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DIGEST

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Donahue

SB No. 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 in state matters 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 at issue. 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 shall apply to matters referred to private counsel on or after the effective date of proposed law.

Proposed law adds specific authorization for local collectors to employ private counsel to assist in the collection of taxes, penalties or interest pursuant to present law. A taxpayer shall pay attorneys fees in amounts equaling up to 10% of the taxes, penalties and interest due. An exception is provided for amounts timely paid under protest with a return that is not delinquent or amounts paid under protest to a vendor in accordance with present law.

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.

## Summary of Amendments Adopted by House

### Committee Amendments Proposed by House Committee on Ways and Means to the reengrossed bill.

1. Adds specific authorization for local tax collectors to employ private counsel to assist with collection of taxes, and provides for the payment of attorney fees by the taxpayer under certain circumstances.
2. Regarding the base amount of taxes and penalties used to calculate the attorney fees in state matters, changes the base from the amount recovered by the collector to the amount at issue.
3. Specifies that provisions of proposed law regarding the payment of attorney fees in state tax matters shall apply prospectively.