

1 **CONFIDENTIAL – FOR S.R. 22 TASK FORCE DISCUSSION PURPOSES ONLY**

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3 DRAFT

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5 HLS _____

ORIGINAL

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8 Regular Session, 2021

9
10 HOUSE/SENATE BILL NO. _____

11
12 BY REPRESENTATIVE/SENATOR _____

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16 TAX, STATE, LABOR [????]:

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18
19
20 AN ACT

21 In order to facilitate voluntary resolution of worker classification issues and achieve the
22 benefits of increased tax compliance and certainty for taxpayers, to amend and re-
23 enact [Insert VDA statute citation, R.S. 47:1580(C)(2) and R.S. 47:1603(A)(2)]
24 the Louisiana Voluntary Disclosure Program to provide an effective process of
25 reporting undisclosed liabilities for withholding taxes administered by the
26 Department of Revenue and unemployment taxes administered by the Louisiana
27 Workforce Commission that would have been due for workers who were not
28 classified as employees where taxpayers may anonymously enter into agreements
29 and voluntarily pay such taxes with no penalty; to provide for definitions; to
30 require the Louisiana Department of Revenue and Louisiana Workforce
31 Commission to establish a program as provided for in this Act; to provide for
32 terms and conditions of the program; to provide for the disposition of the monies
33 collected from the program; to provide for an effective date; and to provide for
34 related matters.

35 Be it enacted by the Legislature of Louisiana:

36 Section 1. Voluntary Disclosure Agreements, Withholding Taxes, Definitions.

37 (A) The definition of *look-back period* for the purposes of withholding taxes
38 that would have been due on amounts paid to the class or classes of workers identified in

1 the application had they been classified as employees during such look-back period is
2 amended to add subparagraph (f), which provides as follows:

3 f. Except for taxes collected and not remitted, the look-back period for
4 withholding taxes shall include the current calendar year up to the date of the
5 Department's acceptance of the application and the one immediately preceding
6 calendar year.

7
8 (B) The fact that an applicant is registered with the Department of Revenue for
9 withholding taxes as of the application date, or that an applicant filed withholding tax
10 returns with the Department, but failed to properly classify workers as employees for any
11 period during or prior to the look-back period shall not disqualify the applicant for a
12 voluntary disclosure agreement to reclassify workers as employees [the definition of
13 *Qualified Applicant* might expressly include this statement];

14 (C) The definition of *undisclosed liability* is amended for withholding tax
15 purposes in that the withholding tax liability shall be the tax determined at the rate
16 pursuant to the Form L-___ withholding certificates for workers submitted with the
17 Applicant's application, or at the rate of 2%, whichever is higher, but in no event shall
18 the term *undisclosed liability* include income tax reported on an individual income tax
19 return filed by any worker in the class or classes of workers identified in the application,
20 with the Department of Revenue or assessed by the Department against such worker
21 during the look-back period.

22 Section 2. Voluntary Disclosure Agreements

23 A. Acceptance of Offer to Enter into Voluntary Disclosure Agreement

24 1. After the secretary has reviewed the application and determined from the
25 information included therein that the applicant qualifies for a voluntary disclosure
26 agreement, the secretary shall send a copy of the agreement to the applicant or the
27 applicant's representative for signature.

28 2. The applicant or applicant's representative, acting under the authority of a power
29 of attorney, must sign the agreement and return it to the secretary within 30 calendar days
30 of the postmark or e-mail date, or within any extension of time authorized by the
31 secretary beyond 30 calendar days from the postmark or e-mail date.

1 3. After the signed agreement is received from the applicant, the secretary or his
2 authorized representative will sign the agreement and return a copy of the agreement
3 which has been signed by both parties to the applicant.

4 B. Waiver or Remittance of Payment of Penalty

5 1. After all tax and interest due for the look-back period have been paid, the
6 delinquent penalties will be waived, unless the tax disclosed was collected but not
7 remitted.

8 2. Where the tax was collected but not remitted, the secretary may consider waiving
9 payment of the whole or any part of the delinquent penalties on a case-by-case basis.

10 C. Payment of Tax and Interest Due

11 1. All tax due for the look-back period, which shall exclude any tax that was reported
12 on an individual income tax return filed by any worker in the class or classes of workers
13 identified in the application as verified by the Department, must be paid within 60
14 calendar days of the secretary's signing date of the voluntary disclosure agreement or
15 within any extension of time authorized by the secretary beyond 60 calendar days of the
16 signing date. All schedules or returns required by the secretary to show the amount of tax
17 due must be included with this payment.

18 2. The secretary shall compute the interest due for the tax disclosed by the applicant
19 and send a schedule by mail or email to the applicant or his representative showing the
20 amount of tax, interest and delinquent penalty due. The applicant must submit payment
21 of the full amount of the interest not remitted or waived within 30 calendar days from
22 the postmark or e-mail date of the schedule or, if applicable, within any extension of
23 time granted by the secretary. If payment of the full amount due has not been received at
24 the expiration of such time, the secretary may void the agreement.

25 D. The terms of the voluntary disclosure agreement shall be valid, binding, and
26 enforceable by and against all parties, including their transferees, successors, and
27 assignees.

28 E. The secretary reserves the right to void the voluntary disclosure agreement if the
29 applicant fails to comply with any of the conditions outlined in the agreement.

1 Section 3. Voluntary Disclosure Agreements, Unemployment Taxes. To authorize
2 the secretary of the Louisiana Workforce Commission (“LWC”) to promulgate rules and
3 regulations concerning the waiver of penalties, including but not limited to the
4 establishment of a voluntary disclosure program. To that end the Louisiana Workforce
5 Commission shall adopt a Rule to encourage unregistered business entities and persons
6 who employ workers or classes of workers who are subject to Louisiana unemployment
7 tax or to voluntarily contact the Louisiana Workforce Commission regarding their
8 unreported Louisiana unemployment tax liabilities and to make arrangements to pay such
9 tax liabilities through a voluntary disclosure program.

10 Section 4. Voluntary Disclosure Agreement for Unemployment Tax.

11 (A)Definitions. For purposes of this Section, the following terms have the
12 meanings ascribed to them.

- 13 1. Applicant—any association, corporation, estate, firm, individual, joint venture,
14 limited liability company, partnership, receiver, syndicate, trust, or any other
15 entity, combination or group that submits or arranges through a representative
16 for the submission of an application to request a voluntary disclosure agreement
17 for a tax administered by the LWC. If the application is submitted through a
18 representative, anonymity of the applicant can be maintained until the voluntary
19 disclosure agreement is executed by the taxpayer and the secretary.
- 20 2. Application—a completed “application to request voluntary disclosure
21 agreement” (Form_____) and all supplemental information including, but not
22 limited to, cover letters, schedules, reports, and any other documents that
23 provide evidence of the applicant’s qualification for a voluntary disclosure
24 agreement. Supplemental information requested by the LWC and timely
25 provided by the applicant shall be considered part of the application.
- 26 3. Application Date—the date a fully completed application requesting a voluntary
27 disclosure agreement is received by the LWC. Supplemental information
28 requested by the LWC and timely provided by the applicant shall not extend or
29 delay the application date.

1 4. Delinquent Penalty—any specific penalty imposed pursuant to R.S.
2 23:_____ or _____ as a result of the failure of the taxpayer to
3 timely make any required return or payment. [Would include waiver of all
4 penalties].

5 5. LWC —the Louisiana Workforce Commission.

6 6. Look-Back Period—a period for which a qualified applicant agrees to disclose
7 and pay the unemployment tax and interest due. The look-back period shall
8 include the current calendar year up to the date of registration with the LWC
9 and the one immediately preceding calendar year.

10 7. For discontinued, acquired, or merged entities, the look-back period shall
11 include undisclosed liabilities in the last calendar year in which the qualified applicant had
12 nexus within this state and the one immediately preceding calendar year.

13 8. Non-Qualified Applicant—includes any taxpayer who:

14 a. has been contacted by the LWC concerning a liability regarding a tax for
15 which a voluntary disclosure agreement is requested, including but not limited to a
16 potential liability or contact for the purpose of performing an audit of the taxpayer's
17 records; or

18 b. is affiliated with another entity that has been contacted by the department
19 for the purpose of performing an audit of the affiliated entity's records. A non-qualified
20 applicant under this subparagraph may become a qualified applicant after the audit of the
21 affiliated entity has been completed, provided the applicant is not disqualified under the
22 criteria listed in Subparagraphs a through c of this Paragraph.

23 9. Qualified Applicant—any taxpayer, other than a non- qualified applicant,
24 subject to the reporting and payment of unemployment tax imposed by the state of
25 Louisiana.

26 10. Secretary—the secretary of the Louisiana Workforce Commission and any
27 duly authorized representative(s).

28 11. Signing Date—the date the voluntary disclosure agreement is signed by the
29 secretary or his authorized representative.

1 12. Undisclosed Liability—an unemployment tax liability that became due
2 during the look-back period and which has not been determined, calculated, researched,
3 identified by or known to the LWC at the time of disclosure and which would likely not
4 be discovered through normal administrative activities. The undisclosed liability must
5 exceed \$500 during the look-back period to qualify for consideration of a voluntary
6 disclosure agreement and shall be determined based on the applicant’s existing experience
7 rating, or if there is no existing experience rating, then pursuant to R.S. 23:1535. The
8 secretary has the discretion to conduct an audit of the applicant’s records to confirm the
9 amount of the undisclosed liability.

10 13. Voluntary Disclosure Agreement—a contractual agreement between a
11 qualified applicant and the secretary wherein the qualified applicant agrees to pay the
12 unemployment tax and interest due on an undisclosed liability, and the secretary agrees to
13 remit or waive payment of the whole of the penalty associated with that liability and to
14 restrict collection of prior liabilities to the look-back period.

15 14. The Secretary shall credit the account of all workers identified by the
16 Applicant in the application for unemployment benefits with respect to the look-back
17 period.

18 B. Acceptance of Offer to Enter into Voluntary Disclosure Agreement

19 1. After the secretary has reviewed the application and determined from the
20 information included therein that the applicant qualifies for a voluntary disclosure
21 agreement, the secretary shall send a copy of the agreement to the applicant or the
22 applicant’s representative for signature.

23 2. The applicant or applicant’s representative, acting under the authority of a
24 power of attorney, must sign the agreement and return it to the secretary within 30
25 calendar days of the postmark or e-mail date, or within any extension of time authorized
26 by the secretary beyond 30 calendar days from the postmark or e-mail date.

27 3. After the signed agreement is received from the applicant, the secretary or
28 his authorized representative will sign the agreement and return a copy of the agreement
29 which has been signed by both parties to the applicant.

1 C. Waiver or Remittance of Payment of Penalty

2 1. After all unemployment tax and interest due for the look-back period have
3 been paid, the delinquent penalties will be waived.

4 D. Payment of Tax, Interest, and Penalty Due

5 1. All unemployment tax due for the look-back period must be paid within 60
6 calendar days of the secretary's signing date of the voluntary disclosure agreement or
7 within any extension of time authorized by the secretary beyond 60 calendar days of the
8 signing date. All schedules or returns required by the secretary to show the amount of tax
9 due must be included with this payment.

10 2. The secretary shall compute the interest due for the tax disclosed by the
11 applicant and send a schedule by mail or email to the applicant or his representative
12 showing the amount of tax and interest due. The applicant must submit payment of the full
13 amount of the interest within 30 calendar days from the postmark or e-mail date of the
14 schedule or, if applicable, within any extension of time granted by the secretary. If
15 payment of the full amount due has not been received at the expiration of such time, the
16 secretary may void the agreement.

17 F. The terms of the voluntary disclosure agreement shall be valid, binding, and
18 enforceable by and against all parties, including their transferees, successors, and
19 assignees.

20 G. The secretary reserves the right to void the voluntary disclosure agreement if
21 the applicant fails to comply with any of the conditions outlined in the agreement.

22 Section 5. This Act shall become effective upon signature by the governor or, if not
23 signed by the governor, as provided by Article III, Section 18 of the Constitution of
24 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this
25 Act shall become effective on the day following such approval.