

Regular Session, 2014

HOUSE BILL NO. 663

BY REPRESENTATIVE ROBIDEAUX

REVENUE DEPARTMENT: Provides relative to the Louisiana Tax Delinquency Amnesty Act of 2013

1 AN ACT

2 To amend and reenact Section 3.(C), (G), and (I) and Section 4.A and to enact Section 3.(M)

3 and (N) of Act No. 421 of the 2013 Regular Session of the Legislature, relative to the

4 Louisiana Tax Delinquency Amnesty Act of 2013; to provide relative to the amount

5 of penalties and interest waived during certain amnesty periods; to provide with

6 respect to the taxes eligible for amnesty; to provide for the doubling of penalties

7 under certain circumstances; to prohibit certain forms of payment of delinquent tax,

8 interest, penalty, or fees pursuant to the Amnesty Program; to authorize installment

9 agreements for certain taxes; to provide for certain requirements and limitations for

10 installment agreements; to authorize the procurement of collection services under

11 certain circumstances; to provide with respect to amnesty administration services

12 and for the procurement of such services; to authorize the promulgation of rules; to

13 prohibit the implementation of future amnesty programs for a certain period of time;

14 and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Section 3.(C), (G), and (I) and Section 4.A of Act No. 421 of the 2013

17 Regular Session of the Legislature are hereby amended and reenacted and Section 3.(M) and

18 (N) of the 2013 Regular Session of the Legislature are hereby enacted to read as follows:

19 * * *

1 Section 3.

2 * * *

3 (C) Notwithstanding the terms or provisions of any other Act or other
4 provisions of law to the contrary, and except as provided in Subsection (B), the
5 following taxes are eligible for amnesty:

6 (1) ~~Taxes due prior to January 1, 2013, for which the department has issued~~
7 ~~an individual or a business proposed assessment, notice of assessment, bill, notice,~~
8 ~~or demand for payment not later than May 31, 2013; or~~ For the 2013 amnesty
9 program: taxes due prior to January 1, 2013, for which the department has issued an
10 individual or a business proposed assessment, notice of assessment, bill, notice, or
11 demand for payment not later than May 31, 2013.

12 (2) Taxes for taxable periods that began before January 1, ~~2013~~ 2014; or .

13 (3) Taxes for which the taxpayer and the department have entered into an
14 agreement to interrupt the running of prescription pursuant to R.S. 47:1580 and said
15 agreement suspends the running of prescription until December 31, ~~2013~~ 2014.

16 (4) For the 2014 amnesty program: taxes due prior to January 1, 2014, for
17 which the department has issued an individual or a business proposed assessment,
18 notice of assessment, bill, notice, or demand for payment not later than May 31,
19 2014.

20 (5) For the 2015 amnesty program: taxes due prior to January 1, 2015, for
21 which the department has issued an individual or a business proposed assessment,
22 notice of assessment, bill, notice, or demand for payment not later than May 31,
23 2015.

24 * * *

25 (G)(1) Amnesty will be granted only for eligible taxes to eligible taxpayers
26 who apply for amnesty during an amnesty period on forms prescribed by the
27 secretary and who pay all of the tax, all fees and costs, if applicable, and any interest
28 due upon filing the amnesty application. Pursuant to the provisions of Subsection
29 (M) of this Section, taxpayers who apply for amnesty by opting to pay the tax and

1 any applicable fees, costs, and interest in installments shall remain eligible to
2 participate in the amnesty program only by making complete and timely payment of
3 the entire amount due under the taxpayer's installment agreement. Taxpayers
4 involved in field audits or litigation shall not be eligible for installment agreements
5 under the amnesty program. The amnesty application for taxpayers involved in field
6 audits or litigation shall include all issues and all eligible periods involved in the
7 audit or litigation. The secretary shall reserve the right to require taxpayers to file
8 tax returns with the amnesty application. Notwithstanding the terms or provisions
9 of any other Act or other provisions of law to the contrary, if the amnesty application
10 is approved during the 2013 amnesty period the secretary shall waive one-half of the
11 interest and all of the penalties associated with the tax periods for which amnesty is
12 applied. If the amnesty application is approved during the 2014 amnesty period, the
13 secretary shall waive ~~fifteen~~ sixty-seven percent of all of the penalties associated
14 with the tax periods for which amnesty is applied, ~~but no~~ and thirty-three percent of
15 the interest shall be waived. If the amnesty application is approved during the 2015
16 amnesty period, the secretary shall waive ~~ten~~ thirty-three percent of all of the
17 penalties associated with the tax periods for which amnesty is applied, ~~but no~~ and
18 seventeen percent of the interest shall be waived. However, any taxpayer for which
19 a final judgment in accordance with R.S. 47:1565 or 1568 has been rendered against
20 him by a court or who has exhausted all rights to protest taxes owed to the state, who
21 also fails to submit an amnesty application during either the 2014 or 2015 amnesty
22 period, whichever occurs first after the final judgment has been rendered against him
23 or in which his rights to protest taxes have been exhausted, shall be subject to double
24 penalties. An amnesty payment or application submitted in a properly addressed
25 envelope with sufficient postage delivered by the United States Postal Service is
26 deemed paid or received on the date it is postmarked. An amnesty payment or
27 application delivered by courier or taxpayer is deemed paid or received on the date
28 it is delivered to the department's headquarters or a regional office. ~~No installment~~
29 ~~agreements will be entered into for tax periods that are approved for amnesty.~~ The

1 department shall not accept tax credits as payment of any tax, interest, penalty, or fee
2 paid as a result of participation in the amnesty program.

3 (2) A taxpayer who disputes a portion of the amount of a delinquent tax
4 assessed by the department may be eligible to apply for amnesty if the taxpayer
5 remits the complete one-time payment of that portion of the tax that is not in dispute,
6 plus applicable interest and penalties, hereinafter referred to as the "compromise
7 amount", to the department prior to the end of the amnesty period for which the
8 taxpayer applies. The secretary shall have thirty days beginning on the first business
9 day after the last day of the amnesty period to determine if the taxpayer shall be
10 granted amnesty based on the compromise amount paid. If the secretary approves
11 the compromise amount paid by the taxpayer, the taxpayer shall be granted amnesty.
12 If the secretary rejects the compromise amount paid by the taxpayer, amnesty shall
13 not be granted and the taxpayer shall be responsible for the full amount of the
14 delinquent tax, penalties, interest, and fees prior to his application for amnesty. Any
15 monies paid to the department as compromised amounts during the amnesty period
16 shall be allocated toward payment of the taxpayer's delinquent tax debt in accordance
17 with rules and regulations which govern such payments in the absence of an amnesty
18 program.

19 * * *

20 (I) Amnesty applications shall include a written waiver of all rights,
21 restrictions, and delays for assessing, collecting, or protesting taxes and interest due
22 as set forth in R.S. 47:1562 through 1565 and 1576. The filing of such applications
23 shall make the tax, interest, and penalty immediately due and payable; except when
24 the taxpayer has been authorized by the secretary of the department, after making
25 application on the supplemental form provided by the secretary, to make installment
26 payments of such tax, interest, penalty, and fees. Pursuant to the provisions of
27 Subsection (M) of this Section, a taxpayer's supplemental application seeking
28 authority to make installment payments of a delinquent tax, interest, penalties, and
29 fees shall, upon approval of the secretary, be deemed to enter the taxpayer into an

1 installment agreement with the department. Payments of tax, interest, penalties, and
 2 fees shall be subject to the distraint procedure provided for in Title 47 of the
 3 Louisiana Revised Statutes of 1950; ineligible for refund, credit, or claim against the
 4 state; and ineligible for redetermination under the provisions of R.S. 47:1565(C);
 5 however, a taxpayer shall be eligible for a refund or credit if the overpayment arises
 6 after the amnesty application is submitted and is attributable to a properly claimed
 7 Louisiana net operating loss or attributable to an adjustment made by the Internal
 8 Revenue Service to the taxpayer's federal income tax, and the taxpayer provides
 9 notice of the adjustment to the secretary within sixty days of receipt of the
 10 adjustment from the Internal Revenue Service. A taxpayer who files an application
 11 for amnesty retains all administrative and judicial rights of appeal with respect to any
 12 additional tax assessed by the department.

* * *

14 (M)(1) Installment agreements. A taxpayer's application to make installment
 15 payments of a delinquent tax and its interest, penalties, and fees shall, upon approval
 16 by the secretary, enter the taxpayer into an installment agreement with the secretary
 17 of the department, whereby continuation in the amnesty program is dependent upon
 18 complete and timely payments of all installment payments. All installment
 19 agreements approved by the secretary shall require the taxpayer to provide a down
 20 payment of no less than twenty percent of the total amount of delinquent tax, penalty,
 21 interest, and fees owed to the department at the time the installment agreement is
 22 approved by the secretary. Additionally, every installment agreement shall include
 23 fixed, equal, monthly payments that shall not extend for more than six months.

24 (a) For the 2014 amnesty program, "timely payment" shall mean all
 25 installment payments shall be received no later than May 1, 2015.

26 (b) For the 2015 amnesty program, "timely payment" shall mean all
 27 installment payments shall be received no later than May 1, 2016.

28 (2) Automated electronic drafts. Applicants seeking to enter into an
 29 installment agreement with the department shall provide necessary information for

1 installment payments to be drafted from an account from which the taxpayer is
2 authorized to remit payment. All payments shall be drafted through electronic
3 automated transactions initiated by the department. Taxpayers who cannot enter into
4 an agreement to make payment by way of automated electronic transactions shall not
5 be eligible for an installment agreement with the department.

6 (3)(a) Forfeiture. If for any reason a taxpayer subject to an installment
7 agreement fails to fulfill his obligation under the agreement by remitting the last
8 installment by the first day of May of the amnesty program year to which the
9 agreement applies, no amnesty shall be granted and the installation agreement shall
10 be null and void. All payments remitted to the department during the duration of
11 such void installment agreement shall be allocated in accordance with department
12 rules and regulations as applied in the absence of an amnesty program. The taxpayer
13 shall be obligated to pay the entirety of the delinquent tax, along with all applicable
14 interest, penalties, and fees.

15 (b) A taxpayer who is approved to participate in the amnesty program who
16 is also a party to an existing installment agreement with the department may be
17 eligible to participate in an installment agreement under the amnesty program. Upon
18 approval by the secretary of an installment agreement under the amnesty program,
19 the original installment agreement with the department shall be cancelled in favor
20 of the installment agreement under amnesty which shall be subject to the provisions
21 of this Subsection.

22 (4) Collection of installment agreements. The secretary may procure
23 amnesty program collection services for the administration and collection of
24 installment agreements. The fee for such services shall be in accordance with the
25 fees authorized in R.S. 47:1516.1.

26 (5) Emergency rules. The secretary of the department may promulgate rules
27 and regulations in accordance with the emergency rulemaking authority of the
28 Administrative Procedure Act as provided for in R.S. 49:953(B) as are necessary to
29 implement the provisions of this Act relative to installment agreements. For

1 purposes of qualifying as an emergency under the provisions of the Administrative
2 Procedure Act, necessity of promulgating these rules by emergency rulemaking shall
3 be deemed to meet the definition of imminent peril to the public health, safety, or
4 welfare of the citizens of the state.

5 (N) After conclusion of the amnesty period in 2015, there shall be no new
6 amnesty program implemented by the Department of Revenue before January 1,
7 2025.

8 Section ~~4.A.~~ 4.(A) The secretary shall retain from monies collected under
9 this Act an amount equal to all penalties waived under this Act, an amount equal to
10 the costs for contractual information technology and amnesty program administration
11 services, including, without limitation, marketing, advertising, and public
12 information services, and an amount equal to any collection fees, legal fees, or any
13 other fees the department incurs that are associated with granting amnesty. Such
14 monies shall be designated as self-generated revenues. Notwithstanding any
15 provision of law to the contrary, amnesty program administration services and
16 information technology services, including, without limitation, marketing,
17 advertising, and public information services, to implement amnesty may be acquired
18 using the emergency procurement process. The secretary shall also retain an amount
19 not to exceed two hundred fifty thousand dollars for advertising expenses from
20 monies collected from taxes paid pursuant to this Act.

21 * * *

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)]

Robideaux HB No. 663

Abstract: Authorizes installment agreements for the payment of delinquent taxes, interest, penalties, and fees for which a taxpayer applies for amnesty and increases the amount of penalties and interest waived for the 2014 and 2015 amnesty periods.

Present law authorizes the Dept. of Revenue (DOR) to develop and implement a tax amnesty program to be effective for the following periods of time, the specific dates of which shall be determined by the secretary of DOR (secretary):

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

- (1) A period of at least one month occurring between July 1, 2014 and Dec. 31, 2014.
- (2) A period of at least one month occurring between July 1, 2015 and Dec. 31, 2015.

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 the amnesty program shall apply to taxes for all of the following:

- (1) Taxes for taxable periods that began before Jan. 1, 2014.
- (2) Taxes for which the department and the taxpayer have entered into an agreement to suspend the running of prescription until Dec. 31, 2014.
- (3) For the 2014 amnesty program: taxes due prior to Jan. 1, 2014, for which the department has issued an individual or a business proposed assessment, notice of assessment, bill, notice, or demand for payment not later than May 31, 2014.
- (4) For the 2015 amnesty program: taxes due prior to Jan. 1, 2015 for which the department has issued an individual or a business proposed assessment, notice of assessment, bill, notice, or demand for payment not later than May 31, 2015.

Present law authorizes the secretary to waive 15% of penalties owed if the amnesty application is approved during the 2014 amnesty period and 10% of penalties owed if the amnesty application is approved during the 2015 amnesty period. No interest is waived during these periods.

Proposed law changes the waiver of the penalties and interest for the 2014 and 2015 amnesty programs to the following:

- (1) Waiver of 67% of penalties and 33% of the interest owed if amnesty is approved during the 2014 amnesty period.
- (2) Waiver of 33% of penalties and 17% of interest owed if amnesty is approved during the 2015 amnesty period.

Proposed law requires the doubling of penalties for any taxpayer for which a final judgment has been rendered against him or who has exhausted all rights to protest taxes owed to the state, who also fails to submit an amnesty application during either the 2014 or 2015 amnesty period, whichever occurs first after the final judgment has been rendered against him or in which his rights to protest taxes have been exhausted.

Proposed law prohibits the department from accepting tax credits as payment of any tax, interest, penalty, or fee as a result of participation in the amnesty program.

Proposed law authorizes taxpayers who dispute a portion of the amount of a delinquent tax assessed by the department to participate in amnesty if the taxpayer remits the payment of that portion of the tax that is not in dispute, plus applicable interest and penalties, and otherwise complies with the requirements of proposed law. Further provides for the requirements of the department with respect to these taxpayers.

Present law prohibits the secretary from allowing taxpayers to enter into installment agreements for amnesty periods.

Proposed law changes present law to authorize installment agreements for the payment of delinquent taxes, interest, penalties, and fees. Further requires the taxpayer to submit an application to make installment payments and once approved by the secretary, requires the

taxpayer to provide a down payment of no less than 20% of the total amount of delinquent tax, penalty, interest, and fees owed by the taxpayer at the time that the installment agreement is approved.

Proposed law requires all installment payments to be made through automated electronic transactions and for all payments to be received by the department no later than May 1st of the program year for which the taxpayer applies for amnesty.

Proposed law provides requirements relative to the forfeiture of monies paid if the taxpayer who is a party to an installment agreement fails to fulfill his obligation under the agreement.

Proposed law authorizes the secretary of DOR to procure amnesty program collection services for the administration and collection of installment agreements. The fee for such services shall be in accordance with the fees provided for in present law.

Proposed law authorizes the department to promulgate rules and regulations in accordance with the emergency rulemaking authority of the Administrative Procedure Act as are necessary to implement the provisions of proposed law relative to installment agreements.

Present law requires the secretary to retain from monies collected pursuant to the amnesty program, an amount equal to the costs for contractual information technology and amnesty program administration services. Further authorizes the secretary to use the emergency procurement process to acquire amnesty program administration services and information technology services.

Proposed law retains present law but includes, without limitation, marketing, advertising, and public information services within the amnesty program administration service costs for which the secretary shall retain from monies collected from the amnesty program and for which the department may acquire using the emergency procurement process.

Proposed law prohibits, after conclusion of the amnesty period in 2015, DOR from implementing a new amnesty program before Jan. 1, 2025.

(Amends §§3.(C), (G), and (I) and 4.(A) of Act No. 421 of the 2013 R.S.; Adds §3.(M) and (N) to Act No. 421 of the 2013 R.S.)

Summary of Amendments Adopted by House

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

1. Adds a provision requiring the payment of double penalties for taxpayers who have a final judgement rendered in accordance with present law or who have exhausted all rights to protest taxes who fail to apply for amnesty under proposed law.
2. Adds the costs for marketing, advertising, and public information services within the amnesty program administration service costs for which the secretary of DOR shall retain from monies collected from the amnesty program and for which the department may acquire using the emergency procurement process.

House Floor Amendments to the engrossed bill.

1. Adds prohibition, after conclusion of the 2015 amnesty program, for DOR to implement a new amnesty program before Jan. 1, 2025.
2. Technical amendments.