

DEPARTMENT OF STATE REVENUE

**Commissioner's Directive #47
August 2013
Effective Date July 1, 2013**

SUBJECT: Amnesty for Unpaid Use Tax on Claimed Race Horses

REFERENCE: [IC 6-2.5-14](#); [71 IAC 6.5-1-1](#)

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY

This directive details the amnesty program for unpaid use tax on claimed race horses, as contained in [IC 6-2.5-14](#) and enacted in Section 79 of HEA 1001-2013. The law takes effect on July 1, 2013.

DEFINITIONS

- (A) "Amnesty period" means the period of July 1, 2013, through Dec. 31, 2013.
- (B) "Claiming transaction" means a transaction in which a horse is claimed for a certain price before the race is run. The change in ownership occurs when the horse leaves the starting gate and is declared an official starter. The winnings, if any, for that particular race go to the person who owned the horse before the claim was made.
- (C) "Due and payable" means:
- (1) The department has issued a proposed assessment for unpaid use tax for a claiming transaction pursuant to [IC 6-8.1-5-1](#);
 - (2) The department has issued a jeopardy assessment and/or notice for unpaid use tax for a claiming transaction pursuant to [IC 6-8.1-5-3](#);
 - (3) The department has issued a demand notice for unpaid use tax for a claiming transaction pursuant to [IC 6-8.1-8-2](#);
 - (4) The taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for use tax for a claiming transaction; or
 - (5) The taxpayer has filed an amnesty agreement with the department for unpaid use tax for a claiming transaction.
- (D) "Taxpayer" means an individual, a corporation, a trust, an estate, a financial institution, an insurance company, a partnership, an S corporation, a limited liability company, or another pass-through entity.
- (E) "Tax period" means a reporting period ending before June 1, 2012.

QUALIFICATIONS FOR AMNESTY PROGRAM

The amnesty program applies to unpaid use tax liabilities for claiming transactions occurring before June 1, 2012. Taxpayers in the following situations are eligible to participate in the amnesty program:

- A taxpayer with an outstanding use tax liability that is due and payable to the department for an eligible tax period;
- A taxpayer who properly protests a liability in accordance with [IC 6-8.1-5-1](#);
- A taxpayer who has a departmental hold on a tax liability payment resulting from an audit, a bankruptcy, a taxpayer advocate action, a criminal investigation, or a criminal prosecution;
- A taxpayer who negotiated a payment plan on or prior to June 1, 2013, with the department, a sheriff, a collection attorney, or a collection agency, and who had an unpaid liability during an amnesty-eligible tax period;
- A taxpayer who filed a sales or use tax return for an amnesty-eligible tax period but underreported the tax liability that was actually due; or
- A taxpayer who has not filed a sales or use tax return or paid taxes for an amnesty-eligible tax period and has not been assessed by the department.

NOTE: The amnesty program does not apply to a taxpayer's state gross retail or use tax liability from any other type of transaction. Additionally, taxpayers who have paid liabilities in full, including interest or penalties, prior to this amnesty program are not entitled to a refund of those amounts. Any overpayment by a taxpayer during the amnesty period for an amnesty-eligible liability may be refunded to the taxpayer at the department's discretion. If

the overpayment is not refunded, it shall be credited to the taxpayer.

The amnesty period is from July 1, 2013, up to and including Dec. 31, 2013. No extensions of payments are permitted unless the taxpayer has established a payment plan agreement with the department.

A taxpayer who elects to voluntarily take advantage of the amnesty program in a timely manner and complies with all the requirements of the department concerning the amnesty program has the assurance that:

- The department shall abate and not seek to collect any applicable interest, penalties, collection fees, or costs related to those tax liabilities that are paid under amnesty;
- The department shall release any liens that are imposed after the full amount of the applicable tax liability is paid;
- The department shall not seek civil or criminal prosecution against any individual or entity that participates in the amnesty program. The provision not to seek any civil or criminal prosecution applies only to use tax liabilities that are included in the amnesty program; and
- The department shall not issue or, if already issued, shall withdraw an assessment, a demand notice, or a warrant for payment for liabilities paid under the amnesty program.

NOTE: A taxpayer who participates in this amnesty program is not eligible to participate in any future amnesty programs. A taxpayer who participated in a prior amnesty program is not eligible to participate in this amnesty program.

PAYMENT PLAN

A taxpayer who enters into an amnesty payment plan shall comply with a written agreement stating the requirements of the payment plan. An amnesty payment plan agreement must be entered into before Dec. 31, 2013. An amnesty payment plan shall not be established for a taxpayer if the amount of base tax due is less than five hundred dollars (\$500). Under an amnesty payment plan agreement, the taxpayer is required to pay twenty percent (20%) of the base tax due at the time of signing the agreement and sixteen percent (16%) of the base tax on the fifteenth of each month thereafter. A taxpayer may pay more than the minimum monthly payment provided in the amnesty payment plan agreement. Payments received after the due date of the payment or payments that are less than the minimum monthly payment amount provided in the payment plan agreement shall result in default of the amnesty agreement. Upon default, liabilities may be subject to penalties, interest, and (if applicable) collection fees.

PARTICIPATION IN AMNESTY PROGRAM

A taxpayer wanting to take advantage of the amnesty program must complete and submit an amnesty settlement agreement. All correspondence, including requests for amnesty settlement agreements, should be mailed to:

Indiana Department of Revenue
ATTN: Race Horse Amnesty Program
100 N. Senate Ave.
Room N-241 MS 104
Indianapolis, IN 46204-2253

Upon receipt of a request, the department will mail an amnesty settlement agreement to the taxpayer. The agreement will set forth all pertinent provisions of the amnesty program, including the requirements that the taxpayer:

- Pay the full amount of the use tax liability for a tax period;
- Relinquish all rights to protest a tax liability that is being paid;
- Agree not to file a claim for refund of the tax paid; and
- Relinquish all rights to participate in future amnesty programs.

A taxpayer who fails to pay the department the full amount of use tax that is due and payable for a tax period shall have the amnesty settlement agreement voided and will be subject to all penalties, interest, and costs related to the use tax for the tax period that would otherwise have been incurred if the taxpayer had not participated in the amnesty program.

Michael J. Alley
Commissioner

Posted: 08/28/2013 by Legislative Services Agency

