

NOTICE OF INTENT
Department of Revenue
Policy Services Division

Under the authority of R.S. 47:201.1 and R.S. 47:1511 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:I.1401 relative to composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members.

Act 21 of the 2000 Second Extraordinary Session of the Louisiana Legislature enacted R.S. 47:201.1 to require certain partnerships and limited liability companies with nonresident partners or members to file composite returns and make composite payments of tax for nonresident partners or members who do not agree to file and pay Louisiana income tax on their own behalf. This rule will provide guidance concerning which partnerships and limited liability companies must file composite returns and make composite payments; when composite returns and payments are due; which partners or members are to be included on the composite return; and how partners or members who do not wish to be included in a composite return can enter into an agreement with the Department of Revenue to file and pay on their own behalf. This rule will also allow certain publicly traded partnerships to request the Secretary's permission to file a composite return and make a composite payment on behalf of all partners of the partnership, including residents and corporations.

The full text of this proposed rule can be viewed in the Emergency Rule Section of this issue of the Louisiana Register.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered
By the Secretary of Revenue

Chapter 14. Income: Partnerships.

§ 1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions

A. Definitions. For the purpose of this rule, the following terms are defined:

Corporation—means an entity that is treated as a corporation for state income tax purposes as set forth in LSA R.S. 47:287.11(A).

Engaging in activities in this state—means having payroll, sales, or tangible property in this state, or intangible property with a Louisiana business situs.

Individual return—means a Louisiana personal income tax return or a Louisiana fiduciary income tax return.

Nonresident—means any person not domiciled, residing in, or having a permanent place of abode in Louisiana.

Partner—means a member or partner of an association that is treated as a partnership for state income tax purposes, including but not limited to, a member in a limited liability company or a partner in a general partnership, a partnership in commendam, or a registered limited liability partnership. A partner is the ultimate owner of a partnership interest; therefore someone holding or managing a partnership interest on behalf of another, such as a broker, is not a partner for purposes of this rule.

Partnership—means any association that is treated as a partnership for state income tax purposes including, but not limited to, a general partnership, partnership in commendam, a registered limited liability partnership, or a limited liability company. Because of LSA R.S. 47:287.11(A), the above listed business associations that do not elect to be taxed as corporations for federal income tax purposes are treated as partnerships for Louisiana income tax purposes.

B. Persons to be included in a composite return.

1. Partnerships engaging in activities in this state that have nonresident partners are required to file a composite partnership return unless:

- a. All nonresident partners are corporations or tax exempt trusts; or
- b. All nonresident partners, other than corporations and tax exempt trusts, have a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. Unless otherwise provided herein, corporate partners cannot be included in composite returns filed by a partnership. Corporate partners must file all applicable Louisiana tax returns, and must report all Louisiana source income, including income from the partnership in those returns.

3. Resident partners, other than corporations and tax-exempt trusts, may be included in a composite return.

4. A partnership that is a partner must be included in the composite return, unless that partner files an agreement with the partnership agreeing to file a composite return that reflects the Louisiana source income from the partnership of which it is a partner.

C. Composite return requirements.

1. All nonresident partners, other than partners that are corporations or tax-exempt trusts, who were partners at any time during the taxable year and who do not have a valid agreement on file with the Department of Revenue must be included in the composite partnership return.

2. The due date of the composite return is the due date set forth for all income tax returns other than corporate returns.

3. A schedule must be attached to the composite return that includes the following information for every nonresident partner in the partnership:

- a. The name of the partner;
- b. The address of the partner;
- c. The taxpayer identification number of the partner;
- d. The partner's distributive share; and
- e. Whether or not that partner has an agreement on file with the Department of Revenue to file an individual return on his or her own behalf.

4. If a resident partner is included in the partnership's composite return, a schedule must be attached to the composite return that includes the following information for every resident partner included in the partnership composite return:

- a. The name of the partner;
- b. The address of the partner;
- c. The taxpayer identification number of the partner;
- d. The partner's distributive share.

5. The filing of a true, correct, and complete partnership composite return will relieve any nonresident partner properly included in the composite return from the duty to file an individual return, provided that the nonresident partner does not have any income from Louisiana sources other than that income reported in the composite return. Inclusion in a partnership composite return shall not relieve a resident partner of the obligation to file a Louisiana income tax return.

6. Filing requirement the first year the partnership is subject to the composite return rules and issuance of special identification number. Every partnership that engages in activities in this state and that has nonresident partners will make an initial filing with the Department.

a. Each partnership that is required to file a composite return will file its first composite return and make its first composite payment by the composite return due date. The partnership will be issued an identification number by the Department upon its initial filing. This identification number shall be used on all partnership correspondence with the Department, including subsequent composite returns filed by that partnership.

b. Each partnership that is not required to file a composite return because all its partners have filed agreements to file on their own behalf, must make an initial filing in which it files all agreements with the Department of Revenue by the composite return due date. The partnership will be issued an identification number by the Department upon its initial filing. This identification number shall be used on all partnership correspondence with the Department, including the filing of additional agreements.

D. Composite payment requirement.

1. All partnerships engaging in activities in this state that have nonresident partners that are not corporations or tax-exempt trusts shall make composite payments on behalf of all of their nonresident partners, other than corporate partners, who do not file an agreement to file an individual return and pay Louisiana income tax.

2. The composite payment is due on the earlier of the date of filing of the composite return or the due date of the composite return, without regard to extensions of time to file. An extension of time to file the composite return does not extend the time to pay the composite payment.

3. Each partner's share of the composite payment is the maximum tax rate for individuals multiplied by the partner's share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. The composite payment to be made by the partnership is the sum of each partner's share of the composite payment for all ~~nonresident~~ partners included in the composite return.

5. For a nonresident partner whose only Louisiana income is from the partnership, amounts paid by the partnership on that partner's behalf will be treated as a payment of that partner's Louisiana individual income tax liability.

6. If a partner has any Louisiana source income in addition to the income from the partnership, amounts paid by the partnership on that partner's behalf will be treated as an advance payment of the tax liability shown on that partner's individually filed return.

E. Nonresident partner's agreement to file an individual return.

1. No composite return or composite payment is required from a partnership on behalf of a partner who has a valid agreement on file with the Department of Revenue in which the partner has agreed to file an individual return and pay income tax on all income derived from or attributable to sources in this state.

2. The partner will execute the agreement and transmit the agreement to the partnership, on or before the last day of the month following the close of the partnership's taxable year.

3. The partnership will file the original agreement with the composite return filed for that taxable year. The partnership must keep a copy of the agreement on file.

4. The agreement must be in writing, in the form of an affidavit and must include all of the following:

- a. A statement that the taxpayer is a nonresident partner or member;
- b. The partner's name;
- c. The partner's address;
- d. The partner's social security number or taxpayer identification number;
- e. The name of the partnership;
- f. The address of the partnership;
- g. The partnership's federal taxpayer identification number;
- h. A statement that the taxpayer agrees to timely file a Louisiana individual income tax return and make payment of Louisiana individual income tax;
- i. A statement that the taxpayer understands that the Louisiana Department of Revenue is not bound by the agreement if the taxpayer fails to abide by the terms of the agreement;

j. The statement that “under penalties of perjury, I declare that I have examined this affidavit and agreement and to the best of my knowledge, and belief, it is true correct and complete;” and

k. The signature of the partner.

5. Once an agreement is signed by the partner, transmitted to the partnership, and the partnership has filed the agreement with the Department of Revenue, the agreement will continue in effect until the partner or the Department of Revenue revokes the agreement, or the partner is no longer a partner in the partnership.

6. The agreement may be revoked by either the partner or the Department of Revenue as follows.

a. The partner may revoke the agreement at will. However, this revocation does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The partner must send written notice of the revocation to the partnership. The partnership will forward the notice to the Department of Revenue. The partner may execute a new agreement, in the manner set forth in this Subsection, at any time.

b. The Department of Revenue may revoke the agreement only if the partner fails to comply with the terms of the agreement. This revocation is prospective only with respect to the partnership, and does not become effective until the first partnership tax year following the partnership tax year in which the revocation is transmitted to the partnership. The Department of Revenue must send written notice of the revocation to the partner and the partnership. The notice will be mailed to the partnership at the address given in the last return or report filed by the partnership. The notice will be mailed to the partner at the address provided in the agreement. If the Department of Revenue revokes an agreement, the Department may refuse to accept a subsequent agreement by that partner, unless the partner can show that the revocation was in error.

F. A partnership making a composite return and payment must furnish the following information to all partners included in the composite return:

1. The identification number that was issued to the partnership by the Department under (B)(6)(b) above;

2. The amount of the payment made on the partner’s behalf;

3. A statement that the amount paid on the partner’s behalf can be used as an advance payment of that partner’s Louisiana individual income tax liability for the same tax period;

4. The mailing address of the Louisiana Department of Revenue; and

5. The world wide web address of the Louisiana Department of Revenue, www.rev.state.la.us.

G. Additional provisions for publicly traded partnerships.

1. A publicly traded partnership, that is not treated as a corporation for federal income tax purposes, may elect, with the prior approval of the Secretary,

a. Not to accept agreements filed by partners under the provisions of (B)(4) or (E) above, and

b. To include all partners in its composite return and composite payment required by this section, including corporations and tax-exempt trusts.

2. This election must be applied for in writing and approved in writing by the Secretary. Once approval is granted, the election will remain in effect until revoked by the partnership.

3. The composite payment to be made by the publicly traded partnership is the sum of each partner’s share of the composite payment for all partners. Each partner’s share of the composite payment is the maximum individual income tax rate multiplied by the partner’s share of partnership income that was derived from or attributable to sources in this state. This computation applies whether or not the partnership income is distributed.

4. Inclusion in a partnership composite return filed by a publicly traded partnership shall not relieve resident partners, corporate partners, or nonresident partners who

have other Louisiana source income of the obligation to file all applicable Louisiana tax returns, and report all Louisiana source income, including income from the partnership.

H. Nothing in this regulation shall restrict the Secretary's authority to otherwise provide for efficient administration of the composite return and composite payment requirements of R.S. 47:201.1.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:201.1 and R.S. 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue, LR 28:

Family Impact Statement For Administrative Rules

Rule Title: 61:I.1401. Partnership Composite Return Requirement, Composite Payment Requirement, Exceptions

The proposed adoption of LAC 61:I.1401, regarding partnership composite returns and composite payments of tax made by a partnership or limited liability company on behalf of nonresident partners or members 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. Specifically, the implementation of this proposed rule will have 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.

Any interested person may submit written data, views, arguments or comments regarding this proposed rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 15409, Baton Rouge, LA 70895-5409. All comments must be received no later than 4:30 p.m. February 26, 2002. A public hearing will be held on Wednesday, February 27, 2002, at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Cynthia Bridges
Secretary