

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, 1407(3), 1418(4)(b),

3 1435(A), (C), and (D), 1561(A)(3), and 1576(D), to enact R.S. 47:1407(6) and

4 1431(D), and to repeal R.S. 47:1432(B), relative to the Board of Tax Appeals; to

5 provide for the jurisdiction of the Board of Tax Appeals; to extend the jurisdiction

6 over matters of constitutionality; to provide for the process of appeals from the

7 decisions of the board; to provide relative to remedies for the collection of taxes; to

8 provide for 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, 1407(3), 1418(4)(b), 1435(A),

11 (C), and (D), 1561(A)(3), and 1576(D) are hereby amended and reenacted and R.S.

12 47:1407(6) and 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

1 taxes due under the local ordinance by means of any of the following alternative  
2 remedies or procedures:

3 \* \* \*

4 (3) Ordinary suit under the provisions of the general laws regulating actions  
5 for the enforcement of obligations before the Board of Tax Appeals or any court of  
6 competent jurisdiction.

7 \* \* \*

8 §337.63. Remittance of tax under protest; suits to recover

9 \* \* \*

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

16 \* \* \*

17 §337.97. Judicial review of validity or applicability of rules

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

24 \* \* \*

25 §1407. Jurisdiction of the board

26 The jurisdiction of the board shall extend to the following:

27 \* \* \*

28 (3) All matters related to state or local taxes or fees, or other jurisdiction  
29 otherwise provided by law, including rules to seek uniformity of interpretation of

1 common sales and use tax law or local sales and use tax law, as provided in R.S.  
2 47:337.101(A)(2), and petitions concerning the validity of a collector's rules,  
3 regulations, or private letter rulings, as provided in R.S. 47:337.102.

4 \* \* \*

5 (6) A petition for declaratory judgment or other action related to the  
6 constitutionality of a law or ordinance or validity of a regulation concerning any  
7 matter relating to any state or local tax or fee excluding those tax matters within the  
8 jurisdiction of the Louisiana Tax Commission.

9 \* \* \*

10 §1418. Definitions

11 For the purposes of this Chapter, except where the context requires otherwise,  
12 the words and expressions defined in this Section shall have the following meanings:

13 \* \* \*

14 (4) "Local collector" means any of the following:

15 \* \* \*

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

20 \* \* \*

21 §1431. Taxpayer's petition

22 \* \* \*

23 D.(1) In compliance with the provisions of Chapter 2 of Title VI of Book II  
24 of the Louisiana Code of Civil Procedure or other applicable law, an aggrieved party  
25 may petition the board concerning a matter authorized pursuant to R.S. 47:1407(6).

26 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, an  
27 action seeking the declaration that a new law is unconstitutional solely on the basis  
28 of noncompliance by the legislature with a particular rule of legislative procedure  
29 expressly required by a provision of the Constitution of Louisiana shall be brought

1 by declaratory action against the state and the presiding officers of the legislature in  
2 the Nineteenth Judicial District Court, with service upon the attorney general as  
3 required by Article 1880 of the Code of Civil Procedure.

4 \* \* \*

5 §1435. Jurisdiction of courts to review decisions of the board

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

10 \* \* \*

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

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

22 \* \* \*

23 §1561. Alternative remedies for the collection of taxes

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

28 \* \* \*



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. Proposed law extends jurisdiction of all matters related to state or local taxes or fees.

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.

Proposed law requires an action seeking the declaration that a new law is unconstitutional solely on the basis of noncompliance by the legislature shall be brought by declaratory action against the state and the presiding officers of the legislature in the 19<sup>th</sup> JDC with service being perfected upon the attorney general.

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, 1407(3), 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.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Expand the jurisdiction of the board to include all matters related to state or local taxes or fees.
3. Require actions seeking a declaration that a new law is unconstitutional based solely on noncompliance shall be brought by a declaratory action against the state and its officers in the 19<sup>th</sup> JDC with service upon the attorney general.