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 DIGEST

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SB 198 Reengrossed

2019 Regular Session

Peacock

Present law provides that the transfer of funds from the local share of the catalog tax to the Department of State Civil Service, Board of Tax Appeals will be increased by \$5,000 a year on the first day of the fiscal year for each of the two fiscal years after 2016-17.

Proposed law changes the number of fiscal years the transfer of local funds will be increased after 2016-17 from two to six fiscal years.

Proposed law provides that if the proceeds from the local portion of the catalog tax are insufficient to cover the funds transfer that the remaining amount necessary to satisfy the funds dedication, it shall be considered an expense of the Louisiana Sales and Use Tax Commission for Remote Sellers and that payment shall be made via interagency transfer from the fee it charges for collection of local taxes.

Proposed law authorizes the Dept. of Revenue to use state catalog tax collections for the interagency transfer to the Board of Tax Appeals.

Present law authorizes the Board of Tax Appeals to administer oaths and issue orders and subpoenas and further provides for the enforcement of orders and subpoenas by duly commissioned persons, including the local sheriff or state police in certain circumstances.

Present law provides that failure to obey any order or subpoena issued under present law shall constitute contempt of court, and may be punished by the board or its local tax judge. in accordance with the provisions of present law with respect to contempt of court. Actions finding anyone in contempt shall be subject to an appeal by trial *de novo* in the 19<sup>th</sup> JDC.

Proposed law changes present law as it relates to appeals of a finding of contempt from a trial *de novo* in the 19<sup>th</sup> JDC to an appeal *or* a supervisory writ in accordance with present law.

Proposed law provides that service of papers filed with the board or orders of the board may also be made as provided by the Code of Civil Procedure or by registered mail.

Present law provides for the review of judgments of the Board of Tax Appeals.

Proposed law provides that in matters in which a local collector is appealing a ruling against another local collector that review is proper in the court of appeal for either the parish of the appellee or the parish that has the most connection to the matter.

Present law requires taxes paid under protest to be placed in escrow and be distributed by the fiscal agent only upon notice of a final, nonappealable judgment. The fiscal agent is selected by the Board of Tax Appeals with the approval of the Cash Management Review Board. The escrow account is subject to audit by the legislative auditor and an annual report is required.

Proposed law authorizes the board to utilize the escrow account, including interest earnings, to facilitate the operation of an online filing system, including the deposit of advance costs from subscribers and related payment of amounts collected related to that service.

Proposed law retains present law escrow provisions, but corrects the reference to the recipient of the annual report related local sales tax related transactions to the Uniform Local Sales Tax Board.

Proposed law authorizes advance deposits of local filing fees to be held in the escrow account pending an order taxing costs in a case.

Present law provides for personal liability for officers, directors, managers, and members of corporations, limited liability companies, and limited partnerships who withhold wages from employees or collect sales and use tax and who willfully fail to remit these taxes to the collector.

Proposed law retains present law and authorizes the collector to bring an action before the Board of Tax Appeals or other court of competent jurisdiction to enforce the obligation of taxpayers to remit taxes to the state they have actually collected from others, and authorizes a money judgment for any amounts that were actually collected from others and not remitted to the state.

Proposed law authorizes the Board of Tax Appeals or court to render a judgment for the payment of tax, interest, penalties, attorney fees, and costs when the collector prevails in an action against a taxpayer that collects, but fails to remit withholding and sales and use taxes.

Present law provides for the suspension of prescription for the assessment of taxes.

Proposed law provides that solely for final adjustments actually made to federal income tax, the period during which prescription is suspended for state income taxes shall run concurrent to the period for which the tax period remains open under federal income tax law.

Present law provides for the prescription of refund claims.

Proposed law provides a specific prescriptive period for income tax refunds to veterans who received a federal refund pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016. It allows this refund to be claimed on an amended return or by claiming a standard amount that will be proportionate to the federal standard amounts provided. The refund may be claimed until two years from the date the taxpayer received notice from Department of Defense that he is eligible for such at the federal level.

Present law defines an "overpayment", for purposes of state and local collectors, as a payment of tax, penalty, or interest when none is due, the excess of the amount of tax, penalty, or interest paid over the amount due, or the payment of a penalty that is later waived or remitted by the collector.

Present law provides for specific instances where the collector is required to refund overpayments out of any current collections of the particular tax which was overpaid.

Present law prohibits refunds for the overpayment of taxes as a result of a mistake of law arising from the misinterpretation by the collector of a law, rule, or regulation. Further requires, in cases of misinterpretation of law, rule, or regulation, that a taxpayer pay the disputed taxes under protest or by appeal to the Board of Tax Appeals.

Proposed law repeals present law as it relates to the taxpayer's remedy to recover overpaid taxes in cases of misinterpretation of law, rule, or regulation, by requiring taxpayers to pay the taxes in dispute under protest or by appeal to the Board of Tax Appeals.

Proposed law adds as a specific instance where the collector is required to pay a refund, cases where taxes are overpaid as a result of an unconstitutional law, invalid or unenforceable rule or regulation, or because of a mistake of law arising from the misinterpretation by the collector of the provisions of any law, rule, or regulation.

Present law authorizes any person who has a claim against the state for money erroneously paid into the State Treasury to present the claim to the Board of Tax Appeals.

Proposed law provides that when a statute or regulation administered by the Dept. of Revenue (DOR) has been declared unconstitutional or unenforceable in a final, non-appealable decision, and a taxpayer has not challenged the constitutionality or enforceability of the tax statute or regulation through the payment under protest procedure

set forth in present law, the taxpayer may seek to recover the amounts paid under the statute or regulation by filing a claim with the Board of Tax Appeals.

Proposed law requires a claim to be submitted to DOR on forms prescribed by the secretary, setting forth the amount of the claim. Further provides that once reviewed for correctness, all claims submitted to the secretary shall be forwarded to the board for its examination of the merits and correctness of each claim. If the secretary's review of any claim remains pending for more than 90 days, the secretary shall forward the claim to the board within 60 days of the written request of the claimant.

Present law provides that if a claim approved by the Board of Tax Appeals does not exceed \$1,000, the chairman of the Board of Tax Appeals shall issue a warrant to the State Treasurer for payment of the approved claim. If the amount of the approved claim exceeds \$1,000, the chairman of the Board of Tax Appeals shall report the amount of the claim to the legislature for consideration of payment at the next legislative session.

Proposed law increases the amount of the approved claim that can be paid from the State Treasury from \$1,000 to \$20,000 and clarifies the procedure for the payment of the approved claim. Proposed law provides that judgments issued by the board for the payment of approved claim when the amount approved does not exceed \$20,000 shall be paid out of current tax collections without interest. Proposed law limits total amount of judgments paid in a fiscal year from current collections to \$2 Million, unless a higher amount for that fiscal year is approved by the Commissioner of Administration and the Joint Legislative Committee on the Budget.

Proposed law provides that the payment of judgments for approved claims shall be paid by the secretary in the order in which the claims were approved by the board. If the total amount of claims authorized for payment exceeds \$2 Million in a fiscal year, the payment of any excess claims shall be issued in the subsequent year in the same order of priority and with priority over any claims subsequently approved by the board.

Proposed law provides that when the board approves a claim against the state and the amount of the claim exceeds \$20,000 but is not more than \$250,000, the claim shall be submitted to the litigation subcommittee of the Joint Legislative Committee on the Budget for review prior to the next regular session of the legislature. If the claim is approved by the litigation subcommittee, the approved claim shall be paid out of current tax collections without interest, following submission of the authorization to the secretary.

Proposed law provides that if a claim against the state for erroneous payments of state taxes is not paid pursuant to present and proposed law nor is the claim paid through an appropriation of the legislature, the secretary and the claimant may agree to pay the claim as a nonrefundable offset against the particular tax at issue. Any unused amount of offset may be carried forward against subsequent tax liability for the same tax for a period not to exceed five years. However, the provisions of proposed law shall not apply to claims that exceed \$1 Million.

Present law provides that when the Board of Tax Appeals has approved a claim against the state for erroneous payments of corporate franchise tax and the claim is not paid within one year of the date the board's approval of the claim becomes final, DOR may agree to pay the claim as an offset against state corporate income or franchise tax liability of the claimant. Further provides that up to 25% of the total claim approved by the board shall be allowed as an offset in each of the four taxable years immediately following the agreement of the parties to the offset. Present law further provides for the administration of the offset to a member of the party's affiliated group.

Proposed law changes present law by specifying that when the Board of Tax Appeals has approved a claim against the state for erroneous payments of corporate franchise tax based on the decision in *UTELCOM, Inc. v. Bridges,* and an amount to pay the claim is not appropriated during the next regular session of the legislature following the date the board's approval of the claim becomes final, DOR may agree to pay the claim as an offset against any state corporate income or franchise tax liability of the claimant or one or more of the claimant's affiliates. Further changes present law by authorizing up to 50% of the total

claim approved by the board to be allowed as a nonrefundable offset in the two taxable periods immediately following the agreement to the offset.

Proposed law prohibits the offset from being treated as a credit for purposes of present law and requires the offset to be applied against state income or corporation franchise tax liability before application of any other credits.

Proposed law authorizes claims approved by the Board of Tax Appeals or the secretary as a result of Act No. 109 from the 2015 R.S. of the Legislature to be taken as an offset against any state corporate income or franchise tax liability of the claimant. Further authorizes up to 50% of the total claim approved by the board or the secretary to be allowed as a nonrefundable offset in the two taxable periods immediately following the agreement of the parties to the offset. Proposed law prohibits the offset amount to be treated as a credit for purposes of present law and requires the offset to be applied against state income or corporation franchise tax liability before application of any other credits.

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

(Amends R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (2)(a) and (E), 1439(C) and (F), 1483, 1484(C), 1574.1(E), and 1580(B)(3); Adds R.S. 47:337.77(B)(7), 340(E)(4), 1436(B)(3), 1481(B) and (C), 1484(D), 1561.1(C), 1621(B)(10), and 1623(G); Repeals R.S. 47:337.77(F), 1403(B)(6)(b), and 1621(F))

Summary of Amendments Adopted by Senate

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

1. Makes technical changes.
2. Provides for source of funds for interagency transfer from the Dept. of Revenue to the Board of Tax Appeals.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the reengrossed bill:

1. Authorize state and local collectors to refund taxes that were overpaid due to the tax being paid pursuant to an unconstitutional law, invalid or unenforceable rule or regulation, or a mistake of law arising from the misinterpretation by the collector of a law, rule, or regulation.
2. Authorize the board to utilize the escrow account, including interest earnings, to facilitate the operation of an online filing system.
3. Establish a procedure for the payment of claims when a statute or regulation has been declared unconstitutional or unenforceable in a final, non-appealable decision, and a taxpayer has not challenged the constitutionality or enforceability of the tax statute or regulation through the payment under protest procedure set forth in present law.
4. Increase the amount of the approved claim that can be paid from the State Treasury from \$1,000 to \$20,000 and clarifies the procedure for the payment of the approved claim.
5. Limit the total amount of judgments for approved claims that do not exceed \$20,000 that can be paid in a fiscal year from current collections to \$2 Million, unless a higher amount for that fiscal year is approved by the Commissioner of Administration and the Joint Legislative Committee on the Budget.

6. Establish procedures for the payment of approved claims in excess of \$20,000 but not more than \$250,000, from current tax collections without interest, following submission of the authorization to the secretary.
7. Authorize certain approved claims to be paid by nonrefundable offset against future tax liability. Any unused amount of offset may be carried forward against subsequent tax liability for the same tax for a period not to exceed five years.
8. Authorize procedures for the payment of approved claims against the state for erroneous payments of corporate franchise tax based on the decision in UTELCOM, Inc. v. Bridges.
9. Authorize procedures for the payment of approved claims against the state as a result of Act No. 109 from the 2015 R.S. of the Legislature.