

Louisiana Enacts Amnesty Program, Amends NOL Provisions

June 28, 2013

Overview

On June 21, 2013, Louisiana Governor Bobby Jindal signed into law House Bill 456 which establishes the Louisiana Tax Delinquency Amnesty Act of 2013 (the "Act").¹

Governor Jindal also recently signed Senate Bill 37 which amended the corporate net operating loss carryback period for losses attributable to Hurricane Isaac.² The provisions of Senate Bill 37 only become effective if a similar bill is passed for federal income tax purposes.³

In this Tax Alert we summarize these Louisiana Tax Amendments.

Louisiana Tax Delinquency Amnesty Act of 2013

Under the Act, which is effective immediately,⁴ the Louisiana Department of Revenue ("LADOR") is required to establish a tax amnesty program for a period of at least two months duration occurring prior to December 31, 2013; for a period of at least one month between July 1, 2014, and December 31, 2014; for a period of at least one month between July 1, 2015, and December 31, 2015.⁵

Participation in the Amnesty Program

To participate in the amnesty program, eligible taxpayers must apply on forms prescribed by the Secretary of the LADOR and pay all of the tax, fees, and costs, if applicable, and any interest due upon filing the amnesty application. Taxpayers that are approved for amnesty during the 2013 amnesty period will receive full penalty abatement and reduced interest (one-half of the interest associated with the tax will be waived). Taxpayers that are approved for amnesty during the 2014 amnesty period will receive a waiver of 15% of all penalties associated with the tax, but no interest abatement. Taxpayers that are approved for amnesty during the 2015 amnesty period will receive a waiver of 10% of all penalties associated with the tax, but no interest abatement.⁶

Subsequent Amnesty Penalties

Following the termination of the tax amnesty period, if the LADOR issues a deficiency assessment for a period for which amnesty was taken, the LADOR has the authority to impose penalties and institute civil proceedings or criminal proceedings, but only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due. The LADOR may by regulation impose a cost of collection penalty not to exceed 20% of any additional 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. The collection penalty may be waived when it is demonstrated that any of the deficiency was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.⁷

No penalty shall be imposed if the deficiency results from an adjustment made by the Internal Revenue Service to the taxpayer's federal income tax and the taxpayer provides written notice of the adjustment to the

¹ Act No. 421, 2013 Regular Session (1st Reg. Sess.), H.B. 456, (hereinafter "H.B.456") §1.

² Act No. 341, 2013 Regular Session (1st Reg. Sess.), S.B. 37 (hereinafter "S.B. 37").

³ Act No. 341, S.B. 37, §3.

⁴ Act No. 421, H.B. 456, §5.

⁵ Act No. 421, H.B. 456, §3(B).

⁶ Act No. 421, H.B. 456, §3(G).

⁷ Act No. 421, H.B. 456, §3(K).

LADOR within 60 days of receipt of the adjustment from the Internal Revenue Service, or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment.⁸

Taxpayers who participate in the amnesty program and later fail to comply with any payment or filing provision administered by the LADOR will be subject to a negligence penalty or a penalty of one hundred dollars, whichever is greater.⁹

Applicable Taxes

The tax amnesty program applies to all taxes administered by the LADOR except motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax.¹⁰

Covered Tax Periods

The tax amnesty program covers the following taxes:

- Taxes due prior to January 1, 2013, for which the LADOR has issued a proposed assessment, notice of assessment, bill, notice, or demand for payment not later than May 31, 2013;¹¹
- Taxes due for taxable periods that began before January 1, 2013;¹² and,
- Taxes for which the taxpayer and the LADOR have entered into an agreement to interrupt the running of prescription pursuant to La R.S. 47:1580 and said agreement suspends the running of prescription until December 31, 2013.¹³

Eligible Participants in the Amnesty Program

The tax amnesty program does not apply to taxpayers who are parties to any criminal investigation or criminal litigation in any court of the United States or Louisiana for nonpayment, delinquency, or fraud in relation to any state tax administered by the LADOR. In addition, a taxpayer who delivers or discloses any false or fraudulent application, document, return, or other statement to the LADOR in connection with an amnesty application shall be ineligible for amnesty and shall be subject to additional penalties.¹⁴

Taxpayers involved in field audits or litigation may participate in the amnesty program if they agree to abide by LADOR's interpretation of the law with respect to issues involved in the audit or litigation resolved through amnesty for all taxable periods beginning in the three years subsequent to the year of the amnesty program.¹⁵ The Act requires taxpayers to agree to abide by the LADOR's interpretation of the law at the time the returns for these periods are filed or be subject to the negligence penalty.¹⁶ 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.¹⁷

Waiver of Rights

In order to be eligible for the program, taxpayers must waive all rights to protest or initiate an administrative or judicial proceeding. The agreement shall only apply to the specific tax and the tax period for which amnesty is granted.¹⁸ However, a taxpayer who files an application for amnesty retains all administrative and judicial rights of appeal with respect to any additional tax assessed by the LADOR.¹⁹

Net Operating Loss Carryback Period Amendments

Senate Bill 37 authorizes a corporate income taxpayer to elect a net operating loss ("NOL") carryback period of 5 years (in lieu of the standard 3 years) to the extent the NOL is attributable to Hurricane Isaac. A loss is "attributable to Hurricane Isaac" if a portion of the allocable loss is attributable to business activity or business

⁸ Act No. 421, H.B. 456, §3(K).

⁹ Act No. 421, H.B. 456, §3(L).

¹⁰ Act No. 421, H.B. 456, §3(B).

¹¹ Act No. 421, H.B. 456, §3(C)(1).

¹² Act No. 421, H.B. 456, §3(C)(2).

¹³ Act No. 421, H.B. 456, §3(C)(3).

¹⁴ Act No. 421, H.B. 456, §3(H).

¹⁵ Act No. 421, H.B. 456, §3(E).

¹⁶ Act No. 421, H.B. 456, §3(E)(1).

¹⁷ Act No. 421, H.B. 456, §3(E)(2).

¹⁸ Act No. 421, H.B. 456, §3(D).

¹⁹ Act No. 421, H.B. 456, §3(I).

property of the taxpayer located in any parish which is in whole or in part in the area with respect to which a disaster has been declared by President Obama before September 10, 2012. The aggregate amount of NOL carryback deduction allowed for all corporations during any taxable year may not exceed \$10 million. The legislation potentially applies to all tax years beginning on or after August 1, 2011.²⁰ However, Senate Bill 37 only becomes effective if, as, and when the 113th Congress of the United States grants a similar benefit to taxpayers under federal income tax law.²¹ The secretary of the LADOR shall provide written notification to the Louisiana State Law Institute if such a benefit is enacted.

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²⁰ Act No. 341, S.B. 37.

²¹ Act No. 341, S.B. 37, § 3.