

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Withholding by Professional Athletic Teams (LAC 61:I.1520)

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. 47:1511, which allows the Department to make reasonable rules and regulations, and R.S. 39:100.1(D) that authorized the Secretary of Revenue to prescribe regulations necessary to carry out the purposes of R.S. 39:100.1, 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 October 1, 2003, 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 implement recent legislative changes to the Sports Facility Assistance Fund and to allow the Department of Revenue to effectively and efficiently attribute the income tax collected from nonresident professional athletes to the Sports Facility Assistance Fund. A delay in promulgating this Rule would have an adverse impact on the facilities that receive appropriations through the Sports Facilities Assistance Fund.

Act 1203 of the 2001 Regular Session enacted R.S. 39:100.1, which created a fund in the state treasury called the Sports Facility Assistance Fund (the Fund). Each year, the treasurer must pay into the Fund an amount equal to the income tax collected by the state from nonresident professional athletes and professional sports franchises on income earned in Louisiana. The monies in the fund are appropriated dollar-for-dollar to the owners of the facilities at which the money that generated the income tax was earned. The purpose of this Emergency Rule is to enable the Department of Revenue to collect income tax from nonresident professional athletes and to accurately attribute the income tax collected to the fund.

Act 119 of the 2003 Regular Session enacted R.S. 39:100.1(D) that authorized the Secretary of Revenue to prescribe regulations necessary to carry out the purposes of R.S. 39:100.1. This Emergency Rule will require periodic withholding for professional athletic teams domiciled outside Louisiana on their nonresident team members. It will also clarify that these teams are required to follow current withholding provisions for their team members who are residents of Louisiana.

Title 61

REVENUE AND TAXATION

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

Chapter 15. Income: Withholding Tax.

§ 1520. Withholding by Professional Athletic Teams

A. Definitions

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

Professional Athletic Team A member team of a professional sports association or league.

Team Member shall include those employees of a professional athletic team who are active players, players on the disabled list, and any other persons required to travel and who travels with and perform services on behalf of a professional athletic team on a regular basis. This definition includes, but is not limited to, coaches, managers, and trainers.

B. Withholding Requirement for Nonresident Team Members

1. Professional Athletic Teams not Domiciled in Louisiana

a. Any professional athletic team that is not domiciled in Louisiana and that pays compensation to a nonresident individual for services rendered to the team within Louisiana shall be deemed to be an employer making payment of wages and shall be required to withhold Louisiana individual income tax from that portion of the compensation for services rendered to the team attributable to "duty days" spent in Louisiana, as defined in LAC 61:I.1304(I), for each game played in Louisiana.

b. This section does not alter the professional athletic team's withholding requirements for team members who are residents of Louisiana. The withholding for these team members must be as provided for in R.S. 47:111.

2. Professional athletic teams with a Louisiana domicile. Professional athletic teams that are domiciled in Louisiana must withhold for all team members as provided for in R.S. 47:111.

3. This section does not alter any professional athletic team member's requirement to file the income tax schedule required under LAC 61:I.1305.

C. Rate of Withholding. The withholding tax rate under this section shall be 4.2 percent of the compensation attributable to "duty days" spent in Louisiana.

D. Due Date of Withholding Return and Payment. A withholding return and payment must be submitted for each game played in Louisiana. The withholding return and payment must be submitted on or before the last day of the month following the month in which the game was played.

E. Account Numbers

1. Each professional athletic team not domiciled in Louisiana will be issued an identification number by the Department.

2. The professional athletic team filing the withholding return must be clearly identified by name, address and Louisiana revenue account identification number. The team's federal employer identification number will not be accepted as a substitute. The withholding return will not be considered complete unless the team's Louisiana revenue account identification number is on the return.

F. Annual Reconciliation Schedule

1. All professional athletic teams that pay compensation to a nonresident individual for services rendered to the team within Louisiana must submit an annual withholding reconciliation schedule that includes a list of all team members who received Louisiana source income during the year. The list must include the following information:

a. the name, social security number, and permanent physical address of all team members regardless of residency, and

b. for each nonresident team member:

i. the total number of duty days spent with the team during the taxable year;

- ii. the number of duty days spent in Louisiana;
- iii. the total amount of compensation for services rendered to the team;
- iv. the amount of compensation for services rendered to the team in Louisiana; and
- v. the total amount deducted and withheld under this Section.

2. The annual reconciliation schedule is due on or before the first business day following February 27 of each year for the preceding calendar year. The secretary may grant a reasonable extension of time, not exceeding thirty days for the filing of the annual reconciliation schedule. The annual reconciliation schedule is not considered to be remitted until it is complete.

3. The permanent address listed on the annual reconciliation schedule will be presumed to be the residence of the team member for purposes of administering the Sports Facility Assistance Fund.

G. Penalty for Failure to Timely Remit Schedules and Payments

1. The following penalties will be imposed for failure to timely remit these returns, schedules, and payments.

a. In the case of failure to timely remit any return or schedule required by this section, the penalty shall be five hundred dollars for the first such failure, one thousand dollars for the second such failure within the three-year period beginning on the due date of the first delinquent return or schedule, and two thousand five hundred dollars for each subsequent failure within the three-year period beginning on the due date of the first delinquent return or schedule.

b. In the case of failure to timely remit any payment required by this section, the penalty shall be five percent of the total payment due if the delinquency is for not more than thirty days, with an additional five percent for each additional thirty days or fraction thereof during which the delinquency continues, not to exceed fifty percent of the amount due.

H. Exception to Withholding Requirement under this Section

1. The secretary may grant an exception to withholding requirements under this section to any professional athletic team not domiciled in Louisiana that agrees in writing to file team composite returns and remit composite payments as provided in LAC 61:I.1304(J).

2. The composite return and composite payment will be considered to be a return and payment required by the secretary to administer the provisions of the Sports Facility Assistance Fund.

3. This agreement will be binding on the secretary and the professional athletic team until it is revoked. Either party may revoke this agreement.

AUTHORITY NOTE: Adopted in accordance with R.S. 39:100.1, R.S. 47:164(D), R.S. 47:295, R.S. 47:1511, and R.S. 47:1602.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:

Cynthia Bridges
Secretary