

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/TAXATION. Provides with respect to employment of private counsel by state and local tax collectors and provides more alternative remedies to taxpayers in lieu of paying local sales tax assessments under protest. (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 attorney fees and expenses of litigation; and to provide for
5 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 one hundred twenty-five percent**
14 **of the unpaid taxes, interest, and penalties demanded in the assessment.**

15 ~~(3)(a) In connection with the filing of such suit, t~~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; **attorney 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~~ **Title**, or to
18 represent him in any proceeding under this ~~Sub-title~~ **Title**. If any taxes, penalties or
19 interest due under this title are referred to an attorney ~~at law~~ for collection **of a**
20 **delinquent account after the assessment has become final**, an additional charge
21 for attorney fees, in the amount of ten ~~per centum~~ **percent** (10%) of the taxes,
22 penalties and interest due, shall be paid by the ~~tax debtor~~ **taxpayer**.

23 **B. The private counsel employed by the collector in accordance with this**
24 **Section may be paid reasonable attorney fees and reasonable expenses out of**
25 **current collections of the particular tax at issue. The reasonable attorney fees**
26 **and reasonable expenses paid by the collector shall not exceed ten percent**
27 **(10%) of the taxes, penalties, and interest recovered by the collector.**

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

The original instrument was prepared by Christopher D. Adams. The following digest, which does not constitute a part of the legislative instrument, was prepared by Riley Boudreaux.

DIGEST

Donahue (SB 268)

Present law authorizes the secretary of the Department of Revenue and local tax collectors to employ private counsel to assist in collection of taxes, interest, and penalties or to represent the collector in any proceeding and authorizes an additional charge for attorney fees, in the amount of 10% of the taxes, penalties and interest due to be paid by the "tax debtor."

Proposed law limits the ability to employ private counsel to collection of delinquent accounts after an assessment has become final, and further provides that the attorney may be paid reasonable attorney fees and reasonable expenses out of current collections of the particular tax at issue, but they cannot exceed 10% of the taxes, penalties, and interest recovered by the collector.

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.

Present law authorizes a taxpayer contesting local sales taxes, as an alternative to paying the contested taxes, penalty, and interest under protest, to post a commercial bond or other security and file suit within 30 days. If he does so, no collection action can be taken in connection with the tax assessment.

Proposed law provides more alternative remedies. It authorizes the taxpayer to:

1. File with the court a statement showing that the amount of tax in controversy during the calendar year at issue does not exceed \$100,000, exclusive of interest and penalties, as evidenced by the assessment.
2. File with the court a certified copy of a pledge, collateral assignment, lien, mortgage, or other encumbrance of assets in favor of the tax collector and in an amount equal to 125% of the unpaid taxes, interest, and penalties demanded in the assessment.

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

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

Summary of Amendments Adopted by Senate

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

1. Changes the proposed law from an authorization of an award to the "prevailing party" of 10% of tax, interest, and penalties either recovered (in the case of the collector) or recovered or determined not to be due (in the

case of the taxpayer) to a limit on the ability of the collectors to employ private counsel to collection of delinquent accounts after an assessment has become final and a limit on the payment to private counsel of "reasonable attorney fees and reasonable expenses" up to 10% of the amount recovered by the collectors.

2. Requires, as an alternative to paying under protest local sales taxes, filing with the court a certified copy of an instrument in favor of the tax collector and in an amount equal to 125% of the amount at issue, rather than only the amount at issue.