Electronic meetings could potentially reduce expenses to directly affected persons, small businesses, or non-governmental groups by negating the need for travel to a board meeting.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed rule is not anticipated to have an effect on competition and employment.

Ronnie S. Johns	Patrice Thomas
Chairman	Deputy Fiscal Officer
2402#026	Legislative Fiscal Officer

NOTICE OF INTENT

Department of Revenue
Tax Policy and Planning Division

Net Capital Gains Deduction
(LAC 61:I.1312)

Under the authority of R.S. 47: 293.2 and 1511, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to adopt LAC 61:I.1312 to effectively administer R.S. 47:293.2 relative to the net capital gains deduction.

Revised Statutes 47:293(9)(a)(xvii) and (10) provide an individual income tax deduction for net capital gains resulting from the sale or exchange of an equity interest in or substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in Louisiana.

Act 242 of the 2023 Regular Legislative Session ("Act 242") requires the department to promulgate regulations relative to the net capital gains deduction and outlines minimum rule requirements. Act 242 provides that the regulations must contain: 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transaction eligible for the deduction; 3) restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana; and 4) restrictions on eligibility for transactions between related parties. The primary purpose of this proposed Rule is to conform to these regulation requirements.

This Rule is written in plain language with a readability score of 11.11.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 13. Income: Individual

§1312. Net Capital Gains Deduction

A. General. R.S. 47:293(9)(a)(xvii) and (10) provide a deduction for resident individuals and nonresident individuals ("taxpayers"), respectively, for net capital gains resulting from the sale or exchange of an equity interest in, or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization ("business") commercially domiciled in Louisiana.

B. Definitions

Capital Gains from the Sale or Exchange of the Assets of a Business—capital gains from sales and exchanges that are reported on Federal Form 4797–Sales of Business Property, the gains from which are reportable on Schedule D of Federal Form 1040.

Commercial Domicile—the principle place from which the business is directed or managed.

Equity Interest—an ownership interest in a business entity that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company.

Net Capital Gains—the amount reported as capital gains on the Federal Form 1040.

Related Party—

a. a taxpayer and all entities which are controlled entities with respect to such taxpayer;

b. a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is five percent or less of the value of the trust property; and

c. except in the case of a sale or exchange in satisfaction of a pecuniary bequest, a taxpayer who is an executor of an estate and a beneficiary of such estate.

Sale or Exchange of an Equity Interest—a sale or exchange of an equity interest that is reportable on Schedule D of Federal Form 1040–Capital Gains and Losses.

Sale or Exchange of Substantially all of the Assets of a Business—a sale or exchange of assets that leaves the entity unable to carry-on its business. A sale or exchange of assets is presumed to be a sale or exchange of substantially all of the assets of the business if the selling business transfers at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets that it held immediately before the transfer.

C. Documentation Requirements

1. Taxpayers claiming the deduction shall submit the following documentation at the time of filing their Louisiana individual income tax return claiming the deduction:

a. a completed Louisiana Form R-6180, Net Capital Gains Deduction Worksheet;

b. documentary evidence of the date the taxpayer acquired an equity interest in the business, such as articles of incorporation or organization, acts of sale or exchange, or donative instruments;

c. a copy of the taxpayer's federal Schedule K-1, if applicable, from the entity from which the gain was derived; and

d. a complete copy of the taxpayer's Federal Form 1040 filed with the IRS for the period in which the gain was recognized, including the Schedule D and any corresponding schedules and forms.

2. In addition to the documentation required by Paragraph 1 above, when the capital gain for which a deduction is being claimed is greater than $250,000, taxpayers shall also submit the following at the time of filing their Louisiana individual income tax return claiming the deduction:

a. copies of the last two returns on which the income from the business was reported. If the gain is derived from a partnership, provide Form IT-565, Louisiana Partnership Return of Income, for the last two years.

b. If the gain is derived from a pass-through entity, provide detailed information on the pass-through structure, such as a complete organizational chart showing each tier between the taxpayer and the entity from which the gain is derived.

c. If the gain is from the sale of assets, the taxpayer shall also provide the following:

i. a depreciation schedule or fixed asset schedule showing a calculation of gross to net asset values; and

ii. an allocation of purchase price among assets as required by IRC Section 1060, and generally reportable on IRS Form 8594.

D. Eligibility Restrictions

1. Net capital gains resulting from the sale or exchange of real property or tangible assets may qualify for the deduction if 75 percent or more of the real property or tangible assets are located within Louisiana, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange.

2. Net capital gains from the sale or exchange of an equity interest or from the sale or exchange of substantially all assets shall not qualify for the deduction if the transaction transfers ownership of the interest or assets to a related party.

E. The accrual of refund interest shall be suspended during any period of time that a delay in allowance or approval of the deduction is attributable to the taxpayer's failure to provide information or documentation required herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xvii) and (10), 47:293.2 and 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Policy and Planning Division, LR 50:

Family Impact Statement

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

Small Business Analysis

The proposed Rule is not anticipated to 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 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 Christina Junker, Attorney, Tax Policy and Planning 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 p.m., Wednesday, March 27, 2024.

Public Hearing

A public hearing will be held on Thursday, March 28, 2024, at 1:30 PM in the LaBelle Room, on the first 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 Christina Junker at the address given above in the Public Comments section, by email at LDRadarequests@la.gov, or by phone at (225) 219-2780.

Richard Nelson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Net Capital Gains Deduction

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

The purpose of the proposed rule is to implement Act 242 of the 2023 Regular Session ("Act 242"), which enacted R.S. 47:293.2 and requires the department to adopt certain regulations relative to the net capital gains deduction ("the deduction"). Specifically, R.S. 47:293.2 requires the department to adopt regulations establishing 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transactions eligible for the deduction; 3) restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana; and 4) restrictions on eligibility for transactions between related parties. In addition, the rule defines certain terms and phrases contained in R.S. 47:293(9)(a)(xvii), which authorizes the deduction. The rule limits eligibility to net capital gains resulting from transactions in which at least 75 percent of the real property or tangible assets are located within Louisiana. Additionally, capital gain from transactions whereby ownership of the interest or assets are transferred to a related party do not qualify for the deduction. The rule further provides for the suspension of the accrual of refund interest should a taxpayer fail to provide information or documentation required within the regulation.

The Louisiana Department of Revenue's ("LDR") implementation costs are expected to be minimal. The agency currently has sufficient funding to implement the proposed rule.

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

It is assumed that eligible claims for the deductions, particularly for relatively small capital gains, are not being submitted due to the required documentation. The rule would require less paperwork for claims for capital gains under $250,000 which could result in an increase of claims for the deduction. However, the proposed rule also limits eligibility which could result in fewer eligible claims. Related parties and parties with less than 75 percent of real property or tangible assets located in Louisiana will no longer qualify for the deduction. The extent to which these new restrictions offset the reduced amount of paperwork is unknown. Overall, the impact to the state 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 NONGOVERNMENTAL GROUPS (Summary)

Act 242 and the proposed rule are expected to result in more taxpayers claiming the net capital gains deduction. Many taxpayers will experience reduced paperwork requirements when seeking the deduction, resulting in increased utilization to the extent that the deduction was not claimed due to the documentation required. LDR will no longer require a qualified appraisal of the business, which will result in a reduction of costs for those seeking the deduction. The proposed rule will also prevent misuse of the deduction by related parties and parties with less than 75 percent of real property or tangible assets located in Louisiana. The proposed rule requires taxpayers seeking to claim the deduction to attach certain documentation based on whether the capital gain for which a deduction is being claimed is less than or greater than $250,000. Taxpayers with capital gains less than $250,000 can expect less costs and paperwork than those with capital gains greater than $250,000.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment.

Richard Nelson	Deborah A. Vivien
Secretary	Chief Economist
2402#025	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Tax Policy and Planning Division

Partnership Filing Requirements
(LAC 61:I.1402)

Under the authority of R.S. 47:1511 and 201 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 adopt LAC 61:I.1402 relative to partnership filing requirements.

Revised Statute 47:201 requires partnerships to file an annual informational return of income, unless otherwise provided. The purpose of the proposed regulation is to implement Act 287 of the 2021 Regular Session of the Louisiana Legislature relative to partnership filing requirements.

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 14. Income: Partnerships

§1402. Partnership Filing Requirements

General Requirement

1. Unless otherwise provided, all partnerships doing business or deriving Louisiana sourced income are required to file an informational partnership return of income with the Department of Revenue.

2. Partnerships subject to the filing requirement are required to file Form IT-565, *Partnership Return of Income*, and include all required schedules and attachments.

B. Exceptions

1. A partnership is exempt from filing a partnership return if any of the following are applicable:

a. The partnership's gross receipts were less than $250,000 and the partnership's total assets at the end of the tax year were less than $1 million.

i. For purposes of this Subparagraph, "gross receipts" means the sum of the amounts reportable as gross receipt or sales, ordinary income from other partnerships, estates, and trusts, net farm profit and other income on federal Form 1065 or successor form (Lines 1a, 4, 5 and 7 on the 2023 Form 1065); other gross rental income, interest income, ordinary dividends, royalties, and other income on Schedule K, Partners' Distributive Share Items, of federal Form 1065 or successor form (Lines 3a, 5, 6a, 7, and 11 on the 2023 Form 1065, Schedule K); gross proceeds from short-term and long-term capital gains on federal Schedule D, Capital Gains and Losses or successor form; gross proceeds from sale of business property on federal Schedule 4797 or successor form; and total gross rents on federal Form 8825 or successor form, (Line 18a on the 2023), excluding any negative values.

ii. For purposes of this Subparagraph, "total assets" means amounts reportable as end of tax year total assets on Schedule L, Balance Sheet per Books of the federal Form 1065, or successor form (Line 14, column D on the 2023 Form 1065, Schedule L) without regard to location of assets, and excluding any negative values reported as assets on the lines preceding of Schedule L (Lines 1 through 13 on the 2023 form).

b. The partnership is not required to file federal Form 1065 with the Internal Revenue Service.

c. The partnership elected to be taxed as a corporation and files Form CIFT 620 with the Department of Revenue.

d. A partnership qualifying for any exception under this Paragraph must complete Form IT-565, *Partnership Return of Income,* when necessary, for the purpose of providing all partners with the information necessary to file all required income tax returns with the Department of Revenue.

2. Notwithstanding Paragraph 1, a partnership shall file a state partnership return regardless of any applicable exception, when any of the following apply: