

BOBBY JINDAL
Governor



TIM BARFIELD
Secretary

State of Louisiana
Department of Revenue

January 4, 2016

Sent via Email To: apa.h-wm@legis.la.gov

The Honorable Joel C. Robideaux, Chairman
House Committee on Ways and Means
P.O. Box 90462
Baton Rouge, Louisiana 70804

RE: Proposed Regulation LAC 61:I.4919 (Installment Agreement for Payment of Tax; Fees)


Dear Representative Robideaux:

On November 12, 2015, a copy of the Notice of Intent for the above-referenced proposed rule was electronically mailed to you for review. The purpose of the proposed rule is to promulgate LAC 61:I.4919 so as to implement the provisions of Act 130 of the 2015 Regular Session of the Louisiana Legislature in order to provide for taxpayer election of installment payments for taxes due and to set mandatory fees for the establishment of standard installment agreements and reinstatement of such agreements in cases of defaults.

The Notice of Intent was published on page 2484 in the November 2015 issue of the *Louisiana Register*. A public hearing was held at the LaSalle building on Tuesday, December 29, 2015, and there were no attendees. Additionally, we received no comments from the public on the proposed rule.

This report is being made in accordance with R.S. 49:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, our rule will be submitted for publication in the February 2016 issue of the *Louisiana Register*. Should you have any questions or need additional information, please contact Vanessa LaFleur, Director, Policy Services Division at Vanessa.lafleur@la.gov or (225) 219-2780.

Sincerely,


Jarrod Coniglio
Deputy Secretary

Enclosure

NOTICE OF INTENT

Department of Revenue Policy Services Division

Installment Agreement for Payment of Tax; Fees (LAC 61:I.4919)

Under the authority of R.S. 105 and R.S. 47:1576.2, 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:I.4919, Installment Agreement for Payment of Tax; Fees, to provide for the payment of taxes, interest, penalties, fees and costs ("taxes due") by installment payments.

Act 130 of the 2015 Regular Session of the Louisiana Legislature amended and reenacted R.S. 47:105 and enacted R.S. 47:1576.2 to provide for taxpayer election of installment payments for taxes due and to set mandatory fees for the establishment of standard installment agreements and reinstatement of such agreements in cases of defaults. To effect optimal collection of taxes due, improve compliance and keep viable businesses operational, the proposed rule provides the requirements, conditions and procedures that apply when qualified taxpayers elect to pay the taxes due in installment payments.

Title 61

REVENUE AND TAXATION

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

Chapter 49. Tax Collection

§4919. Installment Agreement for Payment of Tax

A. Time Tax Payable. The total amount of tax due on a tax return shall be paid no later than the date the return is required to be filed without regard to any extension of time for filing the return. An extension of time to file a return is not an extension of time to pay the tax due. The total amount of tax shown on the return as filed is an assessment, which is equivalent to a judgment, and shall be recorded as an assessment in the records of the secretary.

B. Installment Agreement. If a taxpayer qualifies for an installment agreement, the secretary may allow the taxpayer to pay taxes, interest, penalties, fees and costs due in installments subject, but not limited, to the following requirements or conditions.

1. The taxpayer shall pay a nonrefundable installment agreement fee in the amount of \$105, payable to the Department of Revenue, to establish an installment agreement for the payment of the tax debt. Payment of the fee is mandatory. The installment agreement fee cannot be paid in installments nor waived or applied against any tax debt. However, the secretary shall not charge the fee to enter into an installment payment agreement plan with any taxpayer whose adjusted gross income is less than or equal to \$25,000.

2. The taxpayer must be current in the filing of all returns and in the payment of all liabilities for all tax types and periods not covered in the installment agreement.

3. The taxpayer shall file returns for all tax periods in the installment agreement.

4. The taxpayer shall agree to waive all restrictions and delays on all liabilities not assessed and to timely file all returns and pay all taxes that become due after the periods included in the installment agreement.

5. The taxpayer may be required to pay a down payment of 20 percent and to make installment payments by automatic bank draft.

6. All installment agreement payments shall be applied to accounts, taxes, and periods as determined by the department.

7. Any and all future credits and overpayments of any tax shall be applied to outstanding liabilities covered by the installment agreement.

8. The taxpayer shall notify the department before selling, encumbering, alienating, or otherwise disposing of any of their real (immovable) or personal (movable) property.

9. Tax liens may be filed in any parish wherein the department has reason to believe the taxpayer owns immovable property.

10. A continuing guaranty agreement may be required on installment agreements requested by a corporation.

C. Offset of Tax Refunds and Other Payments

1. All state tax refunds issued to the taxpayer shall be applied to the tax debt until the balance is paid in full.

2. Monies received as an offset of the taxpayer's federal income tax refund shall be credited to the tax debt for the amount of the offset, less a deduction for the offset fee imposed by the Internal Revenue Service, until the balance is paid in full.

3. Other payments that the taxpayer may be entitled to receive shall be offset in accordance with applicable law.

4. Amounts of state or federal tax refunds offsets or other payments applied to the tax debt shall not reduce the amount of any installment payment due or extend the time for paying an installment payment.

D. Forms of Installment Agreements

1. Informal installment agreements shall be allowed only if the amount owed is less than \$25,000 and the payment period is 24 months or less.

2. Formal installment agreements shall be required if the amount owed is \$25,000 or more or the payment period exceeds 24 months. Information relative to the taxpayer's employment, bank account, credit, income statement, balance sheets, cash-flow data, and any other information shall be provided to the department upon request.

3. All installment agreements shall be made on forms and in the manner prescribed by the secretary.

E. Default; Reinstatement of Installment Agreement

1. If any installment payment is not paid on or before the dated fixed for its payment, the total outstanding balance shall be due and payable immediately upon notice and demand from secretary. All collection actions shall be reactivated.

2. Upon request of the taxpayer and the approval of the secretary, the installment agreement may be reinstated, provided the taxpayer pays the mandatory reinstatement fee in the amount of \$60, payable to the Department of Revenue. The reinstatement fee cannot be paid in installments nor waived or applied against any tax debt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 105 and R.S. 47:1576.2.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 42:

Family Impact Statement

The proposed adoption of LAC 61:I.4919 relative to installment agreements and fees 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

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

Provider Impact Statement

The proposed regulation 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

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., December 28, 2015.

Public Hearing

A public hearing will be held on December 29, 2015 at 9 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: **Installment Agreement for Payment of Tax; Fees**

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

This proposed rule implements the fees and procedures authorized by Act 130 of the 2015 Regular Session to establish, or reinstate, a defaulted installment payment agreement. If the taxpayer defaults on the installment agreement, a fee of \$60 is charged to reinstate the agreement. The fees do not apply to establish an installment agreement with a taxpayer whose adjusted gross income is less than or equal to \$25,000. The installment agreement fees cannot be paid in installments nor waived or applied against any tax debt.

The process of implementing and establishing the new installment plans will require a small, indeterminable, and immaterial amount of resources. These costs consist of adjustments to the LDR software system and to existing forms to account for the changes. Conversely, the fees may discourage individuals from choosing to establish an installment agreement for the purpose of halting collection by the department, leading to a small and indeterminable reduction in costs and use of department resources. Local governments will not be affected.

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

This proposed rule implements a new fee of \$105 to establish a standard installment payment agreement for taxes owed to LDR. Further, if the taxpayer defaults on the installment agreement, a fee of \$60 will be charged to reinstate the installment plan. Taxpayer's whose adjusted gross income is less than or equal to \$25,000 are exempt from payment of the fee required to establish an installment agreement. Based on historical data, LDR expects to process approximately 17,000 installment agreements and 4,445 defaults per year. Assuming the number of new and defaulted payment agreements remains constant, LDR self-generated revenue would increase by approximately \$2 million (17,000*\$105 + 4,445*\$60) per year, using actual figures that have been updated since the fiscal note for Act 130 was created.

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

The establishment of an installment agreement will only have a potential financial effect on taxpayers with an adjusted gross income of more than \$25,000. Since payment of the installment agreement fee is mandatory for many taxpayers, the fee may, to an indeterminable degree, discourage taxpayers from establishing installment agreements with LDR solely to have collection actions ceased. Since there is no exception from payment of the reinstatement fee, all taxpayers seeking to reinstate a defaulted installment agreement are required to pay the \$60 reinstatement fee. A formal installment agreement will be required for those with liabilities in excess of \$25,000 or an installment payment term greater than 24 months.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Tim Barfield
Secretary
1511#091

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office