

C. Claiming the Credit

1. Taxpayers must attach to the applicable Louisiana income tax return both a completed Apprenticeship Tax Credit Employer Certification (Form R-90005), as well as Tax Incentives with Job Creation Components (Form R-6311). Additionally, supporting documentation should be maintained or submitted to the department, as directed in Paragraph 2 of this Subsection.

2. Unless otherwise provided, eligible employers will be responsible for obtaining and submitting all required information, which includes the following:

a. For taxpayers seeking to qualify pursuant to a written apprentice agreement with an employer or an association of employers pursuant to a registered apprenticeship program provided for in R.S. 23:281, the number of hours worked during the taxable period for each eligible apprentice. In addition, a copy of the contract executed between the employer and the eligible apprentice should be maintained and available for production upon request from the department to substantiate the qualification of an eligible apprentice.

b. For taxpayers seeking to qualify pursuant to an eligible apprentice enrolled in a training program accredited by NCCER, a copy of the NCCER transcript for each eligible apprentice, which includes:

i. the level of training attained by the student enrolled in the training program;

ii. the number of hours worked during the taxable period by the student enrolled in the training program.

c. Any other information required by the department.

D. Approval

1. No later than January 31 of each calendar year, the Louisiana Workforce Commission shall provide to the department a list of all employers or association of employers that have registered and have been approved to participate in an apprenticeship program as provided for in R.S. 23:381.

2. A taxpayer is deemed eligible upon satisfactorily demonstrating that it has met the requirements of Subsection A of this Section during the taxable year. Eligibility shall authorize a taxpayer for one or more nonrefundable credit(s) with a carryforward of five years equal to the lesser of \$1.25 for each hour of employment or \$1,250 for the tax period deemed eligible.

3. For any amounts denied, the department shall notify the taxpayer as to each apprentice so denied and provide the reasons for denial.

4. For each calendar year, beginning with calendar year 2023, the department shall not approve credits in excess of \$2,500,000. Claims shall be approved as eligible for the credit by the department on a first-come, first-served basis as determined by the postmarked or received date of all documentation required by Subsection C of this Section. A claim shall not be considered complete until all information requested by the department has been received.

5. If the total amount of credits granted in any calendar year to qualifying businesses is less than the respective cap, any residual amount may be available for issuance by the department in subsequent calendar years. For purposes of the credit cap, any amounts authorized by the

department shall be deemed granted for the calendar year in which the credit is earned.

6. In the event it is determined by the department that the taxpayer has not met the requirements of Subsection A of this Section, any amounts approved by the department are subject to disallowance by the department and any amounts allowed to offset tax are subject to recapture by the department.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6033.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 36:1791 (August 2010), amended LR 49:73 (January 2023).

Kevin J. Richard, CPA
Secretary

2301#068

RULE

Department of Revenue Policy Services Division

Fresh Start Proper Worker Classification Initiative (LAC 61:III.2301)

Under the authority of R.S. 47:1511 and 1576.3, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:III.2301, to provide guidance on the Fresh Start Proper Worker Classification Initiative adopted by Act 406 of the 2022 Regular Session.

R.S. 47:1576.3 authorizes the secretary to promulgate rules for the administration of the Fresh Start Proper Worker Classification Initiative. Additionally, R.S. 47:1511 authorizes the secretary to prescribe rules and regulations to carry out the purposes of any statutes or provisions included under the secretary's authority. R.S. 47:1576.3(B) authorizes certain employers who have been treating workers as independent contractors to voluntarily reclassify a class or classes of workers as employees for future periods without being held liable for withholding tax, interest or penalties for prior periods. The purpose of this Rule is to administer and implement the voluntary worker classification program enacted by Act 406 of the 2022 Regular Session. The Rule provides guidance regarding the necessary qualifications to participate in the program and the conditions associated with an accepted application. This Rule is hereby adopted on the day of promulgation.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 23. Fresh Start Proper Worker Classification Initiative

§2301 Fresh Start Program

A. Definitions. For purposes of this Section and the administration of the Fresh Start Proper Worker Classification Initiative ("Fresh Start Program") set forth in

R.S. 47:1576.3, the following terms have the meanings ascribed to them.

IRS Form 1099-MISC—an information return required to be filed with the Internal Revenue Service, in accordance with Section 6041(a) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, to report nonemployee compensation paid to a service provider prior to January 1, 2020.

IRS Form 1099-NEC—an information return required to be filed with the Internal Revenue Service, in accordance with Section 6041A(a) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, to report nonemployee compensation paid to a service provider on or after January 1, 2020 or any equivalent form required to be filed by the Internal Revenue Service.

Reclassified Employees—a worker, or a class or classes of workers who were consistently treated as independent contractors or other non-employees by the taxpayer for the previous three years and for which the Taxpayer filed all required Forms 1099-NEC, or Forms 1099-MISC, with the Internal Revenue Service, consistent with the nonemployee treatment, who will be treated as employees for future periods.

Taxpayer—the person seeking to voluntarily reclassify a worker, or a class or classes of workers through the Fresh Start Program.

B. Application Requirements. Taxpayers applying for relief under the Fresh Start Program shall comply with the following procedures.

1. Applications shall be submitted electronically on forms provided by the secretary between January 1, 2023 and December 31, 2023.

2. An application shall include:

a. a list of each worker that the applicant seeks to voluntarily reclassify as an employee for future tax periods under the Fresh Start Program, including the worker's name, social security number, date of hire and class;

b. copies of the IRS Forms 1099-NEC, or IRS Forms 1099-MISC, that were filed with the IRS for the previous three years for each of the workers for which reclassification is sought under the Fresh Start Program;

c. proof of workers' compensation coverage for the reclassified employees. Coverage shall have an effective date for the reclassified employees of no earlier than 60 days prior to and no later than the date the application is submitted;

d. any other information requested by the Department of Revenue. Additional information shall be submitted within 45 calendar days of the date of written request. Failure to provide the additional information within 45 days may result in denial of the application; however, reasonable extensions may be granted.

3. If a taxpayer does not complete the application in its entirety, the Department of Revenue shall notify the applicant of the deficiencies by mail. The taxpayer shall have 45 calendar days from the date of the notification to correct the deficiencies. If the taxpayer fails to respond during the 45 day period, the application shall be denied.

C. Eligibility

1. A taxpayer is not required to reclassify all of its workers who are currently treated as nonemployees, but shall reclassify all workers within the same class.

2. R.S. 47:1576.3(F) provides that a taxpayer is not eligible for relief if the taxpayer or a member of its affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code is currently under an employment, withholding, or unemployment tax audit by the Internal Revenue Service, United States Department of Labor, or a state government entity. For purposes of this exclusion, a taxpayer that has been contacted by the auditing agency to initiate an audit concerning the classification of workers is considered to be currently under audit.

D. Determination of Ineligibility

1. If the Department of Revenue determines that a taxpayer is ineligible to participate in the Fresh Start Program, the department shall send written notice to the taxpayer within 30 days of such determination.

2. Ineligible taxpayers are not entitled to any relief under the Fresh Start Program.

E. Closing Agreement

1. R.S. 47:1576.3(E)(2) states that acceptance of a taxpayer's application constitutes a joint closing agreement between the taxpayer and the Department of Revenue.

2. Upon acceptance of an application for participation in the Fresh Start Program, the taxpayer agrees to the following conditions which shall be deemed part of the joint closing agreement.

a. Taxpayer shall timely report and remit all withholding taxes for the reclassified employees, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

b. Taxpayer shall timely remit all unemployment insurance contributions for the reclassified employees, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

c. Taxpayer shall maintain workers compensation coverage for the reclassified workers, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

3. The terms of the closing agreement shall be valid, binding, and enforceable by and against all parties, including their transferees, successors, and assignees.

4. The secretary reserves the right to void the closing agreement if the applicant taxpayer fails to comply with any of the conditions outlined in the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 47:1511 and 47:1576.3.

HISTORICAL NOTE: Promulgate by the Department of Revenue, Policy Services Division, LR 49:74 (January 2023).

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Secretary

2301#046