

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KEVIN J. RICHARD, CPA
Secretary

March 14, 2023

Via E-mail/R.R.R. to:

Apa.h-wm@legis.la.gov

The Honorable Stuart J. Bishop, Chairman
House Committee on Ways and Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

Apa.s-r&f@legis.la.gov

The Honorable R.L. Bret Allain, II, Chairman
Senate Committee on Revenue and Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: Louisiana Department of Revenue – Yearly Rule-Making Action Report

Chairman Bishop and Chairman Allain:

In accordance with La. R.S. 49:966(K), the Department of Revenue submits the following summary of actions taken by the department with respect to adoption, amendment, or repeal of proposed rules and of actions taken by the agency with respect to proposed fee adoptions, increases, or decreases. Included are actions taken from January 1, 2022 to December 31, 2022.

Additionally, copies of all comments received by the agency and the agency's responses can be found as an addendum to this report.

EMERGENCY RULES

LAC 61:I.1501 – Income Tax Withholding Tables

Adopted to administer the updated withholding tables based on the new income tax rates as provided by Act 395 of the 2021 Regular Session of the Louisiana Legislature that became operative on January 1, 2022, due to the passage of Constitutional Amendment Two during the November 13, 2021, election.

Emergency Rule Effective Date: January 1, 2022

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NONEMERGENCY RULEMAKING

LAC 61:III.1507 and 2505 – Partnership Returns – Electronic Filing Requirements; Filing Extensions for Partnerships Filing Partnership/Partnership Composite Returns

Adopted to require electronic submission for both the filing and requests for extension of filing the partnership/partnership composite tax return by any partnership required to so file.

Notice of Intent Promulgation: January 20, 2022
Public Hearing: February 25, 2022
Oversight Report Submittal: March 7, 2022
Oversight Hearing: N/A
Final Rule Promulgation: April 20, 2022

LAC 61:I.1515 – Withholding Tax Statements and Returns—Electronic Filing Requirements

Adopted to conform to the return reporting requirements set forth under La. R.S. 47:114.1 as authorized by Act 285 of the 2021 Regular Session of the Louisiana Legislature.

Notice of Intent Promulgation: February 20, 2022
Public Hearing: March 28, 2022
Oversight Report Submittal: March 31, 2022
Oversight Hearing: N/A
Final Rule Promulgation: May 20, 2022

LAC 61:I.1310 and 1501 – Individual Income Tax Tables and Withholding Tables

Adopted to update individual income tax tables, withholding tables and formulas based on the new individual income tax rates provided by Act 395 of the 2021 Regular Session of the Louisiana Legislature that became operative on January 1, 2022 due to the passage of Constitutional Amendment Two during the November 13, 2021 election.

Notice of Intent Promulgation: March 20, 2022
Public Hearing: April 25, 2022
Oversight Report Submittal: April 28, 2022
Oversight Hearing: N/A
Final Rule Promulgation: August 20, 2022

LAC 61:I.103 – Criminal History Record Checks for Access to Federal Tax Information

Adopted to change the timeframe in which criminal history record checks for access to federal tax information must be done. This change is being made to reflect the Internal Revenue Service’s updated requirement that criminal history record checks are to be conducted every five years. Fingerprinting and criminal history record checks are mandated by R.S. 15:587.5.

Notice of Intent Promulgation: May 20, 2022
Public Hearing: June 27, 2022
Oversight Report Submittal: June 28, 2022
Oversight Hearing: N/A
Final Rule Promulgation: August 20, 2022

LAC 61:I.601, 1307, and 1520(C) – Presidential Disaster Tax Relief Credit, Federal Income Tax Deduction and Withholding by Professional Athletic Teams

Adopted to repeal regulations pertaining to Louisiana’s federal income tax deduction and federal disaster tax relief credits which became obsolete due to the repeal of R.S. 47:293(4) and R.S. 47:287.85(C)(2).

Notice of Intent Promulgation: July 20, 2022
Public Hearing: August 25, 2022
Oversight Report Submittal: September 1, 2022
Oversight Hearing: N/A
Final Rule Promulgation: November 20, 2022

LAC 61:I.1923 – Mobile Workforce Exemption

Adopted to implement Act 383 of the 2021 Regular Session of the Louisiana Legislature relative to the Mobile Workforce Exemption.

Notice of Intent Promulgation: July 20, 2022
Public Hearing: August 25, 2022
Potpourri Notice: September 20, 2022
Second Public Hearing: November 29, 2022
Oversight Report Submittal: December 20, 2022
Oversight Hearing: N/A
Final Rule Promulgation: February 20, 2023

LAC 61:III.1533 and 1534 – Mandatory Electronic Filing and Payment for Tobacco Tax by Vapor Dealers

Adopted to mandate electronic filing and payment by retail dealers of vapor products.

Notice of Intent Promulgation: August 20, 2022
Public Hearing: September 27, 2022
Oversight Report Submittal: September 28, 2022
Oversight Hearing: N/A
Final Rule Promulgation: November 20, 2022

LAC 61:I.5103 – Manufacturer’s Net Invoiced Price

Adopted to provide definitions relative to the calculation of manufacturer’s net invoiced price and provide guidance regarding the inclusion and exclusion of certain items such as, trade discounts, cash discounts, federal excise tax and shipping charges routinely reflected on invoices issued to tobacco dealers.

Notice of Intent Promulgation: August 20, 2022
Public Hearing: September 28, 2022
Oversight Report Submittal: October 6, 2022
Oversight Hearing: N/A
Final Rule Promulgation: November 20, 2022

LAC 61:I.1925, 1927 and 1929 – Donation to Qualified Foster Care Charitable Organization Credit and Certain Adoptions Deductions

Adopted to implement LAC 61:I.1925 relative to the Donation to Qualifying Foster Care Charitable Organization Income Tax Credit and LAC 61:I.1927 and 1929 relative to the individual income tax deductions for individuals who adopt a child under certain circumstances.

Notice of Intent Promulgation: August 20, 2022
Public Hearing: September 27, 2022
Oversight Report Submittal: November 3, 2022
Oversight Hearing: N/A
Final Rule Promulgation: December 20, 2022

LAC 61:I.1122, 1124, and 1125 – Taxes Not Deductible; Net Operating Loss Deduction; Application of Net Operating Losses Carryover to Otherwise Closed Years

Adopted to implement Act 103 of the 2015 Regular Session of the Louisiana Legislature, which repeals the carryback provisions as it relates to net operating losses for operations.

Notice of Intent Promulgation: August 20, 2022
Public Hearing: September 29, 2022
Oversight Report Submittal: November 2, 2022
Oversight Hearing: N/A
Final Rule Promulgation: December 20, 2022

LAC 61:I.1001 – Election of Pass-Through Entities

Adopted to implement Act 396 of the 2021 Regular Session of the Louisiana Legislature as it concerns the repeal of the deduction for federal taxes paid and the amendment of rates for taxpayers making a pass-through entity election pursuant to R.S. 47:287.732.2.

Notice of Intent Promulgation: September 20, 2022
Public Hearing: October 27, 2022
Oversight Report Submittal: November 2, 2022
Oversight Hearing: N/A
Final Rule Promulgation: December 20, 2022

LAC 61:I.1909 – Apprenticeship Tax Credits

Adopted to implement Act 454 of the 2021 Regular Session of the Louisiana Legislature relative to Apprenticeship Tax Credits.

Notice of Intent Promulgation: October 20, 2022
Public Hearing: November 30, 2022
Oversight Report Submittal: December 8, 2022
Oversight Hearing: N/A
Final Rule Promulgation: January 20, 2023

LAC 61:III.2301 – Fresh Start Proper Worker Classification Initiative

Adopted to provide guidance on the Fresh Start Proper Worker Classification Initiative adopted by Act 406 of the 2022 Regular Session.

Notice of Intent Promulgation: October 20, 2022
Public Hearing: November 28, 2022
Oversight Report Submittal: December 6, 2022
Oversight Hearing: N/A
Final Rule Promulgation: January 20, 2023

LAC 61:III.2501, 2503, 2505, and 2507 – Income Tax Return Filing Extensions

Proposes amend LAC 61:III.2501, 2503, 2505 and 2507 to implement Act 410 of the 2022 Regular Session of the Louisiana Legislature, which authorizes an automatic six-month filing extension for individual income, fiduciary income and partnership taxpayers unable to file their income tax return by the original due date of the return. In addition, the Act authorizes a six-month extension for corporation income tax if the taxpayer timely requested an extension for federal income tax purposes.

Notice of Intent Promulgation: October 20, 2022
Public Hearing: November 29, 2022
Potpourri Notice: January 20, 2023
Second Public Hearing: February 27, 2023
Oversight Report Submittal: March 3, 2023
Oversight Hearing: N/A
Anticipated Effective Date: April 20, 2023

LAC 61:I.5105 – Articles and Products Made of Tobacco and Tobacco Substitutes

Adopted to provide guidance by clarifying the phrases, “articles and products made of tobacco” and “tobacco substitute” used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15).

Notice of Intent Promulgation: November 20, 2022
Public Hearing: December 28, 2022
Oversight Report Submittal: January 6, 2023
Oversight Hearing: N/A
Final Rule Promulgation: February 20, 2023

If you have any questions or need additional information, please contact the Policy Services Division at (225) 219-2780.

Sincerely,



Danielle B. Clapinski
Director, Policy Services Division

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KEVIN J. RICHARD, CPA
Secretary

December 20, 2022

Via e-mail (return receipt requested) to:

The Honorable Stuart J. Bishop
Chairman of the House Committee on Ways and Means
P.O. Box 94062
Baton Rouge, Louisiana 70804
apa.h-wm@legis.la.gov

The Honorable R.L. "Bret" Allain, II
Chairman of the Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804
apa.s-r&f@legis.la.gov

Re: Summary Report for Proposed Amendments to Regulation LAC 61:I.1923 - Mobile Workforce Exemption

Chairman Bishop and Chairman Allain:

On July 7, 2022, a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of proposed regulation LAC 61:I.1923 *Mobile Workforce Exemption* was sent to your committee for review. The purpose of this regulation is to implement Act 383 of the 2021 Regular Session of the Louisiana Legislature relative to the Mobile Workforce Exemption. The *Notice of Intent* was published on pages 2228 through 2232 of the August 2022 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Thursday, August 25, 2022. There were no attendees other than one Department attorney. One written comment was received and there were no oral comments.

Council on State Taxation

Comment: The draft regulation includes a provision requiring a nonresident employee working in Louisiana to file with their employer Form L-4E, Exemption from Withholding Louisiana Income Tax, an entirely new form asking their employer to refrain from withholding Louisiana income tax from their wages. We believe that requiring this documentation needlessly adds complexity to a statutory change (Act 383 of 2021) designed to simplify withholding requirements for short-term nonresident workers. Under the legislation, if a nonresident is undertaking work-related activity for less than 25 days in Louisiana, the nonresident is automatically brought into compliance without any additional action by employer or employee.

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The proposed filing requirement negates the simplicity of the proposal by imposing additional burdens on employers not contemplated by the statute. Employers should be allowed the flexibility to use whatever method fits within their current systems to track whether an employee has exceeded the threshold number of days in Louisiana.

Response: The Secretary agrees with this comment. The Department is amending the proposed Rule by removing the procedural element requiring nonresident employees to file Form L-4E, *Exemption from Withholding Louisiana Income Tax* with their employer for their employer to refrain from withholding Louisiana income tax from their wages. The department published a Potpourri on pages 2503 and 2504 of the November 2022 edition of the *Louisiana Register* notifying the public of a hearing on this amendment. A public hearing was held on the Potpourri on November 29, 2022. There were no attendees other than one Department attorney and no written or oral comments were received. No further changes will be made.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed rule will be submitted for publication as a final rule in the February 2023 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact Christina Junker via email at christina.junker2@la.gov or by phone at (225) 219-7823.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. J. Richard', with a stylized flourish at the end.

Kevin J. Richard, CPA
Secretary

Cc: The Honorable Patrick Page Cortez, President of the Senate, apa.senatepresident@legis.la.gov
Office of the State Register, Reg.Submission@la.gov

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Department of Revenue

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KEVIN J. RICHARD, CPA
Secretary

March 3, 2023

Via e-mail (return receipt requested) to:

The Honorable Stuart J. Bishop
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Baton Rouge, Louisiana 70804
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The Honorable R.L. "Bret" Allain, II
Chairman of the Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804
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Re: Proposed Amendments to Regulation LAC 61:III.2501, 2503, 2505, and 2507 – Income Tax Filing Extension

Chairman Bishop and Chairman Allain:

On October 6, 2022, a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of proposed regulation LAC 61:III.2501, 2503, 2505, and 2507- *Income Tax Filing Extension* was sent to your committee for review. The purpose of this regulation is to provide guidance to taxpayers seeking extension for filing income and franchise tax returns. Act 410 of the 2022 Regular Legislative Session authorizes an automatic six-month filing extension for individual income, fiduciary income and partnership taxpayers unable to file their income tax return by the original due date of the return. The Act also authorizes a six-month extension for corporation income tax if the taxpayer timely requested an extension for federal income tax purposes.

The *Notice of Intent* was published on pages 2689 through 2691 of the October 2022 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Tuesday, November 29, 2022. There were no attendees other than the one Department attorney assigned to the promulgation of the proposed amendments. Two written comments were received and there were no oral comments. The Secretary agrees, in part, to certain written comments, and, as such, the department published a Potpourri notice on pages 191 through 193 of the January 2023 edition of the *Louisiana Register* notifying the public of a hearing on amendments to the proposed regulation. A public hearing was held on the Potpourri in the LaSalle Building on Monday, February 27, 2023. There were no attendees other than the one Department attorney assigned to

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the promulgation of the proposed amendments. No written comments were received and there were no oral comments. No further changes will be made.

Council on State Taxation

Comment: COST suggested that the word “reasonable” be stricken from Section 2503(B) since the term is not included in the language of S.B. 54 as applicable to taxable periods beginning on or after January 1, 2022. COST also suggest including the word “automatically” in the regulation to clarify the Department’s intent to automatically grant the extension. Accordingly, COST suggested that the department remove the word “reasonable” and inserting the word “automatically”.

Response: The Secretary agrees with removing the term “reasonable” and disagrees with inserting the term “automatically”.

Society of Louisiana Certified Public Accountants (LCPA)

Comment One: LCPA suggested that the word “reasonable” be stricken from Section 2503(B) since the term is not included in the language of S.B. 54 as applicable to taxable periods beginning on or after January 1, 2022. LCPA also suggest including the word “automatically” in the regulation to clarify the Department’s intent to automatically grant the extension. Accordingly, LCPA suggested that the department remove the word “reasonable” and inserting the word “automatically”.

Response: The Secretary agrees with removing the term “reasonable” and disagrees with inserting the term “automatically.”

Comment Two: According to LCPA, the Department’s intent with regard to proposed LAC 61:III.2503(B)(1) is to disallow taxpayers who file corporate franchise tax returns separate from corporate income tax returns to avail themselves of the automatic extension provisions found at La. R.S. 47:287.614(D)(4). LCPA suggests that the regulation, as proposed, appears to deny any extension (i.e., automatic or otherwise) to taxpayers filing corporate franchise tax returns separate from corporate income tax returns and that Act 410 does not appear to contemplate such an outcome. LCPA further states that it would be imprudent for the Department to remove via regulation a taxpayer’s right to extend a franchise tax return particularly because such right existed prior to the enactment of Act 410 and was not affected by Act 410.

Response: The Secretary disagrees. The requirement that a corporation income tax return accompany a franchise tax return in order for the taxpayer to receive a filing extension is not created by this regulation. Instead, R.S. 47:287.614(D) provides that “...the secretary shall grant an extension of the time to file a Louisiana *income tax return*...” (emphasis added) thus limiting the extension to income tax returns and franchise tax returns that accompany corporation income tax returns. Therefore, a franchise tax return that is unaccompanied by a Louisiana corporation income tax return is statutorily ineligible for the filing extension provided for by this section.

Comment Three: According to LCPA, collectively, LAC 61:III.2503(B)(2)(a) and LAC 61:III.2503(B)(2)(b), as both proposed, appear to assume that taxpayers will either receive a Form 6513 from the Internal Revenue Service or otherwise receive some other formal notification from

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the Internal Revenue Service as evidence of an approved federal extension. Because taxpayers are typically not notified of an approved federal extension, the proposed regulation establishes an artificially high standard for establishing the validity of the Louisiana extension. LCPA suggests that either the reference to Form 6513 in the proposed regulation be struck or that the proposed regulation be modified to make clear that a Form 6513 is not the only means by which a taxpayer can establish that a federal extension request was timely filed.

Response: The Secretary agrees and disagrees in part. Because Federal Form 6513, *Extension of Time to File* is not issued to every taxpayer automatically, the Secretary agrees that other material evidencing an approved federal filing extension is sufficient for verification purposes for the Louisiana filing extension. As such, the department is amending 61:III.2503(B)(2)(a) to allow “other material evidencing that their [the taxpayer’s] federal extension has been approved.” The Secretary disagrees that the proposed regulation creates an artificially high standard for establishing the validity of a taxpayer’s federal extension. Requesting that a taxpayer retain proof of their federal approval for potential verification is not unreasonable.

Comment Four: LCPA suggests that LAC 61:III.2503(B)(2)(b) be modified to clarify that, upon request, a taxpayer may be required to provide proof of a valid federal extension as a condition for obtaining a Louisiana extension pursuant to La. R.S. 47:287.614(D). Such proof might include evidence that a federal extension was timely requested. Whether a taxpayer is granted a Louisiana extension pursuant to La. 47:287.614(D)(4) should not be dependent upon whether the Internal Revenue Service provides a Form 6513 or some other acknowledgement.

Response: The Secretary disagrees. Clarification is not necessary as the regulation provides that a taxpayer “should retain a copy” of material evidencing that they have been approved for a federal extension. Approval for Louisiana’s extension is not dependent on the taxpayer providing proof attached to their return. Instead, the proposed rule recommends that the taxpayer retain such material particularly for proof in the event that the department chooses to verify the taxpayer’s federal approval at a later time.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed amendment will be submitted for publication as a final rule in the April 2023 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact Christina Junker via email at christina.junker2@la.gov or by phone at (225) 219-7823.

Sincerely,



Kevin J. Richard, CPA
Secretary

Cc: The Honorable Patrick Page Cortez, President of the Senate, apa.senatepresident@legis.la.gov
Office of the State Register, Reg.Submission@la.gov

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January 6, 2023

Via e-mail (return receipt requested) to:

The Honorable Stuart J. Bishop
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The Honorable R.L. "Bret" Allain, II
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Re: Proposed Regulation LAC 61:I.5105 *Articles and Products Made of Tobacco and Tobacco Substitutes*

Chairman Bishop and Chairman Allain:

On November 1, 2022, a copy of the *Notice of Intent* issued by the Department of Revenue ("Department") for promulgation of the regulation LAC 61:I.5105, *Articles and Products Made of Tobacco and Tobacco Substitutes* was sent to your committee for review. The purpose of this regulation is to provide guidance regarding the taxability of products made with nicotine extract or synthetic nicotine and tobacco substitutes. The proposed regulation provides guidance by clarifying the phrases, "articles and products made of tobacco" and "tobacco substitute" used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15). The proposed regulation reflects current policy of the Department of Revenue.

The *Notice of Intent* was published in the November 2022 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Wednesday, December 28, 2022. No one attended the public hearing and no oral comments were received. Written comments were received by one interested party as noted below.

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Written Comments

Department response to comments from Mark C. Triplett in Attachment 1:

Comment 1: It is important to note that the definition of “cigars”, “cigarettes”, “smoking tobacco”, “smokeless tobacco”, describe and list kinds and forms of tobacco. The common element in each item described and listed in the definition of these products is tobacco, products made of tobacco and products made wholly or in part of tobacco. There is no mention of the word nicotine in the definition of “Tobacco Products” and in fact, nicotine is not mentioned until the definition of “vapor products and electronic cigarettes” which are defined as a product containing nicotine then specifies that it “employ a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means”.

Response 1: The Department agrees that the definitions of “cigars”, “cigarettes”, “smoking tobacco”, and “smokeless tobacco” in LA R.S. 47:842 include lists of various kinds and forms of tobacco. “Tobacco Products” is not a term that is defined in LA R.S. 47:842 or elsewhere in Title 47; reference to any such definition is misplaced. Further, the definition of “smokeless tobacco” includes “articles and products made of tobacco, or a tobacco substitute”. Products made with nicotine extracted from tobacco plants are considered products made of tobacco and thus, meet the definition of smokeless tobacco. Additionally, Merriam-Webster defines a *substitute* as a “thing that takes the place or function of another”. Products made with nicotine extracted from tobacco or synthetic nicotine are designed, marketed and intended to take the place or function of traditional tobacco products. Like cigarettes, smoking tobacco and other smokeless tobacco products, these products are kept behind the store counter and may only be purchased by person 21 years of age or older. In that regard, such products are considered a tobacco substitute and thus, meet the definition of smokeless tobacco. The legislature “cannot possibly enact and re-enact detailed laws to cover every situation during rapidly changing times.” *Krielow v. Louisiana Dep't of Agric. & Forestry*, 2013-1106 (La. 10/15/13), 125 So. 3d 384, 389. By granting rulemaking authority, the legislature has conferred upon the Department the authority and responsibility to “fill in the details”. *Id.*

Comment 2: The scope of the tax levied in RS §47:841 through RS§47:868 is limited to those products defined described and listed in §47:842 (2), (3), (15), (16), (20). Any products outside these definitions cannot be subject to the tax levied in §47:841 of Title 47.

Response 2: The Department agrees that the tobacco tax is limited to products which meet the definitions set forth in LA R.S. 47:842. However, the definitions are not limited to the illustrative lists provided in LA R.S. 47:842 (2), (3), (15), (16), and (20). Any list of products included in these definitions are not exclusive. As stated previously, it has long been recognized that the legislature “cannot possibly enact and re-enact detailed laws to cover every situation during rapidly changing times.” *Krielow v. Louisiana Dep't of Agric. & Forestry*, 2013-1106 (La. 10/15/13), 125 So. 3d 384, 389.

Comment 3: The scope of the tax cannot be extended to any nicotine, nicotine product or product containing nicotine **that does not contain tobacco** like tomatoes, potatoes, cauliflower, eggplants, alfalfa, e-cigarettes, e-liquids, nicotine lozenges and gum (Nicorette), nicotine pouches (ZYN and ON), nicotine patches (NicoDerm). All these products contain nicotine. But,

they are not captured within the scope of the definitions listed above. They simply do not contain tobacco.

Response 3: The Department disagrees that the presence of tobacco plant material is required for a product to be subject to the Louisiana tobacco tax. The definition of “smokeless tobacco” includes “articles and products made of tobacco, or a tobacco substitute”. Products made with nicotine extracted from tobacco plants are considered products made of tobacco and thus, meet the definition of smokeless tobacco. Additionally, nicotine products or products containing nicotine may be considered tobacco substitutes and as such, fall within the scope of smokeless tobacco. Tomatoes, potatoes, cauliflower, eggplants, alfalfa, and smoking cessation products are not designed, marketed and intended to serve as a substitute to traditional tobacco products. E-cigarettes and e-liquids have been isolated as a separate form of tobacco in order that a distinct tax rate can be applied to these products.

Comment 4: ZYN and ON are both Tobacco Free Nicotine Pouches, **they do not** “employ a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means”. Therefore, they fall outside the definition of “Vapor Products.”

Response 4: The Department understands that ZYN and ON nicotine pouches do not contain tobacco leaf. And, the Department agrees that ZYN and ON nicotine pouches are not considered vapor products as defined in LA R.S. 47:842(20). This regulation does not relate to vapor products.

Comment 5: ZYN and ON are both Tobacco Free Nicotine Pouches, they do not contain any tobacco. ZYN and ON and the nicotine they contain are also missing from a long list of tobacco substitutes available to be consumed in the context of Bidis and Spliffs and can also be infused in cannabis products like Damiana, Kratom, Kanna, Lavender, Rosemary, Hops, Catnip, Greengo, Skullcap, and Sage. All proclaim to be nicotine free.

Response 5: The Department understands that ZYN and ON nicotine pouches do not contain tobacco leaf or other plant material. Further, there is no definition or list of tobacco substitutes in the Louisiana tobacco tax laws. The products listed in Comment 5 do not come from the Louisiana tobacco tax laws and the inclusion or exclusion of nicotine pouches from any such list is not reflective of Louisiana law.

Comment 6: ZYN and ON are clearly definable in a family of products called “Nicotine Products” (not defined in §47:842). In fact, the products defined described and listed in §47:842 (2), (3), (15), (16), (20), could easily be defined as a subset of “Nicotine Products”.

Response 6: The Department agrees that “nicotine products” is not a defined term within the Louisiana tobacco tax laws. Nor is that term used in the LA R.S. 47:841 et seq. Regardless, whether or not ZYN and ON or any other category of products defined in LA R.S. 47:842 could be defined as “nicotine products” is irrelevant to the proposed regulation.

No changes will be made to the text of the proposed rule before it is finalized. This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act.

Unless otherwise directed, the proposed amendment will be submitted for publication as a final rule in the February 2023 edition of the *Louisiana Register*.

Should you have any questions or need additional information, please contact me at (225) 219-2700.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. J. Richard', with a stylized flourish at the end.

Kevin J. Richard, CPA
Secretary

cc: The Honorable Patrick Page Cortez, President of the Senate, apa.senatepresident@legis.la.gov
Office of the State Register, Reg.Submission@la.gov