

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KEVIN J. RICHARD, CPA
Secretary

March 3, 2023

Via e-mail (return receipt requested) to:

The Honorable Stuart J. Bishop
Chairman of the House Committee on Ways and Means
P.O. Box 94062
Baton Rouge, Louisiana 70804
apa.h-wm@legis.la.gov

The Honorable R.L. "Bret" Allain, II
Chairman of the Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804
apa.s-r&f@legis.la.gov

Re: Proposed Amendments to Regulation LAC 61:III.2501, 2503, 2505, and 2507 – Income Tax Filing Extension

Chairman Bishop and Chairman Allain:

On October 6, 2022, a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of proposed regulation LAC 61:III.2501, 2503, 2505, and 2507- *Income Tax Filing Extension* was sent to your committee for review. The purpose of this regulation is to provide guidance to taxpayers seeking extension for filing income and franchise tax returns. Act 410 of the 2022 Regular Legislative Session authorizes an automatic six-month filing extension for individual income, fiduciary income and partnership taxpayers unable to file their income tax return by the original due date of the return. The Act also authorizes a six-month extension for corporation income tax if the taxpayer timely requested an extension for federal income tax purposes.

The *Notice of Intent* was published on pages 2689 through 2691 of the October 2022 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Tuesday, November 29, 2022. There were no attendees other than the one Department attorney assigned to the promulgation of the proposed amendments. Two written comments were received and there were no oral comments. The Secretary agrees, in part, to certain written comments, and, as such, the department published a Potpourri notice on pages 191 through 193 of the January 2023 edition of the *Louisiana Register* notifying the public of a hearing on amendments to the proposed regulation. A public hearing was held on the Potpourri in the LaSalle Building on Monday, February 27, 2023. There were no attendees other than the one Department attorney assigned to

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the promulgation of the proposed amendments. No written comments were received and there were no oral comments. No further changes will be made.

Council on State Taxation

Comment: COST suggested that the word “reasonable” be stricken from Section 2503(B) since the term is not included in the language of S.B. 54 as applicable to taxable periods beginning on or after January 1, 2022. COST also suggest including the word “automatically” in the regulation to clarify the Department’s intent to automatically grant the extension. Accordingly, COST suggested that the department remove the word “reasonable” and inserting the word “automatically”.

Response: The Secretary agrees with removing the term “reasonable” and disagrees with inserting the term “automatically”.

Society of Louisiana Certified Public Accountants (LCPA)

Comment One: LCPA suggested that the word “reasonable” be stricken from Section 2503(B) since the term is not included in the language of S.B. 54 as applicable to taxable periods beginning on or after January 1, 2022. LCPA also suggest including the word “automatically” in the regulation to clarify the Department’s intent to automatically grant the extension. Accordingly, LCPA suggested that the department remove the word “reasonable” and inserting the word “automatically”.

Response: The Secretary agrees with removing the term “reasonable” and disagrees with inserting the term “automatically.”

Comment Two: According to LCPA, the Department’s intent with regard to proposed LAC 61:III.2503(B)(1) is to disallow taxpayers who file corporate franchise tax returns separate from corporate income tax returns to avail themselves of the automatic extension provisions found at La. R.S. 47:287.614(D)(4). LCPA suggests that the regulation, as proposed, appears to deny any extension (i.e., automatic or otherwise) to taxpayers filing corporate franchise tax returns separate from corporate income tax returns and that Act 410 does not appear to contemplate such an outcome. LCPA further states that it would be imprudent for the Department to remove via regulation a taxpayer’s right to extend a franchise tax return particularly because such right existed prior to the enactment of Act 410 and was not affected by Act 410.

Response: The Secretary disagrees. The requirement that a corporation income tax return accompany a franchise tax return in order for the taxpayer to receive a filing extension is not created by this regulation. Instead, R.S. 47:287.614(D) provides that “...the secretary shall grant an extension of the time to file a Louisiana *income tax return*...” (emphasis added) thus limiting the extension to income tax returns and franchise tax returns that accompany corporation income tax returns. Therefore, a franchise tax return that is unaccompanied by a Louisiana corporation income tax return is statutorily ineligible for the filing extension provided for by this section.

Comment Three: According to LCPA, collectively, LAC 61:III.2503(B)(2)(a) and LAC 61:III.2503(B)(2)(b), as both proposed, appear to assume that taxpayers will either receive a Form 6513 from the Internal Revenue Service or otherwise receive some other formal notification from

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the Internal Revenue Service as evidence of an approved federal extension. Because taxpayers are typically not notified of an approved federal extension, the proposed regulation establishes an artificially high standard for establishing the validity of the Louisiana extension. LCPA suggests that either the reference to Form 6513 in the proposed regulation be struck or that the proposed regulation be modified to make clear that a Form 6513 is not the only means by which a taxpayer can establish that a federal extension request was timely filed.

Response: The Secretary agrees and disagrees in part. Because Federal Form 6513, *Extension of Time to File* is not issued to every taxpayer automatically, the Secretary agrees that other material evidencing an approved federal filing extension is sufficient for verification purposes for the Louisiana filing extension. As such, the department is amending 61:III.2503(B)(2)(a) to allow “other material evidencing that their [the taxpayer’s] federal extension has been approved.” The Secretary disagrees that the proposed regulation creates an artificially high standard for establishing the validity of a taxpayer’s federal extension. Requesting that a taxpayer retain proof of their federal approval for potential verification is not unreasonable.

Comment Four: LCPA suggests that LAC 61:III.2503(B)(2)(b) be modified to clarify that, upon request, a taxpayer may be required to provide proof of a valid federal extension as a condition for obtaining a Louisiana extension pursuant to La. R.S. 47:287.614(D). Such proof might include evidence that a federal extension was timely requested. Whether a taxpayer is granted a Louisiana extension pursuant to La. 47:287.614(D)(4) should not be dependent upon whether the Internal Revenue Service provides a Form 6513 or some other acknowledgement.

Response: The Secretary disagrees. Clarification is not necessary as the regulation provides that a taxpayer “should retain a copy” of material evidencing that they have been approved for a federal extension. Approval for Louisiana’s extension is not dependent on the taxpayer providing proof attached to their return. Instead, the proposed rule recommends that the taxpayer retain such material particularly for proof in the event that the department chooses to verify the taxpayer’s federal approval at a later time.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed amendment will be submitted for publication as a final rule in the April 2023 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact Christina Junker via email at christina.junker2@la.gov or by phone at (225) 219-7823.

Sincerely,



Kevin J. Richard, CPA
Secretary

Cc: The Honorable Patrick Page Cortez, President of the Senate, apa.senatepresident@legis.la.gov
Office of the State Register, Reg.Submission@la.gov

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