

Regular Session, 2013

HOUSE BILL NO. 456

BY REPRESENTATIVE ROBIDEAUX

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

REVENUE DEPARTMENT: Establishes the Louisiana Tax Delinquency Amnesty Act of 2013

1 AN ACT

2 To enact the Louisiana Tax Delinquency Amnesty Act of 2013; 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 2013".

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.

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

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

11           (B) The amnesty program shall be effective for a period not to exceed twenty-four  
12 consecutive months during the period beginning on July 1, 2013, and ending on December  
13 31, 2015, at the discretion of the secretary. The tax amnesty program shall apply to all taxes  
14 administered by the department except for motor fuel taxes and penalties for failure to  
15 submit information reports that are not based on an underpayment of tax.

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

18           (1) Taxes due prior to January 1, 2013, for which the department has issued an  
19 individual or a business a proposed assessment, notice of assessment, bill, notice, or demand  
20 for payment on or after July 1, 2001, and not later than May 31, 2013; or

21           (2) Taxes for taxable periods that began on and after July 1, 2001, and before  
22 January 1, 2013; 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, 2013; 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 2014, 2015, and 2016. 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 their 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 shall 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 shall reserve the right to require taxpayers to file tax returns with the amnesty  
28 application. If the amnesty application is approved during the first twelve months of the  
29 amnesty period, the secretary shall waive all of the interest and all of the penalties associated  
30 with the tax periods for which amnesty is applied. If the amnesty application is approved  
31 by the secretary during the thirteenth through twenty-fourth month of the amnesty period,

1 the secretary shall waive half of the interest and half of the penalties associated with the tax  
2 periods for which amnesty is applied. If an eligible taxpayer fails to apply for amnesty  
3 during the amnesty period for eligible taxes, the taxpayer shall be required to pay double the  
4 amount of the penalties owed to the state for failing to pay taxes. An amnesty payment or  
5 application submitted in a properly addressed envelope with sufficient postage delivered by  
6 the United States Postal Service is deemed paid on the date it is postmarked. An amnesty  
7 payment or application delivered by courier or taxpayer is deemed paid on the date it is  
8 delivered to the department's headquarters or a regional office. No installment agreements  
9 will be entered into for tax periods that are approved for 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 written 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, 2014, and before December  
22 31, 2019, 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  
31 services and information technology services to implement amnesty may be acquired using

1 the emergency procurement process. The secretary shall also retain an amount not to exceed  
 2 two hundred fifty thousand dollars for advertising expenses from monies collected from  
 3 taxes paid pursuant to this Act. All remaining monies collected pursuant to any tax imposed  
 4 by the state of Louisiana under the provisions of this Act shall be paid into the state treasury  
 5 for credit to the Bond Security and Redemption Fund. After satisfying the requirements of  
 6 the Bond Security and Redemption Fund, the state treasurer is authorized and directed to  
 7 transfer the monies into the State General Fund.

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

13 (B) This Act shall take effect and become operative only if the proposed  
 14 amendments of the Constitution of Louisiana contained in the Joint Resolutions which  
 15 originated as House Bill Nos. 434, 435, and 436 of this 2013 Regular Session of the  
 16 Legislature are concurred in by both houses of the legislature and House Bill Nos. 1, 437,  
 17 474, 571, 620, 653, and 696 of this 2013 Regular Session of the Legislature are enacted into  
 18 law.

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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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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.