

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
GOVERNOR



KIMBERLY LEWIS ROBINSON
SECRETARY

August 6, 2018

Via E-mail/R.R.R. to:

apa.h-wm@legis.la.gov

The Honorable Neil Abramson, Chairman
House Committee on Ways & Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-r&f@legis.la.gov

The Honorable Jean-Paul J. Morrell, Chairman
Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: Proposed Regulation LAC 61:I.1515; LAC 61:III.1501, 1503, 1505, 1507, 1509, and 1530 – Mandatory Electronic Filing of Tax Returns and Payments

Dear Chairman Abramson and Chairman Morrell:

On June 10, 2018, a copy of the Notice of Intent for the above-reference proposed rule was electronically mailed to you for review. The primary purpose for this rule is to require and provide for the electronic filing of the Corporation Franchise, Corporation Income, Partnership, and Fiduciary Income (Estates and Trusts) tax returns. The Secretary's authority to require the electronic filing of returns and reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Procedure Act is authorized by Act 150 of the 2017 Regular Session of the Louisiana Legislature. Additionally the Notice of Intent amends and adopts the Mandatory Electronic Filing of Tax Returns and Payment Rules.

The Notice of Intent was published on page 1166 in the June 2018 issue of the *Louisiana Register*. A public hearing was held at the LaSalle building on Thursday, July 26, 2018, and there was only one attendee (Linda Babin with the Society of Louisiana CPAs) who had no substantive comments to make. Additionally, we received no written 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 September 2018 issue of the *Louisiana Register*.

Contributing to a better quality of life

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,

A handwritten signature in blue ink, appearing to read 'KLR', with a long horizontal flourish extending to the right.

Kimberly Lewis Robinson
Secretary

NOTICE OF INTENT

Department of Revenue Policy Services Division

Mandatory Electronic Filing of Tax Returns and Payments (LAC 61:I.1515; LAC 61:III.Chapter 15)

Under the authority of Act 150 of the 2017 Regular Session of the Louisiana Legislature, which authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Act, R.S. 47:1511, 114, 181, 201, 287.614, 300.1, 551, 609, 1061, 1519, 1520, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to adopt LAC 61:III.1503, 1505, 1507, 1509 and 1530 to provide mandatory electronic filing requirements for the Corporation Franchise, Corporation Income, Partnership, and Fiduciary Income (Estates and Trusts) tax returns.

The Department of Revenue also gives notice that rulemaking procedures have been initiated to amend and adopt the Mandatory Electronic Filing of Tax Returns and Payment Rules, LAC 61:I.1515 and LAC 61:III.1501.

Title 61

REVENUE AND TAXATION

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

Chapter 15. Income: Withholding Tax

§1515. Withholding Tax Statements and Returns—Electronic Filing Requirements

A. Employers that are required to electronically remit withholding tax pursuant to R.S. 47:1519(B) and LAC 61:I.4910.A, shall file a separate L-1 return electronically on a quarterly basis, effective for the periods beginning after December 31, 2011.

B. Employers are required to file a transmittal of withholding tax statements, Form L-3, with copies of the employee withholding statements, Form W-2s and any information returns such as Federal Form 1099.

1. The L-3 transmittal and employee withholding statements must be filed on or before the first business day following January 31 for the preceding calendar year.

2. If a business terminates during the year, the L-3 transmittal and employee withholding statements must be filed within 30 days after the last month in which the wages were paid.

3. If the due date falls on a weekend or holiday, the report is due the next business day and becomes delinquent the following day.

C. Employers that file 50 or more employee withholding statements due on or after January 1, 2016, are required to electronically file the Form L-3, and the employee withholding statements, Form W-2s, and any information returns.

D. Electronic Filing Options. The Form L-3, and the employee withholding statements, Form W-2, and any information returns may be filed electronically as follows:

1. electronic filing using the LaWage electronic filing application via the LDR website, www.revenue.louisiana.gov;

2. any other electronic method authorized by the secretary;

3. submissions by magnetic media including tapes and tape cartridges are no longer allowed; and

4. submissions on CDs or DVDs are no longer allowed.

E. Separate submissions must be made for each employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1519, R.S. 47:1520 and R.S. 47:114.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 28:1489 (June 2002), amended LR 35:2204 (October 2009), LR 38:2382 (September 2012), amended LR 44:

Part III. Administrative and Miscellaneous Provisions Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1501. Requirement for Tax Preparers to File Income Tax Returns Electronically

A. Definitions

Authorized Individual Income Tax Return—any individual tax return that can be filed electronically.

Filed Electronically—filing a tax return by electronic means using software that has been approved for electronic filing by the Louisiana Department of Revenue.

Individual Income Tax Return—any tax return required to be filed by R.S. 47:101.

Tax Preparer—a person or entity that prepares for compensation or employs one or more persons to prepare for compensation any Louisiana individual income tax return.

a. A tax preparer is an entity that is assigned a tax identification number and includes all of the entity's locations.

b. The combined total of the returns prepared at all of the tax preparer's locations will be used to determine whether or not the tax preparer is subject to the electronic filing mandate.

B. For returns due on or after January 1, 2012, 90 percent of the authorized individual income tax returns prepared and filed by a tax preparer that prepares and files more than 100 Louisiana individual income tax returns during any calendar year are required to be filed electronically.

C. A tax preparer that is subject to the electronic filing mandate must be accepted in the IRS e-file Program and have an electronic filer identification number (EFIN) and use software that has been approved for e-file by the Louisiana Department of Revenue.

D. Once a tax preparer is subject to the electronic filing mandate, the tax preparer must continue to e-file the required percentage of authorized individual income tax returns in future years regardless of the number of returns filed.

E. Tax Preparer Undue Hardship Waiver of Electronic Filing Requirement

1. The secretary may waive the electronic filing requirement if it is determined that complying with the requirement would cause an undue hardship.

2. For the purpose of waiver of the electronic filing requirement, inability by the tax preparer to obtain broadband access at the location where the tax returns are prepared will be considered an undue hardship and waiver of the requirement will be granted.

F. The penalty imposed by R.S. 47:1520(B) for failure to comply with the electronic filing requirement does not apply to the requirement for tax preparers to file income tax returns electronically.

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

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:2463 (November 2007), amended LR 34:1425 (July 2008), amended LR 44:

§1503. Corporation Franchise Tax Returns—Electronic Filing Requirements

A. Every corporation that files a Louisiana Corporation Franchise Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows:

1. For tax periods beginning on or after January 1, 2019, every corporation with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2020, every corporation with total assets which have an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the corporation as reported on Line F of the LA CIFT 620;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Corporations required to electronically file their Louisiana Corporation Franchise Tax Return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to corporations and preparers who file the return on a business entity's behalf.

B.1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:609, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

§1505. Corporation Income Tax Returns—Electronic Filing Requirements

A. Every corporation that files a Louisiana Corporate Income Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows.

1. For tax periods beginning on or after January 1, 2018, every corporation with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2019, every corporation with total assets with an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the corporation as reported on Line F of the LA CIFT 620;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Corporations required to electronically file their Louisiana corporation income tax return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to corporations and preparers who file the return on a business entity's behalf.

B.1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.614, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

§1507. Partnership Returns—Electronic Filing Requirements

A. Every partnership that files a Louisiana Partnership Tax Return, except for those partnerships filing composite partnership returns, shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows:

1. For tax periods beginning on or after January 1, 2018, every partnership with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2019, every partnership with total assets which have an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the partnership as reported on Line F of the form IT- 565;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Partnerships required to electronically-file their Louisiana Partnership Income Tax return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to partnerships and preparers who file the return on a business entity's behalf.

B. 1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

§1509. Fiduciary Income Tax Returns (Estates and Trusts)—Electronic Filing Requirements

A. Every fiduciary that files a Louisiana Fiduciary Income Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows.

1. For tax periods beginning on or after January 1, 2019, every fiduciary that files a Louisiana fiduciary income tax return with more than 10 Schedules K-1 attached for taxable years beginning on or after January 1, 2019 shall file the return electronically.

2. For tax periods beginning on or after January 1, 2020, every fiduciary that files a Louisiana fiduciary income tax return with one or more Schedules K-1 attached for taxable years beginning on or after January 1, 2020 shall file the return electronically.

3. Fiduciaries required to electronically-file may not send paper versions of any forms to be included as part of their return.

B. 1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

3. If the taxpayer can prove the electronic filing of a tax return or report would create an undue hardship, the secretary may exempt the taxpayer from filing the return or report electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:181, 201, 300., 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

§1530. Telecommunication Tax for the Deaf—Electronic Payment Required

A. R.S. 47:1519(B)(1) allows the secretary to require a local or wireless telecommunications service company operating in Louisiana to remit the tax collected for the Telecommunications for the Deaf Fund to the Department of Revenue by electronic funds transfer.

B. Effective for the third quarter of the 2018 taxable calendar and all other taxable calendar quarters thereafter, all payments by a local or wireless telecommunications service company operating in Louisiana shall be electronically transferred to the Department of Revenue on or before the thirtieth day following the close of the reporting period using the electronic format provided by the department.

C. For the purposes of this Rule, specific requirements relating to the procedures for making payments by electronic funds transfer are set forth in R.S. 47:1519 and LAC 61:I.4910.

D. Failure to Timely Transfer Electronically

1. Failure to comply with the electronic funds transfer requirements shall result in the tax payment being

considered delinquent and subject to penalties and interest as provided under R.S. 47:1601 through 1602.

2. The deduction allowed by R.S. 47:1061 as compensation for collecting and remitting the tax shall not be allowed if the tax payment is not timely transmitted electronically.

E. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519, this Rule, and LAC 61:I.4910, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

F. In any case where the taxpayer can prove payment by electronic funds transfer would create an undue hardship, the secretary shall exempt the taxpayer from the requirement to transmit funds electronically.

G. A tax return or report must be filed electronically separately from the electronic transmission of the remittance. Specific requirements relating to the mandatory electronic filing of the return or report required by the Department of Revenue are set forth in LAC 61:III.1529.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519, 47:1511, and 1061.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

Family Impact Statement

The proposed adoption of this Rule should have 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 this proposed Rule has 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 has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule has 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.

Small Business Analysis

The proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

Public Comments

All interested persons may submit written data, views, arguments or comments regarding this proposed Rule to Danielle B. Clapinski, 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., July 25, 2018.

Public Hearing

A public hearing will be held on July 26, 2018 at 1:30 p.m. in the LaBelle Room, located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Mandatory Electronic Filing of Tax Returns and Payments

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

This proposal adopts rules that require electronic filing of certain Corporation Income Tax returns, certain Corporation Franchise Tax returns, certain Partnership Income returns, and certain Fiduciary Income Tax returns. The proposal requires a local or wireless telecommunication service company operating in Louisiana to remit the tax collected for the Telecommunication for the Deaf Fund by electronic transfer. This proposal also provides for the assessment and waiver of penalties for non-compliance. Finally, this proposal requires electronic filing for withholding tax, and no longer allows the withholding tax annual return filing via CD or DVD.

Implementation of this proposal will not result in material additional costs or cost savings to governmental units. Computer system acceptance of the required electronic returns is already in place for returns other than Fiduciary, and LDR is implementing electronic filing of Fiduciary returns as an ongoing enhancement of its collection efforts. Accounting for non-compliance penalties will not result in material additional costs.

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

This proposal may increase revenues from penalties by an indeterminable amount. A modest and temporary increase in revenue from penalties is possible as the proposed rule is implemented, although LDR cannot predict non-compliant behavior. For information, on returns that are currently required to be filed electronically, LDR collected approximately \$16,000 in FY15, \$20,000 in FY16, and \$7,000 in FY17. For the most recent year reported, 32,000 of 56,000 Corporate Income and Franchise returns were filed electronically. Information on other return types is unavailable.

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

LDR does not have the information necessary to determine the additional costs to comply with this change, but these costs are expected to be minimal, as online access and activity has largely become a business standard. To the extent non-compliance penalties are collected, affected taxpayers will incur penalty costs. LDR cannot estimate the additional penalty amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition or employment.

Kimberly Robinson
Secretary
1806#038

Gregory V. Albrecht
Chief Economists
Legislative Fiscal Office