

NOTICE OF INTENT

Department of Revenue Tax Policy and Planning Division

Net Capital Gains Deduction (LAC 61:I.1312)

In accordance with the emergency provisions of the Administrative Procedures Act R.S. 49:962(A)(1), which allows the Department of Revenue, Tax Policy and Planning Division to use emergency procedures to establish rules, and R.S. 47:1511, which allows the department to make reasonable rules and regulations, the Secretary hereby adopts LAC 61:I.1312 to effectively administer R.S. 47:293.2 relative to the net capital gains deduction.

Revised Statutes 47:293(9)(a)(xvii) and (10) provide an individual income tax deduction for net capital gains resulting 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 Louisiana.

Act 242 of the 2023 Regular Legislative Session (“Act 242”) requires the department to promulgate regulations relative to the net capital gains deduction and outlines minimum rule requirements. Act 242 provides that the regulations must contain: 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transaction eligible for the deduction; 3) restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana; and 4) restrictions on eligibility for transactions between related parties. Taxpayers seeking to claim the net capital gains deduction must begin applying the requirements set forth in this Emergency Rule to transactions occurring on or after January 1, 2024.

This Emergency Rule is necessary to effectively administer the net capital gains deduction as provided by R.S. 47:293.2 due to time constraints related to legislative passage of Act 242. This Emergency Rule shall be effective January 1, 2024, and shall remain in effect for 180 days, unless renewed or revoked, or until the adoption of the final Rule, whichever comes first.

Title 61

REVENUE AND TAXATION

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

Chapter 13. Income: Individual

§1312. Net Capital Gains Deduction

A. General. R.S. 47:293(9)(a)(xvii) and (10) provide a deduction for resident individuals and nonresident individuals (“taxpayers”), respectively, for net capital gains resulting from the sale or exchange of an equity interest in, or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization (“business”) commercially domiciled in Louisiana.

B. Definitions

Capital Gains from the Sale or Exchange of the Assets of a Business—capital gains from sales and exchanges that are reported on Federal Form 4797—Sales of Business Property, the gains from which are reportable on Schedule D of Federal Form 1040.

Commercial Domicile—the principle place from which the business is directed or managed.

Equity Interest—an ownership interest in a business entity that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company.

Net Capital Gains—the amount reported as capital gains on the Federal Form 1040.

Related Party—

a. a taxpayer and all entities which are controlled entities with respect to such taxpayer;

b. a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary’s interest in the trust is five percent or less of the value of the trust property; and

c. except in the case of a sale or exchange in satisfaction of a pecuniary bequest, a taxpayer who is an executor of an estate and a beneficiary of such estate.

Sale or Exchange of an Equity Interest—a sale or exchange of an equity interest that is reportable on Schedule D of Federal Form 1040—Capital Gains and Losses.

Sale or Exchange of Substantially all of the Assets of a Business—a sale or exchange of assets that leaves the entity unable to carry-on its business. A sale or exchange of assets is presumed to be a sale or exchange of substantially all of the assets of the business if the selling business transfers at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets that it held immediately before the transfer.

C. Documentation Requirements

1. Taxpayers claiming the deduction shall submit the following documentation at the time of filing their Louisiana individual income tax return claiming the deduction:

a. a completed Louisiana Form R-6180, Net Capital Gains Deduction Worksheet;

b. documentary evidence of the date the taxpayer acquired an equity interest in the business, such as articles of incorporation or organization, acts of sale or exchange, or donative instruments;

c. a copy of the taxpayer’s federal Schedule K-1, if applicable, from the entity from which the gain was derived; and

d. a complete copy of the taxpayer’s Federal Form 1040 filed with the IRS for the period in which the gain was recognized, including the Schedule D and any corresponding schedules and forms.

2. In addition to the documentation required by Paragraph 1 above, when the capital gain for which a deduction is being claimed is greater than \$250,000, taxpayers shall also submit the following at the time of filing their Louisiana individual income tax return claiming the deduction:

a. copies of the last two returns on which the income from the business was reported. If the gain is derived from a partnership, provide Form IT-565, Louisiana Partnership Return of Income, for the last two years.

b. If the gain is derived from a pass-through entity, provide detailed information on the pass-through structure, such as a complete organizational chart showing each tier between the taxpayer and the entity from which the gain is derived.

c. If the gain is from the sale of assets, the taxpayer shall also provide the following:

i. a depreciation schedule or fixed asset schedule showing a calculation of gross to net asset values; and

ii. an allocation of purchase price among assets as required by IRC Section 1060, and generally reportable on IRS Form 8594.

D. Eligibility Restrictions

1. Net capital gains resulting from the sale or exchange of real property or tangible assets may qualify for the deduction if 75 percent or more of the real property or tangible assets are located within Louisiana, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange.

2. Net capital gains from the sale or exchange of an equity interest or from the sale or exchange of substantially all assets shall not qualify for the deduction if the transaction transfers ownership of the interest or assets to a related party.

E. The accrual of refund interest shall be suspended during any period of time that a delay in allowance or approval of the deduction is attributable to the taxpayer's failure to provide information or documentation required herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xvii) and (10), 47:293.2 and 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Policy and Planning Division, LR 50:

Kevin J. Richard, CPA
Secretary

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