

GREEN SHEET REDIGEST

HB 978

2016 Regular Session

Danahay

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

TAX/TAXATION: Provides for administration, disposition, enforcement, and adjudication of state and local taxes under the jurisdiction of the Board of Tax Appeals

DIGEST

Board of Tax Appeals

Present law establishes the Board of Tax Appeals (board) to act as an appeal board to hear and decide questions of law and fact arising from disputes between a taxpayer or dealer and the state collector in the enforcement of any tax, excise, license, permit or any other tax law administered by the state collector, and between taxpayers or dealers and local sales and use tax collectors.

Present law authorizes the board and the secretary of the Dept. of Revenue (secretary) to enter into an agreement for a fixed annual interagency transfer to the board as payment in lieu of filing fees owed by the secretary.

Proposed law changes present law by making the agreement between the board and the secretary mandatory rather than discretionary.

Present law provides funding for operation of the board through an annual distribution of certain proceeds from the state sales and use tax collected on sales by a remote dealer on behalf of local taxing authorities. Each year the secretary of the Dept. of Revenue is required to reduce the distribution to local taxing authorities and transfer to the board \$187,000 to be expended for purposes of the Local Tax Division. Thereafter, in each of the two subsequent fiscal years, if the total collections of the tax exceed the amount of collections in FY 2013-2014, the amount shall be increased to \$194,000 per year in FY 2016-2017, and \$199,000 per year in FY 2017-2018.

Proposed law retains present law with the following changes:

- (1) Repeals the requirement that the increase would be contingent upon the total tax collections from which the dedication is derived exceeds those of FY 2013-2014.
- (2) The increase for FY 2016-2017 is changed from \$5,000 to \$32,000.
- (3) A new allocation increase established for FY 2018-2019 in the amount of \$5,000.

Present law establishes quorum requirements for the transaction of the business of the board, and provides that a vacancy in the board shall not impair the powers nor affect the duties of the board, nor of the remaining members of the board. Present law authorizes the chairman to appoint a single board member to serve as hearing judge of the board.

Proposed law retains present law and adds provisions authorizing the designation of a member of the board to serve as hearing judge in instances where there is a vacancy on the board or the absence of a board member, but only for cases involving the state collector.

Present law excludes from the jurisdiction of the board, matters of requiring a declaration of unconstitutionality and establishes the procedure for the transfer of such a case to a district court, which shall consider de novo the issues of unconstitutionality. Further, upon the joint motion of all parties and the attorney general, the board may develop a record and make a recommendation to the district court on the issue.

Proposed law retains present law and adds a requirement that a motion to transfer any such case involving a state statute be served upon the attorney general. Proposed law requires that a hearing on a request for a declaration of unconstitutionality in a case transferred pursuant to present law be given priority and be heard by preference in the district court. Proposed law further provides that after the issue concerning the declaration of unconstitutionality has been finally decided, the district court, on the motion of any party or on its own motion, may order the case remanded to the board for adjudication of the underlying tax dispute.

Proposed law provides procedures relative to the making of any claim as to the constitutionality of any provision of present law concerning the jurisdiction of the board, which procedures include the filing of a petition in the 19th JDC. Proposed law further requires that any such petition be served upon the board, the attorney general, and any opposing parties in the underlying board action, and that the pleading be given priority of hearing by the district court. A failure to follow these procedures shall bar any appeal on the claim.

Present law provides that courts of appeal shall have jurisdiction to review decisions of the board in the same manner as provided for in civil matters.

Proposed law retains present law and adds a requirement to clarify that when a judgment of the board is modified or reversed, and one court of appeal judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority shall concur to render judgment, except as may be otherwise specifically provided for by local rule of a court of appeal.

Proposed law provides that final decisions of the board may be enforced in any manner provided for final judgments of district courts and authorizes the issuance of writs of mandamus to enforce present law.

Proposed law expands the jurisdiction of the board to include appeals concerning occupational license taxes imposed by a municipality or parish, other local taxes, and state taxes and fees collected by agencies other than the Dept. of Revenue. Proposed law further provides that upon the joint motion of all parties, a district court may transfer to the board for adjudication, any matter pending before the court concerning disputes of state or local taxes or fees.

Occupational License Tax

Present law relative to occupational license taxes imposed by a municipal or parish taxing authority, establishes the procedure for a tax collector to pursue the collection of delinquent taxes through a rule to show cause before a court as to why a delinquent taxpayer should not be ordered to pay taxes due.

Proposed law retains present law and adds a requirement that the judgment include the amount of the license, penalty, fees, and costs against the defendant. Further, the order shall require the business to cease the further pursuit of business until the judgment is satisfied, in the same manner as provided for in present law concerning the collection of license fees.

Proposed law adds an optional remedy of collection by way of issuance of an assessment to a taxpayer in the same manner as is provided for in the Uniform Local Sales Tax Code for the collection of sales and use taxes. The assessment may be appealed to the Local Tax Division of the Board of Tax Appeals in the same manner and subject to the same 30 day deadline as provided for in matters concerning local sales and use taxes.

Proposed law adds authorization for appeals for and refunds of occupational license taxes erroneously paid. A taxpayer may appeal a collector's action on a claim for refund to the Local Tax Division of the Board of Tax Appeals, in the same manner and subject to the same deadlines as provided for in the Uniform Local Sales Tax Code for purposes of local sales and use taxes.

The provisions of proposed law amending R.S. 47:1418 and 1432 concerning the expansion of the board's jurisdiction to include additional state and local taxes, and the procedures concerning the definition of collectors, challenges to constitutionality of jurisdiction of the board shall be effective on the effective date of Act No. 640 of the 2014 R.S. (June 12, 2014), with certain exceptions, as the nature of such amendments is procedural and interpretative as relates to that Act.

Claims Against the State

Present law authorizes the Board of Tax Appeals to render claims against the state when a taxpayer has made an erroneous payment of taxes. Claims against the state are subject to appropriation by the legislature.

Proposed law provides an exception to present law for erroneous payments of corporate franchise tax when the claim is not appropriated within one year of the date on which the board approves the claim.

Proposed law authorizes the secretary of revenue and the claimant of a claim against the state for erroneous payment of corporate franchise tax to enter into an agreement to offset corporate taxes for 25% of the amount of the claim per year for four years if the claim is not appropriated by the legislature within one year of the date of the Board of Tax Appeals' approval of the claim.

Proposed law authorizes the secretary to extend the offset period for two years if the claimant is unable to utilize the entire claim within the initial four year period and also authorizes the claimant to transfer the claim to other members of the federal consolidated group to which the claimant belongs. Provides that no offset may be taken prior to July 1, 2017.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4) as enacted by Act No. 22 of the 2016 1st ES, 351, 1403(C), 1418(4)(b) and (7)(d), 1432(B), and 1484(A) and §2 of Act No. 198 of the 2014 R.S.; adds R.S. 47:351.1, 1418(4)(c) and (7)(e), 1435(D), 1437(C), and 1484(C))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the reengrossed bill

1. Makes technical changes.
2. Provides that final decisions of the board may be enforced in any manner provided for final judgments.
3. Authorizes the secretary of revenue and the claimant of a claim against the state for erroneous payment of corporate franchise tax to enter into an agreement to offset corporate taxes.
4. Prohibits taking an offset prior to July 1, 2017.