

Revenue Ruling 20-002
March 30, 2020
Income Tax

Income Tax Relief Provisions for COVID-19 Public Health Emergency

On March 11, 2020, Governor John Bel Edwards declared a statewide public health emergency as a result of the imminent threat posed to Louisiana citizens by the outbreak of a respiratory disease caused by a novel coronavirus known commonly as COVID-19. On March 22, 2020, additional measures, including a general stay-at-home order to the public, were enacted.

The purpose of this ruling is to provide guidance and relief provisions relative to income tax, as follows:

1. Safe harbor provision for declaration payments for the 2020 tax year;
2. Allowance for late filed elections for pass-through entity tax; and
3. Extension of time to acquire tax credit or execute a binding agreement to transfer a tax credit.

First and Second Quarter 2020 Declaration Payments

Overview of Declaration Payments, Penalty, and Exceptions

Individuals are required by statute¹ to file and pay declarations of estimated income tax with the Louisiana Department of Revenue (“Department”). Declarations are required if the Louisiana individual income tax liability can reasonably be expected to exceed \$1,000 after deducting all allowable credits.² The purpose of requiring declaration filings and payments is to ensure income tax is paid timely throughout the tax year as the individual earns the income. Individual income taxpayers are generally exempt from this requirement because their income tax is withheld by employers as withholding tax and remitted directly to the Department. Individuals then claim a credit for taxes withheld by employers when preparing and filing their individual income tax returns.

¹ LA R.S. 47:116 *et seq.*

² LA R.S. 47:116(A); For taxpayers with married filing jointly status, the amount is doubled to \$2,000.

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For the 2020 tax year, generally, the first declaration payment is due on or before April 15, 2020, and the second declaration payment is due on or before June 15, 2020.³ If an individual is required to pay declarations of estimated tax, but fails to do so, the Underpayment of Estimated Tax (“UET”) penalty is added to the tax due.⁴ However, LA R.S. 47:118(D) provides five exceptions; if any one exception is satisfied, the penalty is not assessed by the Department.⁵ Some of the more common exceptions include:

1. The taxpayer does not owe more than \$1,000 after consideration of credits and tax withholdings.
2. The taxpayer’s current year payments equal or exceed the previous year’s tax liability for each installment period.
3. The taxpayer’s current year payments equal or exceed 90% of the tax computed on annualized income for the period ending based on calendar quarters.

Title 47 of the Louisiana Revised Statutes of 1950 provide no mechanism or authority for the Secretary to extend the statutory due date of declaration payments for individuals.⁶ However, for the 2020 tax year, the Secretary may waive the UET penalty if the taxpayer requests a waiver by May 17, 2022 (one year after the statutory due date of the return) and the taxpayer has acted in good faith in failing to make estimated payments.⁷ The Secretary may presume the taxpayer acted in good faith if the failure to make estimated payments was attributable to extraordinary circumstances beyond the individual’s control.⁸

Ruling

Due to the public health emergency resulting from the COVID-19 pandemic, taxpayers are physically unable to visit their tax preparers to prepare 2019 individual tax returns. By extension, without the completed 2019 individual income tax return, taxpayers cannot base

³ LA R.S. 47:117(A)(1); [LDR Form IT-540ESi](#); Farmers and fisherman are exempt from this requirement as provided by LA R.S. 47:117(B)

⁴ LA R.S. 47:118(A)

⁵ [LDR Form R-210Ri](#) (2019 Tax Year) provides an overview of each of the five exceptions and the underlying calculations. Approximately 1.63% and 2.20% of individual income taxpayers were assessed UET penalty in 2017 and 2018, respectively.

⁶ As authorized by LA R.S. 47:1514, the Secretary has administratively extended the filing of various tax returns and their associated payments (*See* Revenue Information Bulletins 20-008 and 009). However, declaration payments required by LA R.S. 47:116 *et seq.* are neither “returns” nor the “payment of tax due” as reflected on “returns”. Thus the general authority to extend a return and payment of tax due is inapplicable to declaration payments.

⁷ LA R.S. 47:118(I)

⁸ LA R.S. 47:118(I)(1)

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their 2020 declaration payments on the prior year's income or liability. Therefore, in consideration of these extraordinary circumstances, the Department shall automatically waive any UET penalty otherwise due for the April 15 and June 15, 2020 declaration payments provided the following criteria are met:

1. The taxpayer pays the April 15 and June 15, 2020, declaration payments timely.
2. The amount paid on the April 15, 2020, declaration payment is at least 90% of the amount paid on the April 15, 2019, declaration payment.
3. The amount paid on the June 15, 2020, declaration payment is at least 90% of the amount paid on the June 17, 2019, declaration payment.

For fiscal year filers, the same UET penalty waiver is granted; fiscal year filers must follow the same criteria provided above but substitute the first and second declaration payment due dates as appropriate based on the filers' taxable year.

Late Filed Elections for Pass-Through Entity Tax

Overview of Act 442 Election

Act 442 of the 2019 Regular Session authorizes a voluntary election by any S corporation, or entity taxed as a partnership for federal income tax purposes, to pay tax on its income.⁹ For the 2019 tax year, the election must be filed by April 15, 2020. However, a late filed election may be treated as timely if reasonable cause exists for the failure to make the election timely.¹⁰

Ruling

Any late filed election for the 2019 tax year filed on or after April 16, 2020, but before July 16, 2020, shall be considered filed timely in light of the COVID-19 public health emergency and in consideration of existing filing and payments extensions provided by LDR RIB 20-008.

For fiscal year filers with an election due between March 1 and May 30, 2020, any late filed election for the 2019 tax year filed on or after the fifteenth day of the fourth month after the close of the taxable year but before the fifteenth day of the seventh month after the close of the taxable year shall be considered filed timely in light of the COVID-19 public health emergency and in consideration of existing filing and payments extensions provided by RIB 20-008.

⁹ LA R.S. 47:287.732.2(A)(1)

¹⁰ LA R.S. 47:287.732.2(A)(2)

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Extension of Time to Transfer Credits (2019 Tax Period Only)

Overview of Time Limitations to Transfer Credits and Proclamation No. JBE 2020-27

Louisiana utilizes a variety of tax credits that offset income and corporation franchise taxes to incentivize taxpayers to engage in certain behaviors such as create jobs, invest in certain business sectors, and donate to particular organizations or causes. These tax credits have different characteristics: refundable, nonrefundable, transferable, and nontransferable. Transferable credits are sold or exchanged between the person who earns the credit and a taxpayer who purchases and utilizes the credit on a Louisiana income or franchise tax return.

In order for a taxpayer who purchases a credit to use the credit on a return, Louisiana law¹¹ requires that either (1) the effective date of the transfer of the tax credit or (2) the execution of a binding agreement to transfer the tax credit must occur on or before the due date of the return, without regard to any extension granted. Title 29¹² also grants the governor the authority in times of emergency or disasters to issue executive orders, proclamations, and regulations and to amend and rescind them related to the emergency or disaster. The statute also provides that any executive order, proclamation, or regulation issued during an emergency shall have the force and effect of law.

Based upon general credits provisions of the applicable statute¹³, there exists no ability to extend the time for either the effective date of the transfer of a tax credit or the execution of a binding agreement to transfer the tax credit beyond the due date of the return for a taxable year. However, on March 13, 2020, Governor John Bel Edwards issued Proclamation JBE 2020-27 (the "Proclamation") which provided additional measures for the COVID-19 public health emergency. Provisions¹⁴ of the Proclamation state that any state department, agency, or political subdivision is allowed to extend any non-essential deadline for a period of no longer than 30 days if the extension is deemed necessary to respond to the COVID-19 threat. The Proclamation also provides that the state of emergency due to COVID-19 extends until April 9, 2020, unless terminated or extended.

Ruling

Based on the existing public health emergency, the Department finds that the deadline to transfer a credit is a non-essential deadline and an extension is necessary to respond to the COVID-19 threat. Therefore, in consideration thereof, the Department extends the deadline

¹¹ LA R.S. 47:1675(H)(1)(e)

¹² LA R.S. 29:724(A)

¹³ LA R.S. 47:1675(H)(1)(e)

¹⁴ Section 4 of Proclamation JBE 2020-27

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for a credit transfer or for the execution of a binding agreement to transfer such credit by 30 days for income and franchise tax returns with an original due date between March 1 and May 30, 2020.¹⁵

For 2019 calendar year filers of returns for individual income tax, corporation income, composite partnership income tax and fiduciary income tax, the extended deadline is June 15, 2020. For fiscal year filers with an income or franchise tax return filing and payment due date between March 1 and May 30, 2020, the extended deadline is thirty days from the original due date of the return.

Summary

In consideration of the public health emergency and general stay-at-home order, the Department rules as follows:

1. The Department shall automatically waive any UET penalty otherwise due for the April 15 and June 15, 2020 declaration payments provided the following criteria are met:
 - a. The taxpayer pays the April 15 and June 15, 2020, declaration payments timely.
 - b. The amount paid on the April 15, 2020, declaration payment is at least 90% of the amount paid on the April 15, 2019, declaration payment.
 - c. The amount paid on the June 15, 2020, declaration payment is at least 90% of the amount paid on the June 17, 2019, declaration payment.

Corresponding relief is granted for fiscal year filers.

2. The Department shall consider any late filed Act 442 election for the 2019 tax year filed on or after April 16, 2020, but before July 16, 2020, as filed timely. Corresponding relief is granted for fiscal year filers.
3. The Department extends the deadline for a credit transfer or for the execution of a binding agreement to transfer such credit for 2019 income and franchise returns by 30 days. Corresponding relief is granted for fiscal year filers.

¹⁵ The credit transfer must include any applicable statutorily mandated transfer fee. This fee remains due at the time of submission of the credit transfer documentation.

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