timely**  
 12           **remitted;**  
 13           ~~(4)~~ **(D) the amount of deficiency as finally determined by the**  
 14           **department; or**  
 15           ~~(5)~~ **(E) the amount of tax due if a person failed to make**  
 16           **payment by electronic funds transfer, overnight courier, or**  
 17           **personal delivery by the due date.**  
 18           (c) For purposes of this section, the filing of a substantially blank or  
 19           unsigned return does not constitute a return.  
 20           (d) If a person subject to the penalty imposed under this section can  
 21           show that the failure to file a return, pay the full amount of tax shown  
 22           on the person's return, timely remit tax held in trust, or pay the  
 23           deficiency determined by the department was due to reasonable cause  
 24           and not due to willful neglect, the department shall waive the penalty.  
 25           (e) A person who wishes to avoid the penalty imposed under this  
 26           section must make an affirmative showing of all facts alleged as a  
 27           reasonable cause for the person's failure to file the return, pay the  
 28           amount of tax shown on the person's return, pay the deficiency, or  
 29           timely remit tax held in trust, in a written statement containing a  
 30           declaration that the statement is made under penalty of perjury. The  
 31           statement must be filed with the return or payment within the time  
 32           prescribed for protesting departmental assessments. A taxpayer may  
 33           also avoid the penalty imposed under this section by obtaining a ruling  
 34           from the department before the end of a particular tax period on the  
 35           amount of tax due for that tax period.  
 36           (f) The department shall adopt rules under IC 4-22-2 to prescribe the  
 37           circumstances that constitute reasonable cause and negligence for  
 38           purposes of this section.  
 39           (g) A person who fails to file a return for a listed tax that shows no  
 40           tax liability for a taxable year, other than an information return (as  
 41           defined in section 6 of this chapter), on or before the due date of the  
 42           return shall pay a penalty of ten dollars (\$10) for each day that the

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1 return is past due, up to a maximum of two hundred fifty dollars  
2 (\$250).

- 3 (h) A:
- 4 (1) corporation which otherwise qualifies under IC 6-3-2-2.8(2);
- 5 (2) partnership; or
- 6 (3) trust;

7 that fails to withhold and pay any amount of tax required to be withheld  
8 under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 shall pay a penalty  
9 equal to twenty percent (20%) of the amount of tax required to be  
10 withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15. This penalty  
11 shall be in addition to any penalty imposed by section 6 of this chapter.

12 (i) Subsections (a) through (c) do not apply to a motor carrier fuel  
13 tax return.

14 (j) If a partnership or an S corporation fails to include all  
15 nonresidential individual partners or nonresidential individual  
16 shareholders in a composite return as required by IC 6-3-4-12(h) or  
17 IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per partnership  
18 or S corporation is imposed on the partnership or S corporation.

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