

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Interest Abatement and Compromise (LAC 61:III.2115)

Under authority of R.S. 47:1601(A)(2)(d) and (e) and 47:1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.2115 to provide guidance as to when interest will be abated or compromised.

Revised Statute 47:1601(A)(2)(d) authorizes the secretary to abate interest due to unreasonable errors or delays by the department in performing ministerial or managerial acts. Revised Statute 47:1601(A)(2)(e) authorizes the secretary to waive interest to promote the effective administration of the tax laws. Guidance is needed to make taxpayers aware of the circumstances under which interest will be abated or compromised.

#### Title 61

#### REVENUE AND TAXATION

#### Part III. Department of Revenue—Administrative Provisions and Miscellaneous

#### Chapter 21. Interest and Penalties

#### §2115. Abatement and Compromise of Interest

##### A. Abatement of Interest under R.S. 47:1601(A)(2)(d)

1. The following definitions apply when determining whether interest may be abated under R.S. 47:1601(A)(2)(d).

a. *Managerial Act*—an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision concerning the proper application of the law is not a managerial act. Further, a general administrative decision, such as the department's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system, is not a managerial act for which interest can be abated under this Section.

b. *Ministerial Act*—a procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of the law is not a ministerial act.

2. The following circumstances are examples of situations that do not constitute an unreasonable error or delay by the department.

a. Interest accrues as a result of the taxpayer's failure to pay the tax liability he calculates for each period when due.

b. Interest accrues as a result of the taxpayer's failure to pay the entire balance owed once he and the department are in agreement as to the amount of the balance.

c. Interest accrues while the taxpayer waits for a determination of his refund claim in order to offset prior period underpayments.

d. Interest accrues as a result of the taxpayer's failure to cooperate with department personnel. Examples include but are not limited to:

i. the taxpayer does not timely furnish information to the department;

ii. the taxpayer delays meetings or appointments with department personnel.

##### B. Compromise of Interest under R.S. 47:1601(A)(2)(e)

1. Before the secretary may consider compromising any amount of interest, the taxpayer must have paid all outstanding taxes.

2. When determining whether or not to compromise interest for a taxpayer, the secretary will examine the taxpayer's filing and compliance history, any special circumstances that may exist, and the hazards of litigation. This list is not all-inclusive.

3. Interest may be compromised when the department and the taxpayer interpret the law differently and there is no binding judicial decision regarding the issue. If interest is compromised with regard to an unresolved issue, the taxpayer will agree to thereafter operate under the department's interpretation of the law.

4. Interest may only be compromised for a specific taxpayer if the taxpayer has not had any interest compromised within the past five years.

5. Interest may only be compromised for a specific taxpayer if neither the taxpayer, his affiliates, nor his related entities have ever had any interest compromised that arose from the same issue.

6. The secretary may compromise any portion of the total interest for which compromise is requested.

7. Following is a partial list of circumstances in which interest will not be compromised.

a. Taxpayer is party to a voluntary disclosure agreement for the period in which the interest accrued.

b. Interest accrues as a result of participation in an abusive tax avoidance transaction.

c. Interest that accrues on trust taxes that the taxpayer has collected but not remitted.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:1601(A)(2)(d) and (e) and 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:

#### Family Impact Statement

This proposed Rule, LAC 61:III.2115, which provides guidance as to when interest will be abated or compromised, 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. 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 budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, November 27, 2006. A public hearing will be held on Tuesday, November 28, 2006, at 10 a.m. in the 7th Floor

River Room of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Interest Abatement and Compromise**

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

This proposed rule provides guidance to taxpayers as to when interest will be abated or compromised under R.S. 47:1601(A)(2)(d), which authorizes the secretary to abate interest when due to unreasonable errors or delays by the department in performing ministerial or managerial acts, or R.S. 47:1601(A)(2)(e), which authorizes the secretary to waive the interest to promote the effective administration of the tax laws.

Implementation of this proposed rule will have minimal impact on the agency's costs. Compromising or abating interest under certain circumstances will promote the effective administration of the tax laws and allow disputed cases to be resolved. The proposed rule will have no costs or savings to local governmental units.

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

This proposed rule, which provides guidance to taxpayers of the circumstances under which interest will be abated or compromised, will result in an indeterminable reduction in the state's interest collections. We do not have data to estimate the amount of the revenue loss. This proposed rule will have no effect on the revenue collections of local governmental units.

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

This proposed rule, which provides for circumstances under which interest will be abated or compromised, will result in reduced interest payments for qualifying taxpayers. The amount of the interest to be abated or compromised cannot be determined.

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

This proposed rule will have no effect on competition or employment.

Cynthia Bridges  
Secretary  
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Robert E. Hosse  
Staff Director  
Legislative Fiscal Office