

State of Louisiana
Department of Revenue



JOHN BEL EDWARDS
Governor

KIMBERLY LEWIS ROBINSON
Secretary

November 5, 2019

Via E-mail/R.R.R. to:

apa.h-wm@legis.la.gov

The Honorable Neil Abramson, Chairman
House Committee on Ways & Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-r&f@legis.la.gov

The Honorable Jean-Paul J. Morrell, Chairman
Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: **Proposed Regulation LAC 61:III.1535 and 1536**

Chairman Abramson and Chairman Morrell:

On September 10, 2019 a copy of the *Notice of Intent* issued by the Department of Revenue ("Department") for promulgation of the proposed regulations, LAC 61:III.1535, *Industrial Hemp-Derived CBD Tax Return- Electronic Filing Requirements* and LAC 61:III.1536, *Industrial Hemp-Derived CBD Tax- Electronic Payment Required*, was sent to your committee for review. The purpose of this *Notice of Intent* is to mandate electronic filing of all industrial hemp-derived CBD tax returns and electronic payment of industrial hemp-derived CBD taxes.

The *Notice of Intent* was published in the September 2019 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Monday, October 28, 2019. No written or oral comments were received. In addition, one attendee was present at the public hearing. No changes will be made to the text of the rule before it is finalized.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed rule will be submitted for publication as a final rule in the December 2019 edition of the *Louisiana Register*.

Contributing to a better quality of life.

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Should you have any questions or need additional information, please contact me at (225) 219-2700.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kimberly Lewis Robinson', with a large, stylized flourish extending to the right.

Kimberly Lewis Robinson
Secretary

NOTICE OF INTENT

Department of Revenue Policy Services Division

Mandatory Electronic Filing of Industrial Hemp-Derived CBD Tax Returns and Payment of Tax (LAC 61:III.1535 and 1536)

Under the authority of R.S. 47:1511, 47:1519, 47:1520, and 47:1695, 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 adopt LAC 61.III.1535 and 1536, to provide mandatory electronic filing and payment requirements for the Industrial Hemp-Derived CBD Tax Return.

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 all Industrial Hemp-Derived CBD Tax Returns and electronic payment of all industrial hemp-derived CBD tax.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

§1535. Industrial Hemp-Derived CBD Tax Return - Electronic Filing Requirements

A. For tax periods beginning on or after January 1, 2020, every industrial hemp-derived CBD retailer shall be required to file the Industrial Hemp-Derived CBD Tax return electronically with the Department of Revenue using the electronic format prescribed by the department.

B. Retailers may not send paper versions of any returns required to be filed.

C.1. Failure to comply with the electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

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

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

§1536. Industrial Hemp-Derived CBD Tax - Electronic Payment Required

A. R.S. 47:1519(B)(1) allows the secretary to require payment of the industrial hemp-derived CBD tax by electronic funds transfer.

B. Effective for all taxable periods beginning on or after January 1, 2020, all payments by an industrial hemp-derived CBD product retailer shall be electronically transferred to the Department of Revenue on or before the twentieth day following the close of the reporting period using the electronic format provided by the department.

C. For purposes of this Rule, specific requirements relating to the procedures for making payments by electronic funds transfer are set forth in R.S. 47:1519 and LAC 61.I.4910.

D. Failure to comply with the electronic funds transfer requirements shall result in the tax payment being considered delinquent and subject to penalties and interest as provided under R.S. 47:1601 and 1602.

E. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519, this Rule, and LAC 61.I.4910, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

F. In any case where the taxpayer can prove payment by electronic funds transfer would create an undue hardship, the secretary shall exempt the taxpayer from the requirement to transmit funds electronically.

G. The tax returns must be filed electronically separately from the electronic transmission of the remittance. Specific requirements relating to the mandatory electronic filing of the return required by the Department of Revenue are set forth in LAC 61.III.1535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1519, 47:1520 and 47:1695.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:

Family Impact Statement

The proposed adoption of this rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule has 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 budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed rule has no known impact on poverty as described in R.S. 49:973.

Small Business Impact Analysis

The proposed rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

The proposed rule has 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

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., October 25, 2019.

Public Hearing

A public hearing will be held on October 28, 2019 at 11 a.m. in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mandatory Electronic Filing of Industrial Hemp-Derived CBD Tax Returns and Payment of Tax

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
This proposal adopts rules that require electronic filing of the industrial hemp-derived CBD tax return and electronic funds transfer of all industrial hemp-derived CBD tax payments. This proposal also provides for the assessment and waiver of penalties for non-compliance.
Implementation of this proposal will not result in material additional costs or cost savings to governmental units. LDR is implementing electronic filing of industrial hemp-derived CBD tax returns through LaTAP as an ongoing enhancement of its collection efforts. Accounting for non-compliance penalties will not result in material additional costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This proposal may increase revenues from penalties by an indeterminable amount. A modest and temporary increase in revenue from penalties is possible as the proposed rule is implemented, although LDR cannot predict non-compliant behavior. For information purposes, on returns that are currently required to be filed electronically, LDR collected approximately \$7,000 in FY17, \$1,000 in FY18, and \$6,000 in FY19.

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

LDR does not have the information necessary to determine the additional costs to comply with this change, but these costs are expected to be minimal, as online access and activity has largely become a business standard. To the extent non-compliance penalties are collected, affected taxpayers will incur penalty costs. LDR cannot estimate the additional penalty amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition or employment.

Kimberly Lewis Robinson
Secretary
1909#047

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office