

NOTICE OF INTENT

Department of Revenue Tax Policy and Planning Division

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

Under the authority of R.S. 47:1511, 287.732.2, 300.6 and 300.7, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to amend LAC 61:I.1001.

The primary purpose of the proposed Rule is to implement Act 450 of the 2023 Regular Session of the Louisiana Legislature relative to the pass-through entity election pursuant to R.S. 47:287.732.2.

The proposed Rule is written in plain language in an effort to increase transparency.

Title 61

REVENUE AND TAXATION

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

Chapter 10. Income: Pass-Through Entities

§1001. Election of Pass-Through Entities

A- B.3.a.ii. ...

~~iii. a copy of the federal S corporation election form, if applicable;~~

~~iv. iii.~~ formation documents of the entity such as the Articles of Incorporation, Partnership Agreement or Operating Agreement which specifically set forth how profits, losses and other tax items are distributed to the owners; and

~~v. iv.~~ a list of all unused Louisiana net operating losses, tax credit balances and other tax items earned at the entity level prior to the election; and

~~vi. any audit reports issued by certified public accountants for the preceding three taxable years, if applicable.~~

B.4.-C.3. ...

~~a. A pro forma Federal Form 1120 completed as if the entity had filed as a C corporation for federal income tax purposes;~~

~~b. a.~~ Schedule K-1s as actually issued to the owners of the entity for the taxable year as well as Louisiana Form R-6981, *Statement of Owner's Share of Entity Level Tax Items*, reflecting any income that remains taxable to the entity's owners in Louisiana after the election such as dividends and interest; and

~~e. b.~~ Louisiana Form R-6982, *Schedule of Tax Paid if Paid by Owner*, calculating how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level.

4. Modification of Income and Loss

a. Taxpayers with an ownership interest in an entity making the election shall make a modification, as follows:

~~4. i.~~ Resident individual taxpayers ~~with an ownership interest in an entity making this election~~ shall make a modification on Schedule E of their Louisiana Form IT-540, *Louisiana Resident Income Tax Return*, in accordance with ~~LA~~-R.S. 47:297.14. A non-resident or part-year resident shall make the modification on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

ii. Resident and nonresident trusts or estates shall make a modification on Lines 2D and 3D and Schedule A, respectively, of their Louisiana Form IT-541, *Fiduciary Income Tax Return*.

a. b. The modification shall be made for all income or loss of the entity that was included by the individual or fiduciary owners in the calculation of federal adjusted gross income or federal taxable income, respectively, but which is being taxed at the entity level for Louisiana income tax purposes after the election is made.

~~b. c.~~ The modification shall not be made for any income or loss that remains taxable for Louisiana individual or fiduciary income tax purposes to the entity's owners, such as interest income and dividend income.

~~e. d.~~ For calculation purposes, individual or fiduciary income taxpayers with an ownership interest in an entity making the election shall submit a *pro forma* Federal Form 1040

or 1041, respectively, that excludes any income, deductions or other tax items that were included in the calculation of Louisiana net income on the entity's Louisiana Form CIFT-620.

C.5-C.6.b. ...

D. Termination of the Election. Entities who make the election pursuant to LA-R.S. 47:287.732.2, may apply to the secretary of the Department of Revenue to terminate the election. Any such termination request requires the written approval of more than one-half of the ownership interest based upon capital account balances on the date the request is submitted. A taxpayer may request a termination of the election by electronic submission of Louisiana Form R-6983, Termination of the Pass-Through Entity Tax Election, and satisfying the requirements of either method of termination, as follows:

1. The secretary may terminate the election if the entity shows a material change in circumstances.

a. – b. ...

~~2. c.~~ The entity shall request to terminate the election shall include by submitting a private letter written explanation of the material change which warrants termination request to the Policy Services Division of the Department of Revenue in accordance with LAC 61:III.101.(C)(2)(a).

~~3. d.~~ Once the entity has filed a Louisiana income tax return for a taxable year for which the election has been made or a subsequent taxable year, the secretary shall not grant a termination of the election to apply to such taxable year for which a return has already been filed.

2. A taxpayer may terminate the election by filing an application for prospective termination.

a. For purposes of this Paragraph, an application shall be considered timely and complete when all required documentation has been submitted on or before November 1 prior to the close of the taxable year for calendar year filers or sixty days prior to the close of the taxable year for fiscal year filers.

3. a. The An entity applying for termination under either method provided in this Subsection must provide the Department either:

a. (i) A resolution signed by secretary of the corporation or equivalent officer manager verifying that more than one-half the ownership interest in the entity based upon capital account balances approved the election, or

b. (ii) Other written proof that more than one-half the ownership interest in the entity based upon capital account balances approved the request for termination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.732.2, 300.6, 300.7 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 46:43 (January 2020), amended by the Department of Revenue, Policy Services Division, LR:48:2991(December 2022); amended by the Department of Revenue, Tax Policy and Planning Division, LR:50:

Family Impact Statement

The proposed Rule has no 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 the proposed amendment 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 Statement

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

Small Business Analysis

The proposed Rule will have no known 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 Rule 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 Brad Blanchard, 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 4:00 p.m., Tuesday, January 23, 2024.

Public Hearing

A public hearing will be held on Wednesday, January 24, 2024, at 10:00 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802. Should individuals with a disability need an accommodation in order to participate, contact Brad Blanchard at the address given above in the Public Comments section, by phone at (225) 219-2780, or by email at LDRadarequests@la.gov.

Kevin J. Richard, CPA
Secretary

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iii. Repealed.

iv. formation documents of the entity such as the Articles of Incorporation, Partnership Agreement or Operating Agreement which specifically set forth how profits, losses and other tax items are distributed to the owners; and

v. a list of all unused Louisiana net operating losses, tax credit balances and other tax items earned at the entity level prior to the election.

vi. Repealed.

B.4.-C.3. ...

a. Repealed.

b. Schedule K-1s as actually issued to the owners of the entity for the taxable year as well as Louisiana Form R-6981, *Statement of Owner's Share of Entity Level Tax Items*, reflecting any income that remains taxable to the entity's owners in Louisiana after the election such as dividends and interest; and

c. Louisiana Form R-6982, *Schedule of Tax Paid if Paid by Owner*, calculating how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level.

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b. The modification shall be made for all income or loss of the entity that was included by the individual or fiduciary owners in the calculation of federal adjusted gross income or federal taxable income, respectively, but which is being taxed at the entity level for Louisiana income tax purposes after the election is made.

c. The modification shall not be made for any income or loss that remains taxable for Louisiana individual or fiduciary income tax purposes to the entity's owners, such as interest income and dividend income.

d. For calculation purposes, individual or fiduciary income taxpayers with an ownership interest in an entity making the election shall submit a *pro forma* Federal Form 1040 or 1041, respectively, that excludes any income, deductions or other tax items that were included in the calculation of Louisiana net income on the entity's Louisiana Form CIFT-620.

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D. Termination of the Election. Entities who make the election pursuant to R.S. 47:287.732.2, may apply to the secretary of the Department of Revenue to terminate the election. Any such termination request requires the written approval of more than one-half of the ownership interest based upon capital account balances on the date the request is submitted. A taxpayer may request a termination of the election by electronic submission of Louisiana Form R-6983, *Termination of the Pass-Through Entity Tax Election*, and satisfying the requirements of either method of termination, as follows:

1. The secretary may terminate the election if the entity shows a material change in circumstances.
 - a. – b. ...
 - c. The request to terminate the election shall include a written explanation of the material change which warrants termination
 - d. Once the entity has filed a Louisiana income tax return for a taxable year for which the election has been made or a subsequent taxable year, the secretary shall not grant a termination of the election to apply to such taxable year for which a return has already been filed.
2. A taxpayer may terminate the election by filing an application for prospective termination.
 - a. For purposes of this Paragraph, an application shall be considered timely and complete when all required documentation has been submitted on or before November 1 prior to the close of the taxable year for calendar year filers or sixty days prior to the close of the taxable year for fiscal year filers.
3. An entity applying for termination under either method provided in this Subsection must provide the Department either:
 - a. A resolution signed by secretary of the corporation or equivalent officer manager verifying that more than one-half the ownership interest in the entity based upon capital account balances approved the election, or
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Kevin J. Richard, CPA
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FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Election of Pass-Through Entities

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

The Louisiana Department of Revenue (“LDR”) will incur one-time costs of \$81,360 in FY 24 for computer system development and testing, modification to tax forms, and Revenue Processing Center scanners.

The purpose of the proposed amendment is to implement Act 450 of the 2023 Regular Session of the Louisiana Legislature relative to the pass-through entity (PTE) election provided for in R.S. 47:287.732.2. Act 450 authorizes the use of the pass-through entity exclusion of net income or loss by estates, trusts, and partnerships. Act 450 additionally authorizes an application process to be administered by LDR that would allow the termination of pass-through entity status in the taxable year following submission and disallows additional status changes for the following five taxable years.

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

The impact on state revenue collections is indeterminable. LDR does not have the information necessary to estimate the impact. There are possible individual scenarios where overall state tax receipts will decrease and possible scenarios where overall state tax receipts will increase. Each situation is dependent on the estate or trust’s tax situation and the entity actually making the election, which cannot be predicted.

The proposed rule addresses the authorization for fiduciary entities who are members, partners, or shareholders of an entity that made the election to exclude any income or loss from that pass-through entity from their taxable income. Partnership provisions are already in current practice and would be of no effect since partnerships do not pay income tax.

The rule also addresses the authorization of a prospective termination of pass-through entity status by application to LDR once per five years. The resulting impact on state tax revenue may be either negative or positive, and thus is indeterminable.

With no local income tax, there is no impact to local governmental revenue as a result of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES OR NON-GOVERNMENTAL GROUPS (Summary)

Businesses will need to submit an application to the Department in order to apply for termination of the election. Additional costs for completion and submission of the required paperwork of this proposed rule are expected to be minor.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposal.

Kevin J. Richard, CPA
Secretary

Alan Boxberger
Interim Fiscal Officer