

POTPOURRI

Department of Economic Development  
Office of Business Development

Notice of Public Hearing—Substantive Changes to Proposed  
Rule: Industrial Ad Valorem Tax Exemption Program  
(LAC 13:I.Chapter 5)

- A. adoption (pre-placement to termination of parental rights);
- B. child protective services including assessment, evaluation, social work intervention, shelter care, counseling and referrals for child abuse/neglect reports;
- C. family services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups);
- D. foster care/residential care services (foster, residential care, and treatment on a 24-hour basis).

Definitions for the proposed services are set forth in the intended use report.

Persons eligible for SSBG funded services include:

- A. persons WRI, who are in need of adoption services, child protection, family services, and foster care/residential services;
- B. individuals WRI who are recipients of Title IV-E adoption assistance;
- C. recipients of supplemental security income (SSI) and recipients of Temporary Assistance for Needy Families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients;
- D. low-income persons (income eligible) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$2050 would qualify as income eligible for services;
- E. persons receiving title XIX (Medicaid) benefits and certain Medicaid applicants identified in the proposed plan as eligible groups.

The post expenditure report for the SSBG program for SFY 2016 is included in the SSBG intended use report for SFY 2017-2018. Free copies are available by telephone request to (225) 342-341-7319 or by writing to the Administrator, Child Welfare Section, P.O. Box 3318, Baton Rouge, LA 70821.

The report is available for public review online at: <http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=131>, then select the 2016-2017 SSBG link. Inquiries and comments on the plan may be submitted in writing to the DCFS, Attention Administrator, P.O. Box 3318, Baton Rouge, LA 70821. The deadline for receipt of written comments is May 3, 2017 at 4 p.m.

All interested persons will have the opportunity to provide comments and/or recommendations on the plan, orally or in writing, at a public hearing scheduled for May 3, 2017 at 11 a.m. in Room 1-129 of the Iberville Building located at 627 North Fourth Street, Baton Rouge. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters  
Secretary

1703#012

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to LAC 13:I.501, 502, 503, and 505, which were originally noticed in the November 20, 2016, issue of the *Louisiana Register*. The department is not making any changes to the Notice of Intent as published in the November 20, 2016 issue of the *Louisiana Register* for LAC 13:I.507-537.

The department has made the following substantive changes to address comments received. These changes clarify that:

- both Executive Orders JBE 16-26 and 16-73 are applicable to these rules changes;
- only those applications with advance notifications filed after June 24, 2016 are subject to the rule changes;
- the definition of manufacturing is to include mass production as well as custom production that utilizes manual labor;
- the parish governing authority and municipality by resolution speak on behalf of themselves as well as other bodies in their jurisdiction that receive millages;
- failure of a local governing entity to issue a resolution or letter within 120 day of a business' written request will result in the business receiving an exemption from the silent entity equal to the mathematical average of the other parish entities that did respond and issue a resolution or letter;

LED shall receive a copy of the business' written request from the local governing entity to issue a resolution or letter and LED shall post those requests on its website; and

Renewal of miscellaneous capital addition contracts granted in compliance with the governor's executive orders shall be treated in accordance with prior rules.

In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulations.

The following changes are to be incorporated into the Notice of Intent.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§501. Statement of Purpose

A. New Rules

1. These rules amend and restate prior rules and upon adoption are to implement two important policies for the industrial tax exemption property tax exemption. The first is

as a competitive incentive for job creation and under compelling circumstances, job retention. The second is to provide for input from local parish and municipal governments, school boards and sheriffs as to the extent of, and other terms and conditions for the industrial tax exemption.

2. On all projects, applicant manufacturers are to demonstrate a genuine commitment to investing in the communities in which they operate, and a genuine commitment to creating and retaining jobs in those communities. These are the expectations for the program's future, and the board will continue to operate it in a way that makes Louisiana competitive with other states in securing good jobs for our citizens while giving local governments a voice in their taxation. These rules are to be interpreted in a manner so as to promote these goals.

B. Applicability of Prior Rules. Just as the board is promoting job growth and economic development and extending fairness to communities, the board is promoting fairness to manufacturers who have acted in accordance with prior rules. Contracts for the industrial property tax exemption and the renewal of the exemption and projects found to be pending as defined by Executive Orders JBE 16-26 and JBE 16-73 are to be treated fairly under the rules that were in place at the time of the contracts and prior to the new rules. Louisiana honors its commitments and the rules governing existing contracts and applications not subject to the new rules are to be interpreted in order to promote fairness and commitment. Therefore, only those applications with an advance notification form filed after June 24, 2016, are subject to the 2017 rules changes.

#### C. Going Forward

1. Louisiana values its manufacturers and their contributions to its economy. The board's policies going forward are to provide all a seat at the table to determine the best investment outcome for our industries and our communities.

2. All rules in this chapter are intended to align with the above purpose while providing a process that balances accountability with reasonable administrative burden for state and local government and applicants.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 43:

#### §502. Definitions

##### *Addition to a Manufacturing Establishment—*

1.a. a capital expenditure for property that would meet the standard of a new manufacturing establishment if the addition were treated as a stand-alone establishment;

b. a capital expenditure for property that is directly related to the manufacturing operations of an existing manufacturing establishment; or

c. an installation or physical change made to a manufacturing establishment that increases its value, utility or competitiveness.

2. Maintenance capital, environmentally required capital upgrades, and replacement parts, except those replacements required in the rehabilitation or restoration of an establishment, to conserve as nearly, and as long as possible, original condition, shall not qualify as an addition to a manufacturing establishment.

3. Expenses associated with the rehabilitation or restoration of an establishment as provided for in Section 511 shall be included as an addition to a manufacturing establishment.

*Beginning of Construction*—the first day on which foundations are started or, where foundations are unnecessary, the first day on which installations of the manufacturing establishment begins.

*Board*—Board of Commerce and Industry.

*Capital Expenditure*—the cost associated with a new manufacturing establishment or an addition to an existing manufacturing establishment, including the purchasing or improving real property and tangible personal property, whose useful life exceeds one year and which is used in the conduct of business.

*Environmentally Required Capital Upgrades*—upgrades required by any state or federal governmental agency in order to avoid fines, closures or other penalty.

*Establishment*—an economic unit at a single physical location.

*Integral*—required to make whole the product being produced.

*Job*—positions of employment that are:

1. new (not previously existing in the state) or retained;

2. permanent (without specific term);

3. full-time (working 30 or more hours per week);

4. employed directly, by an affiliate or through contract labor;

5. based at the manufacturing establishment;

6. filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment; and

7. any others terms of employment as negotiated in the Exhibit A or Exhibit B.

*LED*—Louisiana Economic Development.

*Local Governmental Entity*—parish governing authority, school board, sheriff, and any municipality in which the manufacturing establishment is or will be located.

*Maintenance Capital*—costs incurred to conserve as nearly as possible the original condition.

*Manufacturer*—a person or business who engages in manufacturing at a manufacturing establishment.

*Manufacturing*—working raw materials by means of mass or custom production, including fabrication, applying manual labor or machinery into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. The resulting products must be "suitable for use" as manufactured products that are placed into commerce for sale or sold for use as a component of another product to be placed, and placed into commerce for sale.

*Obsolescence*—the inadequacy, disuse, outdated or non-functionality of facilities, infrastructure, equipment or product technologies due to the effects of time, decay, changing market conditions, invention and adoption of new product technologies or changing consumer demands.

*Qualified Disaster*—

1. a disaster which results from:

a. an act of terror directed against the United States or any of its allies; or

b. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises

2. any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the president of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;

3. a disaster which is determined by an applicable federal, state, or local authority (as determined by the secretary) to warrant assistance from the federal state or local government or agency of instrumentality thereof; or

4. any other extraordinary event that destroys or renders all or a portion of the manufacturing establishment inoperable

*Rehabilitation*—the extensive renovation of a building or project that is intended to cure obsolescence or to repurpose a facility.

*Restoration*—repairs to bring a building or structure to at least its original form or an improved condition.

*Secretary*—Secretary of Louisiana Economic Development.

*Site*—One or more contiguous parcels of land which are under the control of the manufacturing establishment or which contains certain assets of the manufacturing establishment.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 43:

**§503. Advance Notification; Application**

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities on all projects for tax exemption except as provided in §505.A and B of these rules. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification. The estimated project ending date as stated on the advance notification may be amended by the applicant if the amendment is made prior to the estimated project ending date.

B. All financial incentive programs for a given project shall be filed at the same time and on the same advance notification. The applicable advance notification fee for each program for which the applicant anticipates applying shall be submitted with the advance notification.

C. An application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;

2. the deadline for filing the application may be extended pursuant to §523;

3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the project completion report

and affidavit of final cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

D. In order to receive the board's approval, applications with advance notifications filed after June 24, 2016, shall contain both of the following:

1. an exhibit "A" consisting of a fully executed cooperative endeavor agreement between the state, Louisiana Economic Development and the applicant specifying the terms and conditions of the granting of the exemption contract;

a. the terms and conditions of the exhibit "A" shall include the following:

i. either number of jobs and payroll to be created at the project site or the number of jobs and payroll to be retained at the project site where applicable;

ii. the term of the exemption contract which shall be for up to, but no more than five years and may provide for an ad valorem exemption of up to 100 percent and terms for renewal may be included provided that the renewal of the contract shall be for a period up to, but no more than three years and may provide for an ad valorem tax exemption of up to, but no more than 80 percent;

iii. the percentage of property eligible for the exemption;

iv. any penalty provisions for failure to create the requisite number of jobs or payroll at the project site, including but not limited to, a reduction in term, reduction in percentage of exemption, or termination of the exemption; and

v. a statement of return on investment (ROI) as determined by the secretary;

2. an exhibit "B" consisting of resolutions adopted by the parish governing authority (speaking on behalf of the parish and all parish bodies who are located outside the boundary of the affected municipality, where applicable, who receive a millage), the school board, and any municipality (speaking on behalf of the municipality and all municipal bodies who receive a millage) and a letter from the sheriff approving the project in which the manufacturing establishment is or will be located signifying whether each of these authorities is in favor of the project;

a. exhibit "B" shall include provisions addressing the following:

i. the number of jobs and payroll to be created at the project site required by the local governmental entity for approval of the exemption;

ii. the term of the exemption contract approved by the local governmental entity; and

iii. the percentage of property eligible for the exemption approved by the local governmental entity;

b. failure of the parish governing authority, the school board, or the municipality to issue a resolution or failure of the Sheriff to issue a letter within 120 days of a business' written request for such resolution shall result in an exemption equal to the mathematical average of the term and percentage exemption granted by the other local governing bodies who have issued a resolution or letter;

i. the business shall copy LED on its written request to the parish governing authority, school board and municipality for the required resolutions and its written request to the sheriff for the required letter;

ii. LED shall post a copy of the business' written request to the parish governing authority, school board and municipality for the required resolutions and the business' written request to the sheriff for the required letter no later than three business days after receipt of the request;

c. LED will provide guidance to local governmental entities as to suggested alternatives as it relates parameters for job creation, payroll, percentage of exemption and length of contract;

3. the board shall consider the information collected and the provisions of exhibits "A" and "B" in determining whether to approve the contract for exemption and the renewal thereof;

4. if the terms of exhibit "A" and exhibit "B" as it relates to the term of the exemption, and the percentage of property tax eligible for exemption are not the same, the provisions of exhibit "B" shall prevail.

E.1. Applications which provide for a new manufacturing establishment or which provide for an addition to a manufacturing establishment with the creation of new jobs or a compelling reason for the retention of existing jobs shall be favored by the board.

2. In determining whether a company has presented a compelling reason for the retention of existing jobs, the following situations may be considered:

a. to prevent relocation to another state or country;

b. to provide an advantage for investment from a company with multi-state operations with an established competitive capital project program;

c. to employ best practice or innovative, state of the art technology for the establishment's industry;

d. to increase maximum capacity or efficiency; or

e. to provide the state a competitive advantage as determined by the secretary or by the board.

F. An application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

G. OBD reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

H. If the application is submitted after the filing deadline, the term of exemption available under an initial contract and renewal thereof shall be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction up to the maximum remaining term. The board may impose any other penalty for late filing that it deems appropriate.

I. The department will provide a copy of the application and all relative information to the Louisiana Department of Revenue (LDR) for review. LDR may require additional information from the applicant. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

J. Eligibility of the applicant and the property for the exemption, including whether the activities at the site meet

the definition of manufacturing, will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered by the Board of Commerce and Industry. The property exempted may be increased or decreased based upon review of the application, project completion report or affidavit of final cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the project completion report and affidavit of final cost. If the applicant fails to timely file the project completion report or affidavit of final cost the board may, after notice to the applicant, terminate the contract.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015), LR 43:

#### **§505. Miscellaneous Capital Additions**

A. The renewal of miscellaneous capital addition contracts approved in accordance with JBE 16-26 and 16-73 shall be treated in accordance with prior rules.

B. Miscellaneous capital additions which had pending contractual applications on June 24, 2016, and which provide for new jobs at the completed manufacturing establishment shall be considered by the board.

C. Miscellaneous capital additions which did not have a pending contractual application as of June 24, 2016 or those with pending applications as of June 24, 2016, but do not provide for new jobs, are not eligible for the property tax exemption.

**AUTHORITY NOTE:** Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015), LR 43:

No fiscal or economic impact will result from the amendments proposed in this notice.

The changes are available for viewing on the Louisiana Department of Economic Development website, at [www.opportunitylouisiana.com](http://www.opportunitylouisiana.com).

#### **Public Hearing**

A public hearing on the substantive changes to the Notice of Intent only will be held on April 20, 2017, at 10 a.m. in the LaSalle Building, Griffon Room, 617 N. Third Street, Baton Rouge, LA 70802. All persons submitting written comments should reference the March 2017 ITEP Potpourri. Such comments must be received no later than April 20, 2017, at 12 p.m., and should be sent to Danielle Clapinski, Staff Attorney, Louisiana Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185, or e-mail at [danielle.clapinski@la.gov](mailto:danielle.clapinski@la.gov). The comment period for the

substantive changes to the November 2016 Notice of Intent ends on April 20, 2017.

Anne G. Villa  
Undersecretary

1703#031

## POTPOURRI

### Department of Environmental Quality Office of Management and Finance

Fees—Office of the Secretary, Air, Hazardous Waste, Solid Waste, Water Quality, Underground Storage Tank, and Radiation Protection—Risk/Cost Benefit Statement

#### Introduction

The Louisiana Department of Environmental Quality (LDEQ) is proposing amendments to the Office of the Secretary, Air, Hazardous Waste, Solid Waste, Water Quality, Underground Storage Tank, and Radiation Protection regulations that would increase the fees collected in these programs. The department collects these fees from members of the regulated community covered by these programs. The majority of increases are designated for the Environmental Trust Fund, while there are minor increases to the Motor Fuel Trust Fund, the Waste Tire Trust Fund and the Lead Hazard Reduction Fund. Act 451 of the 2016 Regular Session of the Louisiana Legislature authorized the increase in fees. (1703Pot1)

This statement is prepared to satisfy the requirements of R.S. 30:2019(D) and R.S. 49:953(G) (Acts 600 and 642 of the 1995 Louisiana Legislature, respectively). However, this document is not a quantitative analysis of cost, risk, or economic benefit, although costs of implementation were identified to the extent practical. The statutes allow a qualitative analysis of economic and environmental benefit where a more quantitative analysis is not practical. The department asserts that the benefits of a Rule designed to retain personnel in departmental programs justify the costs associated with the fee increases passed by the Louisiana Legislature during the 2016 Regular Session.

Fiscal analysis of the department indicates a need for increased revenue to properly perform the necessary functions of the department. Currently, the only source of funding for the department is through fees charged for services provided. An increase in fees is necessary to properly fund the department.

An analysis was made of the department's historical expenditures necessary to operate the programs and to enforce the regulations required by state and federal law. These expenditures include the costs associated with the issuance of permits, licenses, and registrations; enforcement; surveillance; and all other program costs including equipment, training, and other related expenses. These expenditures were compared to the revenue generated for each program (e.g., air, water, hazardous waste, solid waste, etc.) with the fee structure in place prior to this legislation. The percentage increases proposed for the fees for each program were aligned with the existing funding deficiency and intended to generate sufficient revenues to support all program operations.

Therefore, the qualitative approach is taken with the risk/cost benefit statement. As discussed further in this document, these amendments to the Office of the Secretary, Air, Hazardous Waste, Solid Waste, Water Quality, Underground Storage Tank, and Radiation Protection regulations provide environmental and economic benefits. Assessing dollar benefits of avoided environmental risk or the economic benefits of this rule is not practicable. In addition, the department asserts that the indirect and direct environmental and economic benefits to be derived from this Rule will, in the judgment of reasonable persons, outweigh the costs associated with the implementation of the Rule and that the Rule is the most cost-effective alternative to achieve these benefits.

#### Risks Addressed by the Rule

The Rule addresses the risks associated with the potential pollution or toxic releases caused or exacerbated by inadequate or lack of department-sponsored surveillance, enforcement, and emergency response. The Rule does this by providing the funds necessary to allow the department to maintain current staffing levels and ensure federal, state, and local environmental regulations are properly applied and monitored. Without a revenue increase, the department would no longer be able to operate at current staffing levels in the next several years. If staffing was further reduced, the department would be unable to meet its obligations to the public, industry, oversight entities, and other stakeholders.

#### Environmental and Health Benefits of this Rule

The additional funds collected through this Rule will provide the revenue necessary to carry out the legal mandates of the department. This will result in multimedia inspections of waste-producing facilities around the state as required by local, state, and federal mandates. The fees will allow the monitoring of facilities that is necessary for curbing or preventing releases into the environment. The fee increases will also contribute to the discovery and remediation of unauthorized waste sites around the state. Overall, the increases will allow LDEQ to continue monitoring and maintaining the state's air, water, and land resources, further preventing any incidents or occurrences that may jeopardize the safety or health of Louisiana's citizens.

#### Social and Economic Costs

This Rule is an amendment to raise fees that are already assessed or assess fees for work already being performed, and as such, there are no significant costs to implement the Rule. Representatives of the regulated community are in favor of the proposed increase to fund the department at a level necessary to carry out its mandates.

Persons currently regulated by the Office of the Secretary, Air, Hazardous Waste, Solid Waste, Water Quality, Underground Storage Tank, and/or Radiation Protection regulations would pay additional fees beginning in fiscal year 2018. These new fees would generate an estimated \$9.4 million annually in statutory-dedicated fees.

Persons directly affected will pay additional fees; however, these fees will provide benefits in excess of the fees. The adequate monitoring of regulated facilities would reduce or prevent unauthorized releases into the environment. In addition, health hazards will be removed in the form of unauthorized waste sites, and sites that may