

Regular Session, 2009

HOUSE BILL NO. 720

BY REPRESENTATIVES JANE SMITH, BOBBY BADON, BALDONE, BARROW, BILLIOT, HENRY BURNS, TIM BURNS, CHAMPAGNE, CHANEY, CONNICK, CORTEZ, DOERGE, DOVE, DOWNS, ELLINGTON, FANNIN, GISCLAIR, MICKEY GUILLORY, GUINN, HARRISON, HOFFMANN, JOHNSON, KLECKLEY, LAFONTA, LIGI, 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, GUILLORY, MICHOT, MURRAY, SMITH, AND THOMPSON

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (G) Amnesty will be granted only for eligible taxes to eligible taxpayers who apply  
23 for amnesty during the amnesty period on forms prescribed by the secretary and who pay all  
24 of the tax, all fees and costs, if applicable, and half of the interest due upon filing the  
25 amnesty application. The amnesty application for taxpayers involved in field audits or  
26 litigation shall include all issues and all eligible periods involved in the audit or litigation.  
27 The secretary reserves the right to require taxpayers to file tax returns with the amnesty  
28 application. If the amnesty application is approved, the secretary shall waive the remaining  
29 half of the interest and all of the penalties associated with the tax periods for which amnesty  
30 is applied. An amnesty payment or application submitted in a properly addressed envelope  
31 with sufficient postage delivered by the United States Postal Service is deemed paid on the

1 date it is postmarked. An amnesty payment or application delivered by courier or taxpayer  
2 is deemed paid on the date it is delivered to the department's headquarters or a regional  
3 office. No installment agreements will be entered into for tax periods that are approved for  
4 amnesty.

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

13 (I) Amnesty applications shall include a written waiver of all rights, restrictions, and  
14 delays for assessing, collecting, or protesting taxes and interest due as set forth in R.S.  
15 47:1562 through 1565 and 1576. The filing of such applications shall make the tax, interest,  
16 and penalty immediately due and payable; subject to the distraint procedure provided for in  
17 Title 47 of the Louisiana Revised Statutes of 1950; ineligible for refund, credit, or claim  
18 against the state; and ineligible for redetermination under the provisions of R.S. 47:1565(C);  
19 however, a taxpayer shall be eligible for a refund or credit if the overpayment arises after the  
20 amnesty application is submitted and is attributable to a properly claimed Louisiana net  
21 operating loss or attributable to an adjustment made by the Internal Revenue Service to the  
22 taxpayer's federal income tax, and the taxpayer provides notice of the adjustment to the  
23 secretary within sixty days of receipt of the adjustment from the Internal Revenue Service.  
24 A taxpayer who files an application for amnesty retains all administrative and judicial rights  
25 of appeal with respect to any additional tax assessed by the department.

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

28 (K) Post amnesty collection penalty. If, following the termination of the tax amnesty  
29 period, the secretary issues a deficiency assessment for a period for which amnesty was  
30 taken, the secretary shall have the authority to impose penalties and institute civil  
31 proceedings or criminal proceedings as authorized by law only with respect to the difference

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

15 (L) For taxable periods beginning on or after January 1, 2010, and before December  
16 31, 2015, taxpayers that participate in amnesty and later fail to comply with any payment  
17 and filing provision administered by the secretary shall be subject to the negligence penalty  
18 under R.S. 47:1604.1 or a penalty of one hundred dollars, whichever is greater.

19 Section 4. The secretary shall retain from monies collected under this Act an amount  
20 equal to all penalties waived under this Act, an amount equal to the costs for contractual  
21 information technology and amnesty program administration services, and an amount equal  
22 to any collection fees, legal fees, or any other fees the department incurs that are associated  
23 with granting amnesty. Such monies shall be designated as self-generated revenues.  
24 Notwithstanding any provision of law to the contrary, amnesty program administration  
25 services and information technology services to implement amnesty may be acquired using  
26 the emergency procurement process. The secretary shall also retain an amount not to exceed  
27 two hundred fifty thousand dollars for advertising expenses from monies collected from  
28 taxes paid pursuant to this Act. All remaining monies collected pursuant to any tax imposed  
29 by the state of Louisiana under the provisions of this Act shall be paid into the state treasury  
30 for credit to the Bond Security and Redemption Fund. After satisfying the requirements of  
31 the Bond Security and Redemption Fund, the state treasurer is authorized and directed to

1 transfer the first ninety million dollars for deposit to the Coastal Protection and Restoration  
 2 Fund. In the event that monies have been used, appropriated or withdrawn from the Budget  
 3 Stabilization Fund in accordance with the provisions of Article VII, Section 10.3 of the  
 4 Constitution of Louisiana, the treasurer shall next transfer to the Budget Stabilization Fund  
 5 an amount not to exceed the amount used, appropriated or withdrawn from the Budget  
 6 Stabilization Fund, which amount shall not exceed a total of eighty-six million dollars. The  
 7 state treasurer is directed to transfer all remaining monies for deposit in the State General  
 8 Fund.

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

---

SPEAKER OF THE HOUSE OF REPRESENTATIVES

---

PRESIDENT OF THE SENATE

---

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_