

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Nonresident Contractors (LAC 61:I.4373)

The Department of Revenue, Policy Services Division, is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to provide with the value of the surety bonds that nonresident contractors are required to furnish to the secretary of revenue guaranteeing their payment of the state and local taxes that become due as the result of their construction activity in the state. R.S. 47:306(D) provides that nonresident contractors shall "file with the department a surety bond or a blanket surety bond for all contracts, sufficient to cover all taxes due on the contract or contracts, in accordance with the provisions of R.S. 47:9(B)(1)." R.S. 47:9(B)(1) provides similarly that nonresident contractors "shall execute and file with the secretary of the Department of Revenue a good and valid bond in a surety company authorized to business in this state ... conditioned that all taxes ... will be paid when due ..."

The current Rule provides that the bond shall be for an amount equal to 5 percent of the total contract price, or \$1,000, whichever is greater, for each contract. This Emergency Rule is being adopted to provide a reduced bond amount for nonresident contractors who withhold income taxes from non-employee compensation, such as on payments to subcontractors. The department believes that the reduced bond amounts proposed in this Emergency Rule will be sufficient to guarantee the payment of state and local taxes by contractors who withhold and remit income taxes from non-employee compensation. An emergency is declared because contracts are now being bid and let, and contractors need to be aware required bond amounts and associated costs at the time that they submit bids.

This Emergency Rule is effective October 10 2005, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until the promulgation of a permanent Rule, whichever is sooner.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered

by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4373. Nonresident Contractors

A. - B. ...

C. Contracts to be Registered with Secretary and Central Collector

1. Prior to obtaining a building permit necessary for the lawful commencement of any contract in Louisiana, a nonresident contractor shall register each contract that exceeds \$3,000 in total price or compensation with the secretary of the Department of Revenue and Taxation and with the central sales and use tax collector for the parish in which the project is located. The secretary shall provide the necessary forms for the contractors to register each contract. The forms will require the nonresident contractor to give a complete description of each project, pertinent tax registration data, and a list of anticipated subcontractors. A fee of \$10 per contract shall be paid to the secretary at the time of registration. As required by the secretary, the

contractor shall furnish a surety bond for each contract or a blanket surety bond for all contracts. The bond shall be:

a. two and one-half percent of the gross contract amount or \$1,000, whichever is greater, if income tax withholdings remitted to the department include such payments deducted from non-employee compensation (e.g. independent contractors); or

b. five percent of the gross contract amount or \$1,000, whichever is greater, if income tax is not withheld from non-employee compensation paid by the non-resident contractor.

2. Upon satisfactory completion of the registration and surety bond requirements, the secretary shall issue the contractor a certificate of compliance with which to obtain any building permits necessary for lawful commencement.

C.3. - F.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:9, R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, R.S. 47:337.19, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 21:185 (February 1995), amended by the Department of Revenue, Policy Services Division, LR 31:94 (January 2005), LR 32:

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