

period beginning on the due date of the first delinquent return or schedule.

b. In the case of failure to timely remit any payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be 5 percent of the total payment due if the delinquency is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which the delinquency continues, not to exceed 50 percent of the amount due.

E. Based on R.S. 47:1604.1, any taxpayer who fails to comply with the tax laws of this state or understates tax liability by ten percent or more, under circumstances indicating a careless or reckless disregard of rules and regulations, but with no voluntary intent to defraud, may cause a penalty to be imposed, in addition to any other penalties provided, of 20 percent of the tax or deficiency found to be due.

1. The penalty provided for pursuant to this Paragraph shall not be applicable if a taxpayer's understatement was due to reasonable cause where the taxpayer acted in good faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:100.1, R.S. 47:101(A)(3), R.S. 47:295, R.S. 47:1511, R.S. 47:1602.1, and R.S. 47:1604.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:98 (January 2002), amended LR 34:446 (March 2008), amended LR 48:507 (March 2022).

§1306. Offset of Individual Income Tax Refunds against Debts Owed Certain Persons

A. The claimant must submit a written offset claim with a certified copy of the judgment that makes past-due payments under a child-support award executory. The claim must be submitted before participation in the program and by December 1 each year thereafter. After the first year of participation, a copy of the claim and judgment can be submitted if the information requested in Subsection B has not changed.

B. For each offset claim, the claimant must provide the following information:

1. the name of the debtor;
2. the amount of offset claimed;
3. the Social Security number of the debtor;
4. the most current address of the debtor available to the claimant; and
5. any additional information requested that will facilitate identification of the debtor and processing of the offset claim.

C. Remittances will be made to the claimant within three months after the debtor has waived the right to contest the offset or final disposition by the claimant or by a court.

D. A fee for processing the claim will be withheld from each refund issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:299.34.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:42 (January 2003).

§1311. Annual Retirement Income Exemption for Individuals 65 or Older

A. Louisiana Revised Statutes 47:44.1 provides an exemption of up to \$6,000 for annual retirement income received by an individual who is 65 years of age or older. Only the individual who actually received the annual retirement income is entitled to the exemption.

Annual Retirement Income—pension and annuity income which is included in tax table income.

Tax Table Income—as defined in R. S. 47:293.

B. For purposes of determining the total annual retirement income exemption that can be claimed on a Louisiana individual income tax return, an individual receives annual retirement income as follows.

1. Receipt of Benefits Paid from a Pension Plan. Except as otherwise provided herein, only the plan participant receives annual retirement income from the pension plan, the non-participant spouse does not receive annual retirement income from the plan.

2. Receipt of Annuity Income. Only the named payee or named annuitant receives annual retirement income from an annuity.

3. Receipt of Income from an Individual Retirement Account. Only the named payee or distribute receives annual retirement income from an individual retirement account.

4. Exceptions

a. If there is a qualified domestic relations order, as defined in *Internal Revenue Code* Section 414(p), payments received by the alternate payee will be considered annual retirement benefits received by an individual.

b. Survivor benefits paid from a pension plan to the plan participant's surviving spouse will be considered annual retirement benefits received by an individual.

C. Examples

1. Mary and John are a married couple. Mary worked for X Corporation for 35 years from 1964 until she retired in 1999. While working for X Corporation, Mary participated in the corporation's pension plan. In 2005, Mary received a total of \$30,000 in distributions from the X Corporation pension plan. John's only source of retirement income is federal Social Security, which is not included in the couple's tax table income because it is already exempt under R.S. 47:44.2. Mary and John's filing status for federal and state income tax is married filing joint and they are both over 65.

Because only Mary receives annual retirement income, Mary and John may only exempt \$6,000 of Mary's retirement income from their 2005 income taxes under this exemption. Because John is not the plan participant, he has not received any annual retirement income for purposes of the exemption.

2. Scott and Ellen are a married couple. Their filing status for federal and state income tax is married filing joint and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive. Scott worked for ABC Corporation for 35 years from 1964 until he retired in 1999 at the age of 65. While working for ABC Corporation, Scott participated in the corporation's pension plan. In 2005, Scott received a total of \$30,000 in distributions from the ABC Corporation pension plan. Ellen has two sources of retirement income; federal Social Security that is already exempt under R.S. 47:44.2 and an annuity paid to her as the named annuitant in the amount of \$4,000 annually. Scott may exempt \$6,000 of his ABC Corporation pension income and Ellen may exempt all of her \$4,000 annuity income for a combined exemption of \$10,000.

3. Alan and Leslie are a married couple who do not live apart. Their filing status for federal and state income tax is married filing separate and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive on their married filing separate returns. Alan is the named annuitant of an annuity from which he receives annual retirement income of \$10,000. Leslie is not yet retired and receives a salary, but no annual retirement income. Alan's annuity income and Leslie's salary are community property. Because Louisiana is a community property state and the couple has chosen not to file a joint return, Leslie must report one half of Alan's annuity income, or \$5,000, on her married filing separate federal and state income tax returns. Because Leslie is not the named annuitant, she has not received annual retirement income for purposes of the exemption and cannot claim any exemption amount on her return. Because Alan is only reporting \$5,000 of his annuity income on his federal and state income tax returns, he is only entitled to an exemption of \$5,000.

4. Assume the same facts as in Example 3 except that Alan and Leslie have a separation of property agreement. Each spouse will therefore report his or her own items of income and loss on his or her own married filing separate return. Alan will report the entire amount of his annuity income and will be entitled to exempt \$6,000 of the \$10,000 of annual retirement income he receives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:44.1, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 32:259 (February 2006).

§1312. Net Capital Gains Deduction

A. General. R.S. 47:293(9)(a)(xvii) and (10) provide a deduction for resident individuals and nonresident individuals ("taxpayers"), respectively, for net capital gains resulting from the sale or exchange of an equity interest in, or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization ("business") commercially domiciled in Louisiana.

B. Definitions

Capital Gains from the Sale or Exchange of the Assets of a Business—capital gains from sales and exchanges that are reported on Federal Form 4797—Sales of Business Property, the gains from which are reportable on Schedule D of Federal Form 1040.

Commercial Domicile—the principal place from which the business is directed or managed.

Controlled Entities—with respect to a business or taxpayer

a. a corporation in which more than 50 percent of the value of the outstanding stock is owned (directly or indirectly) by or for the taxpayer or business,

b. a partnership in which more than 50 percent of the capital interest or profits interest is owned (directly or indirectly) by or for the taxpayer or business, and

c. any entity which is a related person to the taxpayer or business pursuant to paragraph (3), (10), (11), or (12) of 26 U.S.C § 267(b).

Equity Interest—an ownership interest in a business that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company.

Net Assets—the total value of gross assets after deducting liabilities reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year.

Net Capital Gains—the amount reported as capital gains on the Federal Form 1040.

Gross Assets—the total value of assets reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year without regard to location of the assets and excluding any negative values reported on Lines 1-13.

Related Party—

a. a business or taxpayer and all entities which are controlled entities with respect to such business or taxpayer;

b. a business or taxpayer and any trust in which such business or taxpayer (or his spouse) is a beneficiary, unless