

Regular Session, 2009

SENATE BILL NO. 268

BY SENATOR DONAHUE AND REPRESENTATIVE TUCKER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES. Establishes an alternative remedy for taxpayers who have received a final notice of assessment of sales and use tax from any tax collector or tax authority. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:337.64 and 1512, relative to tax collection; to provide for

3 alternative remedies for dealers; to provide for the collector to employ private

4 counsel; to provide for prevailing party attorneys' fees and expenses of litigation; and

5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:337.64 and 1512 are hereby amended and reenacted to read as

8 follows:

9 §337.64. Alternative remedy for dealers

10 A. Any taxpayer who has received a final notice of assessment for sales and

11 use taxes from any collector or taxing authority and whose remedy is to make a

12 payment under protest may alternatively **in lieu thereof comply with the**

13 **alternative provisions of this Section** ~~post a commercial bond or other security, as~~

14 ~~provided in this Section,~~ rather than making a payment under protest.

15 B. ~~In order to post commercial bond or other security rather than make a~~

16 ~~payment under protest, the taxpayer, within thirty days of receipt of the notice of~~

17 ~~assessment, shall file suit in any state court of competent jurisdiction contesting the~~

1        ~~final assessment.~~ **If the taxpayer files suit in any state court of competent**  
2        **jurisdiction contesting the final assessment within thirty days of receipt of the**  
3        **notice of final assessment, and satisfies one of the alternative remedies provided**  
4        **for in Subsection C, no collection action shall be taken in connection with the**  
5        **assessment of taxes, interest, and penalties, which are the subject of the**  
6        **taxpayer's suit.**

7                **C.(1) The taxpayer may file with the court a statement showing that the**  
8        **amount of tax in controversy during the calendar year at issue does not exceed**  
9        **one hundred thousand dollars, exclusive of interest and penalties, as may be**  
10        **evidenced by attaching a copy of the assessment issued by the tax collector.**

11                **(2) The taxpayer may file with the court a certified copy of a pledge,**  
12        **collateral assignment, lien, mortgage, or other encumbrance of assets, in favor**  
13        **of the tax collector and in an amount equal to the unpaid taxes, interest, and**  
14        **penalties demanded in the assessment.**

15                ~~(3)(a) In connection with the filing of such suit, the taxpayer shall~~ **may** file  
16        **with the court** a rule to set bond, which shall be set for hearing within thirty days  
17        of the filing of the rule to set bond and shall attach to the petition evidence of the  
18        taxpayer's ability to post bond or other security.

19                ~~C.~~ **(b)** The court shall authorize the posting of a commercial bond or other  
20        security in lieu of a payment under protest if the taxpayer establishes that it does not  
21        have the resources to pay the taxes, penalties, and interest under protest or that a  
22        payment under protest of the taxes, interest, and penalties would seriously disrupt the  
23        ability of the taxpayer to manage its business affairs. The court may either order the  
24        posting of commercial bond or other security in an amount determined by the court  
25        not to be less than the amount of unpaid taxes, interest, and penalties demanded in  
26        the assessment or may order the taxpayer to make a payment under protest pursuant  
27        to the provisions of state law and this Chapter in the amount of such unpaid taxes,  
28        interest, and penalties. The court may order that a portion of the unpaid taxes,  
29        interest, and penalties be paid under protest and the balance secured by the posting

1 of a bond or other security as provided herein.

2 ~~D. (c)~~ The posting of such bond or other security or the payment under  
3 protest shall be made no later than thirty days after the mailing of the notice of the  
4 decision of the court authorizing the posting of bond or other security or requiring  
5 that a payment under protest be made.

6 ~~E. If the taxpayer timely files the suit referred to herein, no collection action~~  
7 ~~shall be taken in connection with the assessment of taxes, interest, and penalties,~~  
8 ~~which are the subject of the taxpayer's suit, unless the taxpayer fails to post bond or~~  
9 ~~other security or make the payment under protest required by the court.~~

10 F. (d) To the extent not inconsistent with this Section, the nature and amount  
11 of the bond or security and the procedures for posting bond or providing other  
12 security shall be consistent with the provisions for providing security in connection  
13 with a suspensive appeal under the Code of Civil Procedure.

14 \* \* \*

15 §1512. Power to employ counsel; prevailing party attorneys' fees

16 A. The collector is authorized to employ private counsel to assist in the  
17 collection of any taxes, penalties or interest due under this Sub-title, or to represent  
18 him in any proceeding under this Sub-title. ~~If any taxes, penalties or interest due~~  
19 ~~under this title are referred to an attorney at law for collection, an additional charge~~  
20 ~~for attorney fees, in the amount of ten per centum (10%) of the taxes, penalties and~~  
21 ~~interest due, shall be paid by the tax debtor.~~

22 B. The court may award to the collector or the taxpayer, whichever is the  
23 prevailing party, reasonable attorneys' fees and expenses of litigation, as  
24 follows:

25 (1) If the collector is the prevailing party, up to ten per centum of the  
26 amount of tax, interest, and penalties determined to be due by the taxpayer.

27 (2) If the taxpayer is the prevailing party, up to ten per centum of the  
28 amount of tax, interest, and penalties recovered by the taxpayer or determined  
29 not to be due by the taxpayer.

1           Section 2. This Act shall become effective upon signature by the governor or, if not  
2 signed by the governor, upon expiration of the time for bills to become law without signature  
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Christopher D. Adams.

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#### DIGEST

Proposed law provides alternative remedies for taxpayers who have received a final notice of assessment for sales and use taxes from any collector or taxing authority and now seek a remedy instead of making a payment under protest.

Proposed law provides taxpayer must file suit in any state court of competent jurisdiction contesting the final assessment within 30 days of receipt of notice of final assessment and satisfy one of three alternative remedies. If the taxpayer timely files suit and properly executes one of the three alternative remedies, no collection shall be taken in connection with assessment of taxes, interest, and penalties subject to the taxpayer's suit.

Proposed law provides for three alternative remedies:

- (1) File with the court a statement showing the amount in controversy during the calendar year at issue does not exceed \$100,000, exclusive of interest and penalties.
- (2) File with the court a certified copy of a pledge, collateral assignment, lien, mortgage, or other encumbrance of assets in favor of tax collector and in amount equal to unpaid taxes, interest, and penalties being sought by tax collection.
- (3) File with the court a rule to set bond.

Present law provides the collector with the authority to employ private counsel to assist in collection of taxes, interest, and penalties or to represent the collector in any proceeding.

Proposed law retains present law and provides the court with the authority to award the prevailing party reasonable attorneys' fees and expenses of litigation.

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

(Amends R.S. 47:337.64 and 1512)