

Regular Session, 2009

HOUSE BILL NO. 720

BY REPRESENTATIVES JANE SMITH, BOBBY BADON, BALDONE, BARROW, BILLIOT, HENRY BURNS, TIMBURNS, CHAMPAGNE, CHANEY, CONNICK, CORTEZ, DOERGE, DOVE, DOWNS, ELLINGTON, FANNIN, GISCLAIR, ELBERT GUILLORY, MICKEY GUILLORY, GUINN, HARRISON, HOFFMANN, JOHNSON, KLECKLEY, LAFONTA, LITTLE, MILLS, MONICA, PEARSON, PERRY, PUGH, RICHARD, ROBIDEAUX, SCHRODER, SIMON, SMILEY, GARY SMITH, PATRICIA SMITH, ST. GERMAIN, STIAES, THIBAUT, TUCKER, WADDELL, AND WILLIAMS AND SENATORS CROWE, DUPLESSIS, MICHOT, AND SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/STATE: Enacts the Louisiana Tax Delinquency Amnesty Act of 2009

1 AN ACT

2 To enact the Louisiana Tax Delinquency Amnesty Act of 2009; to provide for definitions;  
3 to require the Department of Revenue to establish a tax amnesty program as provided  
4 for in this Act; to provide for terms and conditions of the program; to provide for the  
5 disposition of the monies collected pursuant to the tax amnesty program; to provide  
6 for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. This Act shall be known as and may be cited as the "Louisiana Tax  
9 Delinquency Amnesty Act of 2009".

10 Section 2. Definitions. As used in this Act, the following terms have the meaning  
11 ascribed to them in this Section, except when the context clearly indicates otherwise:

12 (1) "Courier" means a messenger other than the United States Postal Service that  
13 delivers parcels, packages, and the like, containing returns, reports, and other documents or  
14 payments.

15 (2) "Department" means the Department of Revenue.

16 (3) "Postmark" means an official mark made by the United States Postal Service on  
17 a piece of mail to cancel the stamp and to indicate the place and date of sending.

1 (4) "Tax period" means any period for which a tax return is required by law to be  
2 filed with the department.

3 (5) "Taxpayer" means any individual or entity subject to any tax imposed by any law  
4 of the state of Louisiana, payable to the state of Louisiana, and collected by the department.

5 Section 3.(A) The department shall develop and implement a tax amnesty program  
6 in accordance with the provisions of this Act. The secretary shall provide by regulation as  
7 necessary for the administration and implementation of this amnesty program. The secretary  
8 shall publicize the tax amnesty program in order to maximize the public awareness of and  
9 participation in the program. The secretary may, for purpose of publicizing the tax amnesty  
10 program, contract with any advertising agency within or outside this state and use public  
11 service announcements, pamphlets, mail notices, and print, television, and radio  
12 announcements. In furthering the collections of amnesty, the secretary may procure amnesty  
13 program administration services on a fee basis; however, the fee shall not exceed ten percent  
14 of the total dollars collected.

15 (B) The amnesty program shall be effective for a period not to exceed two  
16 consecutive calendar months between July 1, 2009, and June 30, 2010, at the discretion of  
17 the secretary. The tax amnesty program shall apply to all taxes administered by the  
18 department except for motor fuel taxes and penalties for failure to submit information reports  
19 that are not based on an underpayment of tax.

20 (C) Except as provided in Subsection B, the following taxes are eligible for amnesty:

21 (1) Taxes due prior to January 1, 2009, for which the department has issued an  
22 individual or a business a proposed assessment, notice of assessment, bill, notice, or demand  
23 for payment on or after July 1, 2001, and before May 31, 2009; or

24 (2) Taxes that became due on or after July 1, 2001, and before January 1, 2009; or

25 (3) Taxes for which the taxpayer and the department have entered into an agreement  
26 to interrupt the running of prescription pursuant to R.S. 47:1580 and said agreement  
27 suspends the running of prescription until December 31, 2009; or

28 (4) Taxes that became due on or before July 1, 2001, if the taxpayer was ineligible  
29 for an earlier amnesty program due to having a matter in civil litigation.

1 (D) Participation in the amnesty program shall be conditioned upon the agreement  
2 of the taxpayer that the right to protest or initiate an administrative or judicial proceeding is  
3 barred. The agreement shall only apply to the specific tax and the tax period for which  
4 amnesty is granted.

5 (E) Amnesty for matters under examination and in litigation.

6 (1) Taxpayers involved in field audits or litigation that participate in the amnesty  
7 program shall agree to abide by the department's interpretation of the law with respect to  
8 issues involved in the audit or litigation resolved through amnesty for all taxable periods  
9 beginning in 2010, 2011, and 2012. Taxpayers shall agree to abide by the department's  
10 interpretation of the law at the time the returns for these periods are filed. Failure to abide  
11 by the department's interpretation of the law for these periods shall subject the taxpayer to  
12 the negligence penalty under R.S. 47:1604.1.

13 (2) Taxpayers involved in litigation that elect to participate in amnesty shall agree  
14 to pay all applicable attorney fees pursuant to R.S. 47:1512 and its own costs of litigation.

15 (3) Taxpayers electing to participate in amnesty who have paid under protest and  
16 filed suit in accordance with R.S. 47:1576 agree that upon approval of their amnesty  
17 application, the department shall release their payment from escrow and apply it in  
18 accordance with the grant of amnesty. Any refunds resulting from the application of the  
19 payment shall be made in accordance with Subsection (J) of this Section. The application  
20 for amnesty shall be subject to the provisions of Paragraphs (1) and (2) of this Subsection.

21 (F) Taxpayers with existing liens on their property, both movable and immovable,  
22 filed pursuant to R.S. 47:1577, as well as taxpayers the department has initiated proceedings  
23 against under the assessment and distraint procedure pursuant to R.S. 47:1569 through 1573  
24 are eligible for amnesty; however, taxpayers are required to pay any and all lien fees  
25 associated with the tax periods for which amnesty is applied for.

26 (G) Amnesty will be granted only for eligible taxes to eligible taxpayers who apply  
27 for amnesty during the amnesty period on forms prescribed by the secretary and who pay all  
28 of the tax, all fees and costs, if applicable, and half of the interest due upon filing the  
29 amnesty application. The amnesty application for taxpayers involved in field audits or  
30 litigation shall include all issues and all eligible periods involved in the audit or litigation.

1 The secretary reserves the right to require taxpayers to file tax returns with the amnesty  
2 application. If the amnesty application is approved, the secretary shall waive the remaining  
3 half of the interest and all of the penalties associated with the tax periods for which amnesty  
4 is applied. An amnesty payment or application submitted in a properly addressed envelope  
5 with sufficient postage delivered by the United States Postal Service is deemed paid on the  
6 date it is postmarked. An amnesty payment or application delivered by courier or taxpayer  
7 is deemed paid on the date it is delivered to the department's headquarters or a regional  
8 office. No installment agreements will be entered into for tax periods that are approved for  
9 amnesty.

10 (H) Ineligible taxpayers. Amnesty shall not be granted to taxpayers who are parties  
11 to any criminal investigation or criminal litigation in any court of the United States or the  
12 state of Louisiana pending on the effective date of this Act for nonpayment, delinquency, or  
13 fraud in relation to any state tax imposed by a law of the state of Louisiana and administered  
14 by the department. Further, a taxpayer who delivers or discloses any false or fraudulent  
15 application, document, return, or other statement to the department in connection with an  
16 amnesty application shall be ineligible for amnesty and shall be subject to the fraud penalty  
17 under R.S. 47:1604 or a penalty of ten thousand dollars, whichever is greater.

18 (I) Amnesty applications shall include a written waiver of all rights, restrictions, and  
19 delays for assessing, collecting, or protesting taxes and interest due as set forth in R.S.  
20 47:1562 through 1565 and 1576. The filing of such applications shall make the tax, interest,  
21 and penalty immediately due and payable; subject to the distraint procedure provided for in  
22 Title 47 of the Louisiana Revised Statutes of 1950; ineligible for refund, credit, or claim  
23 against the state; and ineligible for redetermination under the provisions of R.S. 47:1565(C);  
24 however, a taxpayer shall be eligible for a refund or credit if the overpayment arises after the  
25 amnesty application is submitted and is attributable to a properly claimed Louisiana net  
26 operating loss or attributable to an adjustment made by the Internal Revenue Service to the  
27 taxpayer's federal income tax, and the taxpayer provides notice of the adjustment to the  
28 secretary within sixty days of receipt of the adjustment from the Internal Revenue Service.  
29 A taxpayer who files an application for amnesty retains all administrative and judicial rights  
30 of appeal with respect to any additional tax assessed by the department.

1 (J) No interest shall be paid on refunds for those amounts previously collected by  
2 the department from the taxpayer for a tax period for which amnesty is granted.

3 (K) Post amnesty collection penalty. If, following the termination of the tax amnesty  
4 period, the secretary issues a deficiency assessment for a period for which amnesty was  
5 taken, the secretary shall have the authority to impose penalties and institute civil  
6 proceedings or criminal proceedings as authorized by law only with respect to the difference  
7 between the amount shown on the amnesty application and the correct amount of tax due.  
8 The secretary may by regulation impose after the expiration of the tax amnesty period a cost  
9 of collection penalty not to exceed twenty percent of any additional deficiency assessed for  
10 any taxable period for which amnesty was taken. This penalty shall be in addition to all  
11 other applicable penalties, fees, or costs. The secretary shall have the right to waive any or  
12 all of the collection penalty when it is demonstrated that any of the deficiency of the  
13 taxpayer was not due to negligence, intentional disregard of administrative rules and  
14 regulations, or fraud. The imposition of penalties or civil proceedings or criminal  
15 proceedings shall not invalidate the amnesty that was previously granted. No penalty shall  
16 be imposed if the deficiency results from an adjustment made by the Internal Revenue  
17 Service to the taxpayer's federal income tax and the taxpayer provides notice of the  
18 adjustment to the secretary within sixty days of receipt of the adjustment from the Internal  
19 Revenue Service, or if the taxpayer's application for amnesty was based on a proposed  
20 assessment or notice of assessment.

21 (L) For taxable periods beginning on or after January 1, 2010, and before December  
22 31, 2015, taxpayers that participate in amnesty and later fail to comply with any payment  
23 and filing provision administered by the secretary shall be subject to the negligence penalty  
24 under R.S. 47:1604.1 or a penalty of one hundred dollars, whichever is greater.

25 Section 4. The secretary shall retain from monies collected under this Act an amount  
26 equal to all penalties waived under this Act, an amount equal to the costs for contractual  
27 information technology and amnesty program administration services, and an amount equal  
28 to any collection fees, legal fees, or any other fees the department incurs that are associated  
29 with granting amnesty. Such monies shall be designated as self-generated revenues.  
30 Notwithstanding any provision of law to the contrary, amnesty program administration

1 services and information technology services to implement amnesty may be acquired using  
2 the emergency procurement process. The secretary shall also retain an amount not to exceed  
3 two hundred fifty thousand dollars for advertising expenses from monies collected from  
4 taxes paid pursuant to this Act. All remaining monies collected pursuant to any tax imposed  
5 by the state of Louisiana under the provisions of this Act shall be paid into the state treasury  
6 for credit to the Bond Security and Redemption Fund. After satisfying the requirements of  
7 the Bond Security and Redemption Fund, the state treasurer is authorized and directed to  
8 transfer all remaining monies for deposit in the State Emergency Response Fund. After a  
9 sufficient amount is allocated from the State Emergency Response Fund to pay all state  
10 obligations associated with Hurricanes Gustav and Ike, the state treasurer is authorized and  
11 directed to transfer all remaining monies for deposit in the state general fund which monies  
12 shall be available for appropriation exclusively to the Board of Regents for the funding of  
13 higher education institutions pursuant to the funding formula adopted by the Board of  
14 Regents, with a specific allocation of one million two hundred fifty thousand dollars for the  
15 Louisiana State University and Agricultural and Mechanical College, Office of Academic  
16 Affairs, to be used solely for the operation of the Fire and Emergency Training Institute and  
17 its ancillary facilities.

18 Section 5. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Jane Smith

HB No. 720

**Abstract:** Enacts the Tax Delinquency Amnesty Act of 2009.

Proposed law enacts the "Louisiana Tax Delinquency Amnesty Act of 2009" which requires the Dept. of Revenue (DOR) to develop and implement a tax amnesty program to be effective for a period not to exceed two consecutive calendar months between July 1, 2009, and June 30, 2010, at the discretion of the secretary. The tax amnesty program shall apply to taxes due prior to Jan. 1, 2009, for which the department has issued a proposed

assessment, notice of assessment, bill, notice, or demand for payment on or after July 1, 2001, and before May 31, 2009, taxes that became due on or after July 1, 2001, and before Jan. 1, 2009, taxes for which the taxpayer and the department have entered into an agreement to interrupt prescription until Dec. 31, 2009, and taxes that became due on or before July 1, 2001, if the taxpayer was ineligible for an earlier amnesty period because the matter was in civil litigation, to the taxes eligible for amnesty under proposed law.

Proposed law provides for DOR to publicize the tax amnesty program in order to maximize the public awareness of and participation in the program. Further authorizes the secretary to procure amnesty program administration services on a fee basis; however, prohibits the fee from exceeding 10% of the total dollars collected.

Proposed law provides that participation in the amnesty program shall be conditioned upon agreement of the taxpayer that the right to protest or initiate an administrative or judicial proceeding is granted is barred.

Proposed law requires that taxpayers involved in field audits or litigation that participate in the amnesty program to agree to abide by DOR's interpretation of the law with respect to issues involved in the audit or litigation resolved through amnesty for all taxable periods beginning in 2010, 2011, and 2012. Requires taxpayers to agree to abide by the department's interpretation of the law at the time the returns for these periods are filed or be subject to the negligence penalty under present law. Taxpayers involved in litigation that elect to participate in amnesty shall agree to pay all applicable attorney fees pursuant to present law and its own litigation costs.

Proposed law provides that taxpayers electing to participate in amnesty who have paid under protest and filed suit shall agree that upon approval of their amnesty application, the department shall release their payment from escrow and apply it in accordance with the grant of amnesty.

Proposed law provides that amnesty shall only be granted for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by DOR and who pay all of the tax, all fees and costs, if applicable, and half of the interest due upon filing the amnesty application. If the amnesty application is approved, the secretary shall waive the remaining half of the interest and all of the penalties associated with the tax periods for which amnesty is applied. No installment agreements will be entered into for tax periods that are approved for amnesty.

Proposed law prohibits amnesty from being granted to taxpayers who are parties to any criminal investigation or criminal litigation in any court of the U.S. or La. for nonpayment, delinquency, or fraud in relation to any state tax administered by the department. A taxpayer who delivers or discloses any false or fraudulent application, document, return, or other statement to the department in connection with an amnesty application shall be ineligible for amnesty and shall be subject to the fraud penalty under present law or a penalty of \$10,000, whichever is greater.

Proposed law provides that if, following the termination of the tax amnesty period, DOR issues a deficiency assessment for a period for which amnesty was taken, DOR shall have the authority to impose penalties and institute civil proceedings or criminal proceedings only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due. Proposed law authorizes DOR to, by regulation, impose after the expiration of the tax amnesty period a cost of collection penalty of 20% of any deficiency assessed for any taxable period due on or after July 1, 2001, and ending before Jan. 1, 2009. This penalty shall be in addition to all other applicable penalties, fees, or costs.

Proposed law provides that a taxpayer shall be eligible for a refund or credit if an overpayment arises after the amnesty application is submitted and is attributable to a properly claimed La. net operating loss or attributable to an adjustment made by the Internal Revenue Service (I.R.S.) to the taxpayer's federal income tax and the taxpayer provides

notice of the adjustment to the secretary within 60 days of receipt of the adjustment from the I.R.S.

Proposed law prohibits the department from imposing a penalty if a deficiency results from an adjustment made by the I.R.S. to the taxpayer's federal income tax and the taxpayer provides notice of the adjustment to the secretary within 60 days of receipt of the adjustment from the I.R.S., or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment.

Proposed law provides that for taxable periods beginning on or after Jan. 1, 2010, and before Dec. 31, 2015, taxpayers that participate in amnesty and later fail to comply with any payment and filing provision shall be subject to the negligence penalty under present law or a penalty of \$100, whichever is greater.

Proposed law authorizes DOR to retain from monies collected under the tax amnesty program an amount equal to all penalties waived, an amount equal to the costs for contractual information technology and amnesty program administration services, and an amount equal to any collection fees, legal fees, or any other fees the department incurs that are associated with granting amnesty. Further provides that DOR shall also retain an amount not to exceed \$250,000 for advertising expenses from monies collected from taxes paid pursuant to proposed law.

Proposed law provides that all remaining monies collected under the tax amnesty program shall be paid into the state treasury for credit to the Bond Security and Redemption Fund, and then the state treasurer shall transfer the remaining monies to the State Emergency Response Fund to pay all state obligations associated with Hurricanes Gustav and Ike. After a sufficient amount is allocated to pay the state's obligations from Hurricanes Gustav and Ike, the state treasurer is directed to transfer all remaining monies for deposit into the state general fund to be available for appropriation exclusively to the Board of Regents for the funding of higher education institutions. Further requires a specific allocation of \$1,250,000 for the Louisiana State University and Agricultural and Mechanical College, Office of Academic Affairs, to be used solely for operation of the Fire and Emergency Training Institute and its ancillary facilities.

Effective upon signature of governor or lapse of time for gubernatorial action.

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Authorizes the secretary to procure amnesty program administration services on a fee basis; however, prohibits the fee from exceeding 10% of the total dollars collected.
2. Specifies that taxes for which amnesty shall be available includes taxes which were due prior to Jan. 1, 2009, for which the department issued a demand for payment on or after July 1, 2001, and before May 31, 2009.
3. Authorizes taxes for which the taxpayer and the department have entered into an agreement to interrupt prescription until Dec. 31, 2009, and taxes that became due on or before July 1, 2001, if the taxpayer was ineligible for an earlier amnesty period because the matter was in civil litigation, to the taxes eligible for amnesty under proposed law.
4. Specifies that a taxpayer's agreement to not protest or initiate administrative or judicial proceedings only applies to the specific tax and for the specific tax period for which amnesty is granted.

5. Authorizes the department to release a taxpayer's payment from escrow if the taxpayer paid under protest and filed suit but then elects to participate in amnesty.
6. Authorizes a credit or refund if an overpayment arises after the amnesty application is submitted by the taxpayer and is attributable to an adjustment made by the Internal Revenue Service (I.R.S.) to the taxpayer's federal income tax.
7. Clarifies that the cost of collection penalty shall not exceed 20% of any additional deficiency assessed for a taxable period in which amnesty was granted.
8. Prohibits a penalty from being imposed if a deficiency results from an adjustment made by the I.R.S. to the taxpayer's federal income tax.
9. Deletes provision that requires the secretary to maintain a presumption against the waiver of any penalty or abatement or reduction of any interest for eligible taxpayers to participate in the amnesty program but fail to do so.

#### Summary of Amendments Adopted by House

##### House Floor Amendments to the engrossed bill.

1. Requires that the monies transferred to the state general fund shall be available for appropriation exclusively to the Board of Regents for the funding of higher education institutions. Further requires a specific allocation of \$1,250,000 for the Louisiana State University and Agricultural and Mechanical College, Office of Academic Affairs, to be used solely for operation of the Fire and Emergency Training Institute and its ancillary facilities.