

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Designation of Tax Matters Person

(LAC 61:III.501)

Under the authority of R.S. 47:1511, R.S. 47:1671, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, declares an emergency to exist and adopts by emergency process the attached rule to provide procedures for legal entities that elect to designate a tax matters person to act on behalf of the legal entity making the designation or any other member of the same affiliated group, as that term is defined in Section 1504 of the Internal Revenue Code.

Act 750 of the 2008 Regular Session of the Louisiana Legislature directs the secretary of the Department of Revenue to promulgate procedures for the designation of a tax matters person under R.S. 47:1671(D). Additionally, the proposed rule provides for the resignation, revocation, or termination of a designation of a tax matters person made under this rule.

The Department of Revenue has determined that this emergency action is necessary to prevent undue delay for legal entities electing to designate a tax matters person. This Emergency Rule becomes effective on October 20, 2008 and shall remain in effect for a period of 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 5. Authorized Representatives

§501. Designation of Tax Matters Person

A. Definitions. For purposes of this Chapter, the following terms have the meanings ascribed to them.

Affiliated Group—the same as defined in Section 1504 of the Internal Revenue Code.

Designated Tax Matters Person or Tax Matters Person—the person designated under R.S. 47:1671(D) by a legal entity as their authorized representative to sign any return, document or form and act on behalf of the legal entity, or any other member of the same affiliated group, with respect to any tax, fee, license, penalty, interest or other charge assessed, collected, enforced, or administered by the secretary of the Department of Revenue.

Legal Entity—a corporation, partnership, limited liability company, limited liability partnership, trust, estate, or any other legal entity.

Secretary—the secretary of the Louisiana Department of Revenue or designee of the secretary.

B. Designation of Tax Matters Person; Authority of Person Designated

1. Any legal entity may elect to designate a “tax matters person” as their authorized representative for a specific tax and taxable year or period. For Louisiana tax purposes, a legal entity that elects to designate a tax matters person shall make the designation only as provided in this rule. Similarly, the designation of a tax matters person for a specific tax and taxable year or period may be terminated only as provided in this rule. If a legal entity elects not to designate a tax matters person, or if a designation is terminated without the legal entity designating another tax matters person, the authorized representative shall be determined under R.S. 47:1671(C)(3).

2. The designated tax matters person may also be authorized to act on behalf of any other member of the same affiliated group.

3. The designated tax matters person shall be a natural person and citizen of the United States.

4. Only one tax matters person shall be designated and authorized to act on behalf of the legal entity or any other member of the same affiliated group.

C. Method of Making Designation

1. A legal entity may designate a tax matters person at any time by filing a written statement, captioned “Designation of Tax Matters Person”, with each Department of Revenue designee who requests such statement. The statement shall:

- a. Identify the legal entity making the designation by name, address, and taxpayer identification number;
- b. Identify the designated tax matters person by name and title;
- c. Specify the type of tax and the taxable year(s) or periods to which the designation applies;
- d. Declare that it is a designation of tax matters person for the type of tax and taxable year(s) or period(s) specified;
- e. Authorize the tax matters person as an authorized representative to act on behalf of the legal entity, or any other member of the same affiliated group, and identify the type of tax and taxable year(s) or period(s) of authorization; and
- f. Be signed by the person(s) authorized by the legal entity to make the designation and identified by their title(s).

2. The designation shall be made as provided in this rule. A power of attorney cannot be substituted for the written statement.

D. Prior Designations Superseded. A designation of a tax matters person for a specific type of tax and taxable year or period shall supersede all prior designations of a tax matters person for that tax and year or period.

E. Restriction on Representation and Delegation of Authority. No person shall act in a representative capacity for the designated tax matters person with respect to the Louisiana Department of Revenue.

F. Resignation of Designated Tax Matters Person. A person designated as the tax matters person under this rule may resign at any time by a written statement to that effect. The statement shall specify the tax and the taxable year(s) or period(s) to which the resignation relates and shall identify the legal entity and the tax matters person by name, address, and taxpayer identification number. The statement shall also be signed by the resigning tax matters person and shall be filed with each Department of Revenue designee with whom a designation of tax matters person statement was filed.

G. Revocation of Designation. The legal entity may revoke the designation of the tax matters person for a specific tax and taxable year or period at any time by filing a statement with the Department of Revenue designee with whom the designation of tax matters person statement was filed. The statement shall:

1. Identify by name, address, and taxpayer identification number the legal entity and the person whose designation as tax matters person is being revoked;
2. Specify the tax and taxable year(s) or period(s) to which the revocation relates;
3. Declare that it is a revocation of a designation of the tax matters person for the tax and taxable year(s) or period(s) specified; and
4. Be signed by the person(s) authorized by the legal entity to revoke the designation and identified by their title(s).

H. When Designation, Resignation, or Revocation Becomes Effective

1. Except as provided in Paragraph 2 of this Subsection, a designation, resignation, or revocation provided for in this rule becomes effective on the day that the statement required by the applicable paragraph of this rule is filed.

2. If a notice of beginning of an administrative proceeding or other action is mailed before the date on which a statement of designation, resignation, or revocation provided for in this rule with respect to that specific tax and taxable year or period is filed, the secretary is not required to give effect to the designation, resignation, or revocation until 30 days after the statement is filed.

I. Binding Actions of Tax Matters Person; Conclusive Presumption Created

1. The designated tax matters person shall bind the legal entity to all actions of the tax matters person with respect to matters between the secretary and the legal entity.

2. The name of the designated tax matters person signed on a return, declaration, statement, or any other document or form filed with the secretary shall create a conclusive presumption that the document or form was signed by such person and shall have the same force and effect as the act of the legal entity.

3. Other actions of the designated tax matters person that are binding on the legal entity include, but are not limited to:

- a. Consent to an agreement to suspend prescription.
- b. Signing an offer in compromise, voluntary disclosure agreement, installment agreement or any other offer or settlement agreement with the secretary.

J. Termination of Designation.

1. *In general.* A designation of a tax matters person for a specific tax and taxable year(s) or period(s) under this rule shall remain in effect until:

- a. The death of the designated tax matters person;
- b. Adjudication by a court of competent jurisdiction that the designated tax matters person, because of mental incapacity or physical infirmity, is permanently incapable of managing their person or administering their estate; or
- c. The day on which the resignation of the designated tax matters person, a subsequent designation, or revocation of the designation under this rule becomes effective.

2. *Actions by designated tax matters person before termination of designation.* The termination of the designation of a tax matters person under this Subsection does not affect the validity of any action taken by that designated tax matters person before the designation is terminated. For example, if that designated tax matters person had previously signed an agreement to suspend prescription, the suspension remains valid even after termination of the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:1671.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR XXX_(XXX 2008).