

**CITY OF NEW ORLEANS'
DEPARTMENT OF FINANCE
IN ITS CAPACITY AS THE
ORLEANS PARISH TAX
COLLECTOR**

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**NO. 2004-CA-0835
C/W
2004-CA-0951
C/W
2004-CA-1204**

VERSUS

COURT OF APPEAL

TOURO INFIRMARY

FOURTH CIRCUIT

STATE OF LOUISIANA

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MURRAY, J., DISSENTS IN PART WITH REASONS

I disagree with the majority's holding that the City is entitled to collect a penalty from Touro under La. R.S. 47:1602. Section 1602 provides for the imposition of a specific penalty to be added to the tax owed when the taxpayer has not timely remitted "the total amount of tax that is due on a return which he has filed." La. R.S. 47:1602. The majority construes this to authorize the imposition of a penalty when the taxpayer has not paid the amount he actually owed, even though he has filed a return and paid the amount shown as owed on that return. It reasons that it would lead to absurd consequences if this language were interpreted so as to allow a taxpayer to avoid a penalty simply by filing a return showing an amount less than that actually owed, and paying the incorrect amount of tax as shown on the return.

Although there apparently is no published decision addressing the meaning of the statutory language in question, one commentator has noted that the Legislature added this language to Section 1602 to remedy what was perceived to be a common taxpayer abuse problem. Before the language at issue herein was added it was not uncommon for taxpayers, in order to avoid late filing penalties, to timely file returns reflecting their tax liability but to fail to remit any payment with the return. Because the Department did not have the power to impose penalties in such instances, the taxpayer's only cost was for interest imposed under La. R.S. 47:1601. "This practice by taxpayers denied the state the proper and timely receipt of its tax revenues." Bruce J. Oreck, *Louisiana Sales & Use Taxation* §7.2[1] n. 33 (2nd ed. 1996).

By adding the language at issue herein, the Legislature provided for penalties when taxpayers fail to remit the tax calculated on the return as filed. *Id.* This statutory language, however, does not allow for penalties for underpayments discovered by an audit. *Id.* "Both the statutory language and the legislative history behind the amendment of La. R.S. 47:1602 unquestionably indicate that no penalties can be imposed under that provision with respect to underpayments determined as a consequence of an audit." *Id.*

I , therefore, would affirm the portion of the judgment that denies penalties. For this reason, I respectfully dissent in part.