
DIGEST

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Danahay

HB No. 863

Abstract: Provides for the composition, powers, function, and jurisdiction of the Board of Tax Appeals, adding jurisdiction over local sales and use tax disputes.

General Provisions

Present law establishes the various offices and agencies of the state within the 20 state departments. Offices within each department have varying levels of administrative and operational independence from the secretary of the department.

Present law establishes the Board of Tax Appeals (hereinafter "board") as an independent agency in the Executive Department of the state government.

Proposed law changes present law by transferring the board from the Executive Department to the Department of State Civil Service as an independent quasi-judicial agency.

Present law authorizes the board to act as an appeal board to hear and decide questions of law and fact arising from disputes between a taxpayer and the state revenue collector in the enforcement of any tax, excise, license, permit or any other tax law administered by the collector.

Proposed law retains present law and adds jurisdiction to certain disputes between taxpayers or dealers and local sales and use tax collectors.

Membership

Present law provides for the membership of the board: three members, all being qualified electors of the state, appointed by and serving at the pleasure of the governor. Member vacancies are filled in the same manner as appointments.

Proposed law retains present law and adds membership criteria and appointment requirements.

Proposed law requires the governor to appoint attorneys as board members, and requires that one member be a Board Certified Tax Law Specialist. On or before Aug. 1, 2014, one of the three members shall be selected from a list of up to three nominees provided by a nominating committee established by proposed law. The term of this member expires Feb. 1, 2020, with subsequent appointments for a fixed term of six years. On or before Sept. 1, 2014, the remaining two members shall be appointed, one with a term expiring Feb. 1, 2016, and one with a term

expiring Feb. 1, 2018. Subsequent appointments for these members shall be for either a fixed term of four years or for the remainder of an unexpired term.

Proposed law establishes the Local Tax Division Nominating Committee for purposes of developing a list of one to three nominees to be considered by the governor for board membership for the appointment to be made on or before Aug. 1, 2014. Proposed law provides for the membership and function of the committee, which is composed of representatives of various local government and business interests.

Proposed law provides that a member shall serve until the appointment of a successor. The removal of a member during an unexpired term of office shall be subject to judicial review. Proposed law further provides procedures for the reappointment of board members.

Proposed law authorizes the governor to set the compensation of board members and prohibits the reduction of a member's compensation during their unexpired term of office.

Proposed law provides with respect to the terms of office of members serving on the board on the effective date of proposed law.

Administration

Present law provides for the distribution of certain tax proceeds to each parish. The monies are transmitted by the secretary of the Dept. of Revenue to each parishes' central local sales and use tax collector for distribution on a pro rata basis to each political subdivision within the parish which levies a sales and use tax or receives a portion of the proceeds of a parishwide levy.

Proposed law retains present law and adds an annual dedication of \$120,000 of use tax proceeds for purposes of the board, the allocation to occur before the distributions are made to the parishes pursuant to present law.

Present law provides for the domicile of the board and the conduct of its hearings.

Proposed law authorizes the voluntary recusal of a board member from any proceeding in which he cannot accord a fair and impartial hearing in the same manner as provided for judges by the La. Code of Civil Procedure. Proposed law provides for procedures governing the instance where a party other than a board member requests the recusal of a board member. Proposed law further provides that the remainder of the board may adjudicate a case if a board member is recused, and provides that if all board members are recused then a retired judge may be appointed to adjudicate a case as an ad hoc judge for the board.

Proposed law retains present law and adds an authorization for board hearings by telephone, video conference, or similar communication equipment if the case involves a state collector and such a hearing is requested by the taxpayer, or with the consent of all parties. Further, in a matter involving only local taxing authorities in a single parish and upon the motion of the local collector, a hearing may be held in that parish at the facilities of a local court. Expenses for such

a hearing may be taxed as costs.

Present law grants the board discretion to issue written reasons with its decisions.

Proposed law retains present law and adds a requirement for the issuance of written reasons for judgment upon the request of any party. All written reasons shall be published on the board's website.

Present law authorizes rulemaking by the board and provides an exemption for the board from the Administrative Procedure Act. Present law also provides certain exceptions to the exemption.

Proposed law deletes present law providing for the exceptions and otherwise retains present law.

Proposed law adds a requirement that any rule related to a fee be subject to legislative and gubernatorial oversight and veto in accordance with the Administrative Procedure Act.

Proposed law provides that legislative oversight of rules promulgated by the board shall be performed by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law provides that the board member appointed at the recommendation of the Local Tax Division Nominating Committee shall be the hearing judge for cases designated for hearing in the Local Tax Division. Proposed law further establishes procedures for the designation of cases for hearing in the Local Tax Division and authorizes a local collector to elect by affidavit to have all cases involving that collector be heard in the Local Tax Division.

Proposed law establishes procedures and requirements for the filing of petitions and issuance of notices and decisions with respect to hearings for the redetermination of an assessment, consideration of a payment under protest claim, determination of an overpayment, or appeal of a denial of or inaction on a refund claim. The board is prohibited from ruling on the constitutionality of a statute or ordinance, and provides for the transfer of cases to the applicable district court.

Proposed law provides conditions and limitations on the consolidation of cases by the board, particularly with respect to cases involving local collectors.

Present law establishes district court jurisdiction for appellate review of a decision of the board, with determination of the particular court being governed by the domicile of the taxpayer or as stipulated by all parties.

Proposed law changes present law by changing the appellate jurisdiction from a district court to a court of appeal. Proposed law further provides that the appeal in a local case shall be to the court of appeal for the parish of the local tax collector.

Present law grants the board approval authority for waivers of penalties in matters involving the state collector.

Proposed law retains present law and adds an exclusion from the board's jurisdiction for any review of a penalty waiver or other discretionary function of a local collector.

Jurisdiction over local sales and use tax disputes

Present law establishes the Uniform Local Sales Tax Code which applies in the assessment, collection, administration, and enforcement of the sales and use tax of any local taxing authority.

Present law provides that present law governing the assessment, collection, administration, and adjudication of local sales and use tax shall be interpreted by the courts of La. to have the same meanings as those provisions of present law regarding state sales and use tax assessment, collection, administration, and adjudication.

Proposed law expands the board's jurisdiction to include questions of law and fact arising from disputes and controversies between a taxpayer or dealer and a collector of local sales and use tax. Proposed law further provides that the board shall interpret provisions of present law governing the assessment, collection, administration, and adjudication of local sales and use tax in the same manner as courts of La.

Present law provides with respect to the remedies available for the resolution of disputes between taxpayers or dealers and collectors regarding assessments and refunds. Present law provides that a request for a mandatory arbitration proceeding may be exercised by a taxpayer or dealer in specific circumstances.

Proposed law removes arbitration as a remedy for a taxpayer or dealer and instead provides for an appeal to the board for redetermination of an assessment or overpayment at issue, or a resolution of the dispute.

Present law authorizes a local collector to choose to either collect taxes by assessment, or by filing a suit or summary proceeding in a district court.

Proposed law retains present law.

Proposed law prohibits a taxpayer who fails to file a return or report to appeal their assessment to the board unless the tax was paid to another parish with a timely refund request.

Present law provides that a taxpayer may pay a disputed tax under protest and then file suit in district court within applicable deadlines for a full adjudication of any and all questions in the enforcement or legality of any tax or method of enforcement.

Proposed law retains present law and adds a claim to the board as an optional additional legal

remedy for the adjudication of such questions.

Present law provides district court jurisdiction as the venue for a dispute over a collector's disallowance or inaction concerning a taxpayer's refund request.

Proposed law changes present law for the venue for such disputes from a district court to the board.

Present law provides for the interruption of the prescriptive period of a tax by the filing of a pleading in a court by any party.

Proposed law retains present law and adds provisions for the filing of a pleading with the board by any party as means of interrupting prescription.

Proposed law retains present law and adds such actions to the board's jurisdiction.

Present law provides that an appeal of an assessment pending in a district court shall not delay the filing of an assessment by the collector for taxes owed by a taxpayer in bankruptcy.

Proposed law retains present law and provides that an appeal pending before the board shall not delay the filing of an assessment for taxes owed by a taxpayer in bankruptcy.

Present law provides for an appeal to a court for redetermination of an assessment for a taxpayer whose property is subject to distraint and sale due to a suspicion by the collector that the collection of the tax is in jeopardy and who has paid the assessment.

Proposed law changes present law by changing the authority for redetermination of the jeopardy assessment from a district court to the board.

Proposed law establishes transitional provisions governing the disposition of cases pending before an arbitration panel, the transfers of cases between district courts and the board, and certain cases filed with the board prior to Jan. 1, 2015.

Effective on July 1, 2014, if and when House Bill No. 798 of this 2014 R.S. is enacted and becomes effective.

(Amends R.S. 36:801.1(A) and R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and (B), 337.48(A), 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2), (B), and (D), 337.67(B)(3), (C)(3), and (D)(2), 337.77(F), 337.81(A)(2) and (C), 337.86(E)(2)(a), 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431, 1432, 1436, 1437, and 1451 and R.S. 49:967(A) and 968(B)(9); Adds R.S. 36:53(J) and R.S. 47:337.2(A)(1)(c), 337.77(G), 337.81.1, 337.86(E)(1)(d), 1407(3), 1414(E), 1417, and 1418; Repeals R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and 337.101(A)(2)(c), (B), and (C))

Summary of Amendments Adopted by House

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

1. Added methods for the filing of local sales and use tax disputes with the Board of Tax Appeals.
2. Added provisions governing the function and administration of the Local Tax Division, particularly with respect to the hearing judge and procedures for designation of cases to be assigned to the division.
3. Added requirement that written reasons for judgment be provided at the request of any party.
4. Added conditions and procedures for the recusal of board members.
5. Added provisions of the Administrative Procedure Act governing the board and removes certain exceptions to exemptions, and adds provisions for rules oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.
6. Added transitional provisions relating to certain claims filed with the board prior to Jan. 1, 2015.