

Regular Session, 2009

SENATE BILL NO. 268

BY SENATORS DONAHUE AND WALSWORTH 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 assessment within the time provided by law and**  
3        **satisfies the alternative remedies provided for in Subsection C of this Section,**  
4        **no collection action shall be taken in connection with the assessment of taxes,**  
5        **interest, and penalties, which are the subject of the taxpayer's suit; however, the**  
6        **collector shall be permitted to file a reconventional demand against the**  
7        **taxpayer in such suit.**

8                ~~C. (1)(a) In connection with the filing of such suit, the taxpayer shall~~ **may**  
9        file **with the court** a rule to set bond **or other security**, which shall be set for  
10       hearing within thirty days of the filing of the rule to set bond **or other security** and  
11       shall attach to the petition evidence of the taxpayer's ability to post bond or other  
12       security.

13                ~~C. The court shall authorize the posting of a commercial bond or other~~  
14       security in lieu of a payment under protest if the taxpayer establishes that it does not  
15       have the resources to pay the taxes, penalties, and interest under protest or that a  
16       payment under protest of the taxes, interest, and penalties would seriously disrupt the  
17       ability of the taxpayer to manage its business affairs.

18                **(b) The term "other security" as set forth in this Section shall include**  
19       **but not be limited to a pledge, collateral assignment, lien, mortgage, factoring**  
20       **of accounts receivable, or other encumbrance of assets.**

21                **(2)** The court may either order the posting of commercial bond or other  
22       security in an amount determined by the court not to be less than the amount of  
23       unpaid taxes, interest, and penalties demanded in the assessment or may order the  
24       taxpayer to make a payment under protest pursuant to the provisions of state law and  
25       this Chapter in the amount of such unpaid taxes, interest, and penalties. The court  
26       may order that a portion of the unpaid taxes, interest, and penalties be paid under  
27       protest and the balance secured by the posting of a bond or other security as provided  
28       herein.

29                ~~D. (3)~~ **(3)** The posting of such bond or other security or the payment under

1 protest shall be made no later than thirty days after the mailing of the notice of the  
 2 decision of the court authorizing the posting of bond or other security or requiring  
 3 that a payment under protest be made.

4 E. (4)If the taxpayer timely files the suit referred to herein, no collection  
 5 action shall be taken in connection with the assessment of taxes, interest, and  
 6 penalties, which are the subject of the taxpayer's suit, unless the taxpayer fails to post  
 7 bond or other security or make the payment under protest required by the court;  
 8 **however, the collector shall be permitted to file a reconventional demand**  
 9 **against the taxpayer in such suit.**

10 F.(5) 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**. **The private counsel**  
 19 **employed by the collector in accordance with this Section may be paid**  
 20 **reasonable attorney fees and reasonable expenses out of current collections of**  
 21 **the particular tax at issue, not to exceed ten percent (10%) of the taxes,**  
 22 **penalties, and interest recovered by the collector.**

23 **B.** If any taxes, penalties or interest due under this title are referred to an  
 24 attorney ~~at law~~ for collection **of a delinquent account after the assessment has**  
 25 **become final**, an additional charge for attorney fees, in the amount of ten ~~per centum~~  
 26 **percent** (10%) of the taxes, penalties and interest due, shall be paid by the ~~tax debtor~~  
 27 **taxpayer.**

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

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

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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.

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#### 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 provides that the private counsel employed by the collector 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. If private counsel is employed to collect a delinquent account after an assessment has become final, an additional charge for attorney fees of 10% of the taxes, penalties and interest due must be paid by the taxpayer.

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 requires a taxpayer contesting local sales taxes, as an alternative to paying the contested taxes, penalty, and interest under protest, to file with the court a rule to set bond within 30 days of receipt of a notice of final assessment, which must be set for hearing within 30 days of the filing of the rule. Requires the court to authorize the posting of a commercial bond or other security in lieu of a payment under protest if the taxpayer establishes that it does not have the resources to pay under protest or that a payment under protest would seriously disrupt the ability of the taxpayer to manage its business affairs. If he does so, no collection action can be taken in connection with the tax assessment.

Proposed law authorizes the taxpayer to file a rule and post a bond or "other security" "within the time required by law" and deletes the requirement to show no resources or business disruption as set forth above. Defines "other security" as including, but not being limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts receivable, or other encumbrance of assets.

Proposed law specifically allows a collector to file a reconventional demand against the taxpayer in the suit but retains the prohibition on any other collection action.

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.

Senate Floor Amendments to engrossed bill.

1. Deletes alternatives allowing filing with the court a statement showing that the amount at issue does not exceed \$100,000 and the alternative requiring posting of instruments in an amount equal to 125% of the amount at issue.
2. Specifically authorizes the filing of "other security" by the taxpayer in lieu of a bond and defines the term.
3. Specifically allows a collector to file a reconventional demand against the taxpayer in a suit where bond or other security is properly posted, but retains the prohibition on any other collection action.