

## HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 863 by Representative Danahay

TAX APPEALS/BOARD: Authorizes and provides for the adjudication of certain state and local tax disputes by the Board of Tax Appeals

### Synopsis of Senate Amendments

1. Board membership: Added a requirement that all members be attorneys; changed requirements regarding tax law experience; added a requirement for additional compensation for the hearing judge of the Local Tax Division; and added authority for the reappointment of any member serving on the board on the effective date of proposed law without any additional confirmation by the Senate.
2. Sources of revenue for the board: Added a requirement for an annual allocation of certain proceeds of the state sales and use tax on remote sales through an interagency transfer from the Dept. of Revenue to the board in the amount of \$132,000 with provisions for increases in such amount under certain circumstances, and limiting the use of such monies to support of the Local Tax Division. Also, added a limitation on the use of self-generated revenues of the board which are derived from adjudication of local tax disputes, which monies shall be used exclusively for purposes of the Local Tax Division and shall not be subject to reversion to the state general fund at year's end.
3. Deleted exemptions from certain provisions of the Administrative Procedures Act.
4. Changed effectiveness from July 1, 2014 to governor's signature.

### Digest of Bill as Finally Passed by Senate

#### 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 for 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 changes present law governing board membership criteria and appointments. Proposed law requires the governor to appoint attorneys as board members, and requires that at least two members have tax law experience. 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 board 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. Further, extra compensation shall be paid to the board member who serves as the hearing judge for the Local Tax Division, and that compensation shall be initially set at the same rate as is paid by the state for a part-time city court judge.

Proposed law provides with respect to the terms of office of members serving on the board on the effective date of proposed law and authorizes the reappointment of existing board members without confirmation from the Senate.

### **Administration**

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

Proposed law retains present law and adds 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.

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 petition, 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 proposed law provides the procedures 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 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 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.

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 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.

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 for decisions of the board 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 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 retains present law and adds a requirement that any rule related to a fee shall be subject to legislative and gubernatorial oversight and veto in accordance with the Administrative Procedure Act.

Proposed law further 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.

Present law authorizes the board to make expenditures as necessary and supported by appropriations for such purpose.

Proposed law retains present law and provides that the self-generated revenues derived from the adjudication of local cases shall be expended only for the Local Tax Division, and that such monies shall not be subject to reversion to the state general fund at the end of the fiscal year.

Present law authorizes the levy of a 4% state sales tax in lieu of any sales tax which would be levied by a political subdivision on taxable transactions involving mail order and internet vendors who engage in regular or systematic solicitation in the state by the distribution of advertising, or by other means including print, radio, television, computer database, cable, and other communication systems. After retention of an administrative fee for the Dept. of Revenue, the secretary of the department distributes all remaining tax proceeds 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. A sales and use tax commission advises the secretary on the distribution of tax proceeds.

Proposed law retains present law and adds a requirement for an annual allocation of \$132,000 in tax proceeds to the board via interagency transfer from the Dept. of Revenue. This allocation shall be made prior to distribution of the remaining tax proceeds to local governments as provided in present law. Proposed law further specifies that the annual allocation for the board shall be increased by \$5,000 on July 1, 2015, and also on the first day of each of the four subsequent fiscal years when the amount distributed in the fiscal year immediately preceding that date exceeds the amount distributed in FY2014.

Proposed law adds two members appointed by the La. Sheriff's Association to the sales and use tax commission.

### **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 retains present law and 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 changes present law by removing arbitration as a remedy for a taxpayer or dealer and by instead providing for an appeal to the board for redetermination of an assessment or overpayment at issue, or a resolution of the dispute.

Proposed law adds a prohibition on the appeal of an assessment to the board by a taxpayer who fails to file a return or report unless the tax was paid to another parish with a timely refund request.

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.

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 petition 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.

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 paid by 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.

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, appeals of decisions or judgments of the board, and certain cases filed with the board prior to Jan. 1, 2015.

Sections 1 through 9 of this Act shall become operative on July 1, 2014. .

Section 10 of this Act shall become operative on the effective date of this Act.

Effective upon signature of governor or lapse of time for gubernatorial action, if 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)(6) and (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), 1406, 1410, 1413, 1431, 1432, 1436, 1437, and 1451 and R.S. 49:968(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, 1418, and 1419; repeals R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and 337.101(A)(2)(c), (B), and (C))