

NOTICE OF INTENT

Department of Revenue Policy Services Division

Penalty Waiver (LAC 61:III.2101)

Under the authority of R.S. 47:1502, R.S. 47:1511 and 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 amend LAC 61:III.2101.

Act 198 of the 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.

The purpose for this proposed regulation is to amend LAC 61:III.2101 to update the penalty waiver regulation to direct taxpayers to rules and regulations promulgated by the Department of Revenue concerning the waiver or remittance of penalties under its voluntary disclosure agreement program.

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous

Chapter 21. Interest and Penalties

§2101. Penalty Waiver

A. The secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed \$100, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a request for waiver of penalties for delinquency form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the request for waiver of penalties for delinquency form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The request for waiver of penalties for delinquency form must be accompanied by any supporting documentation.

B. Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver,

fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C. In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered separately in making this determination.

D. In the case of a request to enter into a voluntary disclosure agreement with the Department of Revenue, the secretary will remit or waive delinquent penalties as provided in LAC 61:III.2103 and/or any other applicable rules and regulations promulgated by the Department of Revenue concerning the waiver or remittance of such penalties under its voluntary disclosure program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1603.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 27:866 (June 2001), amended LR 29:950 (June 2003), amended 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 11 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: Penalty Waiver

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

There would be no implementation costs or savings to state government under this proposal. The Department of Revenue

has existing procedures to evaluate requests for penalty waivers which will not change in response to the proposed Rule. This proposed Rule would not apply to local governments.

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

The proposed Rule reflects amendments made to R.S. 47:1603 by Act 198 of the 2014 Regular Legislative Session. Act 198 authorizes the Secretary of the Louisiana Department of Revenue to waive delinquent penalties exceeding \$25,000 only with the approval of the Louisiana Board of Tax Appeals. Previously, this amount was \$5,000. It also authorizes the secretary to establish a voluntary disclosure program for the effective administration of taxes. However, the rule does not affect the internal procedures previously established by the Department to evaluate delinquent penalty waiver requests. Therefore, no impact is anticipated on state revenues from adoption of this provision provided the waiving of penalties follows historical trends. The proposal would apply only to state taxes so there would be no effect on revenue collections of local governmental units.

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

This proposed amendment would not affect the costs or revenues of taxpayers who request waivers of penalties for the delinquent filing of returns or payment of taxes. The department's internal procedures for evaluating requests for penalty waivers will not be affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment would have no effect on competition or employment since the procedures currently followed by the Louisiana Department of Revenue to evaluate requests for penalty waivers will not be impacted.

Tim Barfield
Secretary
1412#112

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office