

Louisiana Department of Revenue Tax Practitioner Issues Questions and Answers (01/11)

- I. RIB #10-017 and the Capital Gains Deduction provided for in LA R.S. 47:293(9)(a)(xvii) and 47:293(10). Income from net capital gains, which shall be limited to gains recognized and treated for Federal income tax purposes as arising from the sale or exchange of an equity interest in, or substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in this state.
- A. RIB 10-017 explains the exclusion for capital gains as an individual income tax deduction. Will the same deduction be allowed for fiduciary income tax?
No. R.S. 47:293 was the only statute amended. It falls under Part III Provisions for Individuals. See 47:291
- B. Does the deduction apply to a sale or exchange of an equity interest in a Louisiana LLC or Louisiana partnership that owns and manages real property in Louisiana?
Yes. "Other business organization" does include LLC's and partnerships that own and manage real property.
- C. Does the deduction apply to a sale of an individual's interest in a joint venture that owns and manages real property in Louisiana? (The joint venture is not a partnership or LLC).
Yes. "The sale or exchange of an equity interest in or substantially all of the assets," means either one of the two kinds of sales. Yes. "Other business organization" does include joint ventures.
- D. Are 2010 collections of principal (reported on the 2010 Federal return) on an installment sale entered into before 2010 excludible from LA taxable income under Louisiana Revised Statutes 47:293(9)(a)(xvii) and 47:293(10)?
"Collections of principal" are not deductible. Gains from installment sales that are reported on Federal form Schedule D may be deductible subject to "substantially all of the assets, LA commercial domicile, non publicly traded" criteria and the "net short term capital gains, net long term capital gains, and net capital gains" limitations stated in the RIB. Note: Lines 4 and 11 of Schedule D include gains from Form 6252, titled, "Installment Sale Income."
- E. What if a taxpayer sold his equity interest in a limited liability company in 2010 and some of the gain is capital gain and some of the gain is ordinary income? (The ordinary income would result from depreciation recapture, for example). The capital gain from the sale is reported on the taxpayer's Federal Schedule D, but the ordinary income resulting from the sale of the equity business is NOT reported on Schedule D. It is reported on Form 4797. *Can the taxpayer get a deduction for the ordinary*

income resulting from the sale of the equity business that is reported on Federal Form 4797 and not Federal Schedule D?

No. The deduction is specifically limited to “net capital gains,” and RIB No. 10-017 defines “Net Capital Gains” as the amount reported as capital gains on the Federal Form 1040.

- F. How to calculate the gain on the sale of a business that would be exempt from Louisiana taxes.

The qualifying gain would be calculated, first based on Federal guidelines for calculating a short-term or long-term gain. Because of the netting of gains with losses on the Federal Schedule D, certain calculations and limitations are necessary to determine the amount of the qualifying gains that are included in the Federal adjusted gross income. The deduction is the smaller amount of Net Capital Gains reported on Federal Form 1040, line 13, or the following sum:

- 1) Smaller amount of total qualifying short-term gains or net short-term gains from line 7 of Schedule D of Federal Form 1040.**
- 2) Plus the smaller amount of total qualifying long-term gains or net long-term gains from line 15 of Schedule D of Federal Form 1040.**
- 3) The Gain must be included in Federal Adjusted Gross Income for the deduction to apply.**

- II. RIB #10-19: Amount of Excess Federal Itemized Deductions Allowed on Louisiana Individual Income Tax Returns

- A. There seems to be confusion if this only applies to NOL's which we think prompted this RIB or does it apply to any of our taxpayers where itemized deductions were limited in the past by the Federal laws. There is no phase out of itemized deductions on the Federal returns for 2010 but this could affect open years.

When a taxpayer has more Federal itemized deductions than they have Federal adjusted gross income, the taxpayer is allowed to offset their Federal adjusted gross income by the Federal itemized deductions until their Federal taxable income is zero. Taxpayers have questioned whether Louisiana's statutory use of the term Federal itemized deductions means the total amount claimed on the taxpayer's Federal income tax return Schedule A or the amount allowed by the IRS to offset the taxpayer's Federal adjusted gross income and Federal taxable income to zero. The term “excess Federal itemized personal deductions” is defined as the amount by which the Federal itemized personal deductions exceed the amount of Federal standard deduction for the taxpayer's filing status. LA R.S. 47:239(3) does not limit taxpayers to the amount of itemized deductions actually claimed on their Federal return. Therefore, taxpayers may claim the total amount of their itemized deductions from the Federal Form Schedule A on line 8A of the IT-540 even if they were not able to claim the entire amount on their Federal return.

- B. I am interested in the support for the total deduction for Federal itemized deductions cited in RIB No. 10-019. The Louisiana Individual Income tax return instructions say to claim the amount reported on the Schedule A line of the Form 1040. Although the instructions are not “law”, they clearly reference the reduced amount of itemized deductions created by the “high income” haircut. Can you provide where this was clarified to include all itemized deductions whether or not they actually get deducted?

This is referring to the limits on itemized deductions for high income groups in past years. Taxpayers whose AGI are over a certain amount, are limited for Federal purposes in the amount of itemized deductions they are allowed to claim; but the reduction is completed, and the reduced itemized deduction amount is what is entered on Line 29, Schedule A, and the IT-540 captures this limited amount on line 8A.

For 2010 when filing their Federal returns the higher income groups will no longer lose part of their personal exemptions and itemized deductions based on their adjusted gross income.

III. Electronic Filing of Extensions and Electronic Payments

- A. I have a question concerning the Notices of Intent from the LDR concerning electronic filing of individual and corporate extensions. Do you know if the LDR will require that we as preparers have a signed authorization from the client authorizing us to electronically file the extensions similar to IRS Form 8878? We as a firm use the Practitioner PIN method and are required by the IRS to complete Form 8878 if we electronically file Form 4868 for clients.

Although the law and regulations do not require a similar form, LDR may want to consider creating its own form. For the moment, the recommendation is that the CPAs use the Federal form for both Louisiana and the IRS, but keep it on file rather than faxing it to us.”

There is also the intent to put the Department’s position in a RIB format as soon as the position is official.

The DOR has not made final decisions at this time concerning electronic filing of extensions. The concerns of tax practitioners are being evaluated.

IV. Late Filing of Returns

- A. Please note that LDR still issues penalty and interest on returns that were postmarked on the due date. They continue to treat the date of receipt as the filing date. Any way we can fix this. In addition, they continue to take 45 to 60 days to deposit the check.

We do not capture the postmark date at this time, because it isn’t efficient to capture. Postmarks don’t image well, and many of them are not readable.

Some barcodes are even in barcode format that isn’t even readable to a human. We use the date received as the filing date for administrative

purposes. Everything received within an established time window after the due date is presumed to have been mailed/filed timely, and no interest or penalty is assessed. The window subsequent to the due date is to allow for mail transit time. On occasion, if the mail transit time is extended, it can exceed that window and generate a late filing penalty. That penalty is ALWAYS waived if the taxpayer can provide documentation as to when it was mailed.”

Under normal circumstances it does not take 45 to 60 days to deposit a check. However, the following are guidelines a taxpayer can use that will reduce processing time:

- **Use black or blue ink on the check and any supporting documents, including a return, voucher, etc.**
- **Send a single check in payment of a single return. For example, don't send in one check in payment of several returns or vice versa.**
- **Make sure all payments are accompanied by an associated payment instrument (voucher, return, etc.) Don't send “check-only” transactions.”**
- **If using a business checking account to pay a personal withholding or income tax liability, be sure to include the correct LA account number.**

V. Bulk Extensions

- A. Requirements: The firm must have an EFIN number registered with the LA DOR or a LA Account Number registered with DOR. You must also have a LDR user account. You will need business information that matches LDR information regarding your business and the last sales tax amount paid.**
- B. Procedures: When uploading data: For Individual Income Tax use one (1) SSN only per line, and for Corporation Income & Franchise Tax use one (1) Louisiana state ID number only. Do not include any other information.**
- C. All past issues have been addressed.**
- D. When bulk extensions are entered via the web, the submitter (preparer) will be given a confirmation page after submission indicating which records were successfully submitted. The entities themselves are not currently notified.**

VI. Citizen's Refund Tips:

- A. File only one time per year. Include multiple amounts in one filing. Use either the 540INS or 540. Not both.**
- B. Paper filers need to include the Insurance Declaration Page with return.**
- C. E-Filers need to retain Insurance Declaration Page. Option to FAX documentation via the fax e-file number if large or unusual amount.**

VII. Miscellaneous

- A. Requests for Waiver of Penalties for Delinquency and/or Underpayment must be made using Form R-20128. All tax and interest must be paid before the penalty waiver will be considered.**
- B. Non-resident partners of a partnership will need to file a non-resident individual income tax return to claim Ad Valorem Credit.**

- C. When a taxpayer is assessed based on an estimate, due to the failure to file a tax return, the best solution is to as soon as possible file a tax return for that period. If the assessment is due to a Federal RAR, file an amended return. The department will not be able to give out details due to an IRS audit adjustment. The taxpayer will need to obtain a transcript from the IRS that details the nature of the audit adjustment.
- D. Never include a copy of an original return when filing an amended return. File the amended return as if it were the original return to be filed for the period. A schedule attached helps when a return is reviewed, but it will not be read by the system when the return is initially processed.
- E. The primary delay of refunds is due to returns stopped for manual review.
 - a. 2% suspend for name problems, SSN errors or other linking errors related to changes in filing status.
 - b. Less than 2% stop for math errors, conflicts with third party data or compliance reviews.
 - c. Most common errors and reviews
 - i. Difference in estimated payments and ccf reported on return compared to LDR records.
 - ii. Software errors.
 - iii. Large refunds.
 - iv. Amended returns filled out incorrectly.
 - v. "Other" claimed on Schedule E, F or G.

F. NOL Carrybacks:

For individual taxpayers in LA, the starting point for determining LA tax table income is the taxpayer's Federal adjusted gross income. All additions or subtractions from Federal adjusted gross income that are used in determining Louisiana tax table income are specifically set forth in La. Rev. Stat. Ann. 47:293. Because there are no modifications in La. Rev. Stat. Ann. 47:293 for net operating losses, the five-year net operating loss carryback period, if allowed for Federal purposes, will be followed for Louisiana individual income tax purposes.

The starting point for LA corporate income taxpayers is Federal gross income. Deductions from gross income allowed by Federal law are allowed for LA purposes unless a specific modification is provided for in La. Rev. Stat. Ann. 47:287.73. Under La. Rev. Stat. Ann. 47:287.73(B)(1), Federal net operating losses are specifically disallowed. LA's net operating loss deduction is found in La. Rev. Stat. Ann. 47:287.86, which does not tie to the Federal carryback provisions, but provides for a three-year carryback, regardless of the allowed Federal period.

- G. Use of the tax practitioner mailboxes via the department's web site is encouraged. If there is a time sensitive matter, please email the department's tax practitioner liaison, Barbara Reeves, at Barbara.reeves@la.gov.