

**Revenue Ruling
No. 02 – 016
October 10, 2002**

Administrative

All Taxes, Interest, and Penalties

**Tax Clearance Required for Lottery Retailer's License and
Lottery Vendor Contract; Exception Provided for Items under Formal Appeal**

The purpose of this Revenue Ruling is to discuss the interpretation of the statutory language “*under formal appeal pursuant to applicable statutes*” that is expressed in Acts 2001, No. 716, which amends La. R.S. 47:9050(B)(2) and enacts La. R.S. 47:9060(D)(2) to expand the lottery tax clearance program to require tax clearances for lottery retailers’ licenses and lottery vendor contracts. The Act is effective for all lottery retailers’ licenses applied for or renewed as well as vendor contracts entered into or renewed on or after July 1, 2001. This Ruling will clarify when the Department will exclude delinquent items as being “*under formal appeal pursuant to applicable statutes*” in the case of a lottery retailer or vendor applying for a tax clearance.

Louisiana Revised Statute 47:9050(B)(2) provides that an applicant for a lottery retailer’s license “must be current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the state of Louisiana, excluding items under formal appeal pursuant to applicable statutes, before a license is issued and before each renewal.”

Louisiana Revised Statute 47:9060(D)(2) provides that “[a] contract shall not be entered into with any vendor who has not first obtained a signed tax clearance from the secretary of the Department of Revenue indicating that the vendor is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Louisiana, excluding items under formal appeal pursuant to applicable statutes.”

Therefore, in accordance with the provisions of La. R.S. 47:9050(B)(2) and R.S. 47:9060(D)(2), the Department will exclude delinquent items that are “*under formal appeal pursuant to applicable statutes*” when determining whether a tax clearance may be issued to a lottery retailer or lottery vendor. To be excluded, however, a delinquent item must be under appeal pursuant to one of the following two methods of appeal that the legislature has authorized taxpayers to use.

In part, La. R.S. 47:1431 states that a taxpayer “aggrieved” by an assessment made by the secretary (or any action of the secretary) may appeal to the Board of Tax Appeals (BTA) for a redetermination of the assessment, by filing a petition with the BTA within the respective periods set forth in La. R.S. 47:1565, 47:1566 and 47:1625. An adverse decision of the BTA may be reviewed by the district court and an adverse decision of the district court may be appealed to the appellate courts. Therefore, items appealed to the BTA in accordance with the provisions of La. R.S. 47:1431 are under appeal until the date on which a decision or judgment of the BTA

A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101(C) of the Louisiana Administrative Code to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

becomes final as provided by La. R.S. 47:1438. *Loe v. McNamara*, 501 So.2d 298 (La.App. 1st Cir. 1987), *writ denied*, 503 So.2d 480 (La. 1987), La. R.S. 47:1431-38, 47:1565-66, and 47:1625; La. Const. of 1974, Art. VII., § 3.

In accordance with La. R.S. 47:1576, a taxpayer may also appeal an assessment made by the secretary, or the enforcement of any provision of the tax laws in relation thereto, by paying the disputed tax under protest and filing a suit for refund in any state court having jurisdiction of the parties and subject matter. A taxpayer is entitled to appeal under La. R.S. 47:1576 in every case “except (a) after he has filed a petition with the BTA for a redetermination of the assessment, or (b) the assessment has become final, or (c) a suit involving the same tax obligation is pending against the taxpayer...” La. R.S. 47:1561. Items appealed under the provisions of La. R.S. 47:1576 are under appeal until the date the judgment of the district court becomes final.

Thus, for the purpose of this Revenue Ruling, an item that is under appeal in accordance with the provisions of La. R.S. 47:1431 or 47:1576 is an item “*under appeal pursuant to applicable statutes.*” An item that is being reviewed under any other method, including administrative review, is **not** an item “*under appeal pursuant to applicable statutes.*” Accordingly, in the case of a lottery retailer or lottery vendor seeking to obtain a tax clearance, the Department will exclude only delinquent items that are under appeal in accordance with the provisions of La. R.S. 47:1431 or R.S. 47:1576 when determining whether the retailer or vendor is current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the state of Louisiana. Further, the appeal of the retailer or vendor must be properly filed at the time the tax clearance is requested, even if the time for filing an appeal has not expired.

Please call the Policy Services Division at (225) 219-2780 if you have any questions concerning this Revenue Ruling.

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