

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Alternative Dispute Resolution (LAC 61:III.301-335)

Under the authority of R.S. 47:1511 and 1522 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary proposes to adopt LAC 61:III.301-335, the rules and regulations governing alternative dispute resolution.

The secretary of the Department Revenue is authorized by R.S. 47:1511 to adopt reasonable rules and regulations to enforce the provisions relating to the taxes collected and administered by the department. Louisiana Administrative Code Title 61, Part III, §§301-335, is proposed to establish the method and the procedures available to implement R.S. 47:1522, which allows the Department of Revenue to use alternative dispute resolution as a means of resolving issues between the taxpayer and the department. Alternative dispute resolution will provide a voluntary, confidential and cooperative means of resolving tax disputes of less than \$1 million, which will reduce the costs and risks of litigation for the taxpayer and the department. Alternative dispute resolution will also expedite the tax collection and refund processes. The rules and regulations for the department's Alternative Dispute Resolution Program are modeled on the Multistate Tax Commission's Alternative Dispute Resolution Program.

#### Title 61

#### REVENUE AND TAXATION

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

#### Chapter 3. Alternative Dispute Resolution Procedures

#### §301. Definitions

A. For purposes of this chapter, the following terms have the meanings ascribed to them.

*Alternative Dispute Resolution*—procedures for settling disputes by means other than litigation.

*Arbitration*—a binding process in which the department and taxpayer submit disputed issues and evidence to an arbitrator and a decision is rendered by the arbitrator.

*Arbitrator*—a neutral third party chosen by the department and taxpayer to hear their claims and render a decision.

*Enrolled Agent*—an individual who has demonstrated technical competence in the field of taxation and is licensed to represent taxpayers before all administrative levels of the Internal Revenue Service.

*Hearing*—a proceeding in which a neutral third party receives testimony or arguments and reviews documents to determine issues of fact and legal conclusions in order to render a decision based on the evidence presented.

*Party*—a taxpayer or department representative involved in an alternative dispute resolution process.

*Secretary*—the Secretary of the Louisiana Department of Revenue.

*Session*—the period of time during which the arbitrator meets with the parties to discuss the issues and listens to the arguments presented in order to reach a decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

#### §303. Type of Alternative Dispute Resolution Process

A. The disputed issue(s) may be resolved by arbitration as agreed upon by the taxpayer and the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

#### §305. Initiation of Arbitration

A. The secretary may select cases whose total value as of the date of selection for binding arbitration is less than \$1 million. Once a case has been selected for arbitration, notice will be sent to the taxpayer regarding the selection within 30 days.

B. The taxpayer may give written notice to the department of the taxpayer's desire to participate in arbitration. The notice must be signed by the taxpayer or representative of the taxpayer and contain the taxpayer's name, tax identification number, address, telephone number, fax number, and e-mail address and the taxpayer's representative e-mail address as well as a brief description of the nature of the dispute and the issues. The notice must also state the relief requested, the reasons supporting the relief, and any other relevant and reliable information supporting the claim.

C. Neither the department nor the taxpayer has the right to mandate or force the opposing party into arbitration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

#### §307. Persons Authorized to Participate in Arbitration

A. Individuals, partnerships, and corporations. Any individual taxpayer participating in arbitration with the department may appear and act for himself or for a partnership of which he is a partner with authority to act on behalf of the partnership's members. A corporation, limited liability company, or limited liability partnership may be represented by a bona fide officer of the corporation upon presentation of a corporate resolution or other documentation evidencing the officer's authority to act on behalf of the organization.

B. Attorneys. Attorneys at law, qualified and licensed under the laws of the state, are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit attorneys at law, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these attorneys are permitted to practice in the courts of Louisiana.

C. Certified Public Accountants. Certified public accountants qualified and licensed under the laws of the state are entitled to represent any taxpayer participating in arbitration with the department. The arbitrator may permit certified public accountants, qualified and licensed under the laws of the several states or the District of Columbia to represent any taxpayer participating in arbitration with the department, in the same manner as these certified public accountants are permitted to practice in Louisiana.

D. Enrolled Agents. Enrolled agents qualified and licensed to practice before the Internal Revenue Service are

entitled to represent any taxpayer participating in arbitration with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§309. Registry of Arbitrators**

A. The department will maintain a registry of arbitration companies authorized to participate in the alternative dispute resolution process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§311. Time Delay for Providing Names of Arbitrators**

A. As soon as practical, but not more than 30 business days after consent of the parties to participate in arbitration, the department will send to the taxpayer or the taxpayer's representative the names of potential arbitration companies to provide case management services for the arbitration session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§313. Selection of Arbitration Company**

A. The department and taxpayer will select an arbitration company from the Registry maintained by the department. The arbitration company will select the arbitrator to preside over the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§315. Disclosure of Conflict of Interest**

A. An arbitrator must have no official, financial, or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed, in writing, to all parties and all parties agree, in writing, that the person may continue to serve. If an arbitrator is disqualified by either party, another arbitrator will be selected by the arbitration company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§317. Procedures for Arbitration**

A. The arbitrator will take necessary steps to avoid delay and to achieve a just, speedy, and cost-effective resolution. The department and taxpayer will cooperate in the exchange of documents, exhibits, and information within either party's control. In addition, the department and taxpayer may conduct discovery as agreed upon by all parties. However, the arbitrator may provide for or place limitations on the discovery as the arbitrator deems appropriate. At the request of the department or the taxpayer, the arbitrator may require the deposition of any person who may possess information vital to the just resolution of the matter.

B. The arbitrator will select a hearing date. Each party must notify the arbitrator in writing at least 10 business days before the initial arbitration session of the following:

1. the party's intention to present witnesses;
2. whether the party will be represented by counsel; and
3. who will be present at the arbitration.

C. The department and taxpayer must submit a brief statement of facts, law, and issues to be resolved. The statement may not exceed 15 legal-size pages without prior approval from the arbitrator.

D. The arbitrator will distribute to the department and taxpayer the information provided in Subsection B and inform the parties of the arbitration process to be followed at least five business days before the initial arbitration session. Except where specified in the regulation, the arbitrator will determine the process to be followed.

E. The rules of evidence in arbitration will be the rules of evidence followed in the state district courts of Louisiana.

F. Any party desiring a stenographic or other recording of the proceedings must make arrangements directly with a stenographer or the person responsible for recording the proceedings. The party seeking to record the proceeding must notify the arbitrator and all other parties of the arrangements at least five business days before the arbitration hearing. The requesting party or parties shall pay the recording costs and the recording or transcript shall be made available to the arbitrator and the other parties for inspection and copying at a date, time, and place determined by the arbitrator.

G. If an arbitration decision is rendered on a case pending in any state court or the Louisiana Board of Tax Appeals, the decision will be entered in the court records.

H. The decision by the arbitrator will be made promptly and, unless otherwise agreed by the parties or specified by law, no later than 30 business days from the date of the closing of the arbitration hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§319. Discovery**

A. The arbitrator will set forth the conditions of discovery. Any extensions of discovery must be in writing and approved by the arbitrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§321. Arbitration Hearing**

A. In order to facilitate the arbitration process, the selected arbitrator will conduct hearings. Each party will be given an opportunity to present the facts, evidence, and argument that support its position regarding the disputed tax issue at the hearing. Hearings will be private and all matters will remain confidential. The only individuals who may participate in hearings will be the taxpayer, taxpayer representatives, department representatives, and any witnesses to be called.

B. Date, Time and Place of Hearing. Hearings will be held at the LaSalle Building in Baton Rouge or at any other place designated by the arbitrator with consideration given to the location and convenience of the parties and their witnesses. All witnesses will be sequestered prior to giving testimony.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§323. Sequence of the Arbitration Hearing**

A. Unless otherwise determined by the arbitrator, the following sequence will be followed at the hearing.

1. Introduction. The arbitrator may make an introduction.

2. Opening statements. The taxpayer or his representative will make an opening statement followed by the department's representative.

3. Taxpayer's case. The taxpayer may introduce evidence, examine witnesses, and submit exhibits. The department's attorney or representative may cross-examine the witnesses.

4. Department's case. The department may introduce evidence, examine witnesses, and submit exhibits. The taxpayer or taxpayer's representative may cross-examine the witnesses.

5. Evidence procedure. Each party will have the opportunity to present relevant and credible evidence during the hearing. All statements will be made under oath administered by the arbitrator. The Rules of Evidence followed in the state district courts of Louisiana will apply to all evidence presented and objections will be permitted.

6. Rebuttal. Presentation of the evidence of the taxpayer in rebuttal and the argument of the taxpayer followed by the argument of the department, and of the taxpayer in rebuttal.

7. Summation. Each party may present a closing statement.

8. Concluding Remarks. The arbitrator may make closing remarks concerning the case.

9. Judgment. The arbitrator shall render a decision within 30 business days after the date of the close of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§325. Ex Parte Communication with the Arbitrator**

A. No party or party representative may directly communicate with an arbitrator except at a hearing or during a scheduled conference concerning any issue related to the arbitration matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§327. Privacy**

A. All arbitration sessions are private and confidential. To ensure the privacy of the arbitration sessions, only the parties and their representatives may attend the sessions. All parties participating in or attending a session are required to sign a confidentiality agreement. Any party that violates this confidentiality provision is subject to sanctions at the request of the other party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§329. Confidentiality**

A. Except as authorized or required by law, no one participating in the session may disclose the existence, content, or results of the session without the written consent of all parties. Each participant to any process conducted, including the arbitrator, must execute a confidentiality agreement before beginning arbitration. Except as authorized, required, or consented to, no party, arbitrator, or any agent or other representative may make public, offer or introduce as evidence, or otherwise refer to in any

administrative, judicial, or other proceeding, any statement made or any document or item of evidence provided during arbitration or any finding, conclusion, order, or result, or lack thereof relating to the process. This prohibition applies but is not limited to the following matters:

1. views expressed or suggestions made by a party with respect to possible settlement of the dispute;

2. admissions made by any party during arbitration;

3. statements made or views expressed by any witnesses, arbitrator, or other persons privy to the arbitration session; or

4. the fact that another party had or had not indicated a willingness to accept a proposal settlement.

B. The arbitrator is subject to the terms and conditions set forth in R.S. 47:1508 regarding the confidential character of tax records.

C. All returns, reports, and other documents presented during the arbitration session may be destroyed by order of the secretary after five years from the last day of December of the year in which the tax to which the records pertain became due, but not less than one year after receipt of the last payment of tax to which the records pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§331. Fees and Expenses**

A. Each party will bear the fees and expenses for its own counsel, expert witnesses, travel, and preparation and presentation of its case. Except as otherwise agreed by the parties, the fees and expenses of the arbitrator will be borne equally by the taxpayer and the department in accordance with the arbitration company's fee schedule.

B. If an arbitration session has been scheduled and a party fails to appear at the session, the party failing to appear will be responsible for the payment of the reasonable costs and fees of the arbitrator and the reasonable travel expenses incurred by the other party, unless the party has provided reasonable notice in writing to the arbitrator and all other parties that they will not appear. It will be presumed, subject to a contrary showing under the circumstances, that giving five business days advanced written notice is reasonable notice.

C. If reasonable notice is not provided, the arbitrator shall determine if there was good cause for the failure to appear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

### **§333. Taxpayer's Duty to Protect Protests and Appeals**

A. It is the duty of the taxpayer to protect his right to protest or appeal any assessment or proposed assessment or to pursue any right to refund relating to any issue that may also be subject to the arbitration process. Compliance with all conditions and time limits for perfecting and pursuing any and all administrative and judicial protests and appeals or requests for refund are the sole responsibility of the taxpayer. Any agreement between a taxpayer, taxpayer representative, and a representative of the department to alter the conditions or time limits must be authorized by the secretary of the Department of Revenue and executed in writing by both parties to be effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

Cynthia Bridges  
Secretary

**§335. Notice of a Waiver or Extension**

A. When required by any party, notice that a written waiver or extension of any and all applicable prescriptive periods must be executed to each party's satisfaction. No party will be required to execute any waiver or extension of a statutory limitation as a condition of participating in an alternative dispute resolution process. Unless otherwise agreed to by the parties, any waiver or extension of prescription will apply to only those issues agreed upon as subject to the alternative dispute resolution process. If a written waiver or extension is required by a party, no alternative dispute resolution process will begin until an agreement has been executed.

B. The department and taxpayer will have 30 business days to resolve the issues and execute the waiver or extension. If no agreement is reached during that period of time, the arbitrator will terminate the alternative dispute resolution process. In the event that an alternative dispute resolution process has been terminated, the parties have a right to initiate a new alternative dispute resolution process. If the second attempt to initiate an alternative dispute resolution process fails, any subsequent attempts will not be allowed unless the arbitrator agrees it is in the parties best interest to continue to arrive at an agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 1522.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:

**Family Impact Statement**

The proposed adoption of LAC 61:III.301-335 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:

1. The implementation of this proposed rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Miscellaneous Taxes and Regulatory Services, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802-5428 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., January 28, 2003. A public hearing will be held on January 29, 2003, at 9:30 a.m. at 617 North Third Street, Baton Rouge, LA 70802-5428.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Alternative Dispute Resolution**

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

These proposed regulations provide for alternative dispute resolution procedures as a means of resolving disputed tax liabilities. Section 331 of the proposed Rule provides that each party will pay the fees and expenses for its own counsel, expert witnesses, travel, and the preparation and presentation of its case and the fees and expenses of the arbitrator will be paid equally by the taxpayer and the department. Alternative dispute resolution should result in reduced litigation costs and the closure of many older legal cases as well as faster resolution of current legal cases which will reduce the agency's costs and allow the department's resources to be employed more efficiently.

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

Alternative dispute resolution will provide more timely resolution of tax disputes and payment of taxes. However, there should be no effect of the state's revenues.

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

Taxpayers with disputed tax liabilities should benefit by alternative dispute resolution as a less expensive alternative to litigation as a means of resolving disputes.

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

These proposed regulations should have no effect on competition or employment.

Cynthia Bridges  
Secretary  
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H. Gordon Monk  
Staff Director  
Legislative Fiscal Office