

RULE

Department of Revenue Policy Services Division

Nonresident Apportionment of Compensation from Personal Services Rendered (LAC 61:I.1304)

Under the authority of R.S. 47:290, R.S. 47:293, R.S. 47:295, 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, has adopted LAC 61:I.1304 relative to the collection of Louisiana individual income tax from nonresidents who perform personal services in Louisiana, including nonresident professional athletes and entertainers.

Under Subsection 47:290.B of the Louisiana Revised Statutes, nonresident individuals who have income earned within or derived from Louisiana sources are taxed on their Louisiana income. Compensation for personal services rendered within Louisiana is income earned within or derived from Louisiana sources. Nonresident professional athletes and entertainers who perform in Louisiana are among the nonresident service providers who are taxed on their Louisiana income. House Concurrent Resolution 208 of the 2001 Regular Session of the Louisiana Legislature urged and requested the Department of Revenue to take all actions that are reasonable and necessary to collect all income taxes owed to the state by nonresident professional athletes.

The purpose of this Rule is to apportion to the state, in a fair and equitable manner, the income of certain nonresident personal service providers who render services in this state. This Rule includes guidance that will enable nonresident professional athletes, who are members of a professional athletic team, to fairly apportion to Louisiana their compensation for services rendered as a member of a professional athletic team that was earned in this state. In addition, the Rule will provide for an optional team composite return and composite payment to allow professional athletic teams to report Louisiana individual income tax on behalf of all nonresident team members.

Title 61

REVENUE AND TAXATION

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

Chapter 13. Income: Individuals

§1304. Nonresident Apportionment of Compensation from Personal Services Rendered in Louisiana

A. For purposes of this Section, nonresident means any individual not domiciled, residing in, or having a permanent place of abode in Louisiana.

B. Nonresidents are taxed on all income from sources within Louisiana. Income from sources within Louisiana includes compensation for personal services rendered within Louisiana.

C. The purpose of this Rule is to apportion to Louisiana, in a fair and equitable manner, a nonresident's total compensation for personal services performed in the state. It is presumed that application of the provisions of this Rule will result in a fair and equitable apportionment of that compensation.

1. When the department demonstrates that the method provided under this Rule does not fairly and equitably

apportion that compensation, the department may require the nonresident service provider to apportion that compensation under an alternative method the department prescribes, as long as the prescribed method results in a fair and equitable apportionment.

2. If a nonresident service provider demonstrates that the method provided under this Rule does not fairly and equitably apportion compensation, the nonresident may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully documented and explained in the nonresident service provider's nonresident personal income tax return for the state.

3. Nonresident service providers shall keep adequate records to substantiate their determination or to permit a determination by the department of the part of their adjusted gross income that was derived from or connected with sources in this state.

D. Compensation of Salaried Employees with a Constant Rate of Pay. The Louisiana income from personal services is the proportion of total compensation from services rendered, which the total number of working days in the state bears to the total number of working days both within and without the state.

1. The total number of working days is determined by subtracting all nonworking days from the total number of days in the year or contract period, if the contract period is less than a year.

2. Nonworking days include, but are not limited to, Saturdays and Sundays not worked, holidays, days off for religious observance, days of absence due to illness or personal injury, vacation days, days of leave without pay, days off for any personal reason, and sabbatical days.

3. Days spent in travel, if the travel is at the direction of the employer, are considered working days even if the travel is on a day that would usually be considered a nonworking day.

E. Compensation Based on Volume of Business. The Louisiana income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made, whose compensation depends directly on the volume of business transacted by him, includes that proportion of the compensation received which the volume of business transacted by such employee within Louisiana bears to the total volume of business transacted by him within and without the state.

F. Compensation from Continuous Employment in Louisiana for Part of the Year. If a nonresident employee (including officers of corporations, but excluding employees, mentioned in Subsection D above) is employed continuously in this state for a definite portion of any taxable year, that employee's Louisiana income includes the total compensation for the period employed in this state.

G. Compensation from Transportation Services. If a nonresident employee is employed in this state at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this state and other states and foreign countries, and is paid on an hourly, daily, weekly or monthly basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the total number of working days, as defined in Subsection C above, employed within the state bears to the total number of working days both within and without the state. If the

employee is paid on a mileage basis, that employee's Louisiana income includes that portion of the total compensation for personal services which the number of miles traversed in Louisiana bears to the total number of miles traversed within and without the state. If the employee is paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Louisiana that portion of the total compensation which is reasonably attributable to personal services performed in this state. This subsection is not intended to attribute to Louisiana any income that is exempted from state taxation by federal law.

H. Compensation of Nonresident Entertainers and Athletes Who are not Members of a Professional Athletic Team. Compensation earned by a nonresident entertainer is considered earned where the services are performed, regardless of where the nonresident entertainer lives, enters into the contract, or receives payment. Entertainers include, but are not limited to, actors, singers, musicians, performers, and professional athletes who are not members of a professional athletic team.

1. Entertainers must include the gross amount received for performances in this state in their Louisiana income.

2. Ordinary and necessary business expenses directly attributable to the income earned in Louisiana and a pro-rata share of indirect business expenses not directly attributable to income from any particular source are "adjustments to income." These "adjustments to income" are subtracted from Louisiana income to arrive at "total Louisiana income."

I. Nonresident Athletes who are Members of a Professional Athletic Team

1. The Louisiana income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

2. Definitions. These terms are defined as follows. Unless otherwise indicated, these definitions apply only to this subsection.

Duty Days All days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in the general definition of duty days above, for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii. Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

iii. Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

iv. Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

v. Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

vi. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

Member of a Professional Athletic Team shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

Professional Athletic Team includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

Total Compensation includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

i. Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

ii. For purposes of this Rule, "bonuses" subject to the allocation procedures described in this Subsection, are:

(a) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(b) bonuses paid for signing a contract, unless all of the following conditions are met:

(i) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(ii) the signing bonus is payable separately from the salary and any other compensation; and

(iii) the signing bonus is nonrefundable.

Total Compensation for Services Rendered as a Member of a Professional Athletic Team the total compensation received during the taxable year for services rendered:

i. from the beginning of the official preseason training period through the last game in which the team

competes or is scheduled to compete during that taxable year; and

ii. during the taxable year on a date that does not fall within the period in Clause i. above, for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

J. Optional team composite return for professional athletic teams. Professional athletic teams may file a composite return, on a form prescribed by the secretary, on behalf of its nonresident professional athletes.

1. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

- a. name;
- b. address;
- c. social security number;
- d. Louisiana income attributable to that nonresident professional athlete.

3. Nonresidents who are members of a professional athletic team who have any other Louisiana source income may be included in the composite return, however, inclusion in the composite return does not relieve these team members of the responsibility of filing any other required Louisiana tax return. If the other Louisiana source income is properly reportable on a Louisiana income tax return, that return must include the income from compensation as a member of a professional athletic team. Any amount paid with the team composite return on a nonresident professional athlete's behalf may be used as a credit against that team member's Louisiana individual income tax liability for the same tax period.

4. Nonresidents who are included in a properly filed and accurate team composite return, and who have no Louisiana income other than compensation for services rendered as a member of a professional athletic team, will be deemed to have filed a Louisiana individual income tax return. Except that any underpayment by the team with the team composite return shall be the personal responsibility of the members of the professional athletic team included in the composite return.

5. The tax due on the composite return shall be computed using either of the following methods:

a. the sum of the actual tax liability from total compensation for services rendered as a member of a professional athletic team for each member of the team included in the composite return;

b. alternative method of computing the tax due on the composite return;

i. add the Louisiana income attributable to all nonresident professional athletes included in the composite return;

ii. subtract a deduction equal to 30 percent of the Louisiana income attributable to all nonresident professional athletes included in the composite return. This deduction is allowed in place of the combined standard deduction and personal exemption, excess itemized deductions, and federal tax deduction for the same period;

iii. the tax shall be computed using the maximum individual tax rate applied to Louisiana income after the 30-percent deduction.

6. Each professional athletic team will be issued an identification number by the department upon the filing of its first composite return. This identification number shall be used on all subsequent composite returns filed by that team.

7. A team making a composite return and payment must furnish the following information to all team members included in the composite return:

a. the team's taxpayer identification number;

b. the amount of the payment made on the team member's behalf;

c. a statement that the amount paid on the team member's behalf can be used as a credit against that team member's Louisiana individual income tax liability for the same tax period, if the team member files an individual return with the Department of Revenue that declares the income from compensation as a member of a professional athletic team;

d. the mailing address of the Louisiana Department of Revenue; and

e. the internet address of the Louisiana Department of Revenue.

K. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the individual income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:290, R.S. 47:293, R.S. 47:295, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Service Division LR 28:000 (January 2002).

Cynthia Bridges
Secretary

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