

NOTICE OF INTENT

Department of Revenue Policy Services Division

Louisiana Tax Credit Registry (LAC 61:III.2701 and 2705)

Under the authority of R.S. 47:1511, 1524, 1602, 1675, 6007 and 6019 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.2701 and 2705.

Pursuant to Act 418 of the 2013 Regular Legislative Session, a centralized registration and recordation system is established for transferable tax credits granted, issued and authorized by the state of Louisiana to be applied against taxes collected by the Department of Revenue. This proposed Rule also establishes transfer fees for transferable tax credits including the motion picture investor tax credit and historic rehabilitation credit.

Title 61

REVENUE AND TAXATION

Part III. Administrative Provisions and Miscellaneous Chapter 27. Transferable Income and Franchise Tax Credits

§2701. Louisiana Tax Credit Registry

A. This Section is applicable to transferable tax credits granted, issued or authorized by the state that are applied against taxes collected by the Louisiana Department of Revenue.

B. Definitions

Department—Louisiana Department of Revenue.

Issuing Agency—the agency with statutory authority to certify the dollar value of tax credits earned.

Secretary—the secretary of Revenue.

Transfer—for purposes of this Section, “transfer” means an assignment, disposition, sale, or any other change in ownership including changes in ownership resulting from a flow through or allocation.

C. Initial Registration. Beginning January 1, 2014, all state agencies issuing transferable tax credits shall furnish the department an agency certification of credit, form (R-6121) or another form approved by the secretary the same date the credits are issued to the earner of the credit.

1. The department shall assign an identifying number and record the tax credit into the registry and issue a credit registration form (R-6135) to the earner of the credit. The credit registration form will contain the unique identifying number of the credit registered and information regarding the use of the credit. The initial registration date shall be the date the agency certification of credit is received by the department along with any other supporting documents issued to the earner by the issuing agency. The tax credit will not be recorded unless the agency’s certification of credit and all supporting documents are received.

2. The department shall warrant the validity of the information recorded in the registry for tax credits issued after January 1, 2014, except as provided in Subsection G.

3. No issuance of tax credits by an issuing agency shall be effective as to third parties nor recognized by the department until it has been recorded in the registry.

D. Transfers. Joint notice from the transferor and transferee and any applicable transfer fees are due to the department within ten business days of the transfer of any transferable credits. The registration date will be the date of the transfer unless the joint notice and applicable fees are not received within 10 business days of the transfer in which case the effective date of transfer will be the date the notice and applicable fee are received by the department. No transfer shall be effective as to third parties nor recognized by the department until it has been recorded in the registry. Transfers will not be recorded in the registry until the department receives the applicable transfer fee.

1. Transfers to a taxpayer. Joint notice from the transferor and transferee must be submitted to the department on the credit utilization form (R-6140, Section 3). In addition to the credit utilization form, the transferor and the transferee must attach the following:

a. a copy of the transferor’s credit registration form (R-6135);

b. a copy of the contract of sale or allocation agreement;

c. the applicable transfer fee.

2. Upon receipt of the credit utilization form and the required attachments, the department shall record the transfer of the tax credit in the registry and issue a credit registration form to the transferee as the new owner of the credit. The transferee may authorize a representative to receive the credit registration form by submitting a completed transferee’s tax credit information disclosure authorization, R-6145, with the credit utilization form.

3. Transfers to the state. When authorized by the statute creating the transferable tax credit, to transfer a credit to the state the owner will submit a completed credit utilization form (R-6140, Section 1), a copy of the credit registration form and the applicable transfer fee.

E. Transfer Fees

1. Motion Picture Investor Tax Credit. The transfer fee per transferee is \$200.

2. Historic Rehabilitation Tax Credit. Beginning July 1, 2014, the transfer fee per transferee is \$200.

3. All other transferable tax credits. The transfer fee is \$200 per transferee, unless the statute creating the credit does not authorize a fee or authorizes a different maximum amount. If the statute creating the credit provides for a different maximum fee, then the fee is the maximum fee authorized.

4. The applicable transfer fee must be submitted with every transfer, including transfers to the state.

F. Record Owner Report. The information contained in the registry and in the possession of the department relative to tax credits is confidential, privileged and protected by the provisions of R.S. 47:1508. However, the owner of the credit may submit a written request by letter or email for a record owner report. The request must contain the name and address of the owner and the unique identifying number of the credit from the credit registration form. The department will issue a record owner report to the owner stating the credit balance as of the date the report is issued. The balance will not reflect any amount of tax credit claimed on a tax return that has been filed but has not been processed, any transfers of credit that have not yet been recorded in the registry, or utilizations of the tax credit as a payment that have not been processed.

G. Disallowance and recapture. A tax credit shall be disallowed and recaptured if the department or issuing agency finds that an individual or entity obtained a tax credit in violation of the provisions of the authorizing statute or by fraud or misrepresentation.

1. Any tax credit previously granted to an individual or entity but later disallowed either by the department or the issuing agency may be recovered by the department using any applicable method authorized by law.

2. If the transferor did not have the right to claim or use the tax credit at the time of the transfer, the transferee's recourse shall be against the transferor as provided by their agreement, unless determined by the department to be a good faith transferee and the credit has already been utilized by the good faith transferee.

3. A transferee will be determined to be in good faith if, at the time of the transfer, the transferor provided a credit registration form and a record owner report showing the validity of the credit to the transferee and honesty in fact and reasonable commercial standards of fair dealing were observed prior to the transfer.

4. A good faith transferee who relied on the validity of the credits recorded in the registry shall not be subject to recapture and recovery if the credits have already been allowed on a return or utilized as a payment at the time when the violation is discovered. Any credits that have not been allowed as a credit on a return or utilized as a payment when the violation is discovered cannot be utilized subsequent to the violation.

5. Notwithstanding any other provision of law, the department may recapture any amounts and other damages from any party involved in the transfer determined not to be in good faith using any of the collection remedies authorized to the secretary by law.

H. In the case of disputed title to tax credits, prescription against assessment shall be suspended as by:

1. the filing of a summary proceeding in any state or federal court. In this instance a copy of the petition shall be filed in the registry by the petitioner;

2. a written agreement between the department and the taxpayer. In this instance a copy of the agreement shall be recorded in the registry on the same date executed;

3. any pleading filed with the Board of Tax Appeals. In this instance a copy of the pleading shall be filed in the registry on the same date filled at the Board of Tax Appeals by the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1524, 1602, 1675, 6007 and 6019.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

§2705. General Administrative Provisions for Income and Franchise Tax Credits

A. Transferable Tax Credits

1. If a person acquires a credit through transfer, the credit is property and can be used to satisfy any outstanding tax liability for the tax against which the credit was originally earned. In this Section, the word "transfer" refers to credits acquired by any means other than by flow through or allocation.

2. Utilization of Transferable Tax Credits by a Transferee

a. A tax credit cannot be claimed on a tax return or utilized as a payment prior to the transfer date of the creditor the effective date of transfer as provided by §2701.D.

b. Utilizing a transferable tax credit as a tax credit on an original or amended return. To claim the credit on a tax return, the taxpayer must attach a completed credit utilization form and a copy of the credit registration form to the return and the effective date of the transfer of the credit must be on or before the due date of the tax. For calendar year taxpayers, the due date of the corporation income tax is April 15 and the due date of the individual income tax is May 15.

c. Utilizing a transferable tax credit as a payment of tax. To utilize a credit after the due date of the tax, the taxpayer must submit a transferable credit payment voucher (R-6170) and a copy of the credit registration form (R-6135) to the tax credit registry.

3. A credit acquired through transfer can be applied to any allowable tax liability that is still due for the year the credit was originally earned and still due for any year afterward until the applicable carry-forward period is over. Penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid. If the taxpayer's tax liability is not paid by withholdings, estimated tax payments or other payments by the due date of the return, the taxpayer may be liable for applicable underpayment penalties and interest even if they have an extension to file and intend to use tax credits on their return to extinguish their remaining tax liability. For tax years prior to the date of the transfer, the credit can only be used as a payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1524, 1602, 1675, 6007 and 6019.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

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

Provider Impact Statement

The proposed amendments 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

Interested persons may submit written data, views, arguments, or comments regarding this proposed Rule to the Policy Services Division, by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be received no later than 5 p.m., May 28, 2015.

Public Hearing

A public hearing will be held on May 29, 2015, at 10 a.m. in the River Room, on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Tim Barfield
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Louisiana Tax Credit Registry

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

This proposed Rule requires state agencies administering transferable tax credits to send identifying information to the Department of Revenue to be entered into a centralized electronic tax registry database. The Rule also establishes the transfer fee for transferable tax credits including the Historic Rehabilitation Credit, which will help fund the tax credit registry, and provides for general administrative provisions for transferable Income and Franchise Tax Credits. Any additional costs will be absorbed in the existing budget.

Local governmental units are not affected by this proposal.

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

The proposed Rule calls for a fee for when the Historic Rehabilitation Tax Credit is transferred that will be paid to the Department of Revenue. This fee will be used to pay for the administrative and other costs necessary to transfer the credit to another user. LDR estimates approximately 1,800 transfers will occur per year with a flat fee of \$200 per transfer, a projected increase of \$360,000 per year in self-generated revenues for LDR. Fees will not begin to be collected until promulgation of this rule. The proposed rule has no effect on the amount of tax due or collected or credits being certified. The proposed rule outlines good faith provisions for disallowed credits in order to assign recourse against the transferee or transferor.

This proposal should have no impact on the revenue collections of local governmental units.

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

Taxpayers purchasing or selling tax credits will be affected by this proposal to the extent they incur fees upon transfer. Also, brokers in the business of facilitating the sale of tax credits will be affected by this proposal since additional fees may be associated with transfer transactions. These impacts are in direct correlation to the fees collected in Section II.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule has no effect on competition or employment.

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