

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Election of Pass-Through Entities (LAC 61.I.1001)

Under the authority of Act 442 of the 2019 Regular Session of the Louisiana Legislature, which authorizes S corporations, and other pass-through entities, to elect to be taxed as C corporations for Louisiana income tax purposes in accordance with LA R.S. 47:287.732(B), 287.732.2, 293, 297.14, 1506, 1517, and 1675 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to adopt LAC 61.I.1001 to provide procedure for making such election, the documents which must be submitted by an electing entity and the procedure for terminating the election.

#### Title 61

#### REVENUE AND TAXATION

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

#### **Chapter 10. Income: Pass-Through Entities**

#### **§1001. Election of Pass-Through Entities**

A. Act 442 of the 2019 Regular Session of the Louisiana Legislature, allows S corporations, and other entities taxed as partnerships for federal income tax purposes, to make an election to be taxed in the same manner as if the entity was required to file a tax return with the Internal Revenue Service as a C corporation.

1. The income of entities that make the election under LA R.S. 47:287.732.2 shall be taxed at the following rates:

- a. two percent upon the first twenty-five thousand dollars of Louisiana taxable income;
- b. four percent upon the amount of Louisiana taxable income above twenty-five thousand dollars but not in excess of one hundred thousand dollars; and
- c. six percent upon the amount of Louisiana taxable income above one hundred thousand dollars.

B. Requirements to Make the Election

1. Shareholders, members or partners holding more than one-half of the ownership interest in the entity based upon capital account balances on the day the election is made shall approve the election.

2. The entity shall provide the Department of Revenue at the time of making the election either:  
a. a resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half of the ownership interest in the entity based upon capital account balances approved the election, or

b. other written proof that more than one-half the ownership interest in the entity approved the election.

3. An entity shall make the election on Form R-6980, *Tax Election for Pass-Through Entities* and the form shall be submitted to the Department of Revenue by email to [Section732.2election@la.gov](mailto:Section732.2election@la.gov).

a. The following documentation shall be attached to Form R-6980:

- i. a list of all owners, their addresses and their tax identification numbers as of the last day of the taxable year to which the election is effective;
- ii. federal returns for the entity for the preceding three taxable years if applicable, including form K-1s and pass-through or disregarded entity forms such as Schedules C, E, and F;
- iii. a copy of the federal S corporation election form, if applicable;
- iv. formation documents of the entity such as the Articles of Incorporation, Partnership Agreement or Operating Agreement which specifically set forth how profits, losses and other tax items are distributed to the owners;
- v. a list of all unused Louisiana net operating losses, tax credit balances and other tax items earned at the entity level prior to the election; and
- vi. any audit reports issued by certified public accountants for the preceding three taxable years, if applicable.

4. Any entity who files a composite partnership return pursuant to LA R.S. 47:201.1 is prohibited from making the election.

5. Elections are timely if made: (i) at any time during the preceding taxable year of the year in which the election is first effective, (ii) at any time during the taxable year in which the election is

first effective or on or before the 15<sup>th</sup> day of the fourth month after the close of the taxable year in which the election is first effective.

a. The Department will begin accepting elections on February 1, 2020 for taxable years beginning on or after January 1, 2019.

b. The Secretary has the discretion to treat an election made after the 15<sup>th</sup> day of the fourth month after the close of the taxable year in which the election is first effective as timely if reasonable circumstances exist for the entity's failure to make a timely election.

i. The Secretary shall consider whether to treat applications filed after the 15<sup>th</sup> day of the fourth month after the close of the taxable year as filed timely on a case-by-case basis.

ii. Reasonable circumstances may include, but are not limited to, death or serious illness of owners, death or serious illness of the entity's tax preparer, or federally declared natural disasters or emergencies.

iii. A determination that the entity and its owners will pay less total tax under the election shall not be a reasonable circumstance to consider a late election timely.

c. An election, once made, is effective for the entire taxable year for which it was made as well as all subsequent taxable years until the election is terminated.

#### C. Filing Tax Returns after Election

1. Each entity making the election shall file Louisiana Form CIFT-620, *Corporation Income Tax and Franchise Tax Return*, for the applicable taxable year for which the election was made and all taxable years thereafter unless the election is terminated.

2. Each entity making the election and filing the Louisiana Form CIFT-620 with all supporting documentation as required by the Department shall be required to file the return electronically in accordance with LAC 61:III.1505. Failure to comply with the electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

3. The following documents shall be attached to the Louisiana Form CIFT-620 when filed:

a. A *pro forma* Federal Form 1120 completed as if the entity had filed as a C corporation for federal income tax purposes including all necessary federal schedules to compute the amount of federal tax that would have been due;

b. Schedule K-1s as actually issued to the owners of the entity for the taxable year as well as Form R-6981, *Statement of Owner's Share of Entity Level Tax Items*, reflecting any income that remains taxable to the entity's owners in Louisiana after the election such as dividends and interest; and

c. Form R-6982, *Schedule of Tax Paid if Paid by Owner*, calculating how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level.

4. Resident individual taxpayers with an ownership interest in an entity making this election shall make a modification on Schedule E of their Louisiana Form IT-540, *Louisiana Resident Income Tax Return*, in accordance with LA R.S. 47:297.14. A non-resident or part-year resident shall make the modification on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

a. The modification shall be made for all income or loss of the entity that was included by the individual owners in the calculation of federal adjusted gross income but which is being taxed at the entity level for Louisiana income tax purposes after the election is made.

b. The modification shall not be made for any income or loss that remains taxable for Louisiana individual income tax purposes to the entity's owners such as interest income and dividend income.

c. For calculation purposes, individual income taxpayers with an ownership interest in an entity making the election shall submit a *pro forma* Federal Form 1040 that excludes any income, deductions or other tax items that were included in the calculation of Louisiana net income on the entity's Louisiana Form CIFT-620.

#### 5. Net Operating Losses

a. Louisiana net operating losses recognized in taxable years prior to the election that have previously been passed through to the owners are tax items of the owners and any such losses are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana net operating losses for any taxable year to which the election applies are tax items of the entity and any such losses shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

#### 6. Tax Credits Granted to Pass-Through Entities

a. Louisiana tax credits earned in taxable years prior to the election that have previously passed through to the owners are tax items of the owners and any such credits are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana tax credits earned for any taxable years to which the election applies are tax items of the entity and any such credits shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

D. Termination of the Election. Entities who make the election pursuant to LA R.S. 47:287.732.2, may apply to the secretary of the Department of Revenue to terminate the election. Any such termination request requires the written approval of more than one-half the of the ownership interest based upon capital account balances on the date the request is submitted.

1. The Secretary may terminate the election if the entity shows a material change in circumstances.

a. A significant change in federal law may be considered a material change in circumstances.

b. A tax increase resulting from the decision to make the election, in and of itself, shall not be considered a material change in circumstances.

2. The entity shall request to terminate the election by submitting a private letter request to the Policy Services Division of the Department of Revenue in accordance with LAC 61:III.101.(C)(2)(a).

a. The entity must provide the Department either:

(i) A resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half the ownership interest in the entity based upon capital account balances approved the election, or

(ii) Other written proof that more than one-half the ownership interest in the entity based upon capital account balances approved the request for termination.

3. Once the entity has filed a Louisiana income tax return for a taxable year for which the election has been made or a subsequent taxable year, the Secretary shall not grant a termination of the election to apply to such taxable year for which a return has already been filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47: 47:287.732(B), 287.732.2, 293, 297.14, 1511, and 1675.

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

#### **Family Impact Statement**

The proposed adoption of this rule should have no 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 has 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 Statement**

The proposed rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

The proposed rule has 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**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Danielle B. Clapinski, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. All written comments must be received no later than 4:30 p.m. on November 25, 2019.

#### **Public Hearing**

A public hearing will be held on November 26, 2019 at 10:00 a.m. in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kimberly Lewis Robinson  
Secretary of Revenue

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Election of Pass-Through Entities (LAC 61.I.1001)

Under the authority of Act 442 of the 2019 Regular Session of the Louisiana Legislature, which authorizes S corporations, and other pass-through entities, to elect to be taxed as C corporations for Louisiana income tax purposes in accordance with LA R.S. 47:287.732(B), 287.732.2, 293, 297.14, 1506, 1517, and 1675 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to adopt LAC 61.I.1001 to provide procedure for making such election, the documents which must be submitted by an electing entity and the procedure for terminating the election.

#### Title 61

#### REVENUE AND TAXATION

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

#### Chapter 10. Income: Pass-Through Entities

#### §1001. Election of Pass-Through Entities

A. Act 442 of the 2019 Regular Session of the Louisiana Legislature, allows S corporations, and other entities taxed as partnerships for federal income tax purposes, to make an election to be taxed in the same manner as if the entity was required to file a tax return with the Internal Revenue Service as a C corporation.

1. The income of entities that make the election under LA R.S. 47:287.732.2 shall be taxed at the following rates:

- a. two percent upon the first twenty-five thousand dollars of Louisiana taxable income;
- b. four percent upon the amount of Louisiana taxable income above twenty-five thousand dollars but not in excess of one hundred thousand dollars; and
- c. six percent upon the amount of Louisiana taxable income above one hundred thousand dollars.

#### B. Requirements to Make the Election

1. Shareholders, members or partners holding more than one-half of the ownership interest in the entity based upon capital account balances on the day the election is made shall approve the election.

2. The entity shall provide the Department of Revenue at the time of making the election either:  
a. a resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half of the ownership interest in the entity based upon capital account balances approved the election, or

b. other written proof that more than one-half the ownership interest in the entity approved the election.

3. An entity shall make the election on Form R-6980, *Tax Election for Pass-Through Entities* and the form shall be submitted to the Department of Revenue by email to [Section732.2election@la.gov](mailto:Section732.2election@la.gov).

a. The following documentation shall be attached to Form R-6980:

- i. a list of all owners, their addresses and their tax identification numbers as of the last day of the taxable year to which the election is effective;
- ii. federal returns for the entity for the preceding three taxable years if applicable, including form K-1s and pass-through or disregarded entity forms such as Schedules C, E, and F;
- iii. a copy of the federal S corporation election form, if applicable;
- iv. formation documents of the entity such as the Articles of Incorporation, Partnership Agreement or Operating Agreement which specifically set forth how profits, losses and other tax items are distributed to the owners;
- v. a list of all unused Louisiana net operating losses, tax credit balances and other tax items earned at the entity level prior to the election; and
- vi. any audit reports issued by certified public accountants for the preceding three taxable years, if applicable.

4. Any entity who files a composite partnership return pursuant to LA R.S. 47:201.1 is prohibited from making the election.

5. Elections are timely if made: (i) at any time during the preceding taxable year of the year in which the election is first effective, (ii) at any time during the taxable year in which the election is

first effective or on or before the 15<sup>th</sup> day of the fourth month after the close of the taxable year in which the election is first effective.

a. The Department will begin accepting elections on February 1, 2020 for taxable years beginning on or after January 1, 2019.

b. The Secretary has the discretion to treat an election made after the 15<sup>th</sup> day of the fourth month after the close of the taxable year in which the election is first effective as timely if reasonable circumstances exist for the entity's failure to make a timely election.

i. The Secretary shall consider whether to treat applications filed after the 15<sup>th</sup> day of the fourth month after the close of the taxable year as filed timely on a case-by-case basis.

ii. Reasonable circumstances may include, but are not limited to, death or serious illness of owners, death or serious illness of the entity's tax preparer, or federally declared natural disasters or emergencies.

iii. A determination that the entity and its owners will pay less total tax under the election shall not be a reasonable circumstance to consider a late election timely.

c. An election, once made, is effective for the entire taxable year for which it was made as well as all subsequent taxable years until the election is terminated.

#### C. Filing Tax Returns after Election

1. Each entity making the election shall file Louisiana Form CIFT-620, *Corporation Income Tax and Franchise Tax Return*, for the applicable taxable year for which the election was made and all taxable years thereafter unless the election is terminated.

2. Each entity making the election and filing the Louisiana Form CIFT-620 with all supporting documentation as required by the Department shall be required to file the return electronically in accordance with LAC 61:III.1505. Failure to comply with the electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

3. The following documents shall be attached to the Louisiana Form CIFT-620 when filed:

a. A *pro forma* Federal Form 1120 completed as if the entity had filed as a C corporation for federal income tax purposes including all necessary federal schedules to compute the amount of federal tax that would have been due;

b. Schedule K-1s as actually issued to the owners of the entity for the taxable year as well as Form R-6981, *Statement of Owner's Share of Entity Level Tax Items*, reflecting any income that remains taxable to the entity's owners in Louisiana after the election such as dividends and interest; and

c. Form R-6982, *Schedule of Tax Paid if Paid by Owner*, calculating how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level.

4. Resident individual taxpayers with an ownership interest in an entity making this election shall make a modification on Schedule E of their Louisiana Form IT-540, *Louisiana Resident Income Tax Return*, in accordance with LA R.S. 47:297.14. A non-resident or part-year resident shall make the modification on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

a. The modification shall be made for all income or loss of the entity that was included by the individual owners in the calculation of federal adjusted gross income but which is being taxed at the entity level for Louisiana income tax purposes after the election is made.

b. The modification shall not be made for any income or loss that remains taxable for Louisiana individual income tax purposes to the entity's owners such as interest income and dividend income.

c. For calculation purposes, individual income taxpayers with an ownership interest in an entity making the election shall submit a *pro forma* Federal Form 1040 that excludes any income, deductions or other tax items that were included in the calculation of Louisiana net income on the entity's Louisiana Form CIFT-620.

#### 5. Net Operating Losses

a. Louisiana net operating losses recognized in taxable years prior to the election that have previously been passed through to the owners are tax items of the owners and any such losses are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana net operating losses for any taxable year to which the election applies are tax items of the entity and any such losses shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

#### 6. Tax Credits Granted to Pass-Through Entities

a. Louisiana tax credits earned in taxable years prior to the election that have previously passed through to the owners are tax items of the owners and any such credits are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana tax credits earned for any taxable years to which the election applies are tax items of the entity and any such credits shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

D. Termination of the Election. Entities who make the election pursuant to LA R.S. 47:287.732.2, may apply to the secretary of the Department of Revenue to terminate the election. Any such termination request requires the written approval of more than one-half the of the ownership interest based upon capital account balances on the date the request is submitted.

1. The Secretary may terminate the election if the entity shows a material change in circumstances.

a. A significant change in federal law may be considered a material change in circumstances.

b. A tax increase resulting from the decision to make the election, in and of itself, shall not be considered a material change in circumstances.

2. The entity shall request to terminate the election by submitting a private letter request to the Policy Services Division of the Department of Revenue in accordance with LAC 61:III.101.(C)(2)(a).

a. The entity must provide the Department either:

(i) A resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half the ownership interest in the entity based upon capital account balances approved the election, or

(ii) Other written proof that more than one-half the ownership interest in the entity based upon capital account balances approved the request for termination.

3. Once the entity has filed a Louisiana income tax return for a taxable year for which the election has been made or a subsequent taxable year, the Secretary shall not grant a termination of the election to apply to such taxable year for which a return has already been filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47: 47:287.732(B), 287.732.2, 293, 297.14, 1511, and 1675.

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

#### **Family Impact Statement**

The proposed adoption of this rule should have no 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 has 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 Statement**

The proposed rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

The proposed rule has 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**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Danielle B. Clapinski, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. All written comments must be received no later than 4:30 p.m. on November 25, 2019.

#### **Public Hearing**

A public hearing will be held on November 26, 2019 at 10:00 a.m. in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kimberly Lewis Robinson  
Secretary of Revenue

**Fiscal and Economic Impact Statement  
For Administrative Rules**

Person preparing statement:	<u>Debbie Anderson</u>	Department:	<u>Revenue</u>
Phone:	<u>(225) 219-2775</u>	Office:	<u>Policy Services Division</u>
Return Address:	<u>617 North Third Street</u>	Rule Title:	<u>LAC 61:I.1001</u>
	<u>Baton Rouge, LA 70802</u>	Date Rule Takes Effect:	<u>January 20, 2020</u>

**Summary**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

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

The purpose of the proposed rule is to implement the provisions of Act 442 of the 2019 Session of the Louisiana Legislature. The Act and this proposed rule, allows S corporations, and other entities taxed as partnerships for federal income tax purposes, to make an election to be taxed in the same manner as if the entity was required to file a tax return with the Internal Revenue Service as a C corporation, thereby paying the state income tax at the entity level as opposed to the shareholder/partner level. The entity will be allowed a federal income tax deduction equal to the federal income tax they would have paid on their Louisiana net income if they filed a C-Corp return at the federal level. The state tax rates these entities will be subject to are set at the individual income tax rates for married filing jointly: 2% on the first \$25,000, 4% on the next \$75,000, and 6% on income above \$100,000.

Minor implementation costs to the Department of Revenue (LDR) are for computer system development and modification, tax form redesign, testing and taxpayer inquiries. Additional costs will be incurred to update equipment and software to process the revised return in FY 2019-2020. These costs are being absorbed in the LDR's budget allocation.

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

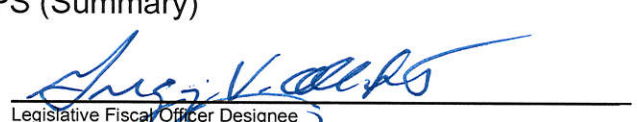
The impact on state revenue collections is indeterminable. LDR does not have the information necessary to estimate the impact. There are possible individual scenarios where overall state tax receipts will decrease and possible scenarios where overall state tax receipts will increase. Each situation is dependent on an individual's tax situation and the entity actually making the election, which cannot be predicted.

Entities/shareholders may seek to minimize the combined state and federal tax burden, and the predominate situation may be an increase in state taxes while federal taxes are decreased by a greater amount (federal rates are considerably higher than state rates). The effect on aggregate state tax receipts is uncertain.

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 NON-GOVERNMENTAL GROUPS (Summary)

  
\_\_\_\_\_  
Signature of Agency Head or Designee  
**Kimberly Robinson, Secretary**  
\_\_\_\_\_  
Typed Name and Title of Agency Head or Designee  
10/8/19  
\_\_\_\_\_  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer Designee  
**Greg Albrecht, Chief Economist**  
\_\_\_\_\_  
Typed Name of Legislative Fiscal Officer Designee  
10/8/2019  
\_\_\_\_\_  
Date of Signature