## HOUSE COMMITTEE AMENDMENTS

2019 Regular Session

Amendments proposed by House Committee on Ways and Means to Reengrossed Senate Bill No. 198 by Senator Peacock

1

AMENDMENT NO. 1

| 2              | On page 1, line 2, after " $1408(D)(1)$ " and before "and (E)," insert "and (2)(a)"   |
|----------------|---|
| 3              | AMENDMENT NO. 2   |
| 4              | On page 1, delete lines 3 and 4 in their entirety and insert the following:   |
| 5<br>6<br>7    | "and (F), 1483, 1484(C), 1574.1(E), and 1580(B)(3), to enact R.S. 47:337.77(B)(7), 340(E)(4), 1436(B)(3), 1481(B) and (C), 1484(D), 1561.1(C), 1621(B)(10), and 1623(G), and to repeal R.S. 47:337.77(F), 1403(B)(6)(b), and 1621(F), relative to"      |
| 8              | AMENDMENT NO. 3   |
| 9              | On page 1, line 9, after "accounts;" and before "to provide" insert the following:  |
| 10<br>11<br>12 | "to authorize the Board of Tax Appeals to use escrow account funds for certain purposes; to provide relative to the satisfaction of claims against the state; to authorize a simplified claim against the state procedure under certain circumstances;" |
| 13             | AMENDMENT NO. 4   |
| 14             | On page 1, line 10, after "refunds;" insert the following:  |
| 15<br>16<br>17 | "to authorize tax refunds under certain circumstances; to provide for certain requirements; to repeal the prohibition of the payment of refunds under certain circumstances; to provide for an effective date;"   |
| 18             | AMENDMENT NO. 5   |
| 19             | On page 1, line 13, after "1408(D)(1)" and before "and (E)," insert "and (2)(a)"  |
| 20             | AMENDMENT NO. 6   |
| 21             | On page 1, delete lines 14 and 15 in their entirety and insert the following:   |
| 22<br>23<br>24 | "(F), 1483, 1484(C), 1574.1(E), and 1580(B)(3) are hereby amended and reenacted and R.S. 47:337.77(B)(7), 340(E)(4), 1436(B)(3), 1481(B) and (C), 1484(D), 1561.1(C), 1621(B)(10), and 1623(G) are hereby enacted to read as follows:"                  |
| 25             | AMENDMENT NO. 7   |
| 26             | On page 2, between lines 14 and 15, insert the following:   |
| 27             | §337.77. Refunds of overpayments authorized   |
| 28             | * * *   |
| 29<br>30       | B. The collector shall make a refund of each overpayment where it is determined that:   |
| 31             | * * *   |
|                |   |

Page 1 of 6

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

| 1              | (7) The tax was overpaid due to payment pursuant to an   |
|----------------|--|
| 2              | unconstitutional law, invalid or unenforceable rule or regulation, or because of   |
| 3              | a mistake of law arising from the misinterpretation by the collector of the  |
| 4<br>5         | provisions of any law or of any rule or regulation. However, the payment of any  |
| 6              | refund pursuant to the provisions of this Paragraph shall be paid by the collector under the terms and conditions determined by the collector. |
| 7              | * * *"   |
| 8              | AMENDMENT NO. 8  |
| 9              | On page 3, between lines 24 and 25, insert the following:  |
| 10             | "(2)(a) In addition to all other remedies provided for in this Section, the  |
| 11             | failure to obey any order or subpoena issued under the authority of this Chapter shall   |
| 12             | constitute contempt of court, and may be punished by the board or its local tax judge  |
| 13             | in accordance with the provisions of Section 2 of Chapter 4 of Title 1 of Book I of  |
| 14             | the Louisiana Code of Civil Procedure, R.S. 13:4611(1), or any other laws  |
| 15             | applicable to and all other applicable laws for contempt of court. Any action  |
| 16             | finding anyone in contempt pursuant to this Paragraph shall be subject to an appeal  |
| 17             | by trial de novo in the Nineteenth Judicial District Court or supervisory writ as  |
| 18             | provided for in R.S. 47:1434 through 1436."  |
| 19             | AMENDMENT NO. 9  |
| 20             | On page 5, between lines 14 and 15, insert the following:  |
| 21             | "(3) The board may utilize the escrow account to facilitate the operation  |
| 22             | of an online filing system, including the deposit of advance costs from  |
| 23             | subscribers and related payment of amounts collected related to that service.  |
| 23<br>24<br>25 | Notwithstanding any provision of this Section to the contrary, the board may   |
| 25             | utilize any interest earned on the account to facilitate an online filing system."   |
| 26             | AMENDMENT NO. 10   |
| 27             | On page 5, between line 15 and 16, insert the following:   |
| 28             | "§1481. Authority of board to receive and consider claims against the state  |
| 29             | A. Any person who has a claim against the State of Louisiana for money   |
| 30             | erroneously paid into the State Treasury, or for any other claim, may present such   |
| 31             | claim to the Board of Tax Appeals, in such form and together with such proofs as the   |
| 32             | Board of Tax Appeals may require by its rules and regulations. The board shall duly  |
| 33             | examine into the justice, merits and correctness of each such claim presented to it,   |
| 34             | and shall officially pass thereon.   |
| 35             | B. For purposes of this Part, except when the context clearly indicates  |
| 36             | otherwise, the terms defined in this Section shall have the following meanings:  |
| 37             | (1) "Current collections" shall first mean any current collections of the  |
| 38             | particular tax at issue, and then current collections of any taxes collected   |
| 39             | pursuant to Chapters 1, 2, Chapter 2-A, Chapter 2-B, or 5 of Subtitle II of Title  |
| 40             |  |
|                | 47 of the Louisiana Revised Statutes of 1950, as amended.  |
| 41             | (2) "Department" shall mean the Department of Revenue.   |

| 1<br>2<br>3<br>4 | C.(1) Whenever a tax statute or regulation administered by the department has been declared unconstitutional or unenforceable in a final, non-appealable decision of the board or any court of competent jurisdiction, and a taxpayer has not challenged the constitutionality or enforceability of the |
|------------------|---|
| 5<br>6<br>7      | tax statute or regulation through the payment under protest procedure set forth in R.S. 47:1576, the taxpayer may seek to recover the amounts paid under the statute or regulation by filing a claim as set forth in this Subsection.   |
| 8<br>9           | (2) A claim filed pursuant to this Subsection shall be submitted to the department on forms prescribed by the secretary, setting forth the amount of  |
| 10               | the claim. The filing of the claim with the department shall be deemed a filing   |
| 11               | with the board for purposes of this Part as of the date the claim is filed with the   |
| 12               | secretary.  |
| 13               | (3) Once reviewed for correctness, all claims submitted to the secretary  |
| 14               | shall be forwarded to the board for its examination of the justice, merits, and   |
| 15               | correctness of each claim. If the secretary's review of any claim remains   |
| 16               | pending for more than ninety days, the secretary shall forward the claim to the   |
| 17               | board within sixty days of the written request of the claimant.   |
| 18<br>19         | (4) Nothing in this Subsection shall restrict or limit any other remedy available to the claimant under any other applicable law.   |
| 20               | * * *   |
| 21               | §1483. Payment of approved claims   |
| 22               | A.(1) If the claim is approved and it should be an amount not exceeding one   |
| 23               | twenty thousand dollars, the chairman of the Board of Tax Appeals shall issue a   |
| 24               | warrant upon the State Treasurer, for the amount for which the same is approved,  |
| 25               | judgment for payment of an approved claim, stating in said warrant the judgment   |
| 26               | the amount, purposes, and reasons for which the same is drawn the judgment. If  |
| 27               | said claim shall amount to more than one twenty thousand dollars, and is approved   |
| 28               | by said Board of Tax Appeals, the board, the chairman, giving all the facts and   |
| 29               | circumstances in connection therewith, shall report the same judgment to the next   |
| 30               | session of the legislature for its consideration as provided for in this Part.  |
| 31               | Provided that where such claim accrues to more than one person, as for example, the   |
| 32               | heirs or legatees of another, and the claim is determined by the board to be properly   |
| 33               | due and owing, payment thereof to the party or parties asserting the same before the  |
| 34               | board shall not be denied because of the failure or refusal of others to join in and  |
| 35               | assert such claim, but in such event only the portion due such claimant or claimants  |
| 36               | shall be paid and then only if the amount to be paid to each such claimant does not   |
| 37               | exceed <del>one</del> twenty thousand dollars.  |
| 38               | B.(1) Any judgment issued by the board for the payment of an approved   |
| 39               | claim when the amount approved does not exceed twenty thousand dollars shall  |
| 40               | be paid out of current collections without interest following submission to the   |
| 41               | secretary. The total amount of judgments paid in a fiscal year from current   |
| 42               | collections pursuant to this Subsection shall not exceed two million dollars,   |
| 43               | unless a higher amount for that fiscal year is approved by the Commissioner of  |
| 44               | Administration and the Joint Legislative Committee on the Budget.   |
| 45               | (2) The payment of judgments for approved claims shall be paid by the   |
| 46               | secretary in the order in which the claims were approved by the board. If the   |
| 47               | total amount of claims approved by the board and authorized for payment   |
| 48               | under this Section exceeds the amount authorized pursuant to Paragraph (1) of   |
| 49               | this Subsection in a fiscal year, the payment of any excess claims shall be issued  |

claims subsequently approved by the board.

in the subsequent year in the same order of priority and with priority over any

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C. When the board approves a claim against the state and the amount of the claim exceeds twenty thousand dollars but does not exceed two hundred fifty thousand dollars, the claim shall be submitted to the litigation subcommittee of the Joint Legislative Committee on the Budget for review prior to the next regular session of the legislature. If the claim is approved by the litigation subcommittee, the approved claim shall be paid out of current collections without interest following submission of the authorization to the secretary.

D. When the board has approved a claim against the state for erroneous payments of state taxes and the claim is not paid in full pursuant to this Section, is not paid pursuant to any provision of R.S. 47:1484, and is not fully appropriated during the next regular session of the legislature following the date of the board's approval, the secretary and the claimant may agree that the payment of the claim may be taken as a nonrefundable offset against the particular tax at issue. If this offset exceeds the amount of taxes due for the claimant, any unused amount may be carried forward against subsequent tax liability for the same tax for a period not to exceed five years. The provisions of this Subsection shall not apply when the amount of the claim exceeds one million dollars.

§1484. Satisfaction of claims

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C.(1) When the Board of Tax Appeals has approved a claim against the state for erroneous payments of corporate franchise tax based on the decision in UTELCOM, Inc. v. Bridges, and an amount to pay the claim is not paid appropriated pursuant to Subsection A of this Section within one year of during the next regular session of the legislature following the date the board's approval of the claim becomes final, the secretary of the Department of Revenue and the claimant may agree that the payment of the claim may be taken as an offset against any state corporate income or franchise tax liability of the claimant or one or more of the claimant's affiliates, as provided in Paragraph (3) of this Subsection.

- (2) Up to twenty-five fifty percent of the total claim approved by the board shall be allowed as an a nonrefundable offset in each of the four taxable years the two taxable periods immediately following the agreement of the parties to the offset. For each taxable year period in which an offset authorized by this Subsection is taken, the amount of the offset shall not exceed the amount of the state corporate income or franchise tax liability against which the offset is taken after application of all be treated as a credit for purposes of R.S. 47:1675 and shall be applied against state income or corporation franchise tax liability before application of any other credits of any kind or nature whatsoever, including but not limited to credits described in R.S. 47:1675. The secretary shall authorize an extension of time not to exceed two years within which an offset may be taken if payment of the amount of the total claim approved is not satisfied after four two years.
- (3) A party claimant for which the secretary has authorized an offset pursuant to this Subsection may transfer all or any portion of the offset to a any member of the party's affiliated group included in the of entities that includes the claimant and that files a federal consolidated return filed under the Internal Revenue Code. Any portion of an offset transferred to a member of the federal consolidated group that includes the claimant shall be allowed only as an offset against the same taxes and shall be subject to the same limitations provided in Paragraph (2) of this Subsection. The transfer shall be in accordance with the procedures set forth by rule or on forms or instructions provided by the secretary.

| 2  | (4) No offset authorized pursuant to this Subsection may be taken prior to July 1, 2017.   |
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| 3  | D. All claims approved by the Board of Tax Appeals or the secretary as   |
| 4  | a result of Act No. 109 from the 2015 Regular Session, may be taken as an offset   |
| 5  | against any state corporate income or franchise tax liability of the claimant as   |
| 6  | follows:   |
| 7  | (1) Up to fifty percent of the total claim approved by the board or the  |
| 8  | secretary shall be allowed as a nonrefundable offset in the two taxable periods  |
| 9  | immediately following the agreement of the parties to the offset. For each   |
| 10   | taxable period in which an offset authorized by this Subsection is taken, the  |
| 11   | amount of the offset shall not be treated as a credit for purposes of R.S. 47:1675   |
| 12   | and shall be applied against state income or corporation franchise tax liability   |
| 13   | before application of any other credits of any kind or nature whatsoever,  |
| 14   | including but not limited to credits described in R.S. 47:1675. The secretary  |
| 15   | shall authorize an extension of time not to exceed two years within which an   |
| 16   | offset may be taken if payment of the amount of the total claim approved is not  |
| 17   | satisfied after two years.   |
| 18   | (2) A claimant for which the secretary has authorized an offset pursuant   |
| 19   | to this Subsection may transfer all or any portion of the offset to any member   |
| 20   | of the affiliated group of entities that includes the claimant and that files a  |
| 21   | federal consolidated return filed under the Internal Revenue Code. Any portion   |
| 22   | of an offset transferred to a member of the federal consolidated group that  |
| 23   | includes the claimant shall be allowed only as an offset against the same taxes  |
| 24   | and shall be subject to the same limitations provided in Paragraph (1) of this   |
| 25   | Subsection. The transfer shall be in accordance with the procedures set forth  |
| 26   | by rule or on forms or instructions provided by the secretary.   |
| 20   | by full of our forms of instructions provided by the secretary.  |
| 27   | * * *!!  |
|  | AMENDMENT NO. 11   |
| 28   |  |
| 29   | On page 6, line 14, after " <u>of</u> " and before " <u>resulting</u> " delete " <u>26 U.S.C. 6501</u> " and insert " <u>26 U.S.C. 6501(e)</u> "   |
| 29   | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26   |
| 29<br>30   | On page 6, line 14, after " <u>of</u> " and before " <u>resulting</u> " delete " <u>26 U.S.C. 6501</u> " and insert " <u>26 U.S.C. 6501(e)</u> "   |
| 29<br>30<br>31   | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12   |
| 29<br>30<br>31<br>32   | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  |
| 29<br>30<br>31<br>32<br>33                                     | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *   |
| 29<br>30<br>31<br>32<br>33<br>34<br>35                         | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *  B. The secretary shall make a refund of each overpayment where it is   |
| 29<br>30<br>31<br>32<br>33<br>34<br>35<br>36                   | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * *  B. The secretary shall make a refund of each overpayment where it is determined that:  |
| 29<br>30<br>31<br>32<br>33<br>34<br>35                         | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *  B. The secretary shall make a refund of each overpayment where it is   |
| 29<br>30<br>31<br>32<br>33<br>34<br>35<br>36                   | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * *  B. The secretary shall make a refund of each overpayment where it is determined that:  |
| 29<br>30<br>31<br>32<br>33<br>34<br>35<br>36<br>37             | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *  B. The secretary shall make a refund of each overpayment where it is determined that:  * * * *   |
| 29<br>30<br>31<br>32<br>33<br>34<br>35<br>36<br>37             | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *  B. The secretary shall make a refund of each overpayment where it is determined that:  * * *  (10) The tax was overpaid due to payment pursuant to an unconstitutional law, invalid or unenforceable rule or regulation, or because of a mistake of law arising from the misinterpretation by the collector of the |
| 29<br>30<br>31<br>32<br>33<br>34<br>35<br>36<br>37<br>38<br>39 | On page 6, line 14, after "of" and before "resulting" delete "26 U.S.C. 6501" and insert "26 U.S.C. 6501(e)"  AMENDMENT NO. 12  On page 6, between lines 18 and 19, insert the following:  "§1621. Refunds of overpayments authorized  * * * *  B. The secretary shall make a refund of each overpayment where it is determined that:  * * * *  (10) The tax was overpaid due to payment pursuant to an unconstitutional law, invalid or unenforceable rule or regulation, or because of   |

## 1 AMENDMENT NO. 13

- On page 7, line 6, after "Section 2." and before "hereby" delete "R.S. 47:1403(B)(6) is" and insert "R.S. 47:337.77(F), 1403(B)(6)(b) and 1621(F) are" 2