

## RÉSUMÉ DIGEST

ACT 367 (SB 198)

2019 Regular Session

Peacock

Prior law provided that the transfer of funds from the local share of the catalog tax to the Department of State Civil Service, Board of Tax Appeals ("board") 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.

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

New 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 La. 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.

New law authorizes the Dept. of Revenue ("DOR") to use state catalog tax collections for the interagency transfer to the board.

Prior law authorized the board 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.

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

New law changes prior law as it relates to appeals of a finding of contempt from a trial *de novo* in the 19th JDC to an appeal *or* a supervisory writ in accordance with prior law.

New 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.

Prior law provided for the review of judgments of the board.

New 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.

Prior law required 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 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.

New 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.

New law retains prior 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.

New law authorizes advance deposits of local filing fees to be held in the escrow account pending an order taxing costs in a case. Provides for refund of unused balances to the depositor if the costs taxes are less than the amount of the advance deposit. Authorizes the board to utilize the escrow account and interest earned on the account to facilitate operations of an online filing system.

New law authorizes the board and the secretary of DOR to enter into an agreement to allow the filing of claims against the state with the department on forms prescribed by the secretary.

Prior law provided that if a claim approved by the board does not exceed \$1,000, the chairman of the board 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 shall report the amount of the claim to the legislature for consideration of payment at the next legislative session.

New 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. New 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. New law limits total amount of judgments paid in a fiscal year from current collections to two million dollars, unless a higher amount for that fiscal year is approved by the commissioner of administration and the Joint Legislative Committee on the Budget ("budget committee").

New 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 two million dollars 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.

New 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 budget committee 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.

New law provides that if a claim against the state for erroneous payments of state taxes is not paid pursuant to prior and new 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 new law shall not apply to claims that exceed one million dollars.

Provides that payment of judgments for approved claims be paid by the secretary in the order in which approved by the board. Provides that if the total amount of claims approved by the Board and authorized for payment new law exceeds the amount authorized in a fiscal year, then payments of excess claims are to be issued in the subsequent year in the same order of priority and with priority over any claims subsequently approved by the board.

New law provides that if the board approves a claim against the state and the amount of the claim exceeds \$20,000 but does not exceed \$250,000, the claim shall be submitted to the litigation subcommittee of the budget committee for review prior to the next regular session of the legislature. If approved by the litigation subcommittee it shall be paid out of current collections without interest following submission of the authorization to the secretary.

New law provides that if the board has approved a claim against the state for erroneous payments of state taxes and the claim is not paid in full pursuant to new law, is not paid pursuant to any provision of R.S. 47:1484, and is not fully appropriated during the next regular session of the legislature following the date of the board's approval, then authorizes the secretary and the claimant to agree that the payment of the claim may be taken as a nonrefundable offset against the particular tax at issue. Provides that if this offset exceeds the amount of taxes due for the claimant, any unused amount may be carried forward against subsequent tax liability for the same tax for a period not to exceed five years. This provision does not apply when the amount of the claim exceeds one million dollars.

Prior law provided 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.

New law retains prior law and authorizes the collector to bring an action before the board 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.

New law authorizes the board 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.

Prior law provided for the suspension of prescription for the assessment of taxes.

New 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.

Prior law provided for the prescription of refund claims.

New 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.

Prior law defined 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.

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

Prior law prohibited 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 required, in cases of misinterpretation of law, rule, or regulation, that a taxpayer pay the disputed taxes under protest or by appeal to the board.

New law repeals prior law as it relates to the taxpayer's remedy against the state 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.

New law requires the state collector to pay a refund in 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.

Effective upon signature of the governor (June 18, 2019).

(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), 1481, 1483, 1574.1(E), and 1580(B)(3); Adds R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), 1621(B)(10), and 1623(G); Repeals R.S. 47:1403(B)(6)(b), and 1621(F))