DECLARATION OF EMERGENCY RULE

Department of Revenue
Office of the Secretary

Louisiana Tax Delinquency Amnesty Act of 2001
(LAC 61:I.4912)

The Department of Revenue, Office of the Secretary, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this emergency rule pertaining to the Louisiana Tax Delinquency Amnesty Act of 2001 (Acts 2001, No. 136), in accordance with the provisions of R.S. 47:1511. The rule is needed to provide guidelines for implementing and administering the Louisiana Tax Delinquency Amnesty Program scheduled to begin on September 1, 2001. The Emergency Rule shall be effective September 1, 2001, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

The Department of Revenue has established a tax amnesty program beginning September 1, 2001 and ending October 30, 2001 for all taxpayers owing any tax imposed by reason of or pursuant to authorization by any law of the State of Louisiana and collected by the department. Amnesty will be granted only to those taxpayers who file an Amnesty Application and pay the entire amount of tax and fees due within the 60-day amnesty period.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 49. Tax Collection

§4912. Louisiana Tax Delinquency Amnesty Act of 2001

A. Definitions. For the purposes of this rule, the following terms shall have the meanings ascribed to them in this section:

Amnesty Application—a form created by the department.

Applicant—a person applying for amnesty under the Louisiana Tax Delinquency Amnesty Act of 2001 (Acts 2001, No. 136).

Audit Finalization Application—a form created by the department that allows the taxpayer involved in an unresolved review or examination to exercise his right under R.S. 47:1565.1 to waive restrictions and delays.

Department—the Louisiana Department of Revenue.

Entire tax liability—the net tax of all taxable periods included in the review or examination.

Ongoing—within the period starting with the taxpayer furnishing books and records to department personnel and ending with the issuance of a final audit report.

Unresolved—the taxpayer has not signed an Audit Finalization Application and paid the entire tax liability as previously notified by the department in writing.

Taxable period—any period for which a tax return is required by law to be filed with the department.

Taxpayer—any individual or entity subject to any tax imposed by any law of the State of Louisiana, payable to the State of Louisiana, and collected by the department.

B. Time Frame. The Amnesty Application, applicable returns, and payment of tax and fees must be received by the department during the period of September 1, 2001, through October 30, 2001.

C. Procedure and Eligibility

1. On the Amnesty Application, the applicant must make a written waiver of all rights, restrictions, and delays for assessing, collecting, or protesting taxes and interest due as set forth in R.S. 47:1562 through 1565 and 1576. The filing of such application will make the tax, interest, penalty, and fees immediately due and payable and subject to the distraint procedure. Upon receipt and approval by the department of the taxpayer's completed Amnesty Application and payment of the entire amount of tax and fees due, the secretary shall waive interest and penalties for any taxable period ending prior to July 1, 2001, provided the application and full payment are received between

September 1, 2001, and October 30, 2001. If a check submitted in conjunction with an Amnesty Application is returned by the bank on which it is drawn for any reason related to the account on which the check is written, such shall constitute a failure to have paid the entire amount due. The secretary shall not seek civil or criminal prosecution for the taxable period for which amnesty has been granted.

2. A taxpayer is eligible for amnesty despite the existence of any of the following circumstances:

a. the taxpayer has previously received a notice in writing of the failure to timely file a return or for failure to remit the amount owed;

b. a lien has been issued against the taxpayer's property, both movable and immovable, pursuant to R.S. 47:1577;

c. the department has initiated proceedings under the assessment and distraint procedure pursuant to R.S. 47:1569 through 1573;

d. the department has entered into an installment agreement with the taxpayer;

e. the taxpayer has filed for bankruptcy protection; or

f. the taxpayer has been notified in writing of an existing tax liability as a result of a review or examination of the taxpayer's return or books and records, and the review or examination is not ongoing or unresolved. Notification may include the issuance of a final audit report to the taxpayer.

3. The taxpayer shall pay any fees associated with any collection proceedings.

4. A taxpayer is not eligible for amnesty under any of the following circumstances:

a. the taxpayer is a party to any criminal investigations or to any civil or criminal litigation that is pending in any court of the United States or the State of Louisiana for nonpayment, delinquency, or fraud in relation to any state tax imposed by a law of the State of Louisiana;

b. the taxpayer is involved in an ongoing review or examination of the taxpayer's return or books and records, provided that the department has notified the taxpayer in writing of the review or examination prior to the application for amnesty;

c. the department notified the taxpayer in writing, prior to the taxpayer submitting an application for amnesty, of the review or examination and completed the audit but the audit is unresolved; or

d. the taxpayer has paid under protest and filed suit pursuant to R.S. 47:1576.

5. In any case where an Amnesty Application is not approved, the Secretary shall consider the waiver of all rights, restrictions, and delays contained in the Amnesty Application and Audit Finalization Application null and void.

D. Refunds and Overpayments

1. No refunds shall be given for those amounts collected from the taxpayer by the department prior to September 1, 2001, for a taxable period that meets the requirements of §4912.C.2.

2. As a consequence of filing a return for a taxable period allowable, any overpayment determined to be due a taxpayer who has not been previously notified by the department in writing of his previous failure to file a timely return or of an existing tax liability for any taxable period ending prior to July 1, 2001, regardless of the amount of the liability, shall receive a credit or refund in accordance with the applicable provisions of Title 47 of Louisiana Revised Statutes of 1950, without the amount bearing interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and Acts 2001, No. 136.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 27:__

Cynthia Bridges
Secretary