

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

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

DIGEST

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.

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.

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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the reengrossed bill.

1. Deletes provisions allocating remaining Tax Amnesty monies to the State Emergency Response Fund to pay obligations associated with hurricanes Gustav and Ike and the \$1.3 million allocation to LSU Fire and Emergency Training Institute.