

# DECLARATION OF EMERGENCY

## Department of Revenue Office of the Secretary

### Louisiana Tax Delinquency Amnesty Act of 2009 (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 2009 (Acts 2009, No. 519) 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, 2009. The Emergency Rule shall be effective September 1, 2009, 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, 2009, and ending October 31, 2009. The tax amnesty program shall apply to all taxes administered by the department except for motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by the secretary and who pay all of the tax, all fees and costs, if applicable, and half of the interest due for periods designated on the amnesty application. The amnesty application for taxpayers involved in field audits or litigation shall include all issues and all eligible periods involved in the audit or litigation. The secretary reserves the right to require taxpayers to file tax returns with the amnesty application. If the amnesty application is approved, the secretary shall waive the remaining half of the interest and all of the penalties associated with the tax periods for which amnesty is applied.

#### 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 2009

##### A. Definitions.

*Amnesty Application*—a form, paper or electronic, distributed by the department or its authorized agent, listing the eligible tax types and eligible tax periods for which the taxpayer is requesting amnesty.

*Applicant*—a person applying for amnesty under the Louisiana Tax Delinquency Amnesty Act of 2009 (Acts 2009, No. 519).

*Department*—the Louisiana Department of Revenue.

*Notice*—a letter or assessment issued in accordance with R.S. 47:1562, R.S. 47:1564, R.S. 47:1565, or R.S. 47:1568 or a schedule prepared during an audit and presented to the taxpayer at the conclusion of the audit.

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

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

##### B. Amnesty Time Period

a. Acts 2009, No. 519 requires the Amnesty Program to be held for a period not to exceed two consecutive calendar months between July 1, 2009, and June 30, 2010.

b. The Amnesty Program will begin on September 1, 2009 and end on October 31, 2009.

##### C. Eligibility for Amnesty

1. A taxpayer is eligible for amnesty under any of the following circumstances:

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

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

c. the department has initiated proceedings under the assessment and distraint procedures 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;

f. the taxpayer is involved in a field audit;

g. the taxpayer is involved in litigation;

h. the taxpayer's liability consists of interest and penalty;

i. the taxpayer's liability consists of interest only;

or

j. the taxpayer's liability consists of penalty only.

2. Taxpayers are not eligible for both Amnesty and a Voluntary Disclosure Agreement for the same tax type and same tax period.

3. Motor fuel taxes are not eligible for amnesty.

4. Penalties for failure to submit information reports that are not based on an underpayment of tax are not eligible for amnesty.

5. Taxpayers who are a party to any criminal investigation or criminal litigation, in any court of the United States or the State of Louisiana pending on July 10, 2009, for nonpayment, delinquency, or fraud in relation to any state tax imposed by a law of the State of Louisiana and administered by the department, are not eligible for amnesty.

6. Taxpayers who deliver or disclose 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 R.S. 47:1604, which provides a penalty of 50 percent of the additional tax due, or a penalty of \$10,000, as provided by Subsection 3(H) of the Louisiana Tax Delinquency Amnesty Act of 2009, whichever is greater.

##### D. Amnesty Application Procedure and Waivers

1. The secretary is authorized to accept an amnesty application for any of the following:

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

b. taxes that became due on or after July 1, 2001 and before January 1, 2009;

c. taxes for which the taxpayer has entered into an agreement to suspend the running of prescription until December 31, 2009;

d. taxes that became due on or before July 1, 2001, if the taxpayer was ineligible for an earlier amnesty program because the matter was in civil litigation.

2. When the applicant signs the amnesty application, the applicant agrees to waive 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.

a. Filing the application makes the tax, interest, penalty, and fees immediately due and payable and subject to the distraint procedure.

b. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period using the form prescribed by the secretary and who pay all of the tax, all fees and costs, if applicable, and half of the interest due for the tax types and tax periods shown on the application according to the department's records.

3. If a taxpayer submits an amnesty application containing the eligible tax types and tax periods, due according to the department's records, and pays all of the tax, all fees and costs, if applicable, and half of the interest, for the tax types and tax periods shown on the amnesty application, the department will consider the amnesty application to be complete.

a. Once the amnesty application is deemed complete, amnesty shall be granted and the secretary shall waive the remaining half of the interest and all penalties outstanding as of September 1, 2009. The taxpayer will be notified of the acceptance.

b. If an amnesty application is deemed incomplete, amnesty shall not be granted and the taxpayer will be notified of the denial.

4. If an amnesty application is submitted and with payment insufficient to pay all of the tax, half of the interest, fees, and costs, if applicable, thereby creating a partial period payment, any partial payments submitted will be treated as a regular tax payment and amnesty shall not be allowed.

5. The department shall not institute a civil suit or seek criminal prosecution for the tax type and tax period for which an amnesty application has been approved.

#### E. Payment Options and Related Matters

1. The taxpayer may use the following payment options to satisfy the amnesty requirement of paying all of the tax, all fees and costs, if applicable, and half of the interest to be submitted with the amnesty application:

- a. cash,
- b. personal check,
- c. business check,
- d. bank wire,
- e. auto-debit,
- f. smartcheck,
- g. smartpay,
- h. credit card,
- i. American express moneygram,
- j. western union quick collect, and
- k. electronic payments via the internet web site.

2. The taxpayer shall pay any fees, including but not limited to attorney's fees, and cost, including but not limited to court cost, associated with any collection proceeding or litigation proceeding.

3. If a check, including smartcheck and smartpay, 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, the returned check shall constitute failure to pay the entire amount due and unless payment is otherwise made before

the October 31, 2009, amnesty deadline, amnesty will be denied.

4. If a debit card or credit card payment is dishonored, the dishonored payment shall constitute a failure to pay the entire amount due and unless payment is otherwise made before the October 31, 2009, amnesty deadline, amnesty will be denied.

5. Funds submitted without an amnesty application will not be considered as an amnesty payment and the monies shall be applied towards the taxpayer's account as a regular tax payment.

6. Payments submitted to the department before the amnesty period begins or payments submitted during the amnesty period without an amnesty application shall be applied to the oldest outstanding tax period in the following order:

- a. tax,
- b. penalty, and
- c. interest.

#### F. Refunds and Overpayments

1. No refunds shall be given for amounts paid by the taxpayer to the department before September 1, 2009, for taxable periods that are eligible for amnesty as provided by §4912.D.1.

2. No interest will be paid on refunds issued for payments made under protest that are used as an amnesty payment.

3. Monies paid for tax periods for which amnesty was granted are ineligible for refund, credit, or claim against the state.

4. Monies paid for tax periods for which amnesty was granted are ineligible for redetermination under the provisions of R.S. 47:1565(C).

5. A taxpayer shall be eligible for a refund or credit under the following circumstances:

a. if the overpayment arises after the amnesty application is submitted and is attributable to a properly claimed Louisiana net operating loss, or

b. if the overpayment is attributable to an adjustment made by the Internal Revenue Service 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 Internal Revenue Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and Acts 2009, No. 519.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 35:

Cynthia Bridges  
Secretary

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