

## NOTICE OF INTENT

### Department of Revenue Tax Administration Division

#### Alternative Fuel Credit (LAC 61:I.1913)

Under the authority of R.S. 47:6035(G), as enacted by Act 469 of the 2009 Regular Legislative Session, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Revenue (LDR), after consultation with the Department of Natural Resources, proposes to adopt LAC 61:I.1913 to provide guidance with respect to the income tax credit authorized by R.S. 47:6035 for taxpayers who purchase qualified clean-burning motor vehicle fuel property. *Qualified clean-burning motor vehicle fuel property* is defined as equipment necessary for vehicles to operate on an alternative fuel, and specifically excludes property that is necessary for vehicles to operate on petroleum gasoline or petroleum diesel. *Alternative fuels* are defined to include natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property.

This proposed Rule discusses the documentation that is required to claim the credit and provides information necessary to determine that certain types of alternative fuel vehicles are not eligible under the provisions of the statute to be treated as "qualified clean-burning motor vehicle fuel property" because the vehicles have only a single fuel storage and delivery system and retain the capability to be propelled by petroleum gasoline or petroleum diesel.

#### Title 61

#### REVENUE AND TAXATION

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

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

#### §1913. Alternative Fuel Tax Credit

A. The tax credit provided by R.S. 47:6035 authorizes an incentive to individuals or corporations to invest in qualified clean-burning motor vehicle fuel property. The tax credit is limited to a portion of the purchase price of qualified clean-burning motor vehicle fuel property. The statute specifically provides that "qualified clean-burning motor vehicle fuel property" does not include any equipment necessary for the operation of a motor vehicle on petroleum gasoline or petroleum diesel. For this reason, the credit provided by R.S. 47:6035 is not allowed for acquisitions of motor vehicles capable of being propelled by an alternative fuel, but that include only a single fuel storage and delivery system and that retain the capability to be propelled by petroleum gasoline or petroleum diesel.

B. The Alternative Fuel Tax Credit is available for:

1. a portion of the cost of the equipment and installation purchased to modify a vehicle originally propelled by petroleum gasoline or petroleum diesel to a vehicle capable of being propelled by an alternative fuel. If the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery

system for the alternative fuel that is capable of using only the alternative fuel;

2. a portion of the cost of a new vehicle that is capable of being propelled by an alternative fuel. If the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

3. a portion of the cost of property, excluding the installation of the property, that is directly related to the delivery of an alternative fuel into the fuel tanks of motor vehicles propelled by an alternative fuel.

C. As used in this Section, the following words and phrases shall have the meanings ascribed to them in this Subsection, unless the context clearly indicates otherwise.

1. *Alternative Fuel*—fuel which results in emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination of these which are comparably lower than emissions from petroleum gasoline or petroleum diesel and which meets or exceeds federal clean air standards, including but not limited to compressed natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity.

2. *Cost of Qualified Clean-burning Motor Vehicle Fuel Property* shall mean any of the following:

a. a portion of the retail cost paid by the owner of a motor vehicle for the purchase and installation by a technician of qualified clean-burning motor vehicle fuel property certified by the United States Environmental Protection Agency to modify a motor vehicle which is propelled by petroleum gasoline or petroleum diesel so that the motor vehicle can thereafter be propelled by an alternative fuel, provided the motor vehicle is registered in this state, and further provided that if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

b. a portion of the retail cost to the owner of a new motor vehicle purchased at retail, that is originally equipped to be propelled by an alternative fuel, for the cost of that portion of the motor vehicle which is attributable to the storage of the alternative fuel, the delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel, provided the motor vehicle is registered in this state, and further provided that, if the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel:

i. for vehicles that are capable of being propelled, either partially or wholly, by electricity, such as hybrid-electric vehicles, plug-in hybrid-electric vehicles, all-electric vehicles, and low-speed electric vehicles, the credit is limited to the qualified clean-burning motor vehicle fuel property that stores and delivers the electricity to the motor, but is not authorized on another separate fuel storage and delivery system within the vehicle that uses petroleum gasoline or petroleum diesel as a fuel source;

c. a portion of the retail cost of property, excluding the installation cost of property, which is directly related to

the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, provided the property is installed and located in this state and no credit has been previously claimed by any taxpayer on the cost of such property;

d. the cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel shall not include costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

3. *Qualified Clean-burning Motor Vehicle Fuel Property* shall not include:

a. equipment necessary for operation of a motor vehicle on petroleum gasoline or petroleum diesel;

b. motor vehicle fuel property that is capable of also being used with non-alternative fuels, such as petroleum gasoline or petroleum diesel;

c. repairs to or replacements of *qualified clean-burning motor vehicle fuel property* after the initial installation of such property into a vehicle by the vehicle's manufacturer or qualified technician.

D. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property, and shall be claimed on the personal or corporate income tax return for the period when the taxpayer incurred the cost for the qualified clean-burning motor vehicle fuel property.

E. In order to receive the credit provided by R.S. 47:6035, the taxpayer must provide certain information and documentation to the LDR that is specific to the type of property upon which the credit is claimed.

1. To claim the credit for the cost of the purchase and installation of vehicle equipment to modify a vehicle to be capable of being propelled by an alternative fuel, required information shall include, but not be limited to, the following:

a. the year, make, model, and vehicle identification number (VIN) of the vehicle;

b. a certification that the installed qualified clean-burning motor vehicle fuel property is certified by the United States Environmental Protection Agency, and that the technician performing the installation is certified by the manufacturer of the equipment to perform the installation;

c. an itemization of the costs associated with the modification, including copies of all invoices for the materials and installation services for the modification;

d. a certification that the modified vehicle is registered in this state; and

e. a certification that, if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

2.a For the purchase of a new vehicle that is capable of being propelled by an alternative fuel, required information shall include:

i. the year, make, model, vehicle identification number (VIN), and price paid for of the vehicle;

ii. a certification that the vehicle is registered in this state; and

iii. a certification that, if the vehicle is capable of being propelled also by petroleum gasoline or petroleum

diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

b. Once a motor vehicle is determined to contain qualified clean-burning motor vehicle fuel property, to claim the credit, the taxpayer can elect to determine the exact cost of the qualified clean-burning motor vehicle fuel property pre-installed by the manufacturer in the purchased vehicle. The cost of the qualified clean-burning motor vehicle fuel property for a new motor vehicle originally equipped to be propelled by an alternative fuel shall be the cost of that portion of the motor vehicle which is attributable to any of the following:

i. the storage of the alternative fuel;

ii. the delivery of the alternative fuel to the engine of the motor vehicle; and

iii. the exhaust of gases from combustion of the alternative fuel.

c.i. If the taxpayer is unable to or elects not to determine the exact cost of the qualified clean-burning motor vehicle property pre-installed by the manufacturer in the purchased vehicle, the taxpayer can claim a credit that is the lesser of:

(a). 10 percent of the cost of the motor vehicle;

or

(b). \$3,000.

ii. When determining the cost of a vehicle for this purpose, the cost shall exclude rebates and discounts provided by the manufacturer or seller of the vehicle, state and local sales taxes, and vehicle registration, title, and processing fees.

3. For the purchase of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, required documentation shall include:

a. a listing of each purchased item including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, together with copies of invoices for each item;

b. a certification that the property is installed and located in this state; and

c. a certification that no credit has been previously claimed by any taxpayer on the cost of such property.

F.1. The credit provided by this Section is applicable to purchase transactions, including purchases of new eligible vehicles, purchases of eligible equipment and installations for fuel system conversions, and purchases of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, but is not applicable to transactions for the lease or rental of vehicles or other tangible personal property, or to purchases of used vehicles.

2. The refundable income tax credit is available to persons and corporations on whom income taxes are imposed by law. The credit is not available to entities or other persons on whom income taxes are not imposed.

3. The credit is available only to persons and corporations who are the titled owners of eligible motor vehicles, as indicated in the records of the Office of Motor Vehicles of the Department of Public Safety and Corrections.

4. The secretary of the Department of Revenue is authorized to withhold the issuance of a credit to any taxpayer who is required to pay an alternative road use tax for his vehicle that operates on certain alternative fuels, such as liquefied natural gas (LNG), compressed natural gas

(CNG), or liquefied petroleum gas (LPG), who has not paid the alternative road tax for that vehicle and received a decal from the secretary evidencing that payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 6035(G).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Administration Division, LR 38:

Jane Smith  
Secretary

### **Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative Oversight Committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

### **Small Business Statement**

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

### **Public Comments**

Interested persons may submit data, views, or arguments, in writing to Jason DeCuir, Assistant Secretary, P.O. Box 66258, Baton Rouge, LA 70896, or by fax to (225) 219-2708. All comments must be submitted by 4:30 p.m., Tuesday, October 23, 2012.

### **Public Hearing**

A public hearing will be held on Thursday, October 25, 2012, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Jane Smith  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Alternative Fuel Credit**

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

The refundable alternative fuels credit may be taken against income tax for 50 percent of the cost and installation of the property related to alternative fuel use, whether in a vehicle or a delivery property, such as a service station. Without itemizing, the filer may instead choose a credit of 10 percent of the cost of a new vehicle that operates on alternative fuel. It is not required that the vehicle purchase occur in Louisiana. In general, the proposed Rule restricts eligibility of the credit and outlines documentation requirements. LDR has provided the credit to flex fuel vehicles under current law. The proposed Rule removes flex-fuel vehicles from credit eligibility.

The proposed Rule is not expected to result in any substantial increase or reduction in workload for the Department of Revenue (LDR). Implementation costs will be absorbed in the existing budget.

Local governmental units are not affected by this proposal.

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

The proposed Rule will result in fewer alternative fuel credits. The Rule disallows credits for flex-fuel vehicles by disqualifying those vehicles that have only one fuel storage and delivery system capable of being used for both "alternative fuel" and petroleum gasoline or petroleum diesel. Under the proposed Rule, only vehicles capable of running independently of petroleum gasoline or petroleum diesel would qualify for the credit. Flex-fuel vehicles comprise the major portion of alternative fuel vehicle sales (96 percent of new registrations over the last 4 years, according to the Department of Public Safety) and eliminating them would significantly reduce the anticipated credit claims.

Since the Emergency Rule became effective on April 30, 2012 and was rescinded on June 14, 2012, a backlog of possible claims of \$4M has accumulated. However, since January 1, 2009, the Office of Motor Vehicles (OMV) reports 162,872 registrations, of which approximately 160,000 are potentially eligible vehicles in the state. If all eligible vehicles claimed an average of a \$2,700 credit, the state is liable for a maximum of \$432.0 M in credits through 8/16/12. Flex-fuel vehicles account for about \$414.7M of the \$432.0M. Thus far, about \$30M has been paid or claimed in alternative fuel credits leaving a state exposure of roughly \$400M through about mid-August.

However, since the proposed Rule does not become effective until December 20, 2012, all new alternative fuel vehicles purchased and registered with the OMV by that date, including flex-fuel vehicles, could still be eligible for the credit, which could increase the state's exposure. According to LDR, the actual claim pattern since 2009 has typically been 8-10 percent of available credits. This amount is currently captured in the revenue estimate of state general fund and is projected in a similar pattern within the current revenue forecast. An increase in filings in anticipation of a change in the eligibility Rules could significantly impact the revenue estimate since filings for the credit are anticipated to be greater than historical patterns. Publicity surrounding the credit could increase this impact given a more general familiarity with its availability making the opportunity to boost filings evident. The first year of prescription is 2013 so filers may still amend returns back to the commencement of the credit in 2009.

In the future under current law in the absence of the proposed Rule, it is estimated that the exposure could be

\$250M per year assuming flex-fuel registrations and other alternative fuel vehicle filings grow at modest rates compared to the recent past. Credits issued would increase proportionately as flex-fuel and other alternative fuel vehicle sales increase. However, the actual impact may be dampened if 1) any new registrations are actually transfers from out of state that are not tied to a new vehicle sale, 2) the claims are never filed, or 3) the average claim amount is below \$2,700,

Under the proposed Rule, the state would continue to pay credits only on hybrid vehicles (3.5 percent of new vehicle registrations, according to OMV) and those running on or converted solely to an alternative fuel for those vehicles purchased or registered after December 20, 2012, and on fueling stations. Based on historical registrations, it is estimated that the credit will cost \$10 million annually if the Rule effectively eliminates flex-fuel vehicles. This represents a potential maximum savings of about \$240M per year, though it is not likely that the full amount of savings will be realized. Similarly, it is not likely that the full exposure to the state would be claimed each year in the absence of the proposed Rule because it is not known how aggressively the claims will be filed. However, given the size of the credit and the information surrounding it, the actual value of the savings could be very large, possibly over \$100 M per year, should recent consumer behavior and public knowledge of the credit be sustained.

This proposal should have no impact on the revenue collections of local governmental units.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Buyers and sellers of vehicles with the "dual-use" fuel systems are directly affected by this Rule. To the extent purchasers of these vehicles would have received the credit without this Rule, purchasers will be negatively affected by the amount estimated in Section II. According to the proposed Rule, filers claiming credits on fuels requiring an alternative road tax, such as liquefied natural gas, compressed natural gas or liquefied petroleum gas, may have payments withheld if the tax is not paid. To the extent sellers of these vehicles would sell more vehicles, or get a higher price for these vehicles because of the credit, sellers will be negatively affected.

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

This proposed Rule should not affect competition or employment.

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