

**LEGISLATIVE FISCAL OFFICE**

**Fiscal Note**



Fiscal Note On: **SB 268** SLS 09RS 130

Bill Text Version: **ORIGINAL**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

<b>Date:</b> May 21, 2009	12:18 PM	<b>Author:</b> DONAHUE
<b>Dept./Agy.:</b> Revenue		<b>Analyst:</b> Charley Rome
<b>Subject:</b> Changes sales tax payments requirements and legal fees		

TAX/SALES

OR INCREASE GF RV See Note

Page 1 of 1

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)

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. The bill states that if the taxpayer files suit with 30 days of receipt of notice of final assessment and properly executes one of three alternative remedies, no collection shall be taken in connection with assessment of taxes, interest, and penalties subject to the taxpayer's suit. The bill provides the following 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 equal to unpaid taxes, interest, and penalties. (3) File with the court a rule to set bond. The bill removes the authority of the Louisiana Department of Revenue (LDR) to collect 10 percent of taxes, penalties, and interest collected for private attorneys' fees and awards reasonable attorney fees and litigation expenses to the litigation's prevailing party up to 10% of the disputed amount. Effective upon governor's signature.

<b>EXPENDITURES</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b><u>\$0</u></b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

  

<b>REVENUES</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Agy. Self-Gen.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Ded./Other	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Federal Funds	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<b><u>\$0</u></b>
<b>Annual Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**EXPENDITURE EXPLANATION**

The bill is unlikely to have a significant impact on state or local governmental expenditures. The bill requires payment of reasonable attorney fees and litigation expenses to parties prevailing in lawsuits regarding disputed sales and use taxes. The Louisiana Department of Revenue (LDR) does not litigate cases without a high probability of an outcome favorable to the state. Furthermore, outside counsel hired by LDR are unlikely to accept cases where an outcome favorable to the state is unlikely. As such, LDR is unlikely to incur significant costs relative to paying legal fees and litigation costs upon losing as required by the bill.

Under current law, tax collectors in local political subdivisions use authority granted to the Louisiana Department of Revenue (LDR) under R.S. 47:1512 to employ and compensate outside legal counsel in the collection of taxes. As with LDR, local governments do not litigate cases without a high probability of an outcome favorable to them. Furthermore, outside counsel hired by local governments are unlikely to accept cases where an outcome favorable to the local government is unlikely. As such, local governments are unlikely to incur significant costs relative to paying legal fees and litigation costs upon losing as required by the bill.

The bill's provisions relative to alternative taxpayer remedies will have no significant impact on state or local expenditures.

**REVENUE EXPLANATION**

The bill will decrease State and local sales taxes, penalties, and interest payments by indeterminable amounts in Fiscal Year 2008-09. The provisions of the bill requiring the loser to pay legal expenses and the provisions limiting outside counsel legal fees are likely to discourage aggressive sales tax collection efforts by the State and local governments. The bill requires that State and local governments pay outside counsel based on reasonable attorney fees and litigation expenses capped at 10 percent of disputed amounts. This provision would, in most cases, decrease the amounts paid to outside counsel. The Department of Revenue (LDR) and local governments utilize outside counsel where specialized legal expertise or capabilities are likely to be required and the Department or local government does not have such expertise or capabilities on staff. Through the use of outside counsel, the Department has collected approximately \$26 million per year over the last five years from these cases. Any initial reductions in State and local sales taxes from the bill's loser pay provision and the bill's potentially reduced payments to outside counsel could grow over time if reduced enforcement efforts encourages more taxpayers to pursue aggressive tax avoidance reporting and payment strategies. This could work to decrease state and local revenue collections beyond the amounts specifically associated with cases litigated by outside counsel.

The bill's provisions relative to alternative taxpayer remedies will have no significant impact on state or local revenues.

Senate

Dual Referral Rules

House

- 13.5.1 >= \$500,000 Annual Fiscal Cost
- 13.5.2 >= \$500,000 Annual Tax or Fee Change

- 6.8(F) >= \$500,000 Annual Fiscal Cost
- 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease

**Robert E. Hosse**  
**LFO Staff Director**