

RULE

Department of Revenue Policy Services Division

Issuance and Cancellation of a Lien; Fees (LAC 61:I.5302)

Under the authority of R.S. 47:1511, R.S. 47:1577 and R.S. 47: 1578 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.5302, the rules and regulations governing the issuance of liens and the fees associated with recording and canceling liens.

The Secretary of Revenue is authorized by R.S. 47:1511, R.S. 47:1577 and R.S. 47:1578 to adopt reasonable rules and regulations relating to the issuance and cancellation of tax liens and the fees assessed to taxpayers for its recordation and cancellation. Because a lien may be filed in the parish mortgage records any time after a tax becomes due, whether assessed or not, and regardless of whether or not then payable, LAC 61:I.5302 establishes guidelines for filing and canceling a lien, as well as the amount to assess taxpayers for its recordation and cancellation.

Title 61

REVENUE AND TAXATION

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

Chapter 53. Miscellaneous Fees

§5302. Issuance and Cancellation of a Lien; Fees

A. A tax lien shall be filed on liabilities when the tax due involves a jeopardy assessment pursuant to R.S. 47:1566.

B. A tax lien may be filed on liabilities when any of the following conditions exist:

1. when liabilities reach warrant for distraint status;
2. information is received indicating the taxpayer is on the verge of bankruptcy;
3. a corporation is in the process of dissolving or withdrawing from the state;
4. the filing history of the taxpayer indicates an effort to avoid the payment of taxes;
5. information indicates that the taxpayer is in the process of selling movable or immovable property;
6. warrants are determined currently not collectible; or
7. a formal installment agreement has been negotiated with the taxpayer.

C. The secretary may authorize the release of a lien subject to the following terms and conditions:

1. when the tax, penalty, fees, or interest secured by a recorded lien have been paid;
2. when the taxpayer executes a surety bond in favor of the secretary in an amount not less than one and one-half times the amount of the obligation due, including penalties, interest, and other costs incurred. The surety bond must be issued by a surety company qualified to do business in Louisiana;
3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the released property. This provision is subject to approval by the Board of Tax Appeals;

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the state of Louisiana's interest in the part of the property released. This provision is subject to approval by the Board of Tax Appeals.

D. The secretary with the approval of two assistant secretaries and the Board of Tax Appeals may compromise any judgments for taxes of five hundred thousand dollars or less exclusive of interest and penalty, including assessments for such amounts that are equivalent to judgments, when any of the following conditions exist:

1. there is serious doubt as to the collectibility of the outstanding judgment.
2. there is serious doubt as to the taxpayer's liability for the outstanding judgment.
3. the administration and collection costs involved would exceed the amount of the outstanding liability.

E. The secretary may, with the approval of the Board of Tax Appeals, upon making a record of his reasons, waive, reduce, or compromise individual income tax, penalties, interest, or other amounts.

F. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1577, and R.S. 47: 1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:000 (February 2002).

Cynthia Bridges
Secretary

0202#041