

SENATE BILL NO. 244 (Substitute of Senate Bill No. 92 by Senator Luneau)

BY SENATOR LUNEAU

1 AN ACT

2 To enact Part XIII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of 1950, to
3 be comprised of R.S. 23:1771 through 1776, relative to employee misclassification;
4 to provide relative to the failure to pay contributions; to provide for definitions; to
5 facilitate voluntary resolution of worker classification issues; to enact the Fresh Start
6 Proper Worker Classification Initiative and the Louisiana Voluntary Disclosure
7 Program; to require the Louisiana Workforce Commission to promulgate rules; to
8 provide for the disposition of penalties; to provide a safe harbor; to provide for an
9 effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part XIII of Chapter 11 of Title 23 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 23:1771 through 1776, is hereby enacted to read as follows:

13 **Part XIII. FRESH START PROPER WORKER CLASSIFICATION**

14 **INITIATIVE AND VOLUNTARY DISCLOSURE PROGRAM**

15 **§1771. Definitions**

16 **A. For the purposes of this Part, the following terms have the meanings**
17 **ascribed to them:**

18 **(1) "Applicant" means any association, corporation, estate, firm,**
19 **individual, joint venture, limited liability company, partnership, receiver,**
20 **syndicate, trust, or any other entity, combination, or group that submits or**

1 arranges through a representative for the submission of an application to
2 request a voluntary disclosure agreement for a tax administered by the
3 department. If the application is submitted through a representative, anonymity
4 of the applicant can be maintained until the voluntary disclosure agreement is
5 executed by the taxpayer and the secretary of the Louisiana Workforce
6 Commission.

7 (2) "Application" means a completed application to request a voluntary
8 disclosure agreement and all supplemental information including but not
9 limited to cover letters, schedules, reports, and any other documents that
10 provide evidence of the applicant's qualification for a voluntary disclosure
11 agreement. Supplemental information requested by the Louisiana Department
12 of Revenue and Louisiana Workforce Commission and timely provided by the
13 applicant shall be considered part of the application.

14 (3) "Application date" means the date a fully completed application
15 requesting a voluntary disclosure agreement is received by the department.
16 Supplemental information requested by the department and timely provided by
17 the applicant shall not extend or delay the application date.

18 (4) "Delinquent penalty" means any specific penalty imposed as a result
19 of the failure of the taxpayer to timely make any required return or payment.

20 (5) "Look-back period" means a period for which a qualified applicant
21 agrees to disclose and pay the tax and interest due. The look-back period shall
22 include the current calendar year up to the date of registration with the
23 Louisiana Department of Revenue and Louisiana Workforce Commission and
24 the one immediately preceding calendar year. For discontinued, acquired, or
25 merged entities, the look-back period shall include undisclosed liabilities in the
26 last calendar year in which the qualified applicant had nexus within this state
27 and the one immediately preceding calendar year.

28 §1772. The Fresh Start Proper Worker Classification Initiative

29 A. The Fresh Start Proper Worker Classification Initiative is optional
30 and provides a taxpayer with an opportunity to voluntarily reclassify his worker

1 as an employee for a future tax period. To be eligible, a taxpayer shall meet all
2 of the following requirements:

3 (1) Apply to the Fresh Start Proper Worker Classification Initiative
4 between January 1, 2022, and December 31, 2022.

5 (2) Produce a certificate of proof of workers' compensation coverage for
6 the employee.

7 (3) Enter into a closing agreement with the Louisiana Workforce
8 Commission and the Louisiana Department of Revenue.

9 B. The Fresh Start Proper Worker Classification Initiative applies to
10 taxpayers that are currently treating their workers as independent contractors
11 or other nonemployees and want to prospectively treat the workers as
12 employees. To be eligible, a taxpayer shall have consistently treated the workers
13 for the previous three years as nonemployees, and shall have filed any required
14 Form 1099-NEC with the Internal Revenue Service with respect to those
15 workers, consistent with the nonemployee treatment.

16 C. An eligible taxpayer that participates in the Fresh Start Proper
17 Worker Classification Initiative agrees to prospectively treat the class or classes
18 of workers identified in the application as employees for future tax periods and
19 is not liable for any withholding tax, unemployment tax, interest, or penalties
20 with respect to any amounts paid to any workers before the date on which the
21 taxpayer is accepted for participation in the Fresh Start Proper Worker
22 Classification Initiative.

23 D.(1) An eligible taxpayer that wishes to participate in the Fresh Start
24 Proper Worker Classification Initiative shall submit an application for
25 participation in the program to the Louisiana Department of Revenue. The
26 Louisiana Department of Revenue shall contact the taxpayer or authorized
27 representative to complete the process once it has reviewed the application and
28 verified the taxpayer's eligibility.

29 (2) An accepted application constitutes a joint closing agreement between
30 the taxpayer and the Louisiana Department of Revenue and the Louisiana

1 **Workforce Commission.**

2 **(3) The closing agreement shall constitute confirmation by the taxpayer**
3 **to treat the class or classes of workers identified in the application as employees.**

4 **(4) The closing agreement becomes effective on the date that the taxpayer**
5 **receives notice from the Louisiana Department of Revenue that the taxpayer's**
6 **application is accepted.**

7 **E. The employers identified in this Subsection shall not be eligible to**
8 **participate in the program:**

9 **(1) Employers who are currently under audit concerning the**
10 **classification of the classes of workers by the Internal Revenue Service, the**
11 **United States Department of Labor, or by a state government entity.**

12 **(2) Employers who are contesting in court the classification of the class**
13 **or classes of workers from a previous audit by the Internal Revenue Service, the**
14 **United States Department of Labor, the Department of Revenue, or the**
15 **Louisiana Workforce Commission.**

16 **(3) Employers who have withheld Louisiana state income taxes from the**
17 **amounts paid to any worker and who have not remitted the tax to the Louisiana**
18 **Department of Revenue.**

19 **(4) For the purposes of Paragraphs (1) and (2) of this Subsection, a**
20 **taxpayer that is a member of an affiliated group within the meaning of Section**
21 **1504(a) of the Internal Revenue Code if any member of the affiliated group is**
22 **under an employment, withholding, or unemployment tax audit.**

23 **F. The Louisiana Department of Revenue shall have the authority to**
24 **promulgate rules and regulations for the administration of the Fresh Start**
25 **Proper Worker Classification Initiative.**

26 **§1773. The Louisiana Voluntary Disclosure Program**

27 **A.(1) The Louisiana Voluntary Disclosure Program is established as a**
28 **process of reporting undisclosed liabilities for withholding taxes administered**
29 **by the Department of Revenue and unemployment taxes administered by the**
30 **Louisiana Workforce Commission that would have been due for workers who**

1 were not classified as employees. The Voluntary Disclosure Program authorizes
2 taxpayers to anonymously enter into agreements and voluntarily pay taxes with
3 no penalty.

4 (2) In order to be admitted to the program, an employer shall obtain and
5 produce a certificate proving he has obtained workers' compensation coverage
6 for his employees.

7 B. The Louisiana Workforce Commission, in consultation with the
8 Department of Revenue shall promulgate rules and regulations necessary for
9 the administration of the Louisiana Voluntary Disclosure Program.

10 §1774. Voluntary Disclosure Agreements; withholding tax

11 A. (1) After the secretary of the Louisiana Department of Revenue has
12 reviewed the application and determined from the information included that the
13 applicant qualifies for a voluntary disclosure agreement, the secretary of the
14 Louisiana Department of Revenue shall send a copy of the agreement to the
15 applicant or the applicant's representative for signature.

16 (2) The applicant or applicant's representative, acting under the
17 authority of a power of attorney, shall sign the agreement and return it to the
18 secretary of the Louisiana Department of Revenue within thirty calendar days
19 of the postmark or email date, or within any extension of time authorized by the
20 secretary of the Louisiana Department of Revenue beyond thirty calendar days
21 from the postmark or email date.

22 (3) After the signed agreement is received from the applicant, the
23 secretary or his authorized representative shall sign the agreement and return
24 a copy of the agreement which has been signed by both parties to the applicant.

25 (4) After all tax and interest due for the look-back period have been paid,
26 the delinquent penalties shall be waived, unless the tax disclosed was collected
27 but not remitted. Where the tax was collected but not remitted, the secretary of
28 the Louisiana Department of Revenue may consider waiving payment of the
29 whole or any part of the delinquent penalties on a case-by-case basis.

30 B. All tax due for the look-back period, which shall exclude any tax that

1 was reported on an individual income tax return filed by any worker in the class
2 or classes of workers identified in the application as verified by the Department
3 of Revenue, shall be paid within sixty calendar days of the secretary's signing
4 date of the voluntary disclosure agreement or within any extension of time
5 authorized by the secretary beyond sixty calendar days of the signing date. All
6 schedules or returns required by the secretary to show the amount of tax due
7 shall be included with this payment.

8 C. The secretary shall compute the interest due for the tax disclosed by
9 the applicant and send a schedule by mail or email to the applicant or his
10 representative showing the amount of tax, interest, and delinquent penalty due.
11 The applicant shall submit payment of the full amount of the interest not
12 remitted or waived within thirty calendar days from the postmark or email date
13 of the schedule or, if applicable, within any extension of time granted by the
14 secretary. If payment of the full amount due has not been received timely, the
15 secretary may void the agreement.

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

19 E. The secretary may void a voluntary disclosure agreement if the
20 applicant fails to comply with any of the conditions outlined in the agreement.

21 §1775. Voluntary Disclosure Agreements; unemployment tax

22 A. (1) After the administrator has reviewed the application and
23 determined from the information included therein that the applicant qualifies
24 for a voluntary disclosure agreement, the administrator shall send a copy of the
25 agreement to the applicant or the applicant's representative for signature.

26 (2) The applicant or applicant's representative, acting under the
27 authority of a power of attorney, shall sign the agreement and return it to the
28 administrator within thirty calendar days of the postmark or email date, or
29 within any extension of time authorized by the administrator beyond thirty
30 calendar days from the postmark or email date.

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

5 (4) The administrator shall credit the account of all workers identified
6 by the applicant in the application for unemployment benefits with respect to
7 the look-back period.

8 B. After all unemployment tax and interest due for the look-back period
9 have been paid, the delinquent penalties shall be waived.

10 C.(1) All unemployment tax due for the look-back period shall be paid
11 within sixty calendar days of the administrator's signing date of the voluntary
12 disclosure agreement or within any extension of time authorized by the
13 administrator beyond sixty calendar days of the signing date. All schedules or
14 returns required by the administrator to show the amount of tax due shall be
15 included with this payment.

16 (2) The administrator shall compute the interest due for the tax disclosed
17 by the applicant and send a schedule by mail or email to the applicant or his
18 representative showing the amount of tax and interest due. The applicant shall
19 submit payment of the full amount of the interest within thirty calendar days
20 from the postmark or email date of the schedule or, if applicable, within any
21 extension of time granted by the administrator. If payment of the full amount
22 due has not been received at the expiration of such time, the administrator may
23 void the agreement.

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

27 E. The administrator may void the voluntary disclosure agreement if the
28 applicant fails to comply with any of the conditions outlined in the agreement.

29 §1776. Safe harbor

30 Any putative employer meeting the requirements provided in this

1 Section shall not owe withholding tax or penalties otherwise due for
2 underpayment of any unemployment taxes for the workers to whom these
3 requirements apply:

4 (1) Reporting consistency. The putative employer timely filed all
5 required federal tax and information returns for independent contractors who
6 were paid six hundred dollars or more, such as Form 1099-MISC or Form
7 1099-NEC. Relief is not available for any worker for whom the employer did
8 not file the required information return.

9 (2) Substantive consistency. The putative employer and any predecessor
10 always treated the worker as an independent contractor; however, if any similar
11 worker was treated as an employee, relief is not available.

12 (3)(a) Reasonable basis. The putative employer had a reasonable basis
13 for not treating the worker as an employee including any of the following:

14 (i) Reliance on a court case or Internal Revenue Service ruling.

15 (ii) The putative employer was previously audited and the Internal
16 Revenue Service considered employment taxes but did not reclassify the
17 workers.

18 (iii) Independent contractor treatment is common in the putative
19 employer's industry for workers providing similar services.

20 (iv) The putative employer and any predecessor always treated the
21 worker as an independent contractor.

22 (v) Reliance on legal advice or advice of an accountant.

23 (b) Notwithstanding any contrary provision of this Paragraph, if any
24 similar worker was treated as an employee, relief is not available.

25 Section 2. The provisions of this Act shall not apply to any person or organization
26 licensed by the Louisiana Department of Insurance, any securities broker-dealer, or any
27 investment adviser or its agents and representatives who are registered with the Securities
28 and Exchange Commission or the Financial Industry Regulatory Authority or licensed by
29 this state.

30 Section 3. This Act shall become effective on January 1, 2022; if vetoed by the

1 governor and subsequently approved by the legislature, this Act shall become effective on
2 January 1, 2022, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____