

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.

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AN ACT

To amend and reenact R.S. 47:337.64 and 1512, and to enact R.S. 47:337.13.1, relative to tax collection; to provide for alternative remedies for dealers; to provide for the collector to employ private counsel; to provide for attorney fees and expenses of litigation; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:337.64 is hereby amended and reenacted, and R.S. 47:337.13.1 is hereby enacted to read as follows:

**§337.13.1. Power to employ counsel; attorney fees**

**The local collector is authorized to employ private counsel to assist in the collection of any taxes, penalties or interest due under this Subtitle, or to represent him in any proceeding under this Subtitle. If any taxes, penalties or interest due under this Subtitle are referred to an attorney at law for collection, an additional charge for attorney fees, in the amount of ten percent (10%) of the taxes, penalties and interest due, except with respect to amounts timely paid under protest with a return that is not delinquent, or paid under protest to a vendor in accordance with law, shall be paid by the taxpayer; provided, however, that the amount paid to the attorney shall be subject to the discretion of the court as to reasonableness.**

\* \* \*

§337.64. Alternative remedy for dealers

A. Any taxpayer who has received a ~~final~~ notice of assessment for sales and use taxes from any collector or taxing authority and whose remedy is to make a payment under protest may ~~alternatively~~ **in lieu thereof comply with the alternative provisions of this Section** ~~post a commercial bond or other security, as~~

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

2 B. ~~In order to post commercial bond or other security rather than make a~~  
 3 ~~payment under protest, the taxpayer, within thirty days of receipt of the notice of~~  
 4 ~~assessment, shall file suit in any state court of competent jurisdiction contesting the~~  
 5 ~~final assessment.~~ **If the taxpayer files suit in any state court of competent**  
 6 **jurisdiction contesting the assessment within the time provided by law and**  
 7 **satisfies the alternative remedies provided for in Subsection C of this Section,**  
 8 **no collection action shall be taken in connection with the assessment of taxes,**  
 9 **interest, and penalties, which are the subject of the taxpayer's suit; however, the**  
 10 **collector shall be permitted to file a reconventional demand against the**  
 11 **taxpayer in such suit.**

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

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

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

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

1 protest and the balance secured by the posting of a bond or other security as provided  
 2 herein.

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

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

13 ~~F.~~ (5) To the extent not inconsistent with this Section, the nature and amount  
 14 of the bond or security and the procedures for posting bond or providing other  
 15 security shall be consistent with the provisions for providing security in connection  
 16 with a suspensive appeal under the Code of Civil Procedure.

17 \* \* \*

18 Section 2. R.S. 47:1512 is hereby amended and reenacted to read as follows:

19 §1512. Power to employ counsel; **attorney fees**

20 A. The collector is authorized to employ private counsel to assist in the  
 21 collection of any taxes, penalties or interest due under this ~~Sub-title~~ **Title**, or to  
 22 represent him in any proceeding under this ~~Sub-title~~ **Title**. **The private counsel**  
 23 **employed by the collector in accordance with this Section may be paid**  
 24 **reasonable attorney fees and reasonable expenses out of current collections of**  
 25 **the particular tax at issue, not to exceed ten percent (10%) of the taxes,**  
 26 **penalties, and interest at issue.**

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

1 taxpayer.

2 Section 3. The provisions of Section 2 of this Act shall be applicable and effective  
3 with respect to matters referred to private counsel on or after the effective date of this Act.

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_