

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

8 Be it enacted by the Legislature of Louisiana:

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

12 §337.63. Remittance of tax under protest; suits to recover

13 \* \* \*

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

20 \* \* \*

1 §337.97. Judicial review of validity or applicability of rules

2 The validity or applicability of a rule may be determined in an action for  
3 declaratory judgment in the Board of Tax Appeals or a court of competent  
4 jurisdiction. The board shall be made a party to the action. The Board of Tax  
5 Appeals or court shall declare the rule invalid or inapplicable if it finds that it  
6 violates constitutional provisions or exceeds the statutory authority of the board or  
7 was adopted without substantial compliance with required rulemaking procedures.

8 \* \* \*

9 §1407. Jurisdiction of the board

10 \* \* \*

11 (6) A petition for declaratory judgment related to the constitutionality of a  
12 law or ordinance, or validity of a regulation, relating to any state or local tax or fee,  
13 excluding those tax matters within the jurisdiction of the Louisiana Tax Commission.

14 \* \* \*

15 §1418. Definitions

16 \* \* \*

17 (4)

18 \* \* \*

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

23 \* \* \*

24 §1431. Taxpayer's petition

25 \* \* \*

26 D. In compliance with the provisions of Chapter 2 of Title VI of Book II of  
27 the Louisiana Code of Civil Procedure, an aggrieved party may petition the board  
28 concerning a matter authorized pursuant to R.S. 47:1407(6).

29 \* \* \*

1 §1435. Jurisdiction of courts to review decisions of the board

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

6 \* \* \*

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

13 D. ~~Except as otherwise specifically provided for by local rule of a court of~~  
14 ~~appeal, when~~ If a judgment of the board is to be modified or reversed and one court  
15 of appeal judge dissents, the case shall be reargued before a panel of at least five  
16 judges prior to rendition of judgment, and a majority shall concur to render  
17 judgment.

18 \* \* \*

19 §1576. Remittance of tax under protest; suits to recover

20 \* \* \*

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

27 \* \* \*

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

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

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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)]

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HB 583 Original

2019 Regular Session

Dwight

**Abstract:** Extends the jurisdiction of the Board of Tax appeals over matters of unlawful unconstitutional taxes and petitions for declaratory judgment related to the constitutionality of laws or ordinances, or the validity of a regulation.

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 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.

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 the supreme court authority over matters related to constitutionality of laws or ordinances.

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.

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