

## Blog Post

# Louisiana Launches Unique State Transfer Pricing Initiative

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By Stefi N. George

Joining Indiana and North Carolina, Louisiana last week became the third state to offer an alternative to the burdensome and expensive process of enduring a state transfer pricing audit.

The Louisiana Department of Revenue announced a short-term voluntary initiative (the “Louisiana Transfer Pricing Managed Audit Program”) for taxpayers to come forward to resolve intercompany state transfer pricing issues. The program is open from November 1, 2021 through April 30, 2022 and, according to the Department’s Revenue Information Bulletin announcing the program, is “aimed at proactively and efficiently resolving intercompany transfer pricing issues.”

## What is a Managed Audit?

Unlike its predecessors, Louisiana has decided to implement this program by utilizing its existing managed audit program under Louisiana Rev. Stat. §47:1541(D). This approach is different from other states’ approaches (Indiana implemented an advance pricing agreement procedure, and North Carolina enacted a short-term amnesty program in 2020 that did not extend to future periods).

The managed audit affords taxpayers the opportunity to conduct a self-audit under review of the Department. It generally is more efficient and

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less costly than a full-fledged audit, and may result in reduced or eliminated penalties and interest on any assessment resulting from the audit.

Once the application is filed to participate in the program, the Department will assign a field audit income tax representative to work with the taxpayer to conduct the managed audit.

### What are the Benefits of the Program?

When a taxpayer is audited on state transfer pricing issues, the taxpayer must demonstrate that its related party transactions with affiliates have been properly reported to the state. The taxpayer must demonstrate that its intercompany transactions are at an arm's length, have economic substance, and are being properly apportioned to the state. The taxpayer may need to procure a costly transfer pricing study to demonstrate that its policies are reasonable.

The program allows corporate taxpayers who engage in related party transactions with affiliates to come forward voluntarily to have the Department review its intercompany transactions to determine whether it is properly reporting the amounts attributable to its business carried on within the state. The program allows for expedited resolution of transfer pricing issues without the additional cost associated with a traditional audit (for both the taxpayer and the state). The Department's stated objectives also include providing certainty for the taxpayer regarding the treatment of its intercompany transactions and improving taxpayers' understanding of Louisiana transfer pricing laws, to limit the disruption to business operations that may be caused by a full-fledged audit.

The program also allows for waiver of penalties for the periods covered and abatement of interest accrued during the course of the audit.

### Who is Eligible?

The program is available to newly incorporated taxpayers as well as existing (and previously registered) taxpayers. However, a taxpayer cannot participate anonymously.

A taxpayer is eligible to participate in the program if it meets the following criteria:

- If the taxpayer previously registered with the Department, it must have an established history of voluntary tax compliance with the Department.
- The taxpayer must be willing to certify that the taxpayer has the time and resources to dedicate as a participant in the program.
- The taxpayer must have suitable records available concerning its intercompany transactions.
- The taxpayer must reasonably expect that it is able to pay any expected liability.

### What Taxes Are Covered?

The managed audit program generally covers the current tax period, any open tax years that are still open for assessment, and up to four future tax periods (although the specific periods covered will depend on the individual facts and circumstances of each taxpayer). Thus, the program not only allows a taxpayer to resolve any questions for open periods, but also can provide assurance to a taxpayer of its position for certain future years.

Notably, the program is available to taxpayers currently under audit by the Department; however, only the transfer pricing issues may be reviewed under the program. Any non-transfer pricing issues under audit will continue to be resolved pursuant to the Department's standard audit procedures.

### Should You Participate?

State transfer pricing issues are a major issue for many companies, and transfer pricing audits can be extremely burdensome and expensive. This program provides a unique approach to transfer pricing

issues that, for the right taxpayer, can be highly beneficial for both the taxpayer and the Department. Whether to take advantage of this opportunity will depend heavily on the specific facts and circumstances of a taxpayer's business, but if the taxpayer has intercompany transactions in the state, the program can provide the taxpayer with certainty and efficiency in resolving open questions, especially since the program can apply to prospective periods. The added benefit of penalty (and certain interest) abatement makes participation even more attractive.

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