

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Annual Retirement Income Exemption for Individuals 65 or Older (LAC 61:I.1311)

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 November 20, 2005, 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 Department of Revenue to inform taxpayers that only the individual who actually received the annual retirement income is entitled to the exemption. A delay in promulgating this Rule would have an adverse impact on the taxpayers who are unaware of the limitation of this exemption.

Louisiana Revised Statutes 47:44.1 allows an individual who is 65 years of age or older and who receives annual retirement income to exempt up to \$6,000 of this income from state income tax. This proposed regulation will inform individual income taxpayers and their representatives that for all tax years beginning on or after 2005 only the individual who actually received the annual retirement income is entitled to the exemption. It will also provide guidance to taxpayers to assist them in determining who is the recipient of annual retirement income from a pension, annuity or individual retirement account.

Title 61

REVENUE AND TAXATION

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

Chapter 13. Income: Individual

§1311. Annual Retirement Income Exemption for Individuals 65 or Older

A. Louisiana Revised Statutes 47:44.1 provides an exemption of up to \$6,000 for annual retirement income received by an individual who is 65 years of age or older. Only the individual who actually received the annual retirement income is entitled to the exemption.

Annual Retirement Income—pension and annuity income which is included in *tax table income*.

Tax Table Income—as defined in La. Rev. Stat. 47:293.

B. For purposes of determining the total annual retirement income exemption that can be claimed on a Louisiana individual income tax return, an individual receives annual retirement income as follows:

1. Receipt of Benefits Paid from a Pension Plan. Except as otherwise provided herein, only the plan participant receives annual retirement income from the pension plan, the non-participant spouse does not receive annual retirement income from the plan.

2. Receipt of Annuity Income. Only the named payee or named annuitant receives annual retirement income from an annuity.

3. Receipt of Income from an Individual Retirement Account. Only the named payee or distribute receives annual retirement income from an individual retirement account.

4. Exceptions

a. If there is a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), payments received by the alternate payee will be considered annual retirement benefits received by an individual.

b. Survivor benefits paid from a pension plan to the plan participant's surviving spouse will be considered annual retirement benefits received by an individual.

C. Examples

1. Mary and John are a married couple. Mary worked for X Corporation for 35 years from 1964 until she retired in 1999. While working for X Corporation, Mary participated in the corporation's pension plan. In 2005, Mary received a total of \$30,000 in distributions from the X Corporation pension plan. John's only source of retirement income is federal social security, which is not included in the couple's tax table income because it is already exempt under R.S. 47:44.2. Mary and John's filing status for federal and state income tax is married filing joint and they are both over 65. Because only Mary receives annual retirement income, Mary and John may only exempt \$6,000 of Mary's retirement income from their 2005 income taxes under this exemption. Because John is not the plan participant, he has not received any annual retirement income for purposes of the exemption.

2. Scott and Ellen are a married couple. Their filing status for federal and state income tax is married filing joint and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive. Scott worked for ABC Corporation for 35 years from 1964 until he retired in 1999 at the age of 65. While working for ABC Corporation, Scott participated in the corporation's pension plan. In 2005, Scott received a total of \$30,000 in distributions from the ABC Corporation pension plan. Ellen has two sources of retirement income; federal social security that is already exempt under R.S. 47:44.2 and an annuity paid to her as the named annuitant in the amount of \$4,000 annually. Scott may exempt \$6,000 of his ABC Corporation pension income and Ellen may exempt all of her \$4,000 annuity income for a combined exemption of \$10,000.

3. Alan and Leslie are a married couple who do not live apart. Their filing status for federal and state income tax is married filing separate and they are both over 65. Because they are both 65 years of age or older, each of them is entitled to exempt up to \$6,000 of the annual retirement income each of them receive on their married filing separate returns. Alan is the named annuitant of an annuity from which he receives annual retirement income of \$10,000. Leslie is not yet retired and receives a salary, but no annual retirement income. Alan's annuity income and Leslie's salary are community property. Because Louisiana is a community property state and the couple has chosen not to file a joint return, Leslie must report one half of Alan's annuity income, or \$5,000, on her married filing separate federal and state income tax returns. Because Leslie is not the named annuitant, she has not received annual retirement income for purposes of the exemption and cannot claim any exemption amount on her return. Because Alan is only reporting \$5,000

of his annuity income on his federal and state income tax returns, he is only entitled to an exemption of \$5,000.

4. Assume the same facts as in Example 3 except that Alan and Leslie have a separation of property agreement. Each spouse will therefore report his or her own items of income and loss on his or her own married filing separate return. Allan will report the entire amount of his annuity income and will be entitled to exempt \$6,000 of the \$10,000 of annual retirement income he receives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:44.1, R.S. 47:295, and R.S. 47:1511.

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

Cynthia Bridges
Secretary

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