

Department—the Louisiana Department of Revenue.

Employee—as defined in R.S. 47:111(A), with the exception of a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.

Employer—as defined in R.S. 47:111(B).

Time and attendance system—a system through which an employee is required, on a contemporaneous basis, to record the employee's work location for every day worked outside the state where the employee's employment duties are primarily performed and that is designed to allow the employer to allocate the employee's compensation for income tax purposes among all states in which the employee performs employment duties for the employer.

C. Filing Requirements.

1. Employees

a. Nonresident employees seeking to claim the exemption for income earned while performing employment duties within the state for less than 25 days are not required to file a Louisiana individual income tax return. If the nonresident employee has other income from Louisiana sources, the nonresident employee does not qualify for this exemption and thus all Louisiana income must be reported on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

b. Nonresident employees must file Form L-4E, *Exemption from Withholding Louisiana Income Tax* with their employer in order for their employer to refrain from withholding Louisiana income tax from their wages. Taxpayers must file a new L-4E annually in order to continue claiming the exemption and must revoke this exemption certificate by completing a Form L-4, *Employee Withholding Exemption Certificate*:

i. within 10 days from the twenty-sixth day of performing employment duties within the state;

ii. within 10 days from the day you anticipate you will incur Louisiana income tax liability for the current year; or

iii. by the first day of the last month of your current taxable year if you anticipate you will incur Louisiana income tax liability for the following year.

2. Employers. If a nonresident employee performs employment duties in excess of 25 days within the state, the employer must begin withholding income tax and report such tax on Form L-1, *Employer's Quarterly Return of Louisiana Withholding Tax* beginning in the period in which the twenty-sixth day fell within.

D. Penalty for Failure to Deduct or Withhold Income Tax

1. The Department shall not require the payment of penalties or interest for failing to deduct and withhold income tax for a nonresident employee who does not qualify for the

exemption, if the employer meets any of the following conditions:

a. The employer at its sole discretion maintained a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for the employer, and the employer relied on data from that system.

b. The employer did not maintain a time and attendance system, and the employer relied on either:

i. its own records, maintained in the regular course of business, of the employee's location;

ii. the employee's reasonable determination of the time the employee expected to spend performing employment duties in this state provided the employer did not have actual knowledge of fraud on the part of the employee in making the determination and provided that the employer and the employee did not collude to evade taxation in making the determination.

2. The department shall require the payment of penalties or interest for failing to deduct and withhold income tax if the employer fails to meet either of the conditions of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:112.2, R.S. 47:242(1)(ii), R.S. 47:248, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 49:334 (February 2023).

§1925. Donations to Qualifying Foster Care Charitable Organization Credit

A. General Description.

1. The Donation to Qualified Foster Care Charitable Organization credit provides a nonrefundable income tax credit for donations made on or after January 1, 2022 to the QFCCO. To qualify for the credit, the donation must be used by the QFCCO to provide services to qualified individuals.

2. QFCCOs are certified by the Department to receive contributions eligible for the tax credit. This certification only pertains to the Donation to Qualifying Foster Care Charitable Organization Credit. This program does not apply to general licensing, operations, or the deductibility of donations to charitable organizations.

3. The credit shall be earned in the year in which the donation was made and shall be equal to the lesser of \$50,000 or the actual amount of donations used by the QFCCO to fund qualified services for qualified individuals.

4. The credit shall be allowed against the income tax for the taxable period in which the credit was earned. If the tax credit allowed pursuant to R.S. 47:6042 exceeds the amount of such taxes due, any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

B. Definitions

Affiliated—any entity possessing either a:

REVENUE AND TAXATION

- a. significant common purpose and substantial common membership; or
- b. direct or indirect substantial common direction or control.

Department—the Department of Revenue.

QFCCO—qualifying foster care charitable organization.

Qualified Individual—a child in a foster care placement program established by the Department of Children and Family Services.

Qualified Services—cash assistance, medical care, child care, food, clothing, shelter, job placement, and job-training services or any other assistance reasonably necessary to meet immediate basic needs that are provided to a qualified individual and used in Louisiana.

Qualifying Foster Care Charitable Organization—an organization that meets all of the following criteria:

- a. is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code;
- b. provides services to at least 25 qualified individuals each operating year;
- c. spends at least 75 percent of its total budget on providing services to qualified individuals or spends at least 75 percent of its funds budgeted for Louisiana on providing services to qualified individuals and the organization certifies to the department that 100 percent of the donations it receives from Louisiana residents will be spent on providing services to qualified individuals;
- d. is approved by the department after applying as provided in Subsection G of this Section.

Related—the donor's spouse, the children of the donor, the spouses of the donor's children, the donor's brothers or sisters and their spouses, the donor's parents, and the parents of the donor's spouse.

Secretary—secretary of the Department of Revenue, or their designee.

Taxpayer—a person who is required to file a Louisiana income tax return.

C. Qualified Services

1. The qualified service must be provided by the QFCCO directly to the qualified individual. Qualified services include the following:

a. Cash Assistance

i. Cash assistance, including cash in the form of gift cards, must be provided directly for the qualified individual for the purpose of assisting the qualified individual in meeting ongoing basic needs.

ii. Cash payments or scholarships to schools, camps, activities, or team sports do not qualify as cash assistance.

b. Medical Care

i. Medical care must be provided by the QFCCO directly, or indirectly, by providing access to medical care by means of paying for the medical care, providing round trip transportation to the medical care provider, or connecting the qualified individual to the medical care.

ii. Medical care must be provided by medical professionals including, but not limited to, doctors, nurses, physician's assistants, optometrists, ophthalmologists, dentists, chiropractors, phycologist, psychiatrists, and licensed therapists.

c. Child Care

i. Child care means the compensated service that is provided to a child who is unaccompanied by a guardian during a portion of a twenty-four hour period.

ii. Child care must be regular and predictable to be considered a basic need service.

d. Food

i. Food includes food products for home meal preparation as well as the provision of prepared meal(s).

e. Clothing

i. Qualified clothing includes, but is not limited to infant attire, shirts, pants, skirts, school uniforms, socks, undergarments, shoes, footwear, coats, and interview attire.

ii. Clothing does not qualify as a basic need if it consists of a single item of clothing per qualified individual for attendance or participation in an event.

iii. Sports team uniforms do not qualify as clothing.

f. Shelter

i. Shelter is the provision of permanent or temporary housing for a qualified individual.

ii. Shelter includes furnishings of a home, rental or mortgage assistance, payment for home maintenance services or supplies and utility expenses.

g. Job Training

i. Job training must be for a specific job or industry, not simply general education to obtain a GED or prepare for college.

ii. Round trip transportation to the job training is considered a basic need service.

D. Claiming the Tax Credit

1. Taxpayers claiming the Donations to Qualifying Foster Care Organization credit must attach Form R-68009, *Receipt for Donation to Qualifying Foster Care Charitable Organization Credit* to their return. The receipt shall consist of a QFCCO portion and a donor portion and must be issued by the QFCCO to the donor.

2. The credit must be claimed for the taxable year in which the donation was made.

E. Tax Credit Cap

1. For each calendar year, the department shall not approve credits in excess of \$500,000. Taxpayers shall be allowed to claim the credit on a first-come, first serve basis as determined by the received date of the taxpayer's income tax return with all required documents. A taxpayer claiming the donations to qualifying foster care organization credit must attach Form R-68009 to their return and provide any additional information requested by the department. A shareholder of an S corporation or other pass-through entity must also attach a copy of the Schedule K-1 to substantiate the credit.

2. All returns received on the same business day shall be treated as received at the same time, and if the aggregate amount of requests received on the same business day exceeds the total amount of the available credits:

a. tax credits shall be approved on a pro rata basis; and

b. the excess shall be treated as having been applied for on the first day of the subsequent year.

F. Other Tax Benefits Disallowed

1. A taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction, rebate, or any other state tax benefit for a donation for which the taxpayer has received a tax credit pursuant to R.S. 47:6042.

2. The credit may be used in addition to any federal tax credits earned for the same donation.

G. Application for Certification as a Qualifying Foster Care Charitable Organization.

1. An organization that seeks to become a QFCCO may apply for certification at any time during the year and must submit the following to the Department:

a. Completed Form R-68010, Application for Certification as a Qualifying Foster Care Charitable Organization.

b. A copy of the Internal Revenue Service ruling establishing the organization is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code.

c. A copy of the organization's operating budget for the prior operating year and a schedule detailing the amount of the budget spent on providing qualified services to qualified individuals.

d. A copy of Federal Form 990 and 990-T and all attachments filed by the organization for the last tax year filed.

e. A copy of the financial statements and detailed schedule of expenses for the QFCCO from the prior year.

f. A schedule detailing how the organization calculated the percentage of its budget spent on providing services to qualified individuals.

g. A statement that the organization intends to continue spending at least seventy-five percent of its total

budget on providing services to qualified individuals or intends to continue spending at least seventy-five percent of its funds budgeted for Louisiana on providing services to qualified individuals and that one hundred percent of the donations it receives from Louisiana residents will be spent on providing services to qualified individuals.

2. Within two months of receipt of an *Application for Certification as a Qualifying Foster Care Charitable Organization*, the department shall notify the applicant of their status by way of approval notated on the application to the mailing address designated on the application. Certification is valid beginning January 1 of the year that an organization is approved.

3. If the application is denied, the department will inform the applicant of its grounds for denial and allow 15 business days from date on the status letter for the applicant to correct any defects. Ground for denials include, but are not limited to:

a. failure of the applicant to submit any information required by the application;

b. failure of the applicant to submit any additional information requested by the Department.

H. QFCCO Reporting

1. A QFCCO must file a report, prepared by an independent certified public accountant not related to a donor or affiliated with the QFCCO, with the department no later than January 31 of each year to the below address:

Louisiana Department of Revenue
P.O. Box 44098
Baton Rouge, LA 70804

2. This annual report shall contain the following information:

a. a certification that the QFCCO continues to meet the requirements set forth by R.S. 47:6042;

b. a certification that the QFCCO spent 100 percent of the donations received from Louisiana residents on providing qualified services to qualified individuals;

c. a listing of all donations made that includes:

i. the name, social security number, or Louisiana Revenue Account Number, and federal taxpayer identification numbers of each taxpayer who donated to the QFCCO during the prior calendar year;

ii. the amount of each donation received during the prior calendar year;

iii. the amount of each donation utilized during the prior calendar year to provide qualified services to qualified individuals and the services provided;

d. notification to the department of changes that may affect certification eligibility.

I. Forms

a. Form R-68009, Receipt for Donation to Qualifying Foster Care Charitable Organization Credit, shall

require information including, but not limited to: the taxpayer's name, mailing address, Louisiana revenue account number or last four digits of the taxpayer's Social Security number, the date the donation was made, the name of the QFCCO and amount of the donation used by the QFCCO to provide services to qualified individuals.

b. Form R-68010, Application for Certification as a Qualifying Foster Care Charitable Organization, shall require information including, but not limited to: the QFCCOs name, address, Louisiana revenue account number (if applicable), federal employer identification number, contact individual's e-mail address and telephone number, and certification that the QFCCO meets certain criteria under R.S. 47:6042(F)(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 6042.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:2988 (December 2022).

§1927. Adoption from Foster Care Deduction

A. General

1. Revised Statute 47:297.20 authorizes a deduction equal to \$5,000, per child, from Louisiana tax table income for a resident taxpayer who legally adopts a child from foster care, as defined in Louisiana Children's Code Article 603, or a youth receiving extended foster care services pursuant to the Extended Foster Care Program Act.

B. Definitions

Child—a person under the age of 18 years who has not been judicially emancipated or emancipated by marriage as provided by law as defined in Louisiana Children's Code Article 603 as amended.

Foster Care—placement in a foster family home, a relative's home, a residential child caring facility, or other living arrangement approved and supervised by the state for provision of substitute care for a child in the custody of Department of Children and Family Services as defined in Louisiana Children's Code Article 603 as amended.

Youth—an individual who was adjudicated as a child in need of care, was in foster care in the department's custody on the day before his eighteenth birthday, and is at least 18 years of age but less than 21 years of age as defined by R.S. 46:288.2 as amended.

C. Claiming the Deduction

1. The taxpayer claiming the adoption from foster care deduction must be listed as an adoptive parent on the adoption order or decree. Taxpayers may claim the adoption deduction according to their filing status as follows:

a. If filing Single, Married Filing Separately, Qualifying Widow(er) or Head of Household then only one taxpayer may claim the adoption credit on their return if two taxpayers are listed as the adoptive parent. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

b. If filing Married Filing Jointly then the deduction may only be claimed on the return of the individual who is listed as an adoptive parent on the adoption order or decree. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

2. The taxpayer claiming the adoption from foster care deduction must attach their deduction eligibility certification letter from the Department of Children and Family Services to the taxpayer's individual income tax return for the taxable year that the adoption is finalized.

D. Limitations

1. The adoption tax deduction shall be in lieu of the dependency deduction authorized in R.S. 47:294.

2. The amount of the deduction authorized by R.S. 47:297.20 shall not exceed the total tax table income of the taxpayer claiming the deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xxiii), 297.20, and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:2990 (December 2022).

§1929. Private Adoption of Certain Infants Deduction

A. General

1. Revised Statute 47:297.21 authorizes a deduction equal to \$5,000, per infant, from tax table income for the resident(s) who legally adopt an infant who is unrelated to the taxpayer(s) and who is less than one year of age through a private agency as defined in Louisiana Children's Code Article 1169(1), or through an attorney. The infant shall be considered less than one year of age for purposes of this deduction if the infant was less than one year of age at the time of the adoption placement.

a. A taxpayer is considered "unrelated" to the infant if they are not the infant's parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

B. Claiming the Deduction

1. The taxpayer claiming the private adoption of certain infants' deduction must be listed as an adoptive parent on the adoption order or decree. Taxpayers may claim the adoption deduction according to their filing status as follows:

a. If filing single, married filing separately, qualifying widow(er), or head of household then only one taxpayer may claim the adoption credit on their return if two taxpayers are listed as the adoptive parent. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

b. If filing married filing jointly then the deduction may only be claimed on the return of the individual who is listed as an adoptive parent on the adoption order or decree. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is