

The mission of the Louisiana Department of Revenue and Taxation is to serve the citizens of Louisiana by efficiently collecting the state's tax revenue in a manner that will generate the highest degree of public confidence in our integrity and fairness.

Rule to provide for administration of nonresident contractor program

The department has adopted LAC 61:I:4373 pertaining to the registration of nonresident contractors. For each contract performed on immovable property, nonresident contractors are required to register, pay a \$10 fee, and provide a surety bond to cover any state and local taxes due. To ensure that taxes due by nonresident contractors are paid to state and local governments, Act 1026 of the 1993 Regular Session of the Legislature directed the Secretary of the Department of Revenue and Taxation to promulgate rules establishing standards for the assessment and collection of local sales taxes from nonresident contractors; to provide for the enforcement of the rules; and authorize the withholding of state funds from local government subdivisions within parishes where the local government has failed to comply with the rules.

§4373. Nonresident Contractors

A. General

This Section provides the procedures that must be followed by nonresident contractors who do business in this state as required by R.S. 47:9 and R.S. 47:306(D). This Section also provides the procedures that must be followed by state and local agencies charged with the responsibility for granting permits and/or licenses for the lawful commencement of construction contracts in this state as required by R.S. 33:2847. This Section also provides the necessary definitions.

B. Definitions

For the purposes of this Section, the following terms are defined:

Contractor - any dealer, as defined in this Chapter, who enters into contracts for the construction, renovation, or repair of immovable properties, such as buildings, houses, roads, levees, pipelines, and industrial facilities. It also includes subcontractors who enter into similar agreements with a general or prime contractor. The term contractor shall not include businesses that fabricate or construct property that is sold to another person as tangible personal property, even though the property may be subsequently incorporated into the construction of an immovable. The term contractor shall include any project owner who obtains any permit, license, or cer-

tificate necessary for the lawful commencement of any construction contract.

Nonresident Contractor - any contractor who does not meet any of the following criteria for resident status.

- a. For an individual proprietorship, resident status requires having maintained permanent domicile in Louisiana for at least one year prior to bidding on work.
- b. For a corporation, resident status requires having operated a permanent business facility in Louisiana for at least one year prior to bidding on work; or having at least 50 percent of its outstanding and issued common stock owned by individuals who have maintained their domicile in Louisiana for at least one year prior to bidding on work.

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Amending the corporate tax return

If it is determined that an error was made on a corporate income and franchise tax return, it is not necessary to complete the entire tax return and all of the schedules that accompany the original tax return.

There are three primary rules to remember when preparing an amended corporate return. First, the face of the return must be completed in its entirety in the same manner as an original return and the word "amended"

must be clearly written across the face of the return. Second, only report those items within the return that have changed. Third, the amended return must be signed.

An explanation of the change, a copy of the federal amended return (Form 1120X), if one was filed, and the revised calculation should accompany the return to assist department personnel in processing the return. ■

Nonresident contractor program (continued)

- c. For partnerships and other legal entities, resident status requires at least 50 percent ownership by individuals or corporations who themselves qualify as residents.

Resident Contractor - all contractors that are not nonresident contractors.

C. Contracts to be Registered with Secretary and Central Collector

1. Prior to obtaining a building permit necessary for the lawful commencement of any contract in Louisiana, a nonresident contractor shall register each contract that exceeds \$3,000 in total price or compensation with the secretary of the Department of Revenue and Taxation and with the central sales and use tax collector for the

parish in which the project is located. The secretary shall provide the necessary forms for the contractors to register each contract. The forms will require the nonresident contractor to give a complete description of each project, pertinent tax registration data, and a list of anticipated subcontractors. A fee of \$10 per contract shall be paid to the secretary at the time of registration. As required by the secretary, the contractor shall furnish a surety bond for each contract or a blanket surety bond for all contracts. The bond shall be for an amount equal to 5 percent of the total contract price, or \$1,000, whichever is greater, for each contract. Upon satisfactory completion of the registration and

surety bond requirements, the secretary shall issue the contractor a certificate of compliance with which to obtain any building permits necessary for lawful commencement.

2. Following the satisfactory registration of contracts with the secretary, the contractor shall submit copies of all registration, tax, and surety bond information to the appropriate parish central sales and use tax collector, except in Cameron Parish. In Cameron Parish, the nonresident contractor is to submit the necessary information to the parish police jury. The collector or police jury may require the contractor to supply additional information necessary to ensure that the contractor and his subcontractors are registered for and remit any applicable sales/use and occupational license taxes. Upon satisfactory completion of this requirement, the collector or police jury will issue the contractor a certification of compliance with which to obtain any building permits necessary for lawful commencement.
3. Nonresident subcontractors will be held to the same requirements of registration, payment of a \$10 fee, and furnishing a surety bond, even though they may not need to secure any permits.

D. Payments to be withheld from subcontractors

R.S. 47:9(B)(3) makes each contractor subject to this provision responsible for all of its subcontractors' compliance with all state and local tax laws. A contractor shall inform each of its subcontractors of their tax registration, contract registration, and surety bond requirements, and shall withhold a sufficient amount from payments made under their contracts to ensure compliance. Upon discovering any unpaid tax liability by a subcontractor, the secretary will first attempt to collect the unpaid taxes from the subcontractor or his surety. However, if the secretary's efforts are unsuccessful, the contractor and his surety have ultimate responsibility for the payment of any subcontractor's unpaid tax liabilities.

Common CIFT return errors

With a little care, common mistakes can be avoided when preparing Corporation Income and Franchise Tax returns.

If taxpayers are not using the pre-printed labels, they must indicate their correct account number and the full name and address of the corporation in the space provided.

Every applicable line on page one should be completed. Fiscal filers (filers for a taxable period ending other than December 31) must indicate the date of the fiscal year end in the space provided at the top of the return.

Beginning with the 1991-1992 return, Line B was added to allow an exclusion to Sub-Chapter S Corporations. Many taxpayers have incorrectly used this line to show their net operating loss deductions.

When taxpayers claim net operating loss deductions on a current return, they must claim those losses on Line 1C (Loss carryforward); those being carried back to the period being filed should be claimed on Line 1D (Loss carryback). A schedule of the losses incurred and utilized should always be attached to the return. Lines 1C and 1D should not be used to show the disposition of a current loss reported on Line 1A.

A taxpayer's federal income tax deduction is the tax liability incurred for the same taxable period as the state return on which it is deducted, not the period in which it is paid. Any reportable refunds of federal taxes should be included on Schedule D (or Schedule P for apportionment taxpayers) and not taken as a "negative" federal tax deduction on Line 1E.

The most common error in the franchise tax area of the return is the omission of Line 7C (Franchise taxable base). A taxpayer's franchise taxable base must be shown on Line 7C (as opposed to being reported only on Line 7A).

Lastly, the taxpayer should make sure that any franchise tax that was paid with an extension request is claimed on Line 12 (previous payments), and not included with the income tax payments on Line 5. However, overpayments credited to this year from the previous year's return should always be claimed as an income tax prepayment on Line 5.

Taxpayer assistance in preparing returns is available by calling the Income and Corporation Franchise Taxes Division at (504) 925-4611, or by writing to P. O. Box 201, Baton Rouge, LA 70821-0201. ■

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Taxpayers exceeding payments of \$50,000 required to pay electronically

Revised Statute 47:1519 authorizes the Department of Revenue and Taxation to require electronic payments from taxpayers whose individual payments exceed \$20,000. Under rules promulgated by the department, payments over \$50,000 are required to be paid electronically at this time.

To phase in the electronic payment program, the department first required electronic payments for average liabilities over \$100,000 for certain taxes and gradually reduced the threshold to \$50,000. Effective February 1, 1995, all business taxpayers with average liabilities over \$50,000 are required to pay electronically.

The electronic payment program is a very effective tool for expediting deposits to the state treasury. The table below shows the percentage of collections from electronic funds transfers for the month of December. The percentage is expected to increase to well over 50% in 1995 as the \$50,000 threshold is implemented for all taxes.

**Ratio of Tax Collections
Electronic Fund Transfers vs. Total Collections**

Tax Type	December EFT Collections	December Total Collections	Ratio of EFT Coll. To Total
Gasoline	\$ 21,582,580.60	\$ 34,164,309.04	63.17%
Corporation	29,336,935.07	95,115,647.83	30.84%
Withholding	14,511,269.28	65,077,808.52	22.30%
Auto Rental	152,546.00	279,855.22	54.51%
Sales	72,222,440.03	104,547,728.98	69.08%
Severance	25,689,822.22	34,149,701.06	75.23%
Hotel Motel	1,908,606.02	4,093,518.52	46.63%
N.O. Exhibition Hall	151,583.00	630,427.01	24.04%
Totals	\$165,555,782.22	\$338,058,996.18	48.97%

Court Holds that Suspension of Sales and Use Tax Exemptions Applies Only to State Taxes

The Supreme Court of Louisiana reheard the case of BP Oil Company v. Plaquemines Parish Government [642 So.2d 1230 (La. 1994)] on January 20, 1995. The issues before the Court on rehearing were the valuation of coke-on-catalyst for use tax purposes and the equalization of state and local tax exemptions and exclusions, in particular the suspensions of state sales tax exemptions. The Court issued its ruling on the rehearing on January 27, 1995.

The Court clarified its earlier ruling on the valuation of coke-on-catalyst by ruling that the valuation by Plaquemines Parish was invalid and remanded the valuation of the coke-on-catalyst to the district court.

On another issue in the case, the Court originally held that the state and local sales and use tax exemptions must apply equally under the La. Const. Art. VI, §29(D). The Court originally used this section of the constitution to rule that the suspensions of state exemptions also applied to local exemptions. On rehearing, the Court concluded that "...we need not decide in this case the meaning or the scope of any uniformity

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Automated system allows taxpayers to check refund status

The department's automated phone system can be used to check on the status of individual income tax refunds. This service is available 24 hours a day, including weekends. To check on a refund, dial (504) 922-3270 and follow the procedures below:

- ◆ The caller will be asked to press 1 to continue. This is to make sure the call is from a touch tone telephone.
- ◆ Callers can choose from 1, for individual income tax refunds or 2, for electronic fund transfers. Press 1 for individual

income tax and 1 again for automated refund inquiries.

- ◆ Enter the primary social security number as shown on the tax return.
- ◆ The computer will verify the numbers entered and ask the caller to confirm the accuracy by pressing 1.
- ◆ The caller will be asked to verify the amount of the refund by entering the amount shown on the tax return (without cents) followed by the # (pound sign on the telephone keypad).

If all the information keyed by the caller is correct and matches the data keyed from the original return, the caller will be furnished with the actual amount of the refund as verified by the department's computer and the date the check was or will be issued.

This service is free of charge, but if you are calling long distance, it is not a toll free call. ■

Don't forget!

The deadline for filing state individual income tax is midnight, Monday, May 15.

Nonresident contractor program (continued)

E. Contract Completion

Cancellation of Surety Bond. Within 30 days after completion of each contract, the contractor shall submit to the secretary a completion report summarizing the costs incurred; the taxes paid to other states, to the state of Louisiana, and to local taxing authorities; and other such information that may be required by the secretary. After reviewing the report and verifying the tax payment amounts reported, the secretary shall refer the summary to the central sales and use tax collector for the parish in which the project is located to determine whether there are any unpaid local tax liabilities. If no unpaid state or local tax liabilities are discovered, the contractor's surety bond may be canceled for that contract. The surety bond will be held by the Department of Revenue and Taxation and used, if necessary, in the future if sales taxes are later found to be due on that contract.

F. Compliance by Permitting Agencies; Withheld Funds Authorized

1. R.S. 47:9(B)(4) and R.S. 47:306(D)(2)(a) place specific responsibilities with state or local agencies that issue permits, licenses, or certificates necessary for the lawful commencement of any construction contract. State agencies, including but not limited to the office of the state fire marshal, and agencies of local governing authorities, including but not limited to parish and municipal building inspectors, shall not issue any building permit, license, or certificate until the applicant has submitted documentation verifying that the contract has been properly registered and the required surety bond has been posted. Proper documentation to be obtained from the secretary of the Department of Revenue and Taxation is as follows:
 - a. Resident contractors must obtain a certificate of resident status.
 - b. Nonresident contractors must obtain a certificate of compliance.
 - c. Individuals seeking a permit for work to be performed on their residence

must submit an affidavit as documentation of residency.

2. The secretary is authorized by R.S. 33:2847(B) to evaluate and monitor parish and municipal permitting agencies to ensure compliance with these provisions.
 - a. When the secretary discovers that a parish or municipal permitting office has issued a permit to a nonresident contractor without verifying compliance with the provisions of this regulation, he shall notify that permitting office, the parish collector, and the governing authority of the parish of the violation by registered mail.
 - b. The affected parties will be allowed 60 days to respond to the department's notification. If the affected parties contact the department after receiving notification, the department will work with them to reconcile the situation. If the situation is resolved, no further action will be taken.
 - c. If an agreement can not be reached or if the department does not receive a response after 60 days, the secretary will notify the state treasurer of the violation by registered mail. A copy of this notification will be sent to the permitting office, the parish collector, and the governing authority of the parish.
 - d. The state treasurer, within 90 days of notification, shall request a hearing on the suspected violation with the House Committee on Ways and Means. The date, time, and location of this meeting will be furnished by the state treasurer to the permitting office, the parish collector, the governing authority of the parish, and the secretary of the Department of Revenue and Taxation by registered mail. Following the hearing, the state treasurer shall take action as directed by the committee, including the withholding of state funds as authorized by R.S. 33:2847(C).

For additional information concerning this rule, contact the Sales Tax Division at (504) 925-7356. ■

Suspension (continued)

requirement for exemptions or exclusions in Section 29(D), because the present case involves only the suspension of a law enacted by the Legislature." The Court thus limited its decision in the rehearing to the suspension of exemptions as it applies to the rights of the legislature under La. Const. Art. III, §20. The Court concluded that the legislature clearly intended the suspension of exemptions to apply only to state exemptions and Article III, §20 does not have a requirement of uniformity between state and local exemptions. The Court reversed itself and decreed that the legislative suspension of exemptions applied only to state sales and use tax exemptions.

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