

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Voluntary Disclosure Agreements (LAC 61:III.2103)

Under the authority of R.S. 47:1502, R.S. 47:1511, R.S. 47:1603(A), as amended by Act 198 of the 2014 Regular Session of the Louisiana Legislature, effective July 1, 2014, 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 adopt LAC 61:III.2103.

Act 198 of 2014 Regular Session of the Louisiana Legislature amended and reenacted R.S. 47:1603(A) to provide with respect to the authority of the secretary of the Department of Revenue to collect and enforce the collection of taxes. For purposes of promoting the effective administration of the tax laws of this State, Act 198 specifically authorizes the secretary to promulgate rules and regulations concerning the waiver of penalties, including but not limited to the establishment of a voluntary disclosure program. To that end the Department of Revenue proposes to adopt this Rule to encourage unregistered business entities and persons who are subject to Louisiana tax or tax collection responsibilities to voluntarily contact the department regarding their unreported Louisiana tax liabilities.

The proposed Rule clarifies the meaning of the phrase “voluntary disclosure agreement” as that term is used in R.S. 47:1580(C)(2) and R.S. 47:1603(A)(2). Additionally, it sets forth the conditions under which an applicant may qualify for a voluntary disclosure agreement, the process for entering into a voluntary disclosure agreement with the Department of Revenue, and the requirements that must be complied with in order for the Department of Revenue to remit or waive payment of the whole or any part of the penalties under a valid voluntary disclosure agreement.

#### Title 61

#### REVENUE AND TAXATION

#### Part III. Administrative Provisions and Miscellaneous

#### Chapter 21. Interest and Penalties

#### §2103. Voluntary Disclosure Agreements

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

*Applicant*—any association, corporation, estate, firm, individual, joint venture, limited liability company, partnership, receiver, syndicate, trust, or any other entity, combination or group that submits or arranges through a representative for the submission of an application to request a voluntary disclosure agreement for a tax administered by the department. If the application is submitted through a representative, anonymity of the applicant can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the secretary.

*Application*—a completed “Application to Request Voluntary Disclosure Agreement” (Form R-60010) or an “Application for Multistate Voluntary Disclosure” filed with the Multistate Tax Commission’s National Nexus Program and all supplemental information including, but not limited to, cover letters, schedules, reports, and any other documents that provide evidence of the applicant’s qualification for a voluntary disclosure agreement. Supplemental information

requested by the department and timely provided by the applicant shall be considered part of the application.

*Application Date*—the date a fully completed application requesting a voluntary disclosure agreement is received by the department. Supplemental information requested by the department and timely provided by the applicant shall not extend or delay the application date.

*Delinquent Penalty*—any specific penalty imposed pursuant to R.S. 47:1603 or 1604.1 as a result of the failure of the taxpayer to timely make any required return or payment.

*Department*—the Louisiana Department of Revenue.

*Look-Back Period*—a period for which a qualified applicant agrees to disclose and pay the tax and interest due. The *look-back period* shall be as follows.

a. Except for taxes collected and not remitted, the *look-back period* shall include the current calendar year up to the date of registration with the department and the three immediately preceding calendar years.

b. For taxes collected and not remitted, the *look-back period* shall include all periods in which tax was collected and not remitted. This *look-back period* shall not affect the *look-back period* described in Subparagraph a of this Paragraph for undisclosed liabilities unrelated to tax collected and not remitted.

c. For discontinued, acquired, or merged entities, the *look-back period* shall include undisclosed liabilities in the last calendar year in which the qualified applicant had nexus within this state and the three immediately preceding calendar years.

d. The secretary and the applicant may agree to adjust a *look-back period* to include other years.

e. The *look-back period(s)* shall be established at the time the secretary or his authorized representative signs the voluntary disclosure agreement.

*Non-Qualified Applicant*—includes any taxpayer who:

a. is registered with the department as of the application date but failed to file returns or underreported the amount due for a tax for which a voluntary disclosure agreement is requested;

b. submitted returns, extensions, payments, or was registered more than 60 days prior to the application date for a tax for which a voluntary disclosure agreement is requested;

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

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

*Qualified Applicant*—any taxpayer, other than a non-qualified applicant, subject to the reporting and payment of a tax imposed by the state of Louisiana. Notwithstanding anything to the contrary, any applicant that entered into a voluntary disclosure agreement with the department prior to July 1, 2014 shall be deemed a *qualified applicant*. Registration with the department for reporting and payment

of any tax for which a voluntary disclosure agreement is not being requested will not disqualify a *qualified applicant* from entering into a voluntary disclosure agreement.

*Secretary*—the *secretary* of the Louisiana Department of Revenue and any duly authorized representative(s).

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

*Undisclosed Liability*—a tax liability that became due during the look-back period and which has not been determined, calculated, researched, identified by or known to the department at the time of disclosure and which would likely not be discovered through normal administrative activities. The *undisclosed liability* must exceed \$500 during the look-back period to qualify for consideration of a voluntary disclosure agreement. The secretary has the discretion to conduct an audit of the applicant's records to confirm the amount of the *undisclosed liability*.

*Voluntary Disclosure Agreement*—a contractual agreement between a qualified applicant and the secretary wherein the qualified applicant agrees to pay the tax and interest due on an undisclosed liability, and the secretary agrees to remit or waive payment of the whole or any part of the penalty associated with that liability and to restrict collection of prior liabilities to the look-back period, except for periods in which tax was collected and not remitted.

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

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

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

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

4. If the application was submitted to the Multistate Tax Commission, the applicant shall return signed agreements in accordance with policies established by the commission.

#### C. Waiver or Remittance of Payment of Penalty

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

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

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

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

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

E. The secretary may disclose tax information to the Multistate Tax Commission or any political subdivision of the state which has entered into an information exchange agreement with the department in order to coordinate the delivery and acceptance of applications for voluntary disclosure agreements. Any information so furnished shall be considered and held confidential and privileged by the Multistate Tax Commission or the political subdivision to the extent provided by R.S. 47:1508.

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1502, R.S. 47:1511, R.S. 47:1580, and R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

#### **Family Impact Statement**

This proposed Rule has no known impact on family formation, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Statement**

This proposed Rule has no known impact on small businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

This proposed Rule has no known impact effect on providers as described in HCR 170 of 2014 Regular Session.

#### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed Rule to Annie L. Gunn, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., January 26, 2015.

#### **Public Hearing**

A public hearing will be held on January 27, 2015, at 9:30 a.m. in the River Room, located on the 7th floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Tim Barfield  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Voluntary Disclosure Agreements**

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

The Department of Revenue has maintained a voluntary disclosure program related to all taxes it administers for approximately twenty years. Act 198 of 2014 authorized LDR to promulgate rules for the program. The proposed rule includes authority of the Secretary of Revenue and any duly authorized representative to waive all penalties and, indirectly, liabilities through adjustment of look-back periods. The program allows voluntary disclosure of taxes that otherwise would not have been discovered through normal departmental activities or for taxpayers deemed eligible by the Secretary prior to July 1, 2014, which is the effective date of Act 198 of 2014. For participation, the minimum undisclosed liability is \$500; the proposed rule does not stipulate any maximums or thresholds. Although several local tax authorities have voluntary disclosure programs, this rule would not apply to local governmental units.

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

Revenues from voluntary disclosure agreements are currently being received by the state and some local jurisdictions. These revenues fluctuate annually based upon the number of applicants and the amount of undisclosed taxes reported. Historically, less than \$500,000 in penalties are waived annually with more than \$10M in collections of tax and interest. There is no maximum threshold included in the proposed rule, though the statutory threshold under which the Secretary can waive penalties without Board of Tax Appeal approval was raised from \$5,000 to \$25,000 in Act 198 of 2014. To the extent that the Secretary and duly authorized representatives waive penalties (self-generated revenue) and/or liabilities (mostly SGF) in excess of those typically waived, state revenue will decrease. The provision in the rule allowing a more liberal eligibility standard for taxpayers prior to July 1, 2014, would allow certain taxpayers benefits under the program including penalty waivers that would not be considered under the voluntarily disclosure program established pursuant to Act 198 of 2014. It is expected that this provision is associated with about \$4M in penalty waivers and about \$18M in collections. There should be no effect on revenue collections of local governmental units resulting from this proposal.

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

This proposed rule will affect the costs or revenues of a limited number of taxpayers who entered into a voluntary disclosure agreement with the Department of Revenue prior to July 1, 2014 to the extent they would not be eligible or considered for the voluntary disclosure program on or after July 1, 2014.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Competition and employment could be impacted by small amounts if similar businesses are afforded different tax situations as a result of this program.

Tim Barfield  
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Greg Albrecht  
Chief Economist  
Legislative Fiscal Office