

### General Provisions

Existing law establishes the various 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.

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

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

Existing law authorizes the board to act as an appeal board to decide questions of law and fact concerning disputes between taxpayers and the state revenue collector in the enforcement of any tax, excise, permit or any other tax law administered by the collector.

New law adds jurisdiction for certain disputes between taxpayers or dealers and local sales and use tax collectors.

### Membership

Existing 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.

New law adds criteria for board membership and a schedule for member appointments. The governor may only appoint attorneys as board members. At least two members shall 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 new law. The term of this member expires Feb. 1, 2020, with subsequent appointments for a fixed term of six years. This member shall serve as the hearing judge for the Local Tax Division. 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. New law further provides with respect to reappointments of board members and filling of vacant memberships.

New 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. New law provides for the membership and function of the committee, which is composed of representatives of various local government and business interests.

New 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 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.

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

### Administration

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

New law 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 a local court.

New law 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.

New 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. New law prohibits the board from ruling on the constitutionality of a statute or ordinance, and provides the procedures for the transfer of cases to the applicable court.

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

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

New law adds a requirement for the issuance of written reasons for judgment upon the request of any party, and requires the written reasons to be published on the board's website.

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

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

New law authorizes the voluntary recusal of a board member and provides procedures governing the instance where a party other than a board member requests the recusal of a board member. Further, new law provides that the remainder of the board may adjudicate a case if a board member is recused, and provides for the appointment of a retired judge to adjudicate a case as an ad hoc judge in the case of recusal of all board members.

Prior law established district court jurisdiction for appellate review of a decision of the board.

New law changes the appellate jurisdiction for decisions of the board from a district court to a court of appeal. New 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.

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

New law 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. 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.

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

New law adds limitations on the use of the board's self-generated revenues derived from the adjudication of local cases by restricting the expenditure of such monies to support of the Local Tax Division, and by exempting these revenues from the requirement for reversion to the state general fund at the end of the fiscal year.

Existing 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.

New law 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 existing law. New 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.

New 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**

Existing 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.

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

Existing law provides with respect to the remedies available for the resolution of disputes between taxpayers or dealers and collectors regarding assessments and refunds.

Prior law provided that a request for a mandatory arbitration proceeding may be exercised by a taxpayer or dealer in specific circumstances as a remedy for resolution of disputes.

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

New 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.

Existing 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.

New law adds a petition to the board as an optional additional legal remedy for the adjudication of such questions.

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

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

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

New law adds the same provisions regarding a pleading filed with the board.

Existing 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.

New law adds the same provisions regarding an appeal pending before the board.

Prior law provided for an appeal to a court for redetermination of an assessment paid by a taxpayer whose property was subject to distraint and sale due to a suspicion by the collector that the collection of the tax was in jeopardy.

New law changes the authority for redetermination of the jeopardy assessment from a district court to the board.

New 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.

Provisions of Sections 1 through 9 of this Act become operative on July 1, 2014, if House Bill No. 798 of this 2014 R.S. is enacted and becomes effective (Act No. 198).

Effective upon signature of governor (June 12, 2014).

(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, 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))