

§915. Returns and Payment

A. The tax due for each quarter shall be remitted to the secretary, by the person responsible for remitting the tax, on or before the twentieth day of the subsequent quarter. All generators and disposers doing business in Louisiana are required to file a tax return quarterly, unless otherwise provided, on forms prescribed by the secretary. Forms are available from the secretary; and although forms are usually mailed to each taxpayer, failure to receive a form will not relieve the taxpayer of the necessity of filing and remitting the tax currently due.

B. Corporations that violate the provisions of R.S. 47:827 shall be fined an amount not to exceed \$100,000. Individuals who violate the provisions of R.S. 47:827 shall be fined an amount not to exceed \$10,000, or imprisoned for not more than one year, or both.

C. When any taxpayer fails to pay any tax, penalty, and interest assessed, as provided in this Chapter, the secretary of the Department of Revenue and Taxation may proceed to enforce the collection thereof by distraint and sale under the provisions of R.S. 47:1570-1573.

AUTHORITYNOTE: Promulgated in accordance with R.S. 47:827.

HISTORICALNOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Section, LR 13:105 (February 1987).

§917. Records Requirements

A. Every person required to pay, collect, or remit the tax imposed under this Chapter shall keep a permanent record of all production, handling, storage, disposal, shipment, and receipt of hazardous waste by him in sufficient detail to be of value in determining the correct tax liability under this Chapter. These records must be kept whether or not the person believes the tax imposed by this Chapter is applicable.

B. Whenever the dry-weight of a waste is used as the basis for computing the tax on a return, full documentation of the facts and methodology used in calculating the dry-weight must be maintained. This documentation includes, but is not limited to, testing procedures followed, test results obtained, assumptions made, and the basis for assumptions made.

C. Where required records are voluminous, they must be kept in chronological order or in some other systematic order compatible with the taxpayer's regular bookkeeping system which will enable the secretary to verify the accuracy of information contained in tax returns.

D. Records kept on punched cards, magnetic tape, or other mechanical or electronic record-keeping devices are permissible provided the taxpayer makes available all necessary codes and equipment to enable the secretary to audit such records, or provides the secretary with written transcripts of those parts of the records which the secretary wishes to examine.

E. The books and records must contain complete information pertaining to both taxable and non-taxable items which are the subject of taxes imposed herein, and must be

retained until the tax period to which they relate has prescribed. Records required by this Section must be available at all times during the regular business hours of the day for inspection by the secretary or duly authorized agents of the secretary.

F. For the purpose of computing, collecting, or auditing the tax imposed by this Chapter, the secretary shall have access to all manifests and records which are required by the Department of Environmental Quality.

AUTHORITYNOTE: Promulgated in accordance with R.S. 47:831.

HISTORICALNOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Section, LR 13:105 (February 1987).

Chapter 10. Income: Pass-Through Entities

§1001. Election of Pass-Through Entities

A. Act 442 of the 2019 Regular Session of the Louisiana Legislature, allows S corporations, and other entities taxed as partnerships for federal income tax purposes, to make an election to be taxed in the same manner as if the entity was required to file a tax return with the Internal Revenue Service as a C corporation.

1. The income of entities that make the election under LA R.S. 47:287.732.2 shall be taxed at the following rates:

- a. two percent upon the first \$25,000 of Louisiana taxable income;
- b. four percent upon the amount of Louisiana taxable income above \$25,000 but not in excess of \$100,000; and
- c. six percent upon the amount of Louisiana taxable income above \$100,000.

B. Requirements to Make the Election

1. Shareholders, members or partners holding more than one-half of the ownership interest in the entity based upon capital account balances on the day the election is made shall approve the election.

2. The entity shall provide the Department of Revenue at the time of making the election either:

- a. a resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half of the ownership interest in the entity based upon capital account balances approved the election, or
- b. other written proof that more than one-half the ownership interest in the entity approved the election.

3. An entity shall make the election on Form R-6980, *Tax Election for Pass-Through Entities* and the form shall be submitted to the Department of Revenue by email to Section732.2election@la.gov.

a. The following documentation shall be attached to Form R-6980:

i. a list of all owners, their addresses and their tax identification numbers as of the last day of the taxable year to which the election is effective;

ii. federal returns for the entity for the preceding three taxable years if applicable, including form K-1s and pass-through or disregarded entity forms such as Schedules C, E, and F;

iii. a copy of the federal S corporation election form, if applicable;

iv. formation documents of the entity such as the Articles of Incorporation, Partnership Agreement or Operating Agreement which specifically set forth how profits, losses and other tax items are distributed to the owners;

v. a list of all unused Louisiana net operating losses, tax credit balances and other tax items earned at the entity level prior to the election; and

vi. any audit reports issued by certified public accountants for the preceding three taxable years, if applicable.

4. Any entity who files a composite partnership return pursuant to LA R.S. 47:201.1 is prohibited from making the election.

5. Elections are timely if made: at any time during the preceding taxable year of the year in which the election is first effective; at any time during the taxable year in which the election is first effective or on or before the 15th day of the fourth month after the close of the taxable year in which the election is first effective.

a. The department will begin accepting elections on February 1, 2020 for taxable years beginning on or after January 1, 2019.

b. The secretary has the discretion to treat an election made after the fifteenth day of the fourth month after the close of the taxable year in which the election is first effective as timely if reasonable circumstances exist for the entity's failure to make a timely election.

i. The secretary shall consider whether to treat applications filed after the fifteenth day of the fourth month after the close of the taxable year as filed timely on a case-by-case basis.

ii. Reasonable circumstances may include, but are not limited to, death or serious illness of owners, death or serious illness of the entity's tax preparer, or federally declared natural disasters or emergencies.

iii. A determination that the entity and its owners will pay less total tax under the election shall not be a reasonable circumstance to consider a late election timely.

c. An election, once made, is effective for the entire taxable year for which it was made as well as all subsequent taxable years until the election is terminated.

C. Filing Tax Returns after Election

1. Each entity making the election shall file Louisiana Form CIFT-620, *Corporation Income Tax and Franchise Tax Return*, for the applicable taxable year for which the election was made and all taxable years thereafter unless the election is terminated.

2. Each entity making the election and filing the Louisiana Form CIFT-620 with all supporting documentation as required by the Department shall be required to file the return electronically in accordance with LAC 61:III.1505. 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).

3. The following documents shall be attached to the Louisiana Form CIFT-620 when filed:

a. A *pro forma* Federal Form 1120 completed as if the entity had filed as a C corporation for federal income tax purposes including all necessary federal schedules to compute the amount of federal tax that would have been due;

b. Schedule K-1s as actually issued to the owners of the entity for the taxable year as well as Form R-6981, *Statement of Owner's Share of Entity Level Tax Items*, reflecting any income that remains taxable to the entity's owners in Louisiana after the election such as dividends and interest; and

c. Form R-6982, *Schedule of Tax Paid if Paid by Owner*, calculating how much tax would have been due if the entity had passed the income through to its owners and the tax had been paid at the owner level.

4. Resident individual taxpayers with an ownership interest in an entity making this election shall make a modification on Schedule E of their Louisiana Form IT-540, *Louisiana Resident Income Tax Return*, in accordance with LA R.S. 47:297.14. A non-resident or part-year resident shall make the modification on the Nonresident and Part-Year Resident (NPR) Worksheet of the Louisiana Form IT-540B, *Louisiana Nonresident and Part-Year Resident Income Tax Return*.

a. The modification shall be made for all income or loss of the entity that was included by the individual owners in the calculation of federal adjusted gross income but which is being taxed at the entity level for Louisiana income tax purposes after the election is made.

b. The modification shall not be made for any income or loss that remains taxable for Louisiana individual income tax purposes to the entity's owners such as interest income and dividend income.

c. For calculation purposes, individual income taxpayers with an ownership interest in an entity making the election shall submit a *pro forma* Federal Form 1040 that excludes any income, deductions or other tax items that were included in the calculation of Louisiana net income on the entity's Louisiana Form CIFT-620.

5. Net Operating Losses

a. Louisiana net operating losses recognized in taxable years prior to the election that have previously been passed through to the owners are tax items of the owners and any such losses are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana net operating losses for any taxable year to which the election applies are tax items of the entity and any such losses shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

6. Tax Credits Granted to Pass-Through Entities

a. Louisiana tax credits earned in taxable years prior to the election that have previously passed through to the owners are tax items of the owners and any such credits are not available for utilization at the entity level in taxable years to which the election applies.

b. Louisiana tax credits earned for any taxable years to which the election applies are tax items of the entity and any such credits shall not pass through to the owners of the entity regardless of whether or not the election is terminated in a future taxable year.

D. Termination of the Election. Entities who make the election pursuant to LA R.S. 47:287.732.2, may apply to the secretary of the Department of Revenue to terminate the election. Any such termination request requires the written approval of more than one-half the of the ownership interest based upon capital account balances on the date the request is submitted.

1. The secretary may terminate the election if the entity shows a material change in circumstances.

a. A significant change in federal law may be considered a material change in circumstances.

b. A tax increase resulting from the decision to make the election, in and of itself, shall not be considered a material change in circumstances.

2. The entity shall request to terminate the election by submitting a private letter request to the Policy Services Division of the Department of Revenue in accordance with LAC 61:III.101.(C)(2)(a).

a. The entity must provide the Department either:

(i) A resolution signed by secretary of the corporation or equivalent officer or manager verifying that more than one-half the ownership interest in the entity based upon capital account balances approved the election, or

(ii) Other written proof that more than one-half the ownership interest in the entity based upon capital account balances approved the request for termination.

3. Once the entity has filed a Louisiana income tax return for a taxable year for which the election has been made or a subsequent taxable year, the secretary shall not grant a termination of the election to apply to such taxable year for which a return has already been filed.

AUTHORITYNOTE: Promulgated in accordance with R.S. 47: 47:287.732(B), 287.732.2, 293, 297.14, 1511, and 1675.

HISTORICALNOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 46:43 (January 2020).

Chapter 11. Corporation Income Tax

§1114. Modifications of Federal Gross Income

A. In order to calculate Louisiana gross income, R.S. 47:287.71 requires modifications be made to federal gross income. R.S. 47:287.71(B)(7) provides that exclusions from Subpart F must be taken into account when computing Louisiana gross income. Included in the exclusions from gross income required by R.S. 47:287.71(B)(7) are those modifications provided for in R.S. 47:287.738(C) through (F).

AUTHORITYNOTE: Promulgated in accordance with R.S. 47:287.71, R.S. 47:287.785, and R.S. 47:1511.

HISTORICALNOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:261 (February 2006).

§1115. Corporate Deductions; Add-Back of Certain Intangible Expenses; Interest and Management Fees

A. General. R.S. 47:287.82 provides that otherwise deductible interest expenses and costs, intangible expenses and costs, and management fees directly or indirectly paid to a related member shall be added back to the corporation's gross income.

B. Exceptions. The taxpayer shall make the add-back unless:

1. the item of income corresponding to the taxpayer's expense, cost, or fee, was in the same taxable year subject to a tax based on or measured by the related member's net income in Louisiana or any other state; or

2. the item of income corresponding to the taxpayer's expense, cost, or fee, was in the same taxable year subject to a tax based on or measured by the related member's net income in a foreign nation which has in force an income tax treaty with the United States, if the recipient was a "resident" as defined in the income tax treaty with the foreign nation; or

3. the transaction giving rise to the expense, cost, or fee between the taxpayer and the related member did not have as a principal purpose the avoidance of any Louisiana tax; or

4. the expense, cost, or fee that was paid or accrued to a related member was "passed through" by the related member or members to an unrelated third party in an arms-length transaction via a corresponding expense, cost, or fee payment; or

5. the add-back is unreasonable. The add-back will be considered unreasonable if the taxpayer establishes that, based on the entirety of the taxpayer's particular facts and circumstances, the add-back adjustments would increase the taxpayer's Louisiana income tax liability to an amount that bears no reasonable relation to the taxpayer's Louisiana presence.