

NOTICE OF INTENT

Department of Revenue Policy Services Division

Inventory Tax Credits (LAC 61:I.1902)

Under the authority of R.S. 47:6006 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.1902.

The primary purpose of this proposed amendment is to implement Acts 4 and 5 of the 2016 Second Extraordinary Session of the Louisiana Legislature.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1902. Inventory Tax Credits

A. - D.3. ...

E. Affiliated or Related Business Entities

1. For purposes of the application of the limitations on refundability of excess credit as provided in R.S. 47:6006, taxpayers shall be treated as a single taxpayer when any of the following are applicable:

a. the taxpayer is included in a consolidated federal income tax return. In such instance, all taxpayers included in a consolidated federal income tax return shall be treated as a single taxpayer; or

b. the taxpayer is a member of a parent-subsidiary relationship, as defined below:

i. the taxpayer is a corporation and another business entity owns, directly or indirectly, more than 50 percent of the ownership interest of the taxpayer. In such instance, the taxpayer and the other business entity shall be treated as a single taxpayer; or

ii. the taxpayer is a limited liability company, partnership, estate, or trust, and another business entity owns, directly or indirectly, more than 50 percent of the ownership interest of the taxpayer. In such instance, the taxpayer and the other business entity shall be treated as a single taxpayer; or

iii. the taxpayer is a corporation and an individual stockholder and the members of the individual stockholder's family, as defined in section 318 of the IRC, own, directly or indirectly, in the aggregate, more than 50 percent of the value of both the taxpayer's and another business entity's ownership interest. In such instance, the taxpayer and the other business entity shall be treated as a single taxpayer;

c. the taxpayer is a member of brother-sister relationship, as defined below:

i. the taxpayer is a corporation and is a member of an affiliated group. For purposes of this Subsection, *affiliated group* means a group of two or more business entities in which a common owner or owners own, in the aggregate, greater than 50 percent of the ownership interest of each member of the group. In such instance, the taxpayer and the other members of the affiliated group and the common owner or owners shall be treated as a single taxpayer; or

ii. the taxpayer is a limited liability company, partnership, sole proprietorship, estate, or trust, and is a member of an affiliated group. Affiliated group means a group of two or more business entities in which a common owner or owners own, in the aggregate, greater than 50 percent of the ownership interest of each member of the group. In such instance, the taxpayer and the other members of the affiliated group and the common owner or owners shall be treated as a single taxpayer; or

iii. the taxpayer is a limited liability company, partnership, estate, or trust, and an individual owner and the members of the individual owner's family, own, directly or indirectly, in the aggregate, more than 50 percent of the value of both the taxpayer's and another business entity's ownership interest. For purposes of this Subsection, *family* shall have the same meaning as that provided in I.R.C. §267(c)(4) In such instance, the taxpayer and the other business entity shall be treated as a single taxpayer.

2. When one or more of the provisions of Paragraph E.1 are applicable to one or more taxpayers, all affected taxpayers shall be treated as a single taxpayer and the aggregate total of the ad valorem taxes paid pursuant to R.S. 47:6006 by all affected taxpayers shall be used for purposes of the application of the limitations on refundability of excess credit as provided in R.S. 47:6006(B). However, inventory which is related to the business held by a manufacturer or affiliated or related business entities or inventory held by a business entity formed or registered to do business in Louisiana after April 15, 2016 shall be calculated separately. Further, in any event, only taxpayers which have paid and are claiming ad valorem taxes paid pursuant to R.S. 47:6006 are subject to aggregation.

3. Industrial Tax Exemption Program (ITEP)

a. For a taxpayer claiming ITEP pursuant to article VII, section 21(F) of the Constitution of Louisiana during the taxable year in which the local inventory taxes were levied, inventory which is utilized by a business which operates as a single economic enterprise that is made up of either separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and

mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts shall be deemed to constitute inventory which is “related to the business” and thus subject to be aggregated for purposes of the limitations on refundability provided for in R.S. 47:6006(B)(3).

b. When a taxpayer qualifies as a manufacturer as provided in R.S. 47:6006(C)(3)(b), the provisions of R.S. 47:6006(B)(3) shall apply. Further, inventory which meets the definition of related to the business, as provided in Subparagraph E.3.a, between affiliated or related business entities, as defined in Paragraph E.1, shall be aggregated and subject to the provisions of R.S. 47:6006(B)(3).

4. When one or more taxpayers are subject to the above provisions and treated as a single taxpayer for purposes of the application of the limitations on refundability of excess credit, the common parent or entity exercising ownership, directly or indirectly, of more than 50 percent of the ownership interest of the taxpayer shall be designated by all affiliated or related business entities as its agent for purposes of calculating the credit when the common parent is a Louisiana taxpayer. Otherwise, the affiliated or related business entities shall designate a single taxpayer to serve as its agent for purposes of calculating the credit.

5. Examples. Unless otherwise provided, all entities are presumed to have been formed or first registered to do business in Louisiana before April 15, 2016.

a. Entity A is a Louisiana corporation which is more than 50 percent owned by a non-Louisiana entity and included in a consolidated federal income tax return. As such, entity A along with all other entities contained in the consolidated federal tax return will be treated as a single taxpayer for purposes of calculating the application of the limitations on refundability of excess credit as provided in R.S. 47:6006. In addition, any other entities which are not included in the federal consolidated return but which would otherwise qualify under the provisions of Paragraph E.1 would also be aggregated and treated as a single taxpayer along with entity A and the entities included in the consolidated federal tax return. Because entity A is not the common parent, the members of the affiliated group must designate a member to serve as agent for purposes of aggregating the total ad valorem taxes paid pursuant to R.S. 47:6006 and calculating the resulting credit on a form prescribed by the secretary.

b. Entity A is a Louisiana LLC owning more than 50 percent of the ownership interest of entity B, an LLC, and entity C, a partnership formed after April 15, 2016. As such, taxpayer A is the common parent of entity B and entity C. In addition, entity B and entity C maintain a brother-sister relationship as they are part

of an affiliated group. However, because entity C was formed after April 15, 2016, its inventory will be calculated separately from the inventory of entity A and entity B, which are treated as a single taxpayer for purposes of calculating the application of the limitations on refundability of excess credit as provided in R.S. 47:6006. Entity A, as a Louisiana taxpayer serving as the common parent of entity B and entity C, must be designated by entity B and C to serve as its agent for purposes of calculating the aggregate ad valorem taxes paid pursuant to R.S. 47:6006 and calculating the resulting credit on a form prescribed by the secretary.

c. Entity A is a Louisiana LLC which is a manufacturer as defined in R.S. 47:6006(3)(b) owning more than 50 percent of the ownership interest of entity B, an LLC, and entity C, a partnership. As such, taxpayer A is the common parent of entity B and entity C. In addition, entity B and entity C maintain a brother-sister relationship as they are part of an affiliated group. However, while entity A and entity B have inventory that is related to the business of such manufacturing, as defined in Subparagraph E.2.a, entity C has inventory which is unrelated to business of such manufacturing of entity A. Accordingly, the unrelated inventory of entity C will be calculated separately from the related business inventory of entity A and entity B. Entity A, as a Louisiana taxpayer serving as the common parent of entity B and entity C, must be designated by entity B and C to serve as its agent for purposes of calculating the aggregate ad valorem taxes paid pursuant to R.S. 47:6006 and calculating the resulting credit on a form prescribed by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6006.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:1705 (October 2001), amended LR 43:

Family Impact Statement

The proposed amendment of LAC 61:I.1902, regarding inventory tax credits, 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

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

Small Business Analysis

It is anticipated that this proposed amendment should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting this proposed amendment to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed amendment 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 these proposed amendments to William E. Little, 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., January 25, 2017.

Public Hearing

A public hearing will be held on January 26, 2017, at 1:30 p.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Inventory Tax Credits

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

The purpose of the proposed rules is to implement the provisions of Acts 4 and 5 of the 2016 Second Extraordinary Session of the Louisiana Legislature. The two Acts amended R.S. 47:6006, which provides tax credits for ad valorem taxes paid on inventories and on natural gas held, used, or consumed in providing or operating natural gas storage facilities.

Act 4 of the 2016 Second Extraordinary Session changed the limitation on the amount of the excess credit over income and corporation franchise tax liability that

is refunded, and required that groups of affiliated companies be treated as one taxpayer for the purposes of limiting refundability. The terms set forth in Act 4 apply for credits claimed on returns filed on or after July 1, 2016.

Act 5 of the 2016 Second Extraordinary Session changed the inventory tax credit to a nonrefundable credit for taxes paid on inventory by any manufacturer who claimed the property tax exemption under the Industrial Tax Exemption Program (ITEP) during the same year the inventory taxes were paid, and taxes paid by any company related to such manufacturer for taxes paid on inventory that is related to the business of such manufacturer.

Implementation costs of the Department of Revenue (LDR) are for computer system modification and testing, tax form redesign, and taxpayer inquires. These costs will be absorbed in LDR's current appropriation.

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

It is estimated that this amendment may increase revenue collections by approximately \$74.3 million annually for FYs 17-19. The revenue estimates are based upon historical data. However, this credit has been substantially altered prior to the proposed rules, and base information reflecting the effects of those prior changes is not yet available. As a result, revenue estimates may differ as a result of adjusted base information.

Except for new business entities formed or first registered to do business in Louisiana after April 15, 2016, Act 4 deemed that if the total amount eligible for the credit is less than or equal to \$500,000, 100% of any excess credit is refundable, and for total eligible amounts above \$500,000, 75% of any excess credit is refundable up to a maximum refund of \$750,000. For new business entities formed or first registered to do business in Louisiana after April 15, 2016, Act 4 deemed that if the total amount eligible for the credit is less than \$10,000, 100% of any excess credit is refundable, and for total eligible amounts \$10,000 or more, 75% of any excess credit is refundable up to a maximum refund of \$750,000. Using data from corporate tax returns received in FY 14, the impact of Act 4 was estimated to be \$17.3 million annually.

The annual impact of Act 5 is anticipated to total \$57 M annually. Using data from corporate tax returns received in FY 14, and a list of companies participating in the ITEP provided by the Department of Economic Development, the impact of Act 5 was estimated to be \$57 million annually after adjustment for projected effects of Act 133 of 2015. Since this amendment is applicable to all tax returns filed on or after July 1, 2016, regardless of the taxable year to which the returns relate, and the LDR analyses are based on a fiscal year of credits, the revenue effects are assumed to be immediate.

However, this credit has been substantially altered prior to the proposed rules, and base information reflecting the effects of those prior changes is not yet available. As a result, the effects of the proposed rules should be viewed with considerable caution.

Furthermore, it is unknown whether it would be more beneficial to some ITEP taxpayers to not

participate in the ITEP, in order to get more of their excess tax credits refunded. If so, to the extent these taxpayers would opt out of the ITEP, local government revenues would be increased by an indeterminable amount. It is also unknown whether taxpayers will keep lower inventory levels because of the tighter constraints on refundability. Lower inventory levels would result in lower local government taxes on inventory.

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

The proposed rules will affect taxpayers approximately \$74.3 M annually in excess credits that would have otherwise been refunded. However, because of prior adjustments to the credit, the base information reflecting the effects of those changes may alter the costs for affected taxpayers. It is reasonable to assume that any costs to affected taxpayers via fewer refunded credits will be equal to the increase in state revenue collections.

Furthermore, taxpayers will also incur the costs of completing more complicated tax forms. These costs have not been estimated but are expected to be relatively minor.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will affect corporate tax filers differently, resulting in shifts in the corporate tax burden among firms, consequently affecting competition and employment among them. However, the degree to which the proposed rules will affect aggregate competition and employment as a result of shifting the corporate tax burden is indeterminable.

Kimberly Lewis Robinson
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