

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Mobile Workforce Exemption (LAC 61:I.1923)

Under the authority of R.S. 47:112.2, R.S. 47:242(1)(g)(ii) and (2)(b), R.S. 47:248, and R.S. 47:1511, 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:I.1923 relative to the Mobile Workforce Exemption.

Revised Statute 47:112.2 authorizes an individual income tax exemption for certain nonresident employees who perform their employment duties in Louisiana for twenty-five days or less. In turn, the statute relieves employers of such nonresident employees of the requirement to withhold Louisiana individual income tax on the nonresident employee's wages. If the nonresident employee performs employment related duties in Louisiana for a period in excess of twenty-five days in a calendar year, the employer is required to withhold and remit tax to Louisiana for the entire year, including the first twenty-five days. Wages paid to a nonresident individuals that are exempt pursuant to the mobile workforce provisions of Revised Statute 47:248 will not be considered an item of gross income. The purpose of this proposed regulation is to implement Act 383 of the 2021 Regular Session of the Louisiana Legislature relative to the Mobile Workforce Exemption.

### Title 61

#### REVENUE AND TAXATION

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

#### Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

#### §1923. Mobile Workforce Exemption

##### A. General Description.

1. The Mobile Workforce Exemption allows certain nonresident mobile workers to exclude wages from Louisiana tax table income. The exemption further relieves employers of such nonresident employees of the requirement to withhold Louisiana individual income tax on the nonresident employee's wages.

2. To be eligible for the exemption, all of the following requirements must be met:

a. The compensation is paid for employment duties performed by the nonresident individual in this state for twenty-five or fewer days in the calendar year.

b. The nonresident individual performed employment duties in more than one state during the calendar year.

c. The wages are not paid for employment duties performed by the nonresident individual in the individual's capacity as a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.

d. The nonresident individual's income is exempt from taxation by this state under the United States Constitution or federal statute or the nonresident individual's state of residence either provides a substantially similar exemption or does not impose an individual income tax.

e. The nonresident individual did not have any other income derived from sources within the state during the taxable year.

B. Definitions. For purposes of this Section, the following terms shall have the meaning ascribed therein.

Department – The Louisiana Department of Revenue.

Day – An employee is considered present and performing employment duties within Louisiana for a day if the employee performs more of his or her duties within Louisiana than any other taxing jurisdiction for that day. Where an employee is present and performing more employment duties in Louisiana than another taxing jurisdiction on the same day, the employee will be considered to have performed the preponderance of his or her duties for that day in Louisiana. The portion of a day that an employee spends in Louisiana while in transit is not considered in determining whether he or she performed employment duties.

Employee – As defined in LA R.S. 47:111(A), with the exception of a professional athlete, staff member of a professional athletic team, professional entertainer, public figure, or qualified production employee.

Employer – As defined in LA R.S. 47:111(B).

Time and attendance system – A system through which an employee is required, on a contemporaneous basis, to record the employee's work location for every day worked outside the state where the employee's employment duties are primarily performed and that is designed to allow the employer to allocate the employee's compensation for income tax purposes among all states in which the employee performs employment duties for the employer.

C. Filing Requirements.

1. Employees.

a. Nonresident employees seeking to claim the exemption for income earned while performing employment duties within the state for less than twenty-five days are not required to file a Louisiana individual income tax return. If the nonresident employee has other income from Louisiana sources, the nonresident employee does not qualify for this exemption and thus all Louisiana income must be reported on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

b. Nonresident employees must file Form L-4E, *Exemption from Withholding Louisiana Income Tax* with their employer in order for their employer to refrain from withholding Louisiana income tax from their wages. Taxpayers must file a new L-4E annually in order to continue claiming the exemption and must revoke this exemption certificate by completing a Form L-4, *Employee Withholding Exemption Certificate*:

i. within 10 days from the twenty-six day of performing employment duties within the state;

ii. within 10 days from the day you anticipate you will incur Louisiana income tax liability for the current year; or

iii. by the first day of the last month of your current taxable year if you anticipate you will incur Louisiana income tax liability for the following year.

2. Employers.

a. An employer who receives Form L-4E from their employee must retain such form with their records.

b. If a nonresident employee performs employment duties in excess of twenty-five days within the state, the employer must begin withholding income tax and report such tax on Form L-1, *Employer's Quarterly Return of Louisiana Withholding Tax* beginning in the period in which the twenty-sixth day fell within.

D. Penalty for Failure to Deduct or Withhold Income Tax.

1. The Department shall not require the payment of penalties or interest for failing to deduct and withhold income tax for a nonresident employee who does not qualify for the exemption, if the employer meets any of the following conditions:

a. The employer at its sole discretion maintained a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for the employer, and the employer relied on data from that system.

b. The employer did not maintain a time and attendance system, and the employer relied on either:

i. Its own records, maintained in the regular course of business, of the employee's location.

ii. The employee's reasonable determination of the time the employee expected to spend performing employment duties in this state provided the employer did not have actual knowledge of fraud on the part of the employee in making the determination and provided that the employer and the employee did not collude to evade taxation in making the determination.

2. The Department shall require the payment of penalties or interest for failing to deduct and withhold income tax if the employer fails to meet either of the conditions of this subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:112.2, R.S. 47:242(1)(ii), R.S. 47:248, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:

### **Family Impact Statement**

The proposed amendments to LAC 61:I.1923, regarding the mobile workforce exemption, 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 parent s 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., Wednesday, August, 24, 2022.

#### **Public Hearing**

A public hearing will be held on Thursday, August, 25, 2022, at 1:30 p.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

**Kevin J. Richard, CPA**  
**Secretary, Department of Revenue**

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**Kevin J. Richard, CPA**  
**Secretary, Department of Revenue**



**Fiscal and Economic Impact Statement  
For Administrative Rules**

Person preparing  
statement:  
Phone:  
Return Address:

Benjamin Vincent  
(225) 219-4007  
617 North Third Street  
Baton Rouge, LA 70802

Department: Revenue  
Office: Policy Services Division  
Rule Title: LAC 61:I.1923  
Date Rule  
Takes Effect: October 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)

The purpose of this proposed rule is to adopt LAC 61:I.1923, to implement Act 383 of the 2021 Regular Session. Act 383 exempts employers of certain nonresident employees who perform their duties in Louisiana for twenty-five days or less in a given year from the requirement to withhold individual income tax on the employee's wages.

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

The proposed rule implementing Act 383 of the 2021 Regular Session can only serve to reduce individual income tax liabilities in the state. However, the impact on state revenue collections is anticipated to be marginal as the affected employees are not anticipated to constitute a material portion of the population. Most nonresident employees working less than 25 days per year in the state, including professional athletes and staff, entertainers, public figures and qualified production employees, are ineligible for the exemption in Act 383. No material impact on revenue collections of local governmental units is anticipated.

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


No material impacts on costs or economic benefits are anticipated for affected persons, small businesses or non-governmental groups due to this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change.

  
Signature of Agency Head or Designee  
Kevin J. Richard, Secretary  
Typed Name and Title of Agency Head or Designee  
6/30/2022  
Date of Signature

*LUKE MORRIS*  
*DEP. SECRETARY*

  
Legislative Fiscal Officer Designee  
Alan Boxberger, Interim Fiscal Officer  
Typed Name of Legislative Fiscal Officer Designee  
7/1/22  
Date of Signature