## DECLARATION OF EMERGENCY

### Department of Revenue
### Policy Services Division

Penalty Waiver
(LAC 61:III.2101)

The Louisiana Department of Revenue is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt this Emergency Rule pertaining to LAC 61:III.2101 pertaining to a penalty waiver for delinquent filing or delinquent payment.

The purpose of this rule is to inform the public of the documentation required when submitting requests for waiver of delinquent filing or late payment penalty and of factors that will be considered by the Department of Revenue in evaluating waiver requests. Title 47 Section 1603 provides that if the failure to file on time or the failure to timely remit the full amount due is not due to the negligence of the taxpayer, but is due to other causes set forth in written form and considered reasonable, the Secretary may waive the penalty in whole or in part. When the penalty exceeds five thousand dollars, the waiver must be approved by the Board of Tax Appeals.

This Emergency Rule shall be effective February 5, 2003 and remain in effect for a period of 120 days or until a final rule is adopted, whichever occurs first.

### Title 61
### REVENUE AND TAXATION
### Part III.  Department of Revenue; Administrative Provisions and Miscellaneous
### Chapter 21.      Interest and Penalties
### §2101.   Penalty Waiver

A.   The Secretary may waive a penalty in whole or in part for the failure to file a return on time or the failure to timely remit the full amount due when the failure is not due to the taxpayer's negligence and is considered reasonable. All penalty waiver requests must be in writing and be accompanied by supporting documentation. If the combined penalties for a tax period exceed one hundred dollars, all of the facts alleged as a basis for reasonable cause must be fully disclosed in an affidavit sworn before a notary public in the presence of two witnesses and accompanied by any supporting documentation. The affidavit must be signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the sworn affidavit may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. In lieu of an affidavit, the taxpayer may submit a Request for Waiver of Penalties for Delinquency Form signed by the taxpayer, or in the case of a corporation, by an officer of the corporation. Where the taxpayer or officer does not have personal knowledge of such facts, the Request for Waiver of Penalties for Delinquency Form may be signed on the taxpayer's or officer's behalf by a responsible individual with personal knowledge of such facts. The Request for Waiver of Penalties for Delinquency Form must be accompanied by any supporting documentation.

B.   Before a taxpayer's request for penalty waiver will be considered, the taxpayer must be current in filing all tax returns and all tax, penalties not being considered for waiver, fees and interest due for any taxes/fees administered by the Department of Revenue must be paid.

C.   In determining whether or not to waive the penalty in whole or in part, the department will take in account both the facts submitted by the taxpayer and the taxpayer's previous compliance record with respect to all of the taxes/fees administered by the Department of Revenue. Prior penalty waivers will be a significant factor in assessing the taxpayer's compliance record. Each waiver request submitted by the taxpayer will be considered on an individual basis. Each tax period or audit liability will be considered separately in determining whether the penalty amount mandates approval of the waiver by the Board of Tax Appeals. The delinquent filing and delinquent payment penalties will also be considered at separately in making this determination.

AUTHORITY NOTE:   Promulgated in accordance with R.S. 47:1603.

HISTORICAL NOTE:   Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 29:

Cynthia Bridges
Secretary