

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Health Insurance Credit for Contractors of Public Works (LAC 61:I.1195)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish Rules, R.S. 47:295 and R.S. 47:1511, which allow the department to make reasonable rules and regulations, the secretary of revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective February 20, 2006, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

This Emergency Rule is necessary to allow the secretary to administer the health insurance credit for contractors of public works for the 2005 and succeeding tax year. R.S. 47:287.759 as enacted by Act 504 of the 2005 Regular Session of the Legislature allows for a three million dollar statewide credit for contractors of public works who offer health insurance to their employees. Because the credit is capped at three million dollars statewide, the Department of Revenue is compelled to set a procedure for the administration of the credit. This credit and the procedure for its implementation must be available for taxpayers while preparing and filing their 2005 Louisiana income tax returns.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 11. Income: Corporation Income Tax §1195. Health Insurance Credit for Contractors of Public Works

A. Louisiana Revised Statutes 47:287.759 allows for a tax credit against corporation income tax to contractors and subcontractors constructing a public work who offer health insurance to their employees and their dependents.

1. The amount of the credit is 2 percent of the total amount of the contract for the public work less any amounts paid to a subcontractor for a portion of the work performed by the subcontractor.

2. The total tax credit for all taxpayers is limited to \$3 million per calendar year.

3. At least 85 percent of the full-time employees must be offered health insurance. Contractors and subcontractors must pay 75 percent of the total premium for the health insurance of employees who choose to participate and at least 50 percent for each participating dependent of such employees.

4. Employees do not include independent contractors.

B. Definitions

Dependents—spouse and those persons who would qualify as dependents on the employee's federal income tax return.

Earnings—gross wages of the employee not including fringe benefits.

Health Insurance—coverage for basic hospital care, and coverage for physician care, as well as coverage for health care.

Public Work—a building, physical improvement, or other fixed construction owned by the state or a political subdivision of the state.

C. Procedure for Allocation of the Health Insurance Credit

1. The department will determine if the \$3 million cap on the health insurance credit has been exceeded after all possible extensions to file have passed for all taxpayers.

2. If the \$3 million cap on the health insurance credit is not exceeded and all applicable extensions to file returns have expired, contractors and subcontractors who earn the health insurance credit will be allowed the full amount of the credit properly claimed on their tax return with appropriate interest.

3. However, if more than \$3 million is claimed statewide, the department will allocate the credit on a pro rata basis in proportion to the amount of health insurance credit properly claimed on each employer's timely filed tax return. The allocation will be made after the filing deadline inclusive of all applicable extension periods.

a. Contractors and subcontractors claiming the health insurance credit and an overall refund of overpayment for the taxable year should file their return with the department.

i. The department will reduce the taxpayer's total refund of overpayment by the amount of the health insurance credit claimed on the tax return.

ii. An initial refund of overpayment, the amount of which is exclusive of the health insurance credit amount, will be sent to the taxpayer with a letter stating that the taxpayer's claimed health insurance credit will be held in abeyance until after the extended filing deadline and subsequently will be refunded with appropriate interest.

iii. The health insurance credit will be processed and refunded proportionately after the last extension for filing deadline.

iv. If the health insurance credit is reduced as provided by §1195.C.3 and the taxpayer owes additional money to the department, an assessment will be sent exclusive of penalties and interest if paid within 60 days.

(a). If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

(b). If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

b. Contractors and subcontractors who claim the health insurance credit and still owe additional taxes for the taxable year, should file their return with the department and remit payment with the return.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3, the taxpayer will receive an assessment for the difference without being subject to penalties and interest if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request

for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

c. Contractors and subcontractors who claim the health insurance credit that reduce their tax liability to zero for a taxable year should file their return with the department.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3 such that the taxpayer owes additional tax, the taxpayer will receive an assessment for the taxes owed exclusive of interest and penalties if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest is abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

D. Information that must be submitted with the return in order to properly claim the credit:

1. statement that health insurance has been offered to at least 85 percent of the employees;
2. copy of the health insurance coverage plan from the insurance company;
3. number of full-time employees working for the contractor or subcontractor; and
4. amount of the contract for public work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.759, R. S. 47:1601, R.S. 47:1603, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:

Cynthia Bridges
Secretary