

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

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

DIGEST

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 of at least two months duration occurring prior to December 31, 2013, at the discretion of the secretary. The amnesty program applies to all taxes administered by DOR except for motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax.

Proposed law provides that amnesty is only granted for taxpayers who apply for amnesty during the amnesty period 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 amnesty period, DOR must waive one-half of the interest and all penalties associated with the tax periods for which amnesty is applied.

If an eligible taxpayer fails to apply for amnesty during the amnesty period, the taxpayer must pay double the amount of penalties owed to the state for failing to pay taxes.

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.

All remaining money collected is credited to a special fund created in the state treasury to be known as the 2013 Amnesty Collections Fund after compliance with Const. Art. VII, Sec. 9(B) relative to the Bond Security and Redemption Fund. The money in the fund must be used solely and exclusively as follows:

1. For FY2013-2014, the Treasurer must transfer from the fund the first \$10 million into the Rapid Response Fund, next, \$75 million into the Louisiana Mega-Project Development Fund, and, last, \$100 million into the Coastal Protection and Restoration Fund.
2. Of the money remaining in the fund on July 1, 2014, the legislature may only appropriate one-half for any purpose in FY2014-2015, and the balance remaining in the fund for any purpose in Fiscal Year 2015-2016.

The money in the fund is invested by the Treasurer in the same manner as money in the state general fund and interest earned on the investment of the money is credited to the fund and all unexpended and unencumbered money in the fund at the end of the year remains in the fund.

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 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.

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 13th through 24th 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the engrossed bill

1. Deletes the requirement that the amnesty program be for a period of up to 24 consecutive months during the period beginning on July 1, 2013, and ending on December 31, 2015, and instead requires the amnesty program to be effective for a period of at least two months duration occurring prior to December 31, 2013.
2. Authorizes the waiver of only one-half the interest on the taxes, not all the interest.
3. Requires money remaining after the amounts dedicated to DOR to be deposited into a special fund, the 2013 Amnesty Collections Fund and to be used solely and exclusively, in FY2013-2014 for \$185 million to be transferred to various funds, and authorizes half of the remainder to be appropriated for any purpose for FY2014-2015, and the balance remaining in the fund for any purpose in Fiscal Year 2015-2016.
4. Authorizes amnesty for tax liabilities prior to July 1, 2001, notwithstanding the provisions of any other Act or law to the contrary.