

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Income and Franchise Tax (LAC 61:I.4907)

Under the authority of R.S.47:1576 and R.S.47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61.I.4907.

The primary purpose of this proposed regulation is to amend LAC 61:I.4907 relative to changes resulting from Act 198 of the 2014 Regular Session of the Louisiana Legislature and to more accurately align the regulation with the provisions of R.S. 47:1576.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered By the Secretary of Revenue

#### Chapter 49. Tax Collection

#### §4907. Remittance of Tax under Protest, Suits or Petitions to Recover

A. Except as provided in R.S. 47:1576(A)(1)(b), any taxpayer protesting the payment of any amount found due by the secretary or the enforcement of any provision of the tax laws in relation thereto, shall remit to the Department of Revenue the amount due, including tax, interest and penalties. At such time, the taxpayer must give notice of its intention to either: file suit in district court; or file a petition at the Board of Tax Appeals for the recovery of such tax. Accordingly, amounts remitted to the department must be deemed at the time remitted as a payment under protest by including notice of intention to either: file suit in district court; or file a petition at the Board of Tax Appeals for recovery of such tax.

1. Overpayments of income tax designated on the prior year's return as an amount of overpayment to be credited to the next year's return cannot be designated as payment under protest.

2. Pending claims for refund cannot be designated as payment under protest.

B. The taxpayer has 30 days from the date of notice to the Department of Revenue of the intention to file suit or petition for recovery of tax paid under protest to file a suit or petition for the recovery of such tax. However, in instances when the payment of tax under protest is required before the amount of tax due is determinable, the taxpayer has 30 days from the due date of the return or the extended due date of the return to file suit or petition for recovery of the taxes paid under protest.

C. There shall be no penalty for underpayment of estimated tax with regard to amounts paid under protest and such amounts paid under protest shall not be due until the due date of the return without regard to extensions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1576.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Division, LR 22:1230 (December 1996), amended by the Department of Revenue, Policy Services Division, LR 40:

#### Family Impact Statement

The proposed amendment of LAC 61:I.4907, regarding remittance of tax under protest, suits or petitions to recover,

should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

#### Poverty Impact Statement

The proposed amendment will have no impact on poverty as described in R.S. 49:973.

#### Provider Impact Statement

The proposed amendments will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Brad Blanchard, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., Monday, October 27, 2014.

#### Public Hearing

A public hearing will be held on Tuesday, October 28, 2014, at 10 a.m. in the Magnolia Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Tim Barfield

Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Income and Franchise Tax

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed amendment disallows carryforward overpayments and pending claims for refunds (presumably including tax credits) to be used as payments under protest. This change will match the accounting of moneys placed in escrow to specific payments, which is expected to reduce workload by an indeterminable immaterial amount and increase the accuracy of tracking payments under protest. No additional costs are expected to result from this proposal. Local governmental units are not affected by this proposal.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule amendments will primarily codify current Department procedures regarding payments under protest, except the disallowance of carryforward overpayments as payment under protest, which was previously allowed. This proposal will not affect revenue collections since it only affects the form of payment, not the amount. It is not expected that taxpayer decisions regarding whether or not to pay a disputed

amount under protest will be affected by the proposed amendments to this rule since any outstanding carryforward overpayment—will continue to be available to the taxpayer. Thus, the proposed amendment is an accounting simplification for tracking payments under protest by having the taxpayer make readily identifiable payments instead of re-designating overpayments from one or multiple sources. This proposed amendment should have no impact on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Taxpayers designating income tax overpayment carryforwards as payments under protest will be affected by this proposal. These taxpayers will incur the costs of making payment by check or electronic means, though they retain the ability to utilize the carryforward overpayment funds through those means (only the payment designation is being removed, not the funds). Taxpayers may also benefit from the ability to more readily identify and/or confirm specific payments made under protest. Any costs or economic benefits to affected persons are expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

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