

2019 Regular Session

HOUSE BILL NO. 583

BY REPRESENTATIVE DWIGHT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX APPEALS/BOARD: Provides relative to jurisdiction of the Board of Tax Appeals and appeals

1 AN ACT

2 To amend and reenact R.S. 47:337.45(A)(3), 337.63(C), 337.97, 1418(4)(b), 1435(A), (C),
3 and (D), 1561(A)(3), and 1576(D), to enact R.S. 47:1407(6) and 1431(D), and to
4 repeal R.S. 47:1432(B), relative to the Board of Tax Appeals; to provide for the
5 jurisdiction of the Board of Tax Appeals; to extend the jurisdiction over matters of
6 constitutionality; to provide for the process of appeals from the decisions of the
7 board; to provide relative to remedies for the collection of taxes; to provide for
8 effectiveness; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:337.45(A)(3), 337.63(C), 337.97, 1418(4)(b), 1435(A), (C), and
11 (D), 1561(A)(3), and 1576(D) are hereby amended and reenacted and R.S. 47:1407(6) and
12 1431(D) are hereby enacted to read as follows:

13 §337.45. Alternative remedies for the collection of taxes

14 A. In addition to following any of the special remedies provided in this
15 Chapter, the collector may, in his discretion, proceed to enforce the collection of any
16 taxes due under the local ordinance by means of any of the following alternative
17 remedies or procedures:

18 * * *

1 §1418. Definitions

2 * * *

3 (4)

4 * * *

5 (b) The individual or entity responsible for collecting occupational license
6 tax or occupancy tax, or other collector responsible for collecting local taxes or fees,
7 ~~where an action is appealable to the board~~ excluding those tax matters within the
8 jurisdiction of the Louisiana Tax Commission.

9 * * *

10 §1431. Taxpayer's petition

11 * * *

12 D. In compliance with the provisions of Chapter 2 of Title VI of Book II of
13 the Louisiana Code of Civil Procedure or other applicable law, an aggrieved party
14 may petition the board concerning a matter authorized pursuant to R.S. 47:1407(6).

15 * * *

16 §1435. Jurisdiction of courts to review decisions of the board

17 A. Except as provided for in Paragraph 5(D) of Article 5 of the Louisiana
18 Constitution, the ~~The~~ courts of appeal shall have exclusive jurisdiction to review the
19 decisions or judgments of the board, and the judgment of any such court shall be
20 subject to further review in accordance with the law relating to civil matters.

21 * * *

22 C. Upon such review, the courts shall have the power to affirm or, if the
23 decision or judgment of the board is not in accordance with law or is manifestly
24 erroneous on the facts considering the record as a whole, to modify, or to reverse the
25 decision or judgment of the board, with or without remanding the case for further
26 proceedings. ~~An appellate court may also remand a case with an order that it be~~
27 ~~immediately transferred to the district court pursuant to R.S. 47:1432(B).~~

28 D. ~~Except as otherwise specifically provided for by local rule of a court of~~
29 ~~appeal, when~~ If a judgment of the board is to be modified or reversed and one court

1 of appeal judge dissents, the case shall be reargued before a panel of at least five
2 judges prior to rendition of judgment, and a majority shall concur to render
3 judgment.

4 * * *

5 §1561. Alternative remedies for the collection of taxes

6 A. In addition to following any of the special remedies provided in the
7 various chapters of this Subtitle, the collector may, in his discretion, proceed to
8 enforce the collection of any taxes due under this Subtitle by means of any of the
9 following alternative remedies or procedures:

10 * * *

11 (3) Ordinary suit under the provisions of the general laws regulating actions
12 for the enforcement of obligations, before the Board of Tax Appeals or any court of
13 competent jurisdiction.

14 * * *

15 §1576. Remittance of tax under protest; suits to recover

16 * * *

17 D. This Section shall be construed to provide a legal remedy in the Board of
18 Tax Appeals or the state courts in case such taxes are claimed to be unconstitutional
19 under any provision of the United States Constitution or Constitution of Louisiana,
20 including an unlawful burden upon interstate commerce, or the collection thereof,
21 in violation of any Act of Congress or the United States Constitution, or the
22 Constitution of Louisiana.

23 * * *

24 Section 3. R.S. 47:1432(B) is hereby repealed in its entirety.

25 Section 4. This Act shall take effect and become operative if and when the proposed
26 amendment of Article VII, Section 3(A) and addition of Article V, Section 35 of the
27 Constitution of Louisiana contained in the Act which originated as House Bill No. 428 of
28 this 2019 Regular Session of the Legislature is adopted at a statewide election and becomes
29 effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 583 Engrossed

2019 Regular Session

Dwight

Abstract: Extends the jurisdiction of the Board of Tax Appeals to matters of unconstitutional taxes and petitions for declaratory judgment or other matters related to the constitutionality of laws or ordinances, or the validity of a regulation, relating to taxes and fees.

Present law authorizes state courts to provide a legal remedy in cases where taxes are claimed to be an unlawful burden upon interstate commerce or when the collection of taxes violates any Act of Congress, the U. S. Constitution, or the Constitution of La.

Proposed law retains present law and extends this jurisdiction to the Board of Tax Appeals (the board) to handle such cases. Proposed law also authorizes state courts and the board to provide a legal remedy for cases where tax are claimed to be unconstitutional under any provision of the U.S. Constitution or the Constitution of La.

Present law authorizes a court of competent jurisdiction to determine in an action for declaratory judgment the validity or applicability of a rule. Proposed law retains present law and additionally authorizes the board to make such determination.

Present law provides for the jurisdiction of the board over matters of appeals, waiver of penalties, rules, petitions, claims against the state, and incidental demands. Proposed law retains present law and additionally extends the jurisdiction to include petitions for declaratory judgment related to the constitutionality of laws or ordinances, or the validity of a regulation concerning any matter relating to any state or local tax or fee not within the jurisdiction of the La. Tax Commission.

Present law includes collectors responsible for collecting local taxes where an action is appealable to the board in the definition of local collector. Proposed law amends the definition to include collectors responsible for collecting local fees and excludes actions appealable to the board and tax matters within the jurisdiction of the La. Tax Commission.

Present law authorizes an aggrieved taxpayer to appeal to the board for matters related to assessments or determinations of alleged overpayment. Proposed law retains present law and additionally authorizes aggrieved parties to petition the board over petitions for declaratory judgment related to the constitutionality of laws or ordinances, or the validity of a regulation.

Present law grants the courts of appeal the exclusive jurisdiction over the decisions and judgments made by the board. Proposed law retains present law and additionally grants this appellate jurisdiction to the supreme court.

Present law states that the Board of Tax Appeals has no jurisdiction to declare a statute or ordinance unconstitutional. The board must order the case to be transferred to the proper district court venue. The district court will determine the constitutionality and then may order the case to be remanded back to the board. Proposed law repeals present law.

Present law authorizes a collector to enforce the collection of taxes through an ordinary suit under provisions of law regulating actions for the enforcement of obligations.

Proposed law provides that such suits shall be before the board or any court of competent jurisdiction.

Effective Jan. 1, 2020, if the proposed amendment of Article VII, and addition of Article V, Section 35 of the Constitution of La. contained in the Act which originated as House Bill No. 428 of this 2019 R.S. of the Legislature is adopted at a statewide election and becomes effective.

(Amends R.S. 47:337.45(A)(3), 337.63(C), 337.97, 1418(4)(b), 1435(A), (C), and (D), 1561(A)(3), and 1576(D); Adds R.S. 47:1407(6) and 1431(D); Repeals R.S. 47:1432(B))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Allow for an ordinary suit to enforce the collection of taxes to be brought before the Board of Tax Appeals or any court of competent jurisdiction.
3. Extend the proposed law jurisdiction of the Board of Tax Appeals to include petitions for other actions related to the constitutionality of a law or ordinance, or validity of a regulation, concerning any matter relating to any state or local tax or fee not under the jurisdiction of the La. Tax Commission.