

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Articles and Products Made of Tobacco and Tobacco Substitutes (LAC 61.I.5105)

Under the authority of R.S. 47:841(D) and 1511, and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, proposes to adopt LAC 61.I.5105 relative to products made with nicotine extract or synthetic nicotine and tobacco substitutes.

The purpose of this proposed regulation is to provide guidance regarding the taxability of products made with nicotine extract or synthetic nicotine and tobacco substitutes. The proposed regulation provides guidance by clarifying the phrases, “articles and products made of tobacco” and “tobacco substitute” used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15). The proposed regulation reflects current policy of the Department of Revenue.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue Chapter 51. Tobacco Tax

#### **§5105. Articles and Products Made of Tobacco and Tobacco Substitutes**

A. The definition of smokeless tobacco provided in R.S. 47:842(15) includes articles and products made of tobacco and tobacco substitutes.

B. Any product made with nicotine which is extracted from tobacco is considered an article or product made of tobacco. It is not necessary that tobacco leaves be present in the article or product. These products are smokeless tobacco for purposes of Louisiana tobacco tax.

C. As used in R.S. 47:842(15), for purposes of the tax due on smokeless tobacco, tobacco substitute includes any non-combustible product intended to be used or consumed as an alternative to tobacco. Examples of tobacco substitutes include, but are not limited to products made with nicotine extracted from tobacco or any other source, products made with synthetic nicotine, and products which simulate traditional smokeless tobacco regardless of the presence of nicotine. These products are smokeless tobacco for purposes of Louisiana tobacco tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:841(D) and 1511.

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

#### **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.

#### **Small Business Impact Analysis**

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

#### **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.

#### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, 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., December 27, 2022.

## **Public Hearing**

A public hearing will be held on December 28, 2022 at 9:00AM in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kevin J. Richard, CPA  
Secretary of Revenue

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Articles and Products Made of Tobacco and Tobacco Substitutes**

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

The proposed rule provides guidance on the taxability of smokeless tobacco products by defining the phrases, “articles and products made of tobacco” and “tobacco substitute” used in the definition of smokeless tobacco provided in Louisiana Revised Statute 47:842(15).

The proposed rule will not result in material implementation costs or savings to state or local governmental units as the rule codifies existing department internal policy.

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

The proposed rule is not expected to have a material impact on annual state or local revenue collections.

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

The proposed rule will have minimal direct economic impact on affected persons, small businesses, or non-governmental groups. The affected businesses are tobacco taxpayers who sell smokeless tobacco. The proposed rule codifies existing department internal policy.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule does not have an effect on competition or employment.

Kevin J. Richard, CPA  
Secretary of Revenue

Alan Boxberger, Interim Fiscal Officer  
Legislative Fiscal Office

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Kevin J. Richard, CPA  
Secretary of Revenue

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### **RULE TITLE: Articles and Products Made of Tobacco and Tobacco Substitutes**

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

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The proposed rule will not result in material implementation costs or savings to state or local governmental units as the rule codifies existing department internal policy.

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

The proposed rule is not expected to have a material impact on annual state or local revenue collections.

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

The proposed rule will have minimal direct economic impact on affected persons, small businesses, or non-governmental groups. The affected businesses are tobacco taxpayers who sell smokeless tobacco. The proposed rule codifies existing department internal policy.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule does not have an effect on competition or employment.

Kevin J. Richard, CPA  
Secretary of Revenue

Alan Boxberger, Interim Fiscal Officer  
Legislative Fiscal Office

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

Person preparing  
statement:  
Phone:  
Return Address:

Brandea Averett  
(225) 219-2780  
617 North Third Street  
Baton Rouge, LA 70802

Department: Revenue  
Office: Policy Services Division  
Rule Title: LAC 61.1.5105  
Date Rule  
Takes Effect: January 20, 2023

**SUMMARY**

(Use complete sentences)

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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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\_\_\_\_\_  
Signature of Agency Head or Designee  
Kevin J Richard, CPA, Secretary  
\_\_\_\_\_  
Typed Name and Title of Agency Head or Designee  
10/27/22  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer Designee  
Alan Boxberger, Interim Fiscal Officer  
\_\_\_\_\_  
Typed Name of Legislative Fiscal Officer Designee  
11/1/22  
\_\_\_\_\_  
Date of Signature