

NOTICE OF INTENT

Department of Revenue Policy Services Division

Nonresident Professional Athletes
(LAC 61:I.1304; LAC 61:I.1305; LAC 61:I.1520; LAC 61:III.1527)

Under the authority of R.S. 39:100.1, 47: 101(A), 111(A)(12), 114, 164(D), 290, 293, 295, 1511, 1520, 1602.1, 1604.1 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.1304, 1305, 1520 and 61:III.1527 relative to Louisiana income tax returns for nonresident professional athletes.

These proposed amendments would repeal language pertaining to obsolete team composite tax returns and composite payments, which allowed professional athletic teams to report Louisiana individual income tax on behalf of all nonresident team members. These amendments would also effectively modify certain reporting requirements related to the Sports Facility Assistance Fund and make an existing regulation consistent with R.S. 47:1604.1, which modifies penalty rates for fraud, negligence and large tax deficiencies.

Title 61 REVENUE AND TAXATION

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

Chapter 13. Income: Individual

§1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana

A. – I. ...

~~J. Optional team composite return for professional athletic teams. Professional athletic teams may file a composite return, on a form prescribed by the secretary, on behalf of its nonresident professional athletes.~~

~~1. Resident professional athletes may not be included on a composite return.~~

~~2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:~~

~~a. name;~~

~~b. address;~~

~~c. Social Security number;~~

~~d. Louisiana income attributable to that nonresident professional athlete.~~

~~3. Nonresidents who are members of a professional athletic team who have any other Louisiana source income may be included in the composite return, however, inclusion in the composite return does not relieve these team members of the responsibility of filing any other required Louisiana tax return. If the other Louisiana source income is properly reportable on a Louisiana income tax return, that return must include the income from compensation as a member of a professional athletic team. Any amount paid with the team composite return on a nonresident professional athlete's behalf may be used as a credit against that team member's Louisiana individual income tax liability for the same tax period.~~

~~4. Nonresidents who are included in a properly filed and accurate team composite return, and who have no Louisiana income other than compensation for services rendered as a member of a professional athletic team, will be deemed to have filed a Louisiana individual income tax return. Except that any underpayment by the team with the team composite return shall be the personal responsibility of the members of the professional athletic team included in the composite return.~~

~~5. The tax due on the composite return shall be computed using either of the following methods:~~

~~a. the sum of the actual tax liability from total compensation for services rendered as a member of a professional athletic team for each member of the team included in the composite return;~~

~~b. alternative method of computing the tax due on the composite return;~~

~~i. add the Louisiana income attributable to all nonresident professional athletes included in the composite return;~~

~~ii. subtract a deduction equal to 30 percent of the Louisiana income attributable to all nonresident professional athletes included in the composite return. This deduction is allowed in place of the combined standard deduction and personal exemption, excess itemized deductions, and federal tax deduction for the same period;~~

~~iii. the tax shall be computed using the maximum individual tax rate applied to Louisiana income after the 30 percent deduction.~~

~~6. Each professional athletic team will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that team.~~

~~7. A team making a composite return and payment must furnish the following information to all team members included in the composite return:~~

- ~~a. the team's taxpayer identification number;~~
- ~~b. the amount of the payment made on the team member's behalf;~~
- ~~c. a statement that the amount paid on the team member's behalf can be used as a credit against that team member's Louisiana individual income tax liability for the same tax period, if the team member files an individual return with the Department of Revenue that declares the income from compensation as a member of a professional athletic team;~~
- ~~d. the mailing address of the Louisiana Department of Revenue; and~~
- ~~e. the internet address of the Louisiana Department of Revenue.~~

J K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:111(A)(12), R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:99 (January 2002), amended LR 47:

§1305. Income Tax Schedule Requirement for Certain Nonresident Professional Athletes and Professional Sports Franchises

A. If the Louisiana income tax of a nonresident professional athlete or professional sports franchise is attributable to the Sports Facility Assistance Fund, created by R.S. 39:~~100.1~~ 99, the following schedule must be attached to any income tax return filed, including individual, corporate, fiduciary, or trust, ~~or composite~~ income tax returns. Each nonresident professional athlete and professional sports franchise with Louisiana source income must attach a schedule to the required Louisiana income tax return, ~~including a team composite return~~, that includes the following information:

1. the name of each facility, course, stadium, or arena at which they earned income in Louisiana;
2. the location of each facility, course, stadium, or arena at which they earned income in Louisiana; and
3. the number of duty days, as defined in LAC 61:I.1304.I, spent at each facility, course, stadium, or arena at which they earned income in Louisiana.

B. ...

C. Effective for tax years beginning on or after January 1, 2021, Nonresident professional athletes, if required to file an individual income tax return, must utilize the Louisiana Nonresident Return, Form Professional Athlete form IT-540B-NRA and attach Schedules NRPA-1 and NRPA-2.

D. Penalty for Failure to Timely Remit Returns, Schedules and Payments

1. The following penalties based on R.S. 47:1602.1 will be imposed for failure to timely remit these returns, schedules, and payments.

a. In the case of Based on R.S. 47:1602.1, the failure to timely make and file any return or schedule required by the secretary to administer the provisions of the Sports Facility Assistance Fund, will result in a the penalty of shall be \$500 for the first such failure, \$1,000 for the second such failure within the three-year period beginning on the due date of the first delinquent return or schedule, and \$2,500 for each subsequent failure within the three-year period beginning on the due date of the first delinquent return or schedule.

b. In the case of failure to timely remit any payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be 5 percent of the total payment due if the delinquency is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which the delinquency continues, not to exceed 50 percent of the amount due.

E. Based on R.S. 47:1604.1, if any taxpayer fails to make any return or makes an incorrect return, under circumstances indicating willful negligence or intentional disregard of rules and regulations, but with no intent to defraud, shall cause a penalty to be imposed, in addition to any other penalties provided, of 5 percent of the tax or deficiency found to be due, or \$10 whichever is greater. any taxpayer who fails to comply with the tax laws of this state or understates tax liability by ten percent or more, under circumstances indicating a careless or reckless disregard of rules and regulations, but with no voluntary intent to defraud, may cause a penalty to be imposed, in addition to any other penalties provided, of 20 percent of the tax or deficiency found to be due.

1. The penalty provided for pursuant to this Paragraph shall not be applicable if a taxpayer's understatement was due to reasonable cause where the taxpayer acted in good faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:100.1, R.S. 47:101(A)(3), R.S. 47:295, R.S. 47:1511, R.S. 47:1602.1, and R.S. 47:1604.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:98 (January 2002), amended LR 34:446 (March 2008), amended LR 47:

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

Chapter 15. Income: Withholding Tax

§1520. Withholding by Professional Athletic Teams

A. – G. ...

~~H. Exception to Withholding Requirement under This Section~~

~~1. The secretary may grant an exception to withholding requirements under this Section to any professional athletic team not domiciled in Louisiana that agrees in writing to file team composite returns and remit composite payments as provided in LAC 61:I.1304.J.~~

~~2. The composite return and composite payment will be considered to be a return and payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund.~~

~~3. This agreement will be binding on the secretary and the professional athletic team until it is revoked. Either party may revoke this agreement.~~

AUTHORITY NOTE: Adopted in accordance with R.S. 39:100.1, R.S. 47:164(D), R.S. 47:295, R.S. 47:1511, R.S. 47:114 and R.S. 47:1602.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:91 (January 2004), amended LR 39:104 (January 2013), repromulgated LR 39:330 (February 2013), amended LR 47:

Part III. Administrative and Miscellaneous Provisions

Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1527. Electronic Filing Mandate for Reports and Returns related to the Sports Facility Assistance Fund

A. – B.(1.) (b.) ...

c. ~~IT-540B-NRA~~ with attached Schedules NRPA-1 and NRPA-2 for nonresident athletes; and

d. – D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1520 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 37:914 (March 2011), amended LR 47:

Family Impact Statement

The proposed amendments to LAC 61:I.1304, 1305, 1520 and 61:III.1527, regarding Louisiana Nonresident Professional Athlete Returns, 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 Statement

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

Small Business Statement

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 Christina Junker, 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 25, 2022.

Public Hearing

A public hearing will be held on Wednesday, January 26, 2022, at 1:00 p.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly J. Lewis
Secretary, Department of Revenue

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1. the name of each facility, course, stadium, or arena at which they earned income in Louisiana;
2. the location of each facility, course, stadium, or arena at which they earned income in Louisiana; and
3. the number of duty days, as defined in LAC 61:I.1304.I, spent at each facility, course, stadium, or arena at which they earned income in Louisiana.

B. ...

C. Effective for tax years beginning on or after January 1, 2021, nonresident professional athletes, if required to file an individual income tax return, must utilize the Louisiana Nonresident Return, Form IT-540B and attach Schedules NRPA-1 and NRPA-2.

D. Penalty for Failure to Timely Remit Returns, Schedules and Payments

1. The following penalties based on R.S. 47:1602.1 will be imposed for failure to timely remit these returns, schedules, and payments.

a. In the case of failure to timely make and file any return or schedule required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be \$500 for the first such failure, \$1,000 for the second such failure within the three-year period beginning on the due date of the first delinquent return or schedule, and \$2,500 for each subsequent failure within the three-year period beginning on the due date of the first delinquent return or schedule.

b. In the case of failure to timely remit any payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund, the penalty shall be 5 percent of the total payment due if the delinquency is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which the delinquency continues, not to exceed 50 percent of the amount due.

E. Based on R.S. 47:1604.1, any taxpayer who fails to comply with the tax laws of this state or understates tax liability by ten percent or more, under circumstances indicating a careless

or reckless disregard of rules and regulations, but with no voluntary intent to defraud, may cause a penalty to be imposed, in addition to any other penalties provided, of 20 percent of the tax or deficiency found to be due.

1. The penalty provided for pursuant to this Paragraph shall not be applicable if a taxpayer's understatement was due to reasonable cause where the taxpayer acted in good faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:100.1, R.S. 47:101(A)(3), R.S. 47:295, R.S. 47:1511, R.S. 47:1602.1, and R.S. 47:1604.1.

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Kimberly J. Lewis
Secretary, Department of Revenue

Fiscal and Economic Impact Statement For Administrative Rules

Person preparing
statement:
Phone:
Return Address:

Ed Landry
(225) 219-2780
617 North Third Street

Baton Rouge, LA 70802

Department: Revenue
Office: Policy Services Division
Rule Title: LAC 61:I.1304, 1305, 1520
and 61:III.1527
Date Rule
Takes Effect: March 20, 2022

Summary

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

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

This proposed rule change will result in approximately \$12,500 in savings to the LA Department of Revenue (LDR) in fiscal year 2022-2023 and fiscal year 2023-2024. The Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1304, 1305, 1520 and 61:III.1527 relative to Louisiana income tax returns for nonresident professional athletes. These proposed amendments would repeal language pertaining to obsolete team composite tax returns, change the income tax form required to be filed by nonresident professional athletes (NRPAs) from the Form IT-540B-NRA to the Form IT-540B, further clarifies that late filing of required schedules trigger the delinquent filing penalty, and adds the statute language regarding the delinquent payment penalty. This proposal also implements the provision of Act 348 of the 2020 Regular Legislative Session that is related to the replacement of the 10% "negligence" penalty with the 20% "Accuracy-related" penalty (R.S. 47:1604.1).

Local governments are not affected by this proposal.

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

The proposed rule amendment will result in no impact to the state general fund in FY 2020-2021, and indeterminable impacts to the state general fund in FY2021-2022 and FY2022-2023. Also, this proposal will result in relatively minor increases to LDR self-generated funds in FY 2021-2022, FY2022-2023, and FY2023-2024

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

NRPAs that are delinquent in paying their tax liability will incur increased delinquent payment penalty costs that are relatively minor in the collective. NRPAs that fail to make a reasonable attempt to comply with the tax laws of this state, or carelessly or recklessly disregard the tax laws of this state will collectively and individually incur indeterminable "Accuracy-related" penalty costs. The changes to optional and required return filings are not expected to impact the affected group's costs, workload, or amount of paperwork.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment is not expected to have any effect on competition or employment.



Signature of Agency Head or Designee
Kimberly Lewis, Secretary

Typed Name and Title of Agency Head or Designee

Date of Signature



Legislative Fiscal Officer Designee
12/9/21

Date of Signature