

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Fresh Start Proper Worker Classification Initiative (LAC 61:III.2301)

Under the authority of R.S. 47:1511 and 1576.3, and in accordance with the Administrative Procedure Act, R.S. 49:950 *et seq.*, the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to enact LAC 61:III.2301, to provide guidance on the Fresh Start Proper Worker Classification Initiative adopted by Act 406 of the 2022 Regular Session.

R.S. 47:1576.3 authorizes the secretary to promulgate rules for the administration of the Fresh Start Proper Worker Classification Initiative. Additionally, R.S. 47:1511 authorizes the secretary to prescribe rules and regulations to carry out the purposes of any statutes or provisions included under the secretary's authority. R.S. 47:1576.3(B) authorizes certain employers who have been treating workers as independent contractors to voluntarily reclassify a class or classes of workers as employees for future periods without being held liable for withholding tax, interest or penalties for prior periods. The purpose of this rule is to administer and implement the voluntary worker classification program enacted by Act 406 of the 2022 Regular Session. The rule provides guidance regarding the necessary qualifications to participate in the program and the conditions associated with an accepted application.

### Title 61

### REVENUE AND TAXATION

#### Part III. Administrative and Miscellaneous Provisions

#### Chapter 23. Fresh Start Proper Worker Classification Initiative

##### §2301 Fresh Start Program

A. Definitions. For purposes of this Section and the administration of the Fresh Start Proper Worker Classification Initiative (“Fresh Start Program”) set forth in R.S. 47:1576.3, the following terms have the meanings ascribed to them.

*IRS Form 1099-MISC* — an information return required to be filed with the Internal Revenue Service, in accordance with Section 6041(a) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, to report nonemployee compensation paid to a service provider prior to January 1, 2020.

*IRS Form 1099-NEC* — an information return required to be filed with the Internal Revenue Service, in accordance with Section 6041A(a) of the Internal Revenue Code of 1986, as amended, and the regulations adopted thereunder, to report nonemployee compensation paid to a service provider on or after January 1, 2020 or any equivalent form required to be filed by the Internal Revenue Service.

*Reclassified Employees* — a worker, or a class or classes of workers who were consistently treated as independent contractors or other non-employees by the taxpayer for the previous three years and for which the Taxpayer filed all required Forms 1099-NEC, or Forms 1099-MISC,

with the Internal Revenue Service, consistent with the nonemployee treatment, who will be treated as employees for future periods.

*Taxpayer*—the person seeking to voluntarily reclassify a worker, or a class or classes of workers through the Fresh Start Program

B. Application Requirements. Taxpayers applying for relief under the Fresh Start Program shall comply with the following procedures.

1. Applications shall be submitted electronically on forms provided by the secretary between January 1, 2023 and December 31, 2023.

2. An application shall include:

a. A list of each worker that the applicant seeks to voluntarily reclassify as an employee for future tax periods under the Fresh Start Program, including the worker's name, social security number, date of hire and class.

b. Copies of the IRS Forms 1099-NEC, or IRS Forms 1099-MISC, that were filed with the IRS for the previous three years for each of the workers for which reclassification is sought under the Fresh Start Program.

c. Proof of workers' compensation coverage for the reclassified employees. Coverage shall have an effective date for the reclassified employees of no earlier than 60 days prior to and no later than the date the application is submitted.

d. Any other information requested by the Department of Revenue. Additional information shall be submitted within 45 calendar days of the date of written request. Failure to provide the additional information within 45 days may result in denial of the application; however, reasonable extensions may be granted.

3. If a taxpayer does not complete the application in its entirety, the Department of Revenue shall notify the applicant of the deficiencies by mail. The taxpayer shall have 45 calendar days from the date of the notification to correct the deficiencies. If the taxpayer fails to respond during the 45 day period, the application shall be denied.

C. Eligibility.

1. A taxpayer is not required to reclassify all of its workers who are currently treated as nonemployees, but shall reclassify all workers within the same class.

2. R.S. 47:1576.3(F) provides that a taxpayer is not eligible for relief if the taxpayer or a member of its affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code is currently under an employment, withholding, or unemployment tax audit by the Internal Revenue Service, United States Department of Labor, or a state government entity. For purposes of this exclusion, a taxpayer that has been contacted by the auditing agency to initiate an audit concerning the classification of workers is considered to be currently under audit.

D. Determination of Ineligibility

1. If the Department of Revenue determines that a taxpayer is ineligible to participate in the Fresh Start Program, the department shall send written notice to the taxpayer within 30 days of such determination.

2. Ineligible taxpayers are not entitled to any relief under the Fresh Start Program.

F. Closing Agreement.

1. R.S. 47:1576.3(E)(2) states that acceptance of a taxpayer's application constitutes a joint closing agreement between the taxpayer and the Department of Revenue.

2. Upon acceptance of an application for participation in the Fresh Start Program, the taxpayer agrees to the following conditions which shall be deemed part of the joint closing agreement:

a. Taxpayer shall timely report and remit all withholding taxes for the reclassified employees, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

b. Taxpayer shall timely remit all unemployment insurance contributions for the reclassified employees, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

c. Taxpayer shall maintain workers compensation coverage for the reclassified workers, or class or classes of workers for all tax periods beginning with and subsequent to the date on which the taxpayer is accepted for participation in the Fresh Start Program and for a period of three years thereafter.

3. The terms of the closing agreement shall be valid, binding, and enforceable by and against all parties, including their transferees, successors, and assignees.

4. The secretary reserves the right to void the closing agreement if the applicant taxpayer fails to comply with any of the conditions outlined in the agreement.

#### **Family Impact Statement**

The proposed rule has no known or foreseeable impact on family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the proposed rule has no known or foreseeable impact on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
4. The behavior and personal responsibility of children.
5. The ability of the family or a local government to perform this function.

#### **Poverty Impact Statement**

The proposed rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Impact Analysis**

The proposed rule has no known or foreseeable measurable impact on small businesses as described in R.S. 49:978.5.

#### **Provider Impact Statement**

The proposed rule has no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Brandea Averett, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., November 27, 2022.

## Public Hearing

A public hearing will be held on November 28, 2022 at 10:00 AM in the LaBelle located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Kevin J. Richard, CPA  
Secretary of Revenue

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULE  
RULE TITLE: Fresh Start Proper Worker Classification Initiative

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule provides procedures and requirements for applying for relief under the Fresh Start Proper Worker Classification Initiative established by Act 406 of the 2022 Regular Session. The program allows certain employers who have misclassified employees to voluntarily reclassify those employees in exchange for relief from withholding tax, interest and penalties that may have been due for prior periods. The proposed rule will not result in material implementation costs or savings to state or local governmental units. To the extent the Department incurs additional costs, they will be absorbed in the existing budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no direct impact on annual state or local revenue collections by the Department of Revenue.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule will have minimal direct economic impact on directly affected persons, small businesses, or non-governmental groups. Affected businesses are employers who have been misclassifying employees as independent contractors and consistently treating them as independent contractors. Additional paperwork will be required for employers applying for relief through the Fresh Start Program initiative, but the costs are not expected to be material. Electronic filing is also required, which is expected to be accommodated under normal business operations for most. Any business obtaining relief provided by the program will avoid withholdings, penalties and interest to the extent the program allows.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule does not affect competition or employment.

Kevin J. Richard, CPA  
Secretary of Revenue

Alan Boxberger  
Interim Fiscal Officer