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TITLE 45 DEPARTMENT OF STATE REVENUE

LSA Document #05-273(E)

DIGEST

Temporarily adds provisions to explain and implement the Tax Amnesty Program as contained in HEA 1004-2005. Repeals LSA Document #05-188(E), printed at 28 IR 3585. Authority: HEA 1004-2005, SECTION 4. Effective September 9, 2005.

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

(b) “Amnesty period” means the period of September 15, 2005, through November 15, 2005, when a taxpayer can elect to take advantage of the provisions contained in IC 6-8.1-3-17.

(c) “Department” means the department of state revenue.

(d) “Due and payable” means:

(1) the department has issued an assessment of the listed tax and demand for payment under IC 6-8.1-5-3;

(2) the department has issued a demand notice for payment of the listed tax under IC 6-8.1-8-2;

(3) the taxpayer has filed a return or an amended return in which the taxpayer has reported a liability for the listed tax;
or

(4) the taxpayer has filed a written statement of liability in the form of an original return for the tax period and has filed an amnesty agreement with the department for the listed tax.

(e) “Listed taxes” means the taxes and fees described in IC 6-8.1-1-1 as in effect on May 12, 2005.

(f) “Taxpayer” means an individual, corporation, trust, estate, financial institution, insurance company, or a partner, shareholder, or member of a pass through entity.

(g) For purposes of liabilities assessed against an individual officer or employee under IC 6-2.5-9-3, IC 6-3-4-8, or IC 6-6-2.5-38, “taxpayer” shall collectively refer to all such individuals who have been assessed as well as the entity that is responsible for collection and remittance of such taxes.

(h) For purposes of liabilities 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.

(i) For purposes of IC 6-3-4-8.5, “taxpayer” shall collectively refer to the entity that incurred the initial tax liability and the transferee of property subject to tax under IC 6-3-4-8.5.

(j) “Tax period” means a reporting period ending on or before June 30, 2004.

SECTION 2. The inheritance tax, estate tax, and generation skipping tax are not subject to the provisions of the amnesty program.

SECTION 3. (a) The department shall establish an amnesty program that applies to unpaid tax liabilities for listed taxes that are due and payable for a tax period ending before July 1, 2004.

(b) Individuals with unpaid individual income tax liabilities are eligible for amnesty if the liability is for a taxable year ending on or before June 30, 2004. This applies to liabilities that are outstanding and due for resident individuals, partial year residents, and nonresidents.

(c) Taxpayers who are liable for sales and withholding taxes for tax periods ending on or before June 30, 2004, are eligible for amnesty on those outstanding liabilities.

(d) Corporations with unpaid tax liabilities are eligible for amnesty if the liability is for a tax period ending on or before June 30, 2004.

(e) Taxpayers that filed a tax return for an amnesty eligible tax period, 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 the base tax that is due.

(f) Taxpayers that have not filed a tax return, or paid taxes for an amnesty eligible tax period, and 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 the base tax that is due.

SECTION 4. (a) The amnesty period is from September 15, 2005, up to and including November 15, 2005.

(b) No extensions of payments are permitted unless the taxpayer has established a payment plan with the department under SECTION 10 of this document.

(c) A payment received by the department before September 15, 2005, for an amnesty eligible tax period is not eligible for the abatement of penalties, interest, and costs, and fees under SECTION 7 of this document.

SECTION 5. (a) Except as provided in SECTION 6 of this document, a taxpayer with an eligible outstanding tax liability that is due and payable to the department for an eligible tax period is eligible to participate in the amnesty program.

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

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

(d) A taxpayer that negotiated a payment plan on or prior to May 12, 2005, with the department, a sheriff, collection attorney, or collection agency is eligible to participate in the amnesty program.

SECTION 6. A tax liability incurred because of a taxpayer's failure to add back the riverboat wagering tax to federal adjusted gross income or federal taxable income of the taxpayer is not eligible for the amnesty program. This includes the entity's distributive income passed through to its partners, shareholders, or other members of a pass through entity. The exclusion includes any income taxes attributable to the addback for which a pass through entity is responsible for withholding on behalf of nonresident shareholders or partners.

SECTION 7. (a) A taxpayer that elects to voluntarily take advantage of the amnesty program in a timely manner and complies with all requirements of the department concerning the amnesty program has the assurance that:

- (1) 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;
- (2) the department shall release any liens that are imposed after the full amount of the applicable tax liability is paid;
- (3) 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 only applies to tax liabilities that are included in the amnesty program; and
- (4) the department shall not issue or if issued shall withdraw an assessment, a demand notice, or a warrant for payment for liabilities paid under the amnesty program.

(b) A taxpayer that has an outstanding tax liability for taxes related to the International Fuel Tax Agreement (IFTA) that participates in the amnesty program will have penalty and interest abated for the Indiana portion of penalty and interest assessed. The IFTA prohibits Indiana from eliminating another state's penalty and interest assessment.

SECTION 8. (a) A taxpayer that participates in the amnesty program is not eligible to participate in any future amnesty program.

(b) The provision contained in subsection (a) does not apply to an amnesty agreement entered into under Section 402 of the Streamlined Sales and Use Tax Agreement.

SECTION 9. (a) A taxpayer that fails to pay the department the full amount of base tax for a listed tax that is due and payable for a tax period shall have the amnesty agreement voided and will be subject to all penalties, including the additional penalty provided in SECTION 11 of this document, and interest and costs related to the listed tax for the tax period that would be incurred if the taxpayer had not participated in the amnesty program.

(b) Any liability that is not eligible for the amnesty program will not be subject to the additional penalty provided in SECTION 11 of this document.

SECTION 10. (a) A taxpayer that enters into an amnesty payment plan shall comply with a written agreement stating the requirements of the payment plan.

(b) An amnesty payment plan agreement that is entered into by the taxpayer and the department shall require that the full amount of base tax due as established in the agreement must be remitted by June 15, 2006.

(c) 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).

(d) If the amnesty payment plan agreement is entered into on or before September 30, 2005, the taxpayer is required to pay twenty percent (20%) of the base tax due at the time of signing the agreement and ten percent (10%) of the base tax on the fifteenth of each month beginning on November 15, 2005, until the balance is paid in full.

(e) If the amnesty payment plan agreement is entered into after September 30, 2005, and on or before November 15, 2005, the taxpayer is required to pay thirty percent (30%) of the base tax due at the time of signing the agreement and ten percent (10%) of the base tax on the fifteenth of each month beginning on December 15, 2005, until the balance is paid in full.

(f) A taxpayer may pay more than the minimum monthly payment provided in the amnesty payment plan agreement.

(g) Payments received that are less than the minimum monthly payment amount provided in the payment plan agreement shall result in default of the amnesty agreement.

SECTION 11. (a) A taxpayer that fails to participate in the amnesty program or does not pay the entire base tax liability for a tax period that is due and payable for a tax period ending before July 1, 2004, shall be assessed a penalty that is double the amount of the penalty originally assessed.

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

- (1) the full amount of tax due if the taxpayer fails to file a return;**
- (2) the amount of tax not paid if the taxpayer fails to pay the full amount of tax shown on the taxpayer's return;**
- (3) the amount of tax held in trust that is not timely remitted;**
- (4) the amount of deficiency as finally determined by the department; or**
- (5) the amount of tax due if the taxpayer fails to remit a payment by electronic funds transfer.**

(c) The penalty that is originally assessed is equal to twenty percent (20%) if the taxpayer fails to withhold tax for nonresident shareholders that are shareholders in an S Corporation.

(d) The penalty that is originally assessed on a return 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).

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

(f) The penalty that is 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%).

(g) The penalty that is originally assessed for a check where the department is unable to obtain payment on the check when the check is presented for payment through normal banking channels is one hundred percent (100%) of the face value of the check if the taxpayer fails to make the payment by check, certified check, or other guaranteed payment within ten (10) days of being notified by the department that the check has been dishonored.

(h) The penalty that is originally assessed for failure to file an information return (Schedule K-1 of Form IT-20S, IT-41, or IT-65) 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, IT-20SC, IT-41, or IT-65.

(i) The penalty that is 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.

(j) The penalty that is 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.

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

SECTION 12. The provision for doubling the penalty as contained in SECTION 11 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 11 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) Either:
 - (A) the tax court enjoins collection of the penalty or the tax on which the penalty is based; or
 - (B) the department consents to an injunction against collection of the penalty or tax without entry of an order by the tax court.

SECTION 13. The provision for doubling the penalty as contained in SECTION 11 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, 2005; or
- (3) the taxpayer proves that the taxpayer did not ever receive notice of the outstanding tax liability.

SECTION 14. (a) A taxpayer that has a legitimate hold on making a payment or had established a payment plan with the department by May 12, 2005, may participate in the amnesty program and have penalty, interest, and costs waived by the department.

(b) A taxpayer that claims they never received the notice described in SECTION 15 of this document must prove that the taxpayer never resided or never operated a business at the address to which the notification of the amnesty program was mailed.

SECTION 15. (a) All taxpayers that are eligible for amnesty that have an outstanding tax liability for a listed tax that is due and payable will be notified by first class mail between August 15, 2005, and September 15, 2005, 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 outstanding tax liabilities that qualify for amnesty by tax type and tax period.

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

SECTION 16. (a) A taxpayer desiring to take advantage of the amnesty program can pay the base tax due by mailing to the department the amount of tax due.

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

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

SECTION 17. (a) A taxpayer that participates in the amnesty program must agree to all provisions contained in SECTIONS 7 through 9 of this document. The taxpayer acknowledges all terms of the agreement when they sign the coupon that is to be sent to the department when the taxpayer pays the liability.

(b) A taxpayer that remits and agrees to amnesty through the department's amnesty Web site by clicking on the "I accept the terms of the agreement" checkbox is consenting to the amnesty agreement.

SECTION 18. (a) A taxpayer agreement is completed when the taxpayer signs the amnesty agreement and returns the amnesty payment coupon to the department, or files amended returns to report a previous tax deficiency, or files an initial return if the taxpayer had failed to file and remit for amnesty eligible tax periods.

(b) 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.

SECTION 19. A prerequisite to participation in the amnesty program requires the taxpayer to:

- (1) pay the full amount of a tax liability for a tax period;**
- (2) relinquish all rights to protest a tax liability that is being paid; and**
- (3) agree not file a claim for refund of the tax paid.**

SECTION 20. (a) A taxpayer that has multiple tax liabilities that are eligible for the tax amnesty program 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 21. Any overpayment by a taxpayer during the amnesty period for an amnesty eligible liability that is a computational error may be refunded to the taxpayer at the department's discretion. If the overpayment is not refunded, it shall be credited to the taxpayer.

SECTION 22. If a taxpayer properly protests a proposed assessment of the department, the tax liability protested is eligible for the amnesty program.

SECTION 23. (a) A taxpayer that 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.

(c) A taxpayer that files a return reporting zero (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.**

SECTION 24. (a) A taxpayer that established a payment plan with the department on or before May 12, 2005, is eligible to participate in the amnesty program.

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

(c) The taxpayer, upon approval of the department, may establish an amnesty payment plan and shall conform to the requirements of SECTION 10 of this document.

(d) If the taxpayer 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.

SECTION 25. (a) A payment by a taxpayer that is 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 under reporting of a tax liability for the tax period.

(b) A taxpayer that 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 26. (a) A taxpayer that has established a payment plan with a sheriff, collection attorney, or collection agency will discontinue making payments as of June 15, 2005, and will be eligible for the tax amnesty program.

(b) A taxpayer that had been on a payment plan will receive an amnesty packet from the department before the amnesty program begins.

(c) A taxpayer may elect to pay the remaining balance to the department during amnesty, and all remaining penalties, interest, and costs will be waived.

(d) If the taxpayer 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.

SECTION 27. LSA Document #05-188(E) IS REPEALED.

SECTION 28. This document expires December 31, 2006.

LSA Document #05-273(E)

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