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## DIGEST

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Robideaux

HB No. 456

**Abstract:** Establishes the Louisiana Tax Delinquency Act of 2013.

Proposed law enacts the "Louisiana Tax Delinquency Amnesty Act of 2013" which requires the Dept. of Revenue (DOR) to develop and implement a tax amnesty program to be effective for a period not to exceed 24 consecutive months during the period beginning July 1, 2013, and ending on Dec. 31, 2015, at the discretion of the secretary. The tax amnesty program shall apply to taxes due prior to Jan. 1, 2013, 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 not later than May 31, 2013, taxes for taxable periods that began on and after July 1, 2001, and Jan. 1, 2013, taxes for which the taxpayer and the department have entered into an agreement to interrupt prescription until Dec. 31, 2013, 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 2014, 2015, and 2016. 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 their 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 during the first 12 months of the amnesty period, the secretary shall waive all interest and penalties associated with the tax periods for which amnesty is applied. If the amnesty application is approved by the secretary during the 13<sup>th</sup> through 24<sup>th</sup> month of the amnesty period, the secretary shall waive half of the interest and half of the penalties associated with the tax periods for which amnesty is applied. If an eligible taxpayer fails to apply for amnesty during the amnesty period for eligible taxes, the taxpayer shall be required to pay double the amount of the penalties owed to the state for failing to pay taxes.

Proposed law prohibits installment agreements from being entered into for tax periods 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 not to exceed 20% of any deficiency assessed for any taxable period for which amnesty was taken. 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 written notice of the adjustment to the secretary within 60 days of receipt of the adjustment from the I.R.S.

Proposed law provides that for taxable periods beginning on or after Jan. 1, 2014, and before Dec. 31, 2019, 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 General Fund.

Effective upon signature of governor or lapse of time for gubernatorial action and shall effect and become operative only if the proposed amendments of the Const. of La. contained in the Joint Resolutions which originated as HB Nos. 434, 435, and 436 of this 2013 R. S. of the Legislature are concurred in by both houses of the legislature and HB Nos. 1, 437, 474, 571, 620, 653, and 696 of this 2013 R.S. of the Legislature are enacted into law.

#### Summary of Amendments Adopted by House

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

1. Changes the amnesty period from 2 consecutive calendar months between July 1, 2013, and June 20, 2014, to 24 consecutive months during the period beginning on July 1, 2013, and ending on Dec. 31, 2015.
2. Changes the waiver of penalties and interest for approved amnesty applications from the waiver of half of the interest and all of the penalties to a waiver of all of the penalties and interest if the amnesty application is approved during the first 12 months of the amnesty period for approved amnesty applications and the waiver of half of the penalties and interest if the amnesty application is approved during the 13<sup>th</sup> through 24<sup>th</sup> month of the amnesty application.
3. Adds provision that if an eligible taxpayer fails to apply for amnesty during the amnesty period for eligible taxes, the taxpayer shall be required to pay double the amount of the penalties owed to the state for failing to pay taxes.
4. Adds conditional effectiveness that the provisions of proposed law shall become operative only if the proposed amendments of the Const. of La. contained in the Joint Resolutions which originated as HB Nos. 434, 435, and 436 of the 2013 R. S. of the Legislature are concurred in by both houses of the legislature and HB Nos. 1, 437, 474, 571, 620, 653, and 696 of the 2013 R.S. of the Legislature are enacted into law.