TITLE 45 DEPARTMENT OF STATE REVENUE

Emergency Rule
LSA Document #15-240(E)

DIGEST

Temporarily adds provisions to explain and implement the Tax Amnesty Program as contained in HEA 1001-2015. Statutory authority: IC 6-8.1-3-24. Effective July 27, 2015.

SECTION 1. **(a) The definitions in this SECTION apply throughout this document.**

(b) "Amnesty eligible liability" means an unpaid tax liability for a listed tax that was due and payable for a tax period ending before January 1, 2013.

(c) "Amnesty period" means the period of September 15, 2015, through 8 p.m. on November 16, 2015, during which a taxpayer may take advantage of the provisions contained in IC 6-8.1-3-17.

(d) "Department" means the department of state revenue, as provided in IC 6-8.1-1-2.

(e) "Due and payable" means:
(1) the department has issued:
(A) an assessment of the listed tax under IC 6-8.1-5-1;
(B) a demand for payment under IC 6-8.1-5-3; or
(C) a demand notice for payment of the listed tax under IC 6-8.1-8-2;
(2) the taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for the listed tax; or
(3) the taxpayer has filed:
(A) a written statement of liability in the form of an original return for the tax period; and
(B) an amnesty agreement with the department for the listed tax.

(f) "Listed tax" means a tax or fee described in IC 6-8.1-1-1 as in effect before January 1, 2013.

(g) "Participate" means to pay in full:
(1) one (1) or more amnesty eligible liabilities for which the taxpayer entered into an amnesty agreement with the department; or
(2) an amount established under a settlement agreement with the department if that settlement agreement was entered into in conjunction with the current amnesty program.

(h) "Taxpayer" means any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, national bank, bank, co-signee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, limited liability company, Indiana political subdivision engaged in private or proprietary activities, estate, trust, or any other group or combination acting as a unit who is liable for the payment of taxes, as provided in IC 6-8.1-1-5.5 as follows:
(1) For purposes of liabilities assessed against an individual officer or employee under IC 6-2.5-9-3, IC 6-3-4-8, IC 6-6-1.1-801, IC 6-6-2.5-38, or any other taxes for which an individual officer or employee is personally liable for taxes held in trust, "taxpayer" shall refer collectively to all such individuals who have been assessed as well as the entity that is responsible for collection and remittance of such taxes.
(2) For purposes of liabilities assessed under IC 6-3-4-8.1, IC 6-3-4-8.2, IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15, "taxpayer" shall also refer to the entity responsible for withholding and remitting the taxes.
(3) For purposes of IC 6-3-4-8.5, "taxpayer" shall refer collectively to the entity that incurred the initial tax liability and the transferee of property subject to tax under IC 6-3-4-8.5.
(4) If a taxpayer files a combined or consolidated tax return on behalf of multiple entities for utility receipts tax, adjusted gross income tax, or financial institutions tax, "taxpayer" shall mean the filing entity listed on the return.
(5) For any tax due pursuant to IC 6-4.1, "taxpayer" shall refer collectively to the estate, the personal representative of the estate, any trustee of any trust subject to tax under IC 6-4.1, and any individual or entity that received property subject to tax under IC 6-4.1.

(i) "Tax period" means a reporting period ending before January 1, 2013.

SECTION 2. The department shall establish an amnesty program for taxpayers having an unpaid tax liability for a listed tax that was due and payable for a tax period ending before January 1, 2013.

SECTION 3. (a) Except as provided in SECTION 4 of this document, a taxpayer with an amnesty eligible liability is eligible to participate in the amnesty program.

(b) Taxpayers with unpaid individual income tax liabilities are eligible to participate in the amnesty program if the liability is for the tax period. This applies to amnesty eligible liabilities for resident individuals, partial year residents, and nonresidents.

(c) Taxpayers liable for unpaid sales and withholding taxes are eligible to participate in the amnesty program if the liability is for the tax period.

(d) Taxpayers with unpaid inheritance tax, estate tax, or generation skipping transfer tax liabilities are eligible to participate in the amnesty program.

(e) Taxpayers who filed a tax return for an amnesty eligible liability, but underreported the tax liability that was actually due, may participate in the amnesty program by completing an amnesty agreement, filing an amended return for the tax period, and paying in full the base tax due.

(f) Taxpayers who have not filed a tax return, or paid taxes for an amnesty eligible liability, and who have not been assessed by the department may participate in the amnesty program by completing an amnesty agreement, filing the original tax return for the tax period, and paying in full the base tax due.

(g) A taxpayer who properly protests an amnesty eligible liability in accordance with IC 6-8.1-5-1 is eligible to participate in the amnesty program.

(h) A taxpayer who has a departmental hold on an amnesty eligible liability payment resulting from an audit, bankruptcy, taxpayer advocate action, criminal investigation, or criminal prosecution is eligible to participate in the amnesty program.

(i) A taxpayer who negotiated a payment plan on or prior to May 12, 2015, with the department, a sheriff, collection attorney, or collection agency is eligible to participate in the amnesty program if that payment plan pertains to an amnesty eligible liability.

(j) A taxpayer who has pending litigation under IC 6-4.1 between September 15, 2015, and November 16, 2015, is eligible to participate in the amnesty program.

SECTION 4. (a) A taxpayer is ineligible to participate in the amnesty program if the taxpayer participated in the amnesty program conducted by the department from September 15, 2005, through November 15, 2005, or the amnesty program for unpaid use tax on claimed race horses under IC 6-2.5-14.

(b) A taxpayer's liability is ineligible for the amnesty program if the liability was incurred because of the taxpayer's failure to add back the riverboat wagering tax (IC 4-33-13) or the slot machine wagering tax (IC 4-35-8) to the taxpayer's federal adjusted gross income or federal taxable income. This includes the taxpayer's distributive income passed through to its partners, shareholders, or other members of a pass through entity. This exclusion includes any income tax attributable to the addback for which a pass through entity is responsible for withholding on behalf of nonresident shareholders or partners.

(c) A taxpayer is ineligible to participate in the amnesty program if the taxpayer has pled guilty to or been convicted of tax fraud.

(d) A taxpayer who participates in the amnesty program is not eligible to participate in any future amnesty program.

(e) Subsection (a) does not apply to a taxpayer who entered into an amnesty agreement under Section 402 of the Streamlined Sales and Use Tax Agreement.

(f) Payments received by the department before September 15, 2015, for an amnesty eligible liability

are not eligible for the abatement of penalties, interest, costs, or collection fees under SECTION 5 of this document.

SECTION 5. (a) If a taxpayer participates in the amnesty program and complies with all applicable requirements, the department:

(1) shall abate and not seek to collect any interest, penalties, collection fees, or costs related to tax liabilities that are paid in full pursuant to the amnesty program;

(2) shall, after all amnesty eligible liabilities are paid in full, release any liens imposed;

(3) shall not initiate civil or criminal prosecution against any individual or entity that participates in the amnesty program for nonpayment of amnesty eligible liabilities that are paid in full pursuant to the amnesty program; and

(4) shall not issue, or, if issued, shall withdraw an assessment, a demand notice, tax due notice, or a warrant for payment for amnesty eligible liabilities paid in full pursuant to the amnesty program.

(b) A taxpayer who has an amnesty eligible liability related to the International Fuel Tax Agreement (IFTA) or fees related to the International Registration Plan (IRP) who participates in the amnesty program with respect to those amnesty eligible liabilities will have all penalties and Indiana interest abated. IFTA and IRP prohibit Indiana from eliminating another jurisdiction's interest that is due.

SECTION 6. (a) All payments for amnesty eligible liabilities shall be made to the department.

(b) A taxpayer may pay in full all amnesty eligible liabilities with one (1) lump-sum payment. If one (1) lump-sum payment is not made, the taxpayer may enter into an amnesty payment plan agreement.

(c) A taxpayer who enters into an amnesty payment plan agreement shall comply with a written agreement stating the requirements of the payment plan.

(d) An amnesty payment plan agreement entered into by the taxpayer and the department shall require the base tax due, as established in the agreement, be paid in full and remitted to the department by June 15, 2016.

(e) A taxpayer may pay more than the minimum monthly payment amount required by an amnesty payment plan agreement.

(f) Payments made that are less than the minimum monthly payment amount required by an amnesty payment plan agreement shall result in a default by the taxpayer of the amnesty agreement.

(g) No extensions of payments beyond June 15, 2016, are permitted.

(h) A taxpayer who fails to pay in full to the department the base tax due for all amnesty eligible liabilities shall have the amnesty agreement voided and will be subject to all penalties, including the additional penalty provided in SECTION 8 of this document, interest, and costs related to the amnesty eligible liabilities that would have been incurred if the taxpayer had not attempted to participate in the amnesty program. However, no amount paid in attempted compliance with an amnesty agreement shall be refunded to a taxpayer.

SECTION 7. (a) A taxpayer desiring to participate in the amnesty program can pay in full the base tax due for all amnesty eligible liabilities by mailing to the department the entire amount of tax due.

(b) A taxpayer can remit the payment or payments by check, money order, or certified funds through the U.S. mail.

(c) If a taxpayer chooses to remit electronically via the Internet or telephone, he or she can pay with a credit card, debit card, or by eCheck.

(d) The date of the payment shall be determined in accordance with IC 6-8.1-6-3.

SECTION 8. A taxpayer who fails to participate in the amnesty program, or does not pay in full the base tax owed for all amnesty eligible liabilities, shall be assessed an additional penalty equal to the sum of any penalties originally assessed. This additional penalty shall apply to the following penalties:

(1) The penalty originally assessed is equal to ten percent (10%) of:

(A) the full amount of tax due if the taxpayer fails to file a return;
(B) the amount of tax not paid if the taxpayer fails to pay the full amount of tax shown on the taxpayer's return;
(C) the amount of tax held in trust that is not timely remitted;
(D) the amount of deficiency as finally determined by the department; or
(E) the amount of tax due if the taxpayer fails to remit a payment by electronic funds transfer.

(2) The penalty originally assessed is equal to twenty percent (20%) if the taxpayer fails to withhold tax for nonresidents that are shareholders in an S corporation, partners in a partnership, or beneficiaries in a trust.

(3) The penalty originally assessed for filing an individual income tax return required by law where no remittance is due with the return is ten dollars ($10) per day that the return is past due up to a maximum of five hundred dollars ($500).

(4) The penalty originally assessed on a return, other than an individual return, filed after the due date that shows no tax liability for a taxable year is ten dollars ($10) per day for each day that the return is past due up to a maximum of two hundred fifty dollars ($250).

(5) The penalty originally assessed on a return prepared by the department based on best information available is twenty percent (20%) of the unpaid tax.

(6) The penalty originally assessed for failure to file a return or failure to make full payment with the fraudulent intent of evading the tax is one hundred percent (100%).

(7) The penalty that is originally assessed for a check, credit card, debit card, or electronic funds transfer, for which the department is unable to obtain payment, in an amount equivalent to its full face amount when presented for payment through normal banking channels, is:
(A) one hundred percent (100%) of the value of the check, credit card, debit card, or electronic funds transfer, if the taxpayer fails to make the payment by cash, certified check, or other guaranteed payment within ten (10) days of being notified by the department that the payment has been dishonored, if the dishonored payment was made before January 1, 2014; or
(B) thirty percent (30%) of the value of the check, credit card, debit card, or electronic funds transfer, if the taxpayer fails to make the payment by cash, certified check, or other guaranteed payment within ten (10) days of being notified by the department that the payment has been dishonored, if the dishonored payment was made on or after January 1, 2014.

(8) The penalty originally assessed for failure to file an information return is ten dollars ($10) for each failure to file a timely return up to a maximum of twenty-five thousand dollars ($25,000). The term information return does not include form IT-20FIT, IT-20S, IT20SC, IT-41, or IT-65.

(9) The penalty originally assessed on a corporate officer for violations concerning the dissolution of a corporation is thirty percent (30%) of the unpaid tax for failure to take reasonable steps to set aside corporate assets to meet the liability due the department.

(10) The penalty originally assessed for selling gasoline in Indiana with the intent to avoid payment of the gasoline tax is fifty percent (50%) of the tax that has not been paid to the department.

(11) The penalty originally assessed for failure to remit the special fuel tax is one hundred percent (100%) of the uncollected tax.

(12) Any other penalties prescribed under IC 6-6 and related to a listed tax.

SECTION 9. (a) The provision for doubling penalties contained in SECTION 8 of this document does not apply if all of the following conditions are present:

(1) The department imposes a penalty on a taxpayer or otherwise calculates the penalty under the provisions described in SECTION 8 of this document.

(2) The taxpayer against whom the penalty is imposed:
(A) timely files an original tax appeal in the tax court; and
(B) contests the department's imposition of the penalty or the tax on which the penalty is based.

(3) The taxpayer meets all other jurisdictional requirements to initiate the original tax appeal.

(4) The tax court enjoins collection of the penalty or the tax on which the penalty is based, or the department consents to an injunction against collection of the penalty or tax without entry of an order by the tax court.

(b) The provision for doubling the penalty as contained in SECTION 8 of this document does not apply if any of the following circumstances apply:

(1) The taxpayer has a legitimate hold on making the payment as a result of an audit, bankruptcy, protest, taxpayer advocate action, criminal investigation, or prosecution.

(2) The taxpayer had established a payment plan with the department by May 12, 2015.

(3) The taxpayer proves that the taxpayer did not ever receive notice of the outstanding tax liability, as set forth in SECTION 10(d) of this document.

(c) Any tax liability not eligible for the amnesty program will not be subject to the additional penalty provided in SECTION 8 of this document.

(d) The department shall not apply the penalty if the tax court enjoins collection or if the department consents to an injunction.

(e) The penalty under IC 6-4.1 is not subject to doubling under SECTION 8 of this document.

SECTION 10. (a) All known taxpayers eligible to participate in the amnesty program that an amnesty eligible liability will be notified by first class mail by September 15, 2015, at the last known address of the taxpayer, that they are eligible to participate in the amnesty program.

(b) The taxpayer will be notified of all known amnesty eligible liabilities.

(c) The notification will include the amount of payment required to participate in the amnesty program and the amount of tax, penalty, interest, fees, and costs that will be due if the taxpayer does not take advantage of the amnesty program.

(d) A taxpayer who claims they never received the notice must prove:
(1) the taxpayer never resided or never operated a business at the address to which the notification of the amnesty program was mailed;
(2) the taxpayer never used as a mailing address for tax purposes the address to which the notification of the amnesty program was mailed; or
(3) the taxpayer previously provided the department with an updated or corrected current address.

SECTION 11. (a) A taxpayer who participates in the amnesty program must agree to all provisions contained in SECTIONS 6 through 8 of this document. The taxpayer acknowledges all terms of the amnesty agreement when they sign the coupon that is to be sent to the department when the taxpayer pays the liability.

(b) A taxpayer who remits and agrees to amnesty through the department's amnesty website by clicking on the "I accept the terms of the agreement" checkbox is consenting to all terms contained in the amnesty agreement.

(c) A taxpayer agreement is completed when the taxpayer:
(1) signs the amnesty agreement and returns the amnesty payment coupon to the department;
(2) files amended returns to report a previous tax deficiency; or
(3) files an initial return, if the taxpayer failed to file and remit for the tax period, and remits the required payment.

(d) A taxpayer may appoint a personal representative to sign the amnesty agreement. However, the taxpayer shall complete a power of attorney (Form POA-1) giving the representative authorization to sign on behalf of the taxpayer.

(e) To participate successfully in the amnesty program, the taxpayer must:
(1) pay in full all amnesty eligible liabilities;
(2) relinquish all rights to protest, appeal, or litigate a tax liability that is being paid;
(3) agree not to file a claim for refund of any tax paid under the amnesty program; and
(4) comply with subsection (a).

(f) Notwithstanding subsection (e), a taxpayer may participate successfully in the amnesty program if the taxpayer pays in full an amount established under a settlement agreement with the department if that settlement agreement was entered into in conjunction with the current amnesty program.

SECTION 12. (a) A taxpayer who has multiple amnesty eligible liabilities shall have any payment applied to the oldest tax liability for which the taxpayer's payment can satisfy the tax liability in full.

(b) The oldest liability shall be determined by the date of the tax period.

(c) The allocation of a payment to the oldest tax liability first may be altered if the taxpayer

specifically indicates the allocation of a payment to another liability.

SECTION 13. If the department determines:
(1) an overpayment has been made by a taxpayer during the amnesty period for an amnesty eligible liability; and
(2) the overpayment was due to a computational error;
that overpayment may be refunded to the taxpayer. If the overpayment is not refunded, it shall be credited to the taxpayer.

SECTION 14. (a) A taxpayer who receives an assessment based on best information available (BIA) that is issued for a tax period that qualifies for amnesty is allowed to pay the amount of the base tax assessed.

(b) If the taxpayer remits an amount that is different than the base tax amount assessed, the taxpayer must file a tax return for the tax period attesting that the amount remitted was the correct tax liability due.

(c) A taxpayer who files a return reporting a zero dollar ($0) tax liability as the result of a BIA assessment shall attach a verification that no tax liability exists.

(d) Verification of no tax liability can be proven by attaching evidence that no tax liability exists. Examples of documents the department will consider acceptable include the following:
(1) Minutes of the final board of directors meeting.
(2) Records of bank accounts closed.
(3) Articles of dissolution.
(4) Notarized statement of dissolution from an officer of the business.
(5) Final utility bills.
(6) Any proof of dissolution filed with the Internal Revenue Service.
(7) Books and records or any other pertinent information.

(e) Reported tax liabilities are subject to review by the department.

SECTION 15. (a) A taxpayer who established a payment plan with the department on or before May 12, 2015, for an amnesty eligible liability is eligible to participate in the amnesty program.

(b) A taxpayer who has established a payment plan with a sheriff, collection attorney, or collection agency will be eligible for the tax amnesty program.

(c) The taxpayer may pay the remaining balance of the payment plan in full during the amnesty program.

(d) The taxpayer, upon approval of the department, may establish an amnesty payment plan and shall conform to the requirements of SECTION 11 of this document.

(e) If a taxpayer that established a payment plan with the department on or before May 12, 2015, is not able to pay the remaining balance during the amnesty period, or will not be able to pay the remaining balance through an amnesty payment plan, the taxpayer may elect not to participate in the amnesty program without being subject to the double penalty assessment.

(f) If a taxpayer who has established a payment plan with a sheriff, collection attorney, or collection agency does not pay the balance of tax due, or does not establish a payment plan within the amnesty program, the taxpayer is subject to the double penalty after the amnesty period ends.

(g) No amount paid in attempted compliance with an amnesty agreement shall be refunded to a taxpayer.

SECTION 16. (a) A payment by a taxpayer made in anticipation of an audit assessment for a listed tax is not considered an amnesty payment unless the taxpayer is filing an amended return admitting to previous underreporting of a tax liability for the tax period.

(b) A taxpayer who makes a payment as part of an amended return pursuant to the amnesty program cannot file a claim for refund if an audit determines that the taxpayer overpaid the tax liability for the

reporting period.

SECTION 17. **(a) A taxpayer who fully complies with the terms of an amnesty agreement is eligible to have his or her tax warrant or warrants expunged, in the sole discretion of the department. However, the department will not expunge a warrant if the department finds that the warrant was issued based on the taxpayer's fraudulent, intentional, or reckless conduct.**

(b) To have a warrant expunged, a taxpayer must submit to the department a properly completed amnesty expungement request form. Request forms should not be submitted until all amnesty eligible liabilities have been paid in full. Request forms submitted to the department before a taxpayer's amnesty eligible liabilities have been paid in full will receive no consideration, and no expungement will take place. Taxpayers must submit the amnesty expungement request form by September 16, 2016. The department shall have one hundred eighty (180) days to review and approve or deny an amnesty expungement request form.

(c) In addition to submitting an amnesty expungement request form, to be eligible to have a tax warrant expunged, the taxpayer making the request:
(1) must be current on all subsequent tax filings; and
(2) may not have any outstanding tax liabilities.

SECTION 18. This document expires June 15, 2016.

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