

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KIMBERLY LEWIS ROBINSON
Secretary

September 26, 2019

Via E-mail/R.R.R. to:

apa.h-wm@legis.la.gov
The Honorable Neil Abramson, Chairman
House Committee on Ways & Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-r&f@legis.la.gov
The Honorable Jean-Paul J. Morrell, Chairman
Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

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The Honorable Cameron Henry
House Appropriations Committee
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-fin@legis.la.gov
The Honorable Eric LaFleur
Senate Finance Committee
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: Proposed Regulation LAC 61:I.4914- Prescription of Refunds Claimed Pursuant to the Federal Combat-Injured Veterans Tax Fairness Act of 2016

Chairman Abramson, Chairman Morrell, Chairman Henry, and Chairman LaFleur:

On August 9, 2019 a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of the proposed regulation, LAC 61:I.4914, *Prescription of Refunds Claimed Pursuant to the Federal Combat-Injured Veterans Tax Fairness Act of 2016*, was sent to your committee for review. The purpose of this *Notice of Intent* is to implement R.S. 47:1623(G), which was enacted by Act 367 of the 2019 Regular Session of the Louisiana Legislature.

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The *Notice of Intent* was published in the August 2019 issue of the *Louisiana Register*. A public hearing was held on Wednesday, September 25, 2019. No written or oral comments were received. In addition, one attendee was present at the public hearing. No changes will be made to the text of the rule before it is finalized.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed rule will be submitted for publication as a final rule in the October 2019 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact me at (225) 219-2700.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, positioned above the typed name.

Kimberly Lewis Robinson
Secretary

NOTICE OF INTENT

Department of Revenue Policy Services Division

Prescription of Refunds Claimed Pursuant to the
Federal Combat-Injured Veterans Tax Fairness Act
of 2016
(LAC 61:I.4914)

Under the authority of R.S. 47:1511 and in accordance with the provisions of R.S. 47:1623(G) and the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.4914.

The primary purpose of this proposed regulation is to implement R.S. 47:1623(G), which was enacted by Act 367 of the 2019 Regular Session of the Louisiana Legislature.

Title 61

REVENUE AND TAXATION

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

Chapter 49. Tax Collection

§4914. Prescription of Refunds Claimed Pursuant to the Federal Combat-Injured Veterans Tax Fairness Act of 2016

A. General. R.S. 47: 1623(G) provides for an extension of the prescriptive period applicable to certain individual income tax refunds. Taxpayers who received a federal income tax refund pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016 are entitled to an extension of prescription on the corresponding Louisiana income tax refund. The extension of prescription only applies to refunds allowed pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016.

B. Combat-Injured Veterans Tax Fairness Act of 2016. On December 16, 2016, the President signed the Combat-Injured Veterans Tax Fairness Act of 2016 into law as Public Law 114-292. Public Law 114-292 provides an extension of the federal statute of limitations for refunds of income tax erroneously paid on lump-sum disability severance payments made by the U.S. Department of Defense. For tax years 1991 through 2016, the Department of Defense erroneously withheld income tax from lump-sum disability severance payments that are exempt from federal income tax pursuant to Section 104(a)(4) of the Internal Revenue Code.

1. Erroneous Withholding. Federal income tax was erroneously withheld from the following Department of Defense payments:

a. lump-sum disability severance payments for combat-related injuries; and

b. lump-sum disability severance payments that would qualify as disability compensation from the Department of Veterans Affairs.

2. Required Notice. Public Law 114-292 requires the Department of Defense to provide notice to affected taxpayers whose exempt payments were subjected to erroneous withholding.

3. Federal Extension. Public Law 114-292 provides an extension of the three-year period for claiming a tax refund pursuant to Section 6511(a) of the Internal Revenue Code. The extension is one year after the date the required notice is provided to the taxpayer.

4. Amended Return or Standard Refund Amount

a. Pursuant to IR-2018-148, the Internal Revenue Service allows affected taxpayers, including the surviving relative of a deceased taxpayer, the option of either:

i. filing an amended federal income tax return for the tax period in which the lump-sum disability severance payments were received to remove the exempt income from gross income; or
ii. claiming a standard refund amount.

b. The standard refund amounts are as follows:

i. \$1,750 for tax years 1991 through 2005;
ii. \$2,400 for tax years 2006 through 2010;
iii. \$3,200 for tax years 2011 through 2016.

C. Louisiana conformity with federal adjusted gross income. Pursuant to R.S. 47:293(1), Louisiana adjusted gross income means the adjusted gross income that is reportable on the federal income tax return. Thus, lump-sum disability severance payments that are exempt from federal income tax pursuant to Section 104(a)(4) of the Internal Revenue Code are likewise exempt from Louisiana income tax. Because Louisiana conforms to federal adjusted gross income, exempt lump-sum disability severance payments that were included in a taxpayer's federal adjusted gross income were by default also included in Louisiana adjusted gross income.

D. Prescription of Refunds. Act 367 of the 2019 Regular Session of the Louisiana Legislature enacted R.S. 47: 1623(G), which provides for an extension of the prescriptive period applicable to certain refunds of Louisiana individual income tax. If a taxpayer receives a federal individual income tax refund pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016, prescription is extended for the corresponding Louisiana income tax refund.

1. Length of Extension. The prescriptive period does not expire until after two years from the date of the taxpayer's receipt of the U.S. Department of Defense notice issued pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016. The U.S.

Department of Defense notice is deemed to be received on the last day of the month that is printed on the notice. For example, if the date of the U.S. Department of Defense notice is July 20, 2018, then the taxpayer has until July 31, 2020 to request a refund. Taxpayers that did not receive a U.S. Department of Defense notice but received a federal refund pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016 have until July 31, 2020 to request a Louisiana refund.

2. Amended Return or Standard Refund Amount

a. Pursuant to R.S. 47: 1623(G), eligible taxpayers have the option of either:

i. filing an amended Louisiana individual income tax return (Form IT-540) for the tax period in which the lump-sum disability severance payments were received to remove the exempt income from adjusted gross income, or

ii. claiming a standard refund amount by submitting a completed Form R-6185, *Individual Income Tax Refund Claim Pursuant to the Federal Combat-Injured Veterans Tax Fairness Act of 2016*. However, taxpayers are required to make the same election as was made for federal purposes except as provided in paragraph E. For example, if a taxpayer elected to claim the standard refund amount for federal purposes, the taxpayer is required to claim the standard refund amount for Louisiana purposes.

b. The Louisiana standard refund amounts are as follows:

- i. \$326 for tax years 1991 through 2002;
- ii. \$592 for tax years 2003 through 2008;
- iii. \$543 for tax years 2009 through 2010;
- iv. \$637 for tax years 2011 through 2016.

3. Interest. The general provision on interest on refunds provided by R.S. 1624(A)(1) shall apply to refunds issues pursuant to R.S. 47: 1623(G). Pursuant to R.S. 1624(A)(1), interest is allowed on refunds from ninety days after the later of the due date of the return, the filing date of the return or claim for refund on which the overpayment is claimed, or the date the tax was paid.

E. Documentation Required. Taxpayers must attach a copy of the federal form 1040X and a copy of the Department of Defense notice (Letters 6060-A and 6060-D) or other documentation required by the IRS for taxpayers that did not receive a Department of Defense notice. For the 1991 through 2003 tax periods, taxpayers filing an amended Louisiana individual income tax return (Form IT-540) must attach a copy of the original Louisiana individual income tax return (Form IT-540). Taxpayers who are unable to provide a copy of their original Louisiana return are required to claim the standard refund amount for Louisiana purposes.

F. Survivors of Deceased Veterans. Survivors of veterans who received notice from the Department of Defense that their relative qualified for a tax refund due to the Combat-Injured Veterans Tax Fairness Act of 2016 may submit a claim for refund. Survivors have the option of either filing an amended individual income tax return (Form IT-540) or claiming a standard refund amount. Survivors must also file Form R-6642, *Statement of Claimant to Refund Due on Behalf of Deceased Taxpayer* unless the person filing the claim is the surviving spouse of the veteran and filed a joint tax return with the veteran for the year the veteran received the lump-sum disability severance payments.

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

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 45:

Family Impact Statement

The proposed adoption of LAC 61:I.4909.1 regarding prescription of refunds claimed pursuant to the federal Combat-Injured Veterans Tax Fairness Act of 2016 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed regulation will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that the proposed Rule should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed regulation will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Any interested person may submit written data, views, arguments, or comments regarding this proposed regulation to Bradley Blanchard, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. on September 24, 2019.

Public Hearing

A public hearing will be held on September 25, 2019, at 10 a.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

**FISCAL AND ECONOMIC IMPACT
STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Prescription of Refunds Claimed
Pursuant to the Federal Combat-Injured
Veterans Tax Fairness Act of 2016**

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

The purpose of the proposed rule is to implement R.S. 47:1623(G), which was enacted by Act 367 of the 2019 Regular Session of the Louisiana Legislature. This Act provides for an extension of the prescriptive period applicable to certain individual income tax refunds. The extension of prescription only applies to the state refund on an adjustment made on federal income allowed pursuant to the Combat-Injured Veterans Fairness Act of 2016. Many veterans unknowingly reported such payments as income and the statute of limitations to amend such returns, typically three years from the due date of the return, has prescribed. To resolve this issue of prescription, the Act provides that qualifying veterans who reported such payments as income may request a refund by amending their state return or claim a standard refund amount.

Implementation costs to the Department of Revenue (LDR) are for computer system modification to issue the standard refund amount, and taxpayer's inquiries. These costs are relatively small and will be absorbed in LDR's current appropriation

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

The estimated exposure to state revenue collections is a decrease of approximately \$1.2 million. There would be no effect on revenue collections of local governmental units.

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

The taxpayer will incur the cost of completing a claim form and providing copies of documentation, but the costs are estimated to be minimal.

The taxpayer will receive the economic benefit of the refund received, which can range from \$326 to \$637.

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

The taxpayer will incur the cost of completing a claim form and providing copies of documentation, but the costs are estimated to be minimal.

The taxpayer will receive the economic benefit of the refund received, which can range from \$326 to \$637.

Kimberly Robinson
Secretary
1908#025

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office