Public Hearing

A public hearing will be held on Thursday, September 29, 2022 at 10 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kevin J. Richard, CPA
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Corporation Income Tax

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

The proposed amendments to LAC 61:I.1122; 1124, and 1125 remove various administrative provisions made obsolete by Act 103 of the 2015 Regular Session, which repealed the carryback provisions as it relates to net operating losses ("NOL") for corporations.

No impacts on costs borne by state or local governmental units are anticipated due to this proposed rule change.

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

No material impacts on revenue collections of state or local governmental units are anticipated due to this proposed rule change. This proposal is repealing rules that are no longer relevant due to change in statute.

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

No material impacts on costs or economic benefits are anticipated for affected personal, small business or non-governmental groups due to this proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change.

Kevin J. Richard, CPA	Alan M. Boxberger
Secretary	Interim Legislative Fiscal Officer
2208#067	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Donation to Qualified Foster Care Charitable Organization Credit and Certain Adoptions Deductions
(LAC 61:I.1925, 1927, and 1929)

Under the authority of R.S. 47:293(9)(a)(xxiii) and (xxiv), 297.20, 297.21, 1511 and 6042 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.1925 relative to the Donation to Qualifying Foster Care Charitable Organization Income Tax Credit and LAC 61:I.1927 and 1929 relative to the individual income tax deductions for individuals who adopt a child under certain circumstances.

Revised Statute 47:6042 authorizes a nonrefundable tax credit for donations made to Qualifying Foster Care Charitable Organizations that are used to provide services to qualified individuals. In addition, Revised Statutes 47:297.20 and 297.21 authorize an individual income tax deduction of $5,000 for taxpayers who adopt a youth from foster care, or an infant through private adoption, or an attorney. The primary purpose of this proposed regulation is to implement Act 378 of the 2021 Regular Session of the Louisiana Legislature.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions
§1925. Donations to Qualifying Foster Care Charitable Organization Credit

A. General Description.

1. The Donation to Qualified Foster Care Charitable Organization credit provides a nonrefundable income tax credit for donations made on or after January 1, 2022 to the QFCCO. To qualify for the credit, the donation must be used by the QFCCO to provide services to qualified individuals.

2. QFCCOs are certified by the Department to receive contributions eligible for the tax credit. This certification only pertains to the Donation to Qualifying Foster Care Charitable Organization Credit. This program does not apply to general licensing, operations, or the deductibility of donations to charitable organizations.

3. The credit shall be earned in the year in which the donation was made and shall be equal to the lesser of $50,000 or the actual amount of donations used by the QFCCO to fund qualified services for qualified individuals.

4. The credit shall be allowed against the income tax for the taxable period in which the credit was earned. If the tax credit allowed pursuant to R.S. 47:6042 exceeds the amount of such taxes due, any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

B. Definitions

Affiliated—any entity possessing either a:

a. significant common purpose and substantial common membership; or

b. direct or indirect substantial common direction or control.

Department—the Department of Revenue.

QFCCO—qualifying foster care charitable organization.

Qualified Individual—a child in a foster care placement program established by the Department of Children and Family Services.

Qualified Services—cash assistance, medical care, child care, food, clothing, shelter, job placement, and job-training services or any other assistance reasonably necessary to meet immediate basic needs that are provided to a qualified individual and used in Louisiana.

Qualifying Foster Care Charitable Organization—an organization that meets all of the following criteria:

a. is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code;

b. provides services to at least 25 qualified individuals each operating year.

c. spends at least 75 percent of its total budget on providing services to qualified individuals or spends at least 75 percent of its funds budgeted for Louisiana on providing services to qualified individuals and the organization certifies to the department that 100 percent of the donations it receives from Louisiana residents will be spent on providing services to qualified individuals.

d. is approved by the department after applying as provided in Subsection G of this Section.

Related—the donor's spouse, the children of the donor, the spouses of the donor's children, the donor's brothers or sisters and their spouses, the donor's parents, and the parents of the donor's spouse.

Secretary—secretary of the Department of Revenue, or their designee.

Taxpayer—a person who is required to file a Louisiana income tax return.

C. Qualified Services

1. The qualified service must be provided by the QFCCO directly to the qualified individual. Qualified services include the following:

a. Cash Assistance

i. Cash assistance, including cash in the form of gift cards, must be provided directly for the qualified individual for the purpose of assisting the qualified individual in meeting ongoing basic needs.

ii. Cash payments or scholarships to schools, camps, activities, or team sports do not qualify as cash assistance.

b. Medical Care

i. Medical care must be provided by the QFCCO directly, or indirectly, by providing access to medical care by means of paying for the medical care, providing round trip transportation to the medical care provider, or connecting the qualified individual to the medical care.

ii. Medical care must be provided by medical professionals including, but not limited to, doctors, nurses, physician's assistants, optometrists, ophthalmologists, dentists, chiropractors, phycologist, psychiatrists, and licensed therapists.

c. Child Care

i. Child care means the compensated service that is provided to a child who is unaccompanied by a guardian during a portion of a twenty-four hour period.

ii. Child care must be regular and predictable to be considered a basic need service.

d. Food

i. Food includes food products for home meal preparation as well as the provision of prepared meal(s).

e. Clothing

i. Qualified clothing includes, but is not limited to infant attire, shirts, pants, skirts, school uniforms, socks, undergarments, shoes, footwear, coats, and interview attire.

ii. Clothing does not qualify as a basic need if it consists of a single item of clothing per qualified individual for attendance or participation in an event.

iii. Sports team uniforms do not qualify as clothing.

f. Shelter

i. Shelter is the provision of permanent or temporary housing for a qualified individual.

ii. Shelter includes furnishings of a home, rental or mortgage assistance, payment for home maintenance services or supplies and utility expenses.

g. Job Training

i. Job training must be for a specific job or industry, not simply general education to obtain a GED or prepare for college.

ii. Round trip transportation to the job training is considered a basic need service.

D. Claiming the Tax Credit

1. Taxpayers claiming the Donations to Qualifying Foster Care Organization credit must attach Form R-68009, *Receipt for Donation to Qualifying Foster Care Charitable Organization Credit* to their return. The receipt shall consist of a QFCCO portion and a donor portion and must be issued by the QFCCO to the donor.

2. The credit must be claimed for the taxable year in which the donation was made.

E. Tax Credit Cap

1. For each calendar year, the department shall not approve credits in excess of $500,000. Taxpayers shall be allowed to claim the credit on a first-come, first serve basis as determined by the received date of the taxpayer's income tax return with all required documents. A taxpayer claiming the donations to qualifying foster care organization credit must attach Form R-68009 to their return and provide any additional information requested by the department. A shareholder of an S corporation or other pass-through entity must also attach a copy of the Schedule K-1 to substantiate the credit.

2. All returns received on the same business day shall be treated as received at the same time, and if the aggregate amount of requests received on the same business day exceeds the total amount of the available credits:

a. tax credits shall be approved on a pro rata basis; and

b. the excess shall be treated as having been applied for on the first day of the subsequent year.

F. Other Tax Benefits Disallowed

1. A taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction, rebate, or any other state tax benefit for a donation for which the taxpayer has received a tax credit pursuant to R.S. 47:6042.

2. The credit may be used in addition to any federal tax credits earned for the same donation.

G. Application for Certification as a Qualifying Foster Care Charitable Organization.

1. An organization that seeks to become a QFCCO may apply for certification at any time during the year and must submit the following to the Department:

a. Completed Form R-68010, Application for Certification as a Qualifying Foster Care Charitable Organization.

b. A copy of the Internal Revenue Service ruling establishing the organization is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code.

c. A copy of the organization's operating budget for the prior operating year and a schedule detailing the amount of the budget spent on providing qualified services to qualified individuals.

d. A copy of Federal Form 990 and 990-T and all attachments filed by the organization for the last tax year filed.

e. A copy of the financial statements and detailed schedule of expenses for the QFCCO from the prior year.

f. A schedule detailing how the organization calculated the percentage of its budget spent on providing services to qualified individuals.

g. A statement that the organization intends to continue spending at least seventy-five percent of its total budget on providing services to qualified individuals or intends to continue spending at least seventy-five percent of its funds budgeted for Louisiana on providing services to qualified individuals and that one hundred percent of the donations it receives from Louisiana residents will be spent on providing services to qualified individuals.

2. Within two months of receipt of an *Application for Certification as a Qualifying Foster Care Charitable Organization*, the department shall notify the applicant of their status by way of approval notated on the application to the mailing address designated on the application. Certification is valid beginning January 1 of the year that an organization is approved.

3. If the application is denied, the department will inform the applicant of its grounds for denial and allow 15 business days from date on the status letter for the applicant to correct any defects. Ground for denials include, but are not limited to:

a. failure of the applicant to submit any information required by the application;

b. failure of the applicant to submit any additional information requested by the Department.

H. QFCCO Reporting

1. A QFCCO must file a report, prepared by an independent certified public accountant not related to a donor or affiliated with the QFCCO, with the department no later than January 31 of each year to the below address:

Louisiana Department of Revenue
P.O. Box 44098
Baton Rouge, LA 70804

2. This annual report shall contain the following information:

a. a certification that the QFCCO continues to meet the requirements set forth by R.S. 47:6042;

b. a certification that the QFCCO spent 100 percent of the donations received from Louisiana residents on providing qualified services to qualified individuals;

c. a listing of all donations made that includes:

i. the name, social security number, or Louisiana Revenue Account Number, and federal taxpayer identification numbers of each taxpayer who donated to the QFCCO during the prior calendar year;

ii. the amount of each donation received during the prior calendar year;

iii. the amount of each donation utilized during the prior calendar year to provide qualified services to qualified individuals and the services provided;

d. notification to the department of changes that may affect certification eligibility.

I. Forms

a. Form R-68009, Receipt for Donation to Qualifying Foster Care Charitable Organization Credit, shall require information including, but not limited to: the taxpayer's name, mailing address, Louisiana revenue account number or last four digits of the taxpayer's Social Security number, the date the donation was made, the name of the QFCCO and amount of the donation used by the QFCCO to provide services to qualified individuals.

b. Form R-68010, Application for Certification as a Qualifying Foster Care Charitable Organization, shall require information including, but not limited to: the QFCCOs name, address, Louisiana revenue account number (if applicable), federal employer identification number, contact individual's e-mail address and telephone number, and certification that the QFCCO meets certain criteria under R.S. 47:6042(F)(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and 6042.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:

§1927. Adoption from Foster Care Deduction

A. General

1. Revised Statute 47:297.20 authorizes a deduction equal to $5,000, per child, from Louisiana tax table income for a resident taxpayer who legally adopts a child from foster care, as defined in Louisiana Children's Code Article 603, or a youth receiving extended foster care services pursuant to the Extended Foster Care Program Act.

B. Definitions

Child—a person under the age of 18 years who has not been judicially emancipated or emancipated by marriage as provided by law as defined in Louisiana Children's Code Article 603 as amended.

Foster Care—placement in a foster family home, a relative's home, a residential child caring facility, or other living arrangement approved and supervised by the state for provision of substitute care for a child in the custody of Department of Children and Family Services as defined in Louisiana Children's Code Article 603 as amended.

Youth—an individual who was adjudicated as a child in need of care, was in foster care in the department's custody on the day before his eighteenth birthday, and is at least 18 years of age but less than 21 years of age as defined by R.S. 46:288.2 as amended.

C. Claiming the Deduction

1. The taxpayer claiming the adoption from foster care deduction must be listed as an adoptive parent on the adoption order or decree. Taxpayers may claim the adoption deduction according to their filing status as follows:

a. If filing Single, Married Filing Separately, Qualifying Widow(er) or Head of Household then only one taxpayer may claim the adoption credit on their return if two taxpayers are listed as the adoptive parent. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

b. If filing Married Filing Jointly then the deduction may only be claimed on the return of the individual who is listed as an adoptive parent on the adoption order or decree. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

2. The taxpayer claiming the adoption from foster care deduction must attach their deduction eligibility certification letter from the Department of Children and Family Services

to the taxpayer's individual income tax return for the taxable year that the adoption is finalized.

D. Limitations

1. The adoption tax deduction shall be in lieu of the dependency deduction authorized in R.S. 47:294.

2. The amount of the deduction authorized by R.S. 47:297.20 shall not exceed the total tax table income of the taxpayer claiming the deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xxiii), 297.20, and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:

§1929. Private Adoption of Certain Infants Deduction

A. General.

1. Revised Statute 47:297.21 authorizes a deduction equal to $5,000, per infant, from tax table income for the resident(s) who legally adopt an infant who is unrelated to the taxpayer(s) and who is less than one year of age through a private agency as defined in Louisiana Children's Code Article 1169(1), or through an attorney. The infant shall be considered less than one year of age for purposes of this deduction if the infant was less than one year of age at the time of the adoption placement.

a. A taxpayer is considered "unrelated" to the infant if they are not the infant's parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

B. Claiming the Deduction

1. The taxpayer claiming the private adoption of certain infants' deduction must be listed as an adoptive parent on the adoption order or decree. Taxpayers may claim the adoption deduction according to their filing status as follows:

a. If filing single, married filing separately, qualifying widow(er), or head of household then only one taxpayer may claim the adoption credit on their return if two taxpayers are listed as the adoptive parent. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

b. If filing married filing jointly then the deduction may only be claimed on the return of the individual who is listed as an adoptive parent on the adoption order or decree. The deduction may not be divided between the adoptive parents and can only be claimed by the taxpayer that is claiming the child as a dependent on their federal individual income tax return.

2. The taxpayer claiming the private adoption of certain infants' deduction must attach the following to the taxpayer's individual income tax return for the taxable year that the adoption is finalized:

a. a copy of the adoption order or decree; and

b. a letter from the attorney who facilitated the adoption or private agency stating when the infant was placed with the adoptive parents.

C. Limitations

1. The adoption tax deduction shall be in lieu of the dependency deduction authorized in R.S. 47:294.

2. The amount of the deduction authorized by R.S. 47:297.20 shall not exceed the total tax table income of the taxpayer claiming the deduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xxiv), 297.21 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 48:

Family Impact Statement

The proposed adoption of LAC 61:I.1925, LAC 61:I.1927, and LAC 61:I.1929, regarding the Donations to Qualified Foster Care Organization Credit, Adoption from Foster Care Deduction and Private Adoption of Certain Infants Deduction 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 by providing financial relief to families who incur expenses related to the adoption of an infant(s), child(ren) or youth(s). The implementation of this proposed rule has no other 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

This proposed regulation will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that this proposed amendment should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting this proposed amendment to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed amendment will have 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

Any interested person may submit written data, views, arguments or comments regarding these proposed amendments to Christina Junker, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:00 p.m., Monday, September 26, 2022.

Public Hearing

A public hearing will be held on Tuesday, September 27, 2022, at 2:00 P.M. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kevin J. Richard, CPA
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Donation to Qualified Foster Care Charitable Organization Credit and Certain Adoptions Deductions

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

The purpose of this rule is to implement Act 378 of the 2021 Regular Legislative Session, which provides for 1) a non-refundable income tax credit for the amount of a donation up to $50,000 per taxpayer to a Qualifying Foster Care Charitable Organization ("QFCCO"). The state-wide credit is limited to $500,000 annually. and 2) a one-time individual income tax deduction of $5,000 per child (net of the $1,000 dependent deduction) for taxpayers who adopt a child from foster care or privately if the unrelated adopted child is under 1 year of age.

Louisiana Department of Revenue ("LDR") anticipates one-time costs of $83,360 for computer system development and modification, tax form redesign, and testing. Minimal ongoing administrative costs would also be incurred to monitor and maintain the $500,000/year cap on donations to foster care charitable organizations. All of these expenses will be absorbed in the agency's budget.

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

The proposed rule will result in a decrease to the SGF of approximately $658,000 annually in fiscal years 2023 - 2026. The amount of exposure for the income tax credit allowed for donations to qualifying foster care charitable organizations is indeterminable at the commencing of the program. However, the maximum exposure would be $500,000 per year, the amount of the annual cap on the credits provided for in the Act.

The personal income tax deduction for the adoption of foster children results in an estimated SGF exposure of $158,000 annually. The revenue impact of the income tax deduction for parents who adopt certain children through a private agency or attorney is indeterminable since DCFS does not collect data on private adoptions. Thus, the state fiscal exposure to the adoption deductions could be materially greater than stated above.

There is no anticipated direct material effect on local governmental revenues as a result of this rule.

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

The proposed rule may reduce the tax liability of qualifying individual income tax filers who are adopting a child or youth from foster care as provided in LA R.S. 47:297.20, or adopting an infant by private adoption as provided in LA R.S. 47:297.21. The proposed rule may also incentivize financial assistance to QFCCOs who provide qualified services to children in foster care placement programs established by the Department of Children and Family Services ("DCFS") as provided by LA R.S. 47:6042. Due to the availability of the tax credit, these organizations may experience an increase in donations to be used to provide services to a child in a foster care placement program with DCFS, while taxpayers donating to QFCCOs may be eligible for a reduced tax liability, subject to the statewide maximum of $500,000.

In order to claim the qualifying deduction for individual income tax for adopting a child under certain circumstances, or claim an income tax credit for donations made to QFCCOs, taxpayers must attach a copy of supporting documents to support eligibility for the credit or deduction. Additional costs for completion and submission of the required paperwork of this proposed rule are expected to be minimal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change.

Kevin J. Richard, CPA	Alan M. Boxberger
Secretary	Interim Legislative Fiscal Officer
2208#051	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Mandatory Electronic Filing and Payment of Tobacco Tax by Vapor Dealers (LAC 61.III.1533 and 1534)

Under the authority of R.S. 13:5077, 47:1511, 47:1519, and 47:1520, and in accordance with 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 amend LAC 61.III.1533 and 1534, to mandate electronic filing and payment by retail dealers of vapor products.

R.S. 47:1519(B)(1) authorizes the secretary to require payments by electronic funds transfer, and R.S. 47:1520(A)(2) authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of this regulation is to mandate electronic filing of tobacco tax returns and reports by retail dealers of vapor products and electronic payment of all tobacco tax by retail dealers of vapor products.

Title 61
REVENUE AND TAXATION
Part III. Administrative and Miscellaneous Provisions
Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1533. Tobacco Tax—Electronic Filing Requirements

A.1. For tax periods beginning on or after October 1, 2019, every dealer that files a Louisiana Tobacco Tax Return shall be required to file the return and all reports electronically with the Department of Revenue using the electronic format prescribed by the department.

2. For tax periods beginning on or after January 1, 2023, every retail dealer of vapor products that files a Louisiana Tobacco Tax Return for Retail Dealers of Vapor Products shall be required to file the return and all reports electronically with the Department of Revenue using the electronic format prescribed by the department.

B. - C.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5077, 47:1511, and 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:932 (July 2019), amended LR 48:

§1534. Tobacco Tax - Electronic Payment Required

A. R.S. 47:1519(B)(1) allows the secretary to require payment of tobacco tax by electronic funds transfer.

B.1. Effective for all taxable periods beginning on or after October 1, 2019, all payments by a tobacco dealer shall