

Regular Session, 2014

HOUSE BILL NO. 863

BY REPRESENTATIVE DANAHA Y

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

1 AN ACT

2 To amend and reenact R.S. 36:801.1(A) and R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and

3 (B), 337.48(A), 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2), (B),

4 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),

5 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431, 1432, 1436, 1437, and

6 1451, to enact R.S. 36:53(J) and R.S. 47:337.2(A)(1)(c), 337.81.1, 337.86(E)(1)(d), 1407(3),

7 1414(E), and 1418, and to repeal R.S. 36:4(B)(1)(p) and R.S.47:337.51.1 and

8 337.101(A)(2)(c), (B), and (C), relative to disputes concerning taxes, fees, and claims against

9 the state and its political subdivisions; to provide relative to the composition, compensation,

10 procedures, and jurisdiction of the Board of Tax Appeals; to provide for the dedication of

11 certain revenues for support of the board; to transfer the board to the Department of State

12 Civil Service; to provide with respect to procedures for collection and adjudication of local

13 sales and use tax; to provide for redetermination of certain local sales and use tax

14 assessments and overpayments; to authorize the transfer of certain cases to and from the

15 board and certain courts; to provide for definitions; to provide for effectiveness; and to

16 provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 36:801.1(A) is hereby amended and reenacted and R.S. 36:53(J) is

19 hereby enacted to read as follows:

1 §53. Transfer of boards, commissions, departments, and agencies to Department of
2 State Civil Service

3 * * *

4 J. The Board of Tax Appeals is placed within the Department of State Civil
5 Service as an independent agency and shall exercise its powers, duties, functions,
6 and responsibilities in the manner provided for agencies transferred in accordance
7 with the provisions of R.S. 36:801.1. The State Civil Service Commission, the
8 Department of State Civil Service, and its director shall in no way interfere with,
9 review, or change the decisions or operations of the agency so placed. There shall
10 be a local tax division of the Board of Tax Appeals.

11 * * *

12 §801.1. Transfer; retention of all functions

13 A. The agencies transferred by the provisions of R.S. 36:4(B)(1)(dd), ~~(B)~~
14 and (18) and (D), 4.1(C) and (G), 53(H) and (J), 209(R), 259(J), 409(N), 509(O),
15 651(D), 725(A), and 769(J) shall continue to be comprised and selected as provided
16 by law.

17 * * *

18 Section 2. R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and (B), 337.48(A),
19 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2), (B), and (D),
20 337.67(B)(3), (C)(3), and (D)(2), 337.77(F), 337.81(A)(2) and (C), 337.86(E)(2)(a),
21 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431, 1432, 1436, 1437, and
22 1451 are hereby amended and reenacted and R.S. 47:337.2(A)(1)(c), 337.81.1,
23 337.86(E)(1)(d), 1407(3), 1414(E), and 1418, are hereby enacted to read as follows:

24 §302. Imposition of tax

25 * * *

26 K. An additional tax shall be levied as follows:

27 * * *

28 (7) ~~Pursuant~~ From the avails of the tax levied under this Subsection, the
29 amount of one hundred and twenty thousand dollars shall be dedicated to and

1 of this Subtitle shall be interpreted by the Board of Tax Appeals and the courts of
2 this state to have the same meaning and application as the provisions in those
3 Chapters.

4 * * *

5 §337.45. Alternative remedies for the collection of taxes

6 A. In addition to following any of the special remedies provided in this
7 Chapter, the collector may, in his discretion, proceed to enforce the collection of any
8 taxes due under the local ordinance by means of any of the following alternative
9 remedies or procedures:

10 (1) Assessment and distraint, as provided in R.S. 47:337.48 through 337.60;
11 ~~provided that a taxpayer may utilize the mandatory arbitration procedure provided~~
12 ~~for in R.S. 47:337.51.1.~~

13 * * *

14 B. The collector may choose which of these procedures he will pursue in
15 each case, and the counter-remedies and delays to which the taxpayer will be entitled
16 will be only those which are not inconsistent with the proceeding initiated by the
17 collector, provided that in every case the taxpayer shall be entitled to proceed under
18 R.S. 47:337.63, except (a) after he has filed a petition with the Board of Tax Appeals
19 for a redetermination of the assessment, (b) when an assessment for the tax in
20 question has become final, or (c) when a suit involving the same tax obligation
21 is pending against him; and provided further, that the fact that the collector has
22 initiated proceedings under the assessment and distraint procedure will not preclude
23 him from thereafter proceeding by summary or ordinary court proceedings for the
24 enforcement of the same tax obligation.

25 * * *

26 §337.48. Determination and notice of tax due

27 A.(1) If a taxpayer fails to make and file any return or report required by the
28 provisions of the local ordinance and this Chapter, the collector shall determine the
29 tax, penalty, and interest due by estimate or otherwise. Having determined the

1 amount of tax, penalty, and interest due, the collector shall send by mail a notice to
2 the taxpayer at the address given in the last report filed by him pursuant to the
3 provisions of this Chapter, or to any address that may be obtainable from any private
4 entity which will provide such address free of charge or from any federal, state, or
5 local government entity, including but not limited to the U.S. Postal Service or from
6 U.S. Postal Service certified software, setting out his determination and informing
7 the person of his purpose to assess the amount so determined against him after
8 fifteen calendar days from the date of the notice.

9 (2) Notwithstanding any other provision of law to the contrary, a notice
10 issued pursuant to Paragraph (1) of this Subsection to a taxpayer or dealer who fails
11 to make and file any required report or return shall not be appealable to the Board of
12 Tax Appeals for redetermination of the notice of tax due issued pursuant to this
13 Section when the notice is solely for the periods and is in the amount stated on the
14 notice transmitted to such taxpayer or dealer pursuant to Paragraph (1) of this
15 Subsection. Nothing in this Paragraph shall prohibit any taxpayer or dealer from
16 proceeding to file suit pursuant R.S. 47:337.63 or 337.64, or any other applicable
17 law.

18 * * *

19 §337.51. Notice of assessment and right to appeal ~~or arbitration~~

20 A.(1) Having assessed the amount determined to be due, the collector shall
21 send a notice by certified mail to the taxpayer against whom the assessment is
22 imposed at the address given in the last report filed by said taxpayer, or to any
23 address obtainable from any private entity which will provide such address free of
24 charge or from any federal, state, or local government entity, including but not
25 limited to the United States Postal Service or from the United States Postal Service
26 certified software. This notice shall inform the taxpayer of the assessment and that
27 he has thirty calendar days from the date of the notice to do any of the following:

28 (a) Pay the amount of the assessment.

1 **(b) Appeal to the Board of Tax Appeals for redetermination of the**
2 **assessment.**

3 **(c) Pay under protest in accordance with R.S. 47:337.63, and then either file**
4 **suit or file a claim with the Board of Tax Appeals all as provided for in that Section.**

5 **(2) If no report has been timely filed, the collector shall send a notice by**
6 **certified mail to the taxpayer against whom the assessment is imposed at any address**
7 **obtainable from any private entity which will provide such address free of charge or**
8 **from any federal, state, or local government entity, including but not limited to the**
9 **United States Postal Service or from the United States Postal Service certified**
10 **software. This notice shall inform the taxpayer of the assessment and that he has**
11 **thirty calendar days from the date of the notice to ~~(a) pay the amount of the~~**
12 **assessment; ~~(b) request mandatory arbitration pursuant to R.S. 47:337.51.1 or; (c)~~**
13 **pay do either of the following:**

14 **(a) Pay the amount of the assessment.**

15 **(b) Pay under protest in accordance with R.S. 47:337.63 and then either file**
16 **suit or file a claim with the Board of Tax Appeals, all as provided for in that Section**
17 **or request mandatory arbitration pursuant to R.S. 47:337.51.1.**

18 **(3) If the taxpayer has not paid under protest in accordance with the**
19 **provisions of R.S. 47:337.63 or 337.64, or filed an appeal with the Board of Tax**
20 **Appeals within the thirty day period provided for in Paragraph (1) of this Subsection,**
21 **the assessment shall be final and shall be collectible by distraint and sale as provided**
22 **in this Part. If an appeal for a redetermination of the assessment has been timely and**
23 **properly filed, the assessment shall not be collectible by distraint and sale until such**
24 **time as the assessment has been redetermined or affirmed by the Board of Tax**
25 **Appeals or the court which last reviews the matter.**

26 **B. If any dealer ~~shall be aggrieved by~~ disputes any findings or assessment**
27 **of the collector, he may, within thirty days of the receipt of notice of the assessment**
28 **or finding, do any of the following:**

1 (1)(a) File an appeal from the decision of the collector directed to ~~any state,~~
2 ~~city, or federal court of competent jurisdiction~~ the Board of Tax Appeals.

3 (b) Pay under protest in accordance with R.S. 47:337.63, and either file suit
4 as provided for in that Section, or ~~make a written request for mandatory arbitration~~
5 ~~pursuant to R.S. 47:337.51.1~~ file a claim with the Board of Tax Appeals as provided
6 in that Section.

7 ~~(c) Mail a written request for mandatory arbitration pursuant to R.S.~~
8 ~~47:337.51.1 without payment under protest.~~

9 (2) This Section shall afford a legal remedy and right of action in the Board
10 of Tax Appeals, or in any state, city, or federal court having jurisdiction of the parties
11 and subject matter for a full and complete adjudication of any and all questions
12 arising in the enforcement of the local ordinance and this Chapter as to the legality
13 of any tax accrued or accruing or the method of enforcement thereof. If an appeal
14 for a redetermination of the assessment has been timely and properly filed with the
15 Board of Tax Appeals pursuant to Subparagraph(1)(a) of this Subsection, the
16 assessment shall not be collectible by distraint and sale until the assessment has been
17 redetermined or affirmed by the Board of Tax Appeals or the court which last
18 reviews the matter.

19 (3) A notice of tax due issued pursuant to the provisions of R.S. 47:337.48
20 shall not constitute a finding for purposes of this Subsection.

21 C.

22 * * *

23 (2) The determination of an error of fact or of law under this Subsection shall
24 be solely that of the collector, and no action against the collector with respect to the
25 determination shall be brought in any court, including the Board of Tax Appeals, and
26 no court shall have jurisdiction of any such action, it being the intent of this
27 Subsection only to permit the collector to correct manifest errors of fact or in the
28 application of the law made by the collector in making the assessment; however, all
29 reductions of assessments based on such errors, except estimated assessments made

1 due to the failure of the taxpayer to file a proper tax return, must be approved and
2 signed by the collector. Estimated assessments made due to the failure of the
3 taxpayer to file a proper tax return may be corrected by the acceptance of the proper
4 tax return and must be approved by the collector or his designee.

5 * * *

6 §337.53. Assessment and notice when tax is in jeopardy

7 * * *

8 C. The taxpayer against whom the assessment lies can stay distraint of his
9 property, or sale of his property already distrained, as the case may be, only by the
10 immediate payment of the assessment or by posting with the collector a surety bond
11 for twice the amount of such assessment, or of a lower amount acceptable to the
12 collector, with such sureties as the collector deems necessary. The taxpayer shall
13 have sixty calendar days from the date of payment, or the date of posting bond, to
14 appeal to ~~a court of competent jurisdiction~~ the Board of Tax Appeals for a
15 redetermination of the assessment. During this period, the collector shall hold any
16 payment made in an escrow account. If the taxpayer does not appeal, the collector
17 shall immediately credit such payment to tax collections or proceed to collect from
18 sureties, if any were given. In the event of an appeal, such payment or demand for
19 payment from sureties given shall be held in abeyance pending the redetermination
20 or affirmation of the assessment by the Board of Tax Appeals or the court which last
21 reviews the matter. Final payment, or collection from sureties, will be for the
22 amount of the affirmed or redetermined assessment.

23 §337.54. Assessment and claims in bankruptcy and receivership

24 Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy
25 proceeding, or the appointment of a receiver for any taxpayer in a receivership
26 proceeding, before any court of this state or of the United States, the collector may
27 immediately make a determination from any available information or by estimate or
28 otherwise, of the amount of tax, penalty and interest the taxpayer is liable to pay and
29 immediately assess said amount, and by a writing to be retained as a part of his

1 official records indicate that such assessment has been made. Such assessment may
 2 be made whenever a tax becomes due under the provisions of this Chapter,
 3 regardless of whether it is then payable or not. Claims for such assessments, and
 4 additional interest and attorney fees thereon, shall be presented for adjudication in
 5 accordance with law to the court before which the bankruptcy or receivership
 6 proceeding is pending despite the pendency of delays before assessment provided in
 7 R.S. 47:337.48 through 337.51, or the pendency of an appeal to the collector, the
 8 Board of Tax Appeals, or the courts for a redetermination. However, no petition for
 9 the redetermination of an assessment shall be filed with the collector, the Board of
 10 Tax Appeals, or the courts after an adjudication of bankruptcy or the appointment of
 11 a receiver, unless the petition is accompanied by a certified copy of an order of the
 12 court before which the bankruptcy or receivership proceedings is pending,
 13 authorizing the trustee or receiver to prosecute such appeal.

14 * * *

15 §337.63. Remittance of tax under protest; suits to recover

16 A.(1)(a) Any taxpayer protesting the payment of any amount found due by
 17 the collector or the enforcement of any provision of law in relation thereto shall
 18 remit to the collector the amount due and at that time shall give notice of intention
 19 to file suit for the recovery of such tax or shall remit to the collector the amount due
 20 and ~~make a written request for mandatory arbitration pursuant to R.S. 47:337.51.1~~
 21 give notice of intention to file a claim with the Board of Tax Appeals, as provided
 22 in this Section.

23 (b) In the case of sales or use taxes that are required to be collected and
 24 remitted by a selling dealer as provided for in R.S. 47:337.17, the purchaser, in order
 25 to avail himself of the alternative remedy provided by this Section, shall remit
 26 protested sales or use tax to the selling dealer, and shall retain copies of
 27 documentation evidencing the amount of the sales or use tax paid to the dealer on the
 28 transactions. On or before the twentieth day of the month following the month of the
 29 transactions on which the selling dealer charged the tax, the purchaser shall inform

1 the collector by certified mail or other reasonable means of the dates and amounts
2 of the protested taxes that were charged by the selling dealer, and shall give notice
3 of the purchaser's intention to file suit for recovery of the tax or to ~~make a written~~
4 ~~request for mandatory arbitration pursuant to R.S. 47:337.51.1~~ file a claim for
5 recovery of the tax with the Board of Tax Appeals, as provided by law.

6 (2) Upon receipt of this notice, the amount remitted to the collector or the
7 amount of protested taxes that have been paid to the selling dealer shall be placed in
8 an escrow account and held by the collector or his duly authorized representative for
9 a period of thirty days. If suit is filed for recovery of the tax or a ~~written request for~~
10 ~~mandatory arbitration is mailed as provided for in R.S. 47:337.51.1~~ claim is filed
11 with the Board of Tax Appeals for recovery of the tax, within the thirty-day period,
12 the funds in the escrow account shall be further held pending the outcome of the suit
13 or ~~the arbitration proceeding~~ claim with the Board of Tax Appeals or appeal
14 therefrom.

15 * * *

16 B. This Section shall afford a legal remedy and right of action in the Board
17 of Tax Appeals as provided in this Section, or in any state court having jurisdiction
18 of the parties and subject matter, for a full and complete adjudication of any and all
19 questions arising in the enforcement of the sales and use tax of a taxing authority as
20 to the legality of any tax accrued or accruing or the method of enforcement thereof.
21 In such action, service of process upon the collector shall be sufficient service, and
22 he shall be the sole necessary and proper party defendant in any such suit.

23 * * *

24 D. Upon request of a taxpayer and upon proper showing by such taxpayer
25 that the principle of law involved in an additional assessment is already pending
26 before the courts for judicial determination or before ~~an arbitration panel as provided~~
27 ~~for in R.S. 47:337.51~~ the Board of Tax Appeals, the taxpayer, upon agreement to
28 abide by the decision of the courts, ~~an arbitration panel~~ the Board of Tax Appeals,
29 or by a final judgment of a court upon a timely appeal of a decision of ~~an arbitration~~

1 ~~panel~~ the Board of Tax Appeals, may remit the additional assessment under protest,
 2 but need not file an additional suit or ~~make another mandatory arbitration request~~
 3 claim. In such cases, the tax so paid under protest shall be placed in an escrow
 4 account and held by the collector until the question of law involved has been
 5 determined by the courts, ~~an arbitration panel~~ the Board of Tax Appeals, or by a final
 6 judgment of a court upon a timely appeal of a decision of ~~an arbitration panel~~ the
 7 Board of Tax Appeals, and shall then be disposed of as therein provided.

8 * * *

9 §337.67. Suspension and interruption of prescription

10 * * *

11 B. The prescriptive period running against any such sales and use tax shall
 12 be interrupted by any of the following:

13 * * *

14 (3) The filing of any pleading, either by the collector or the taxpayer, with
 15 the Board of Tax Appeals or with any state or federal court.

16 * * *

17 C. The running of such prescriptive period may also be suspended as
 18 follows:

19 * * *

20 (3) ~~By use of the mandatory arbitration procedure provided for in R.S.~~
 21 ~~47:337.51.1:~~ the filing of a claim for refund as to the period for which a refund is
 22 requested, which shall also suspend prescription for the same period for the collector,
 23 which determines whether the taxpayer owes any other liability under any ordinance
 24 administered by the collector under the provisions of R.S. 47:337.78.

25 D.

26 * * *

27 (2) However, if a taxpayer who does not file a tax return required to be filed
 28 by this Chapter later becomes responsible for the filing of such return due to a
 29 decision of the Board of Tax Appeals which has become final, or due to a final court

1 decision ~~rendering~~ which renders a transaction or other activity as taxable, and the
2 laws, regulations, or jurisprudence of this state previously classified that transaction
3 or other activity as nontaxable, this provision shall not apply and prescription shall
4 run as if the taxpayer had timely filed the return.

5 * * *

6 §337.77. Refunds of overpayments authorized

7 * * *

8 F. This Section shall not be construed to authorize any refund of tax overpaid
9 through a mistake of law arising from the misinterpretation by the collector of the
10 provisions of any law or of any rules and regulations. In the event a taxpayer
11 believes that the collector has misinterpreted the law or rules and regulations
12 contrary therewith, his remedy is by payment under protest and suit to recover or
13 claim to the Board of Tax Appeals, as provided by law.

14 * * *

15 §337.81. Appeals from the collector's disallowance of refund claim

16 A.

17 * * *

18 (2) The taxpayer may appeal a denial of a claim for refund to ~~a court of~~
19 ~~competent jurisdiction or mail a written request for mandatory arbitration pursuant~~
20 ~~to R.S. 47:337.51.1~~ the Board of Tax Appeals, as provided by law. No appeal may
21 be filed ~~or request for arbitration made~~ before the expiration of one year from the
22 date of filing such claim unless the collector renders a decision thereon within that
23 time, nor after the expiration of ninety days from the date of mailing by certified or
24 registered mail by the collector to the taxpayer of a notice of the disallowance of the
25 part of the claim to which such appeal relates, nor after the expiration of one hundred
26 eighty days from the end of the year in which the collector failed to act.

27 * * *

28 C. In answering any such appeal, the collector is authorized to assert a
29 demand for any tax and additions thereto that he may deem is due for the period

1 involved in the claim for refund or credit, and the Board of Tax Appeals shall have
2 jurisdiction to determine the correct amount of tax for the period in controversy, and
3 to render judgment ordering the refunding or crediting of any overpayment or the
4 payment of any additional tax, interest, and penalty found to be due.

5 * * *

6 §337.81.1. Board of Tax Appeals' finding of overpayment upon appeal from
7 assessment

8 If the Board of Tax Appeals, pursuant to a hearing of an appeal from an
9 assessment of the collector in accordance with the provisions of R.S. 47:337.51,
10 337.53, or 337.54, finds that there is no tax due and further finds that the taxpayer
11 has made a refundable overpayment of the tax for the period for which the collector
12 asserted the claim for additional tax, the Board of Tax Appeals shall have jurisdiction
13 to determine the amount of the overpayment, and to order that the amount of
14 overpayment be refunded or credited to the taxpayer; however, the Board of Tax
15 Appeals shall not order a refund or credit unless, as part of its decision, it determines
16 that either the petition of appeal in which the refund or credit was requested was filed
17 within the period set out in R.S. 47:337.79, or that a claim for the refund or credit
18 had been filed with the collector within that period.

19 * * *

20 §337.86. Credit for taxes paid

21 * * *

22 E.(1) Notwithstanding any other law to the contrary, no person shall be taxed
23 with respect to a particular event more than once, provided that the person collecting
24 and remitting taxes can produce to the collector documentary evidence to show a
25 good faith effort to recover taxes paid to the incorrect taxing authority. Such
26 documentary evidence shall consist of the following:

27 * * *

28 (d) Notwithstanding any provision of law to the contrary, any taxpayer who
29 receives an assessment and who has complied with any applicable provisions of

1 the board, is created as an independent agency in the ~~executive department of the~~
2 ~~state government~~ Department of State Civil Service, and for the purposes of this
3 Chapter.

4 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

5 A. The Board of Tax Appeals shall be composed of three members who shall
6 be qualified electors of the state. At least two of the board members shall be
7 attorneys who have been admitted to the practice of law in Louisiana for at least five
8 years, and at least one of the board members shall be certified as a Tax Law
9 Specialist by the Louisiana Board of Legal Specialization. Each member shall be
10 appointed by the governor ~~and shall serve at the pleasure of the governor~~. Vacancies
11 shall be filled in the manner of the original appointment.

12 B. Each appointment to the board by the governor shall be submitted to the
13 Senate for confirmation.

14 C. ~~The term of members in office prior to twelve o'clock noon on July 16,~~
15 ~~1984 shall be deemed to have terminated as of July 16, 1984; however, any such~~
16 ~~member shall remain in office until his successor is appointed and takes office~~
17 governor shall make the following appointments on or before September 1, 2014:
18 one member with a term expiring February 1, 2016, and one member with a term
19 expiring February 1, 2018. Any subsequent appointments pursuant to this
20 Subsection shall be for either a fixed term of four years or for the remainder of an
21 unexpired term.

22 D.(1) On or before August 1, 2014, the governor shall appoint one member
23 to a term expiring February 1, 2020, from a list of qualified nominees provided by
24 the nominating committee established pursuant to this Subsection. Any subsequent
25 appointments pursuant to this Subsection shall be for either a fixed term of six years
26 or for the remainder of an unexpired term.

27 (2) The nominating committee shall be responsible for developing a list of
28 not less than one, nor more than three, qualified nominees for any vacancy. Any
29 person nominated by the committee must be an attorney with experience in

1 Louisiana sales tax law, and at least one nominee shall be certified as a Tax Law
2 Specialist by the Louisiana Board of Legal Specialization.

3 (3) The Local Tax Division Nominating Committee is hereby established to
4 be comprised of eight members who shall be either an attorney licensed to practice
5 law in Louisiana, a certified public accountant, or a parish tax administrator. The
6 committee shall be comprised of the following members:

7 (a) A representative of the Louisiana Association of Business and Industry.

8 (b) A representative of the Society of Louisiana Certified Public
9 Accountants, selected in consultation with the Business and Industry Committee of
10 the Louisiana Association of Tax Administrators.

11 (c) Two representatives of the Section on Taxation of the Louisiana State
12 Bar Association, with one selected in consultation with the National Bar Association
13 Greater New Orleans Chapter Louis A Martinet Society.

14 (d) A representative of the Louisiana Municipal Association.

15 (e) A representative of the Police Jury Association of Louisiana.

16 (f) A representative of the Louisiana School Boards Association.

17 (g) A representative of the Louisiana Sheriff's Association.

18 (4) The secretary-clerk of the board shall maintain the records of the
19 nominating committee, and shall call an organizational meeting of the nominating
20 committee in order for the nominating committee to elect its chairman. The
21 chairman, or a majority of committee members, may call meetings of the committee,
22 and shall provide advance notice of all meetings to the members and to the
23 appointing entities referenced in Paragraph (3) of this Subsection.

24 (5) Six members shall constitute a quorum for the transaction of committee
25 business, and each nomination must be approved by a favorable vote of at least five
26 committee members.

27 E.(1) A board member shall continue to serve until a successor has been
28 appointed. No member may be removed during an unexpired term of office except
29 for good cause shown, which shall be subject to judicial review.

1 (2) A member who has served on the board for more than two and one-half
2 terms occurring within three consecutive terms shall be ineligible for reappointment
3 to the board until at least two years from the last day of their last appointment.
4 However, a member may be reappointed notwithstanding any other provision of law
5 to the contrary, if nominated pursuant to Subsection D of this Section, and service
6 pursuant to that Subsection is not counted for the purposes of any term or service
7 limitation.

8 F. The governor shall establish the compensation to be paid to members of
9 the board, including any additional compensation for its officers. A member's
10 compensation shall not be reduced during their unexpired term of office.

11 §1403. Designation of ~~chairman~~ officers; domicile; quorum; seal

12 A. The governor shall designate a chairman from the membership of the
13 Board of Tax Appeals. The member other than the chairman with the longest service
14 on the board shall be its vice-chairman, and shall perform duties as may be specified
15 in the rules of the board and delegated by the chairman.

16 B.(1) The principal office and domicile of the board shall be at Baton Rouge,
17 Louisiana.

18 (2) The board may hold meetings at any place within the state, and any
19 member, when designated by the chairman, may act as a hearing judge and conduct
20 hearings for the purpose of receiving testimony, argument, or both and reporting his
21 findings of fact, law, or both to the board for decision or judgment.

22 (3) The time and place of meetings and hearings shall be designated by the
23 chairman, with a view of securing reasonable opportunity to taxpayers to appear
24 before the board with as little inconvenience and expense to ~~taxpayers~~ parties and
25 witnesses as is practicable.

26 (4) With the consent of all parties or upon the request of the taxpayer in a
27 case involving only a state collector, the board may allow for a hearing to be held by
28 telephone, video conference, or similar communication equipment, including the
29 administration of oaths in proceedings.

1 ~~promulgated.~~ Upon promulgation, the rules and regulations shall be binding upon
2 parties litigant in any cause over which the jurisdiction of this board shall extend.

3 B. Rules related to the establishment of fees chargeable for filings and for
4 services rendered by the board shall be subject to review, suspension, or veto
5 pursuant to R.S. 49:968 through 970.

6 C. The rules and regulations of the board shall be annually reviewed, and
7 may be revised as necessary to provide relative to a prompt adjudication of cases
8 filed against local collectors.

9 §1414. Persons authorized to appear before the board

10 * * *

11 E. A local collector may be represented by any designated employee of the
12 local collector.

13 * * *

14 §1418. Definitions

15 For purposes of this Chapter, except when the context requires otherwise, the
16 words and expressions defined in this Section shall have the following meanings:

17 (1) "Board" means the Board of Tax Appeals.

18 (2) "Collector" means the state collector or a local collector, unless specified
19 otherwise.

20 (3) "Local collector" means any of the following:

21 (a) The individual or entity designated as the single collector of the sales and
22 use taxes of any parish, municipality, school board, any other unit of local
23 government, and any special district whose boundary is not coterminous with the
24 state, and their duly authorized assistants in relation to a tax levied by any local
25 political subdivision within the jurisdiction of the Board of Tax Appeals.

26 (b) The agent or successor to any of the above, including any joint
27 commission, authority, or other duly constituted single collection entity, created by
28 an agreement, when administering or collecting the taxes of any local political
29 subdivision within the jurisdiction of the Board of Tax Appeals.

1 B. If a taxpayer has complied with the provisions of R.S. 47:337.63 or 1576,
2 the taxpayer may file a payment under protest claim with the board within the
3 respective periods set forth therein.

4 C. If a taxpayer disputes an assessment made by a local collector, or a local
5 collector's action or failure to act on a claim for a refund or credit of an overpayment,
6 the taxpayer may appeal to the board for a redetermination of the assessment or a
7 determination of the alleged overpayment, by filing a petition with the board as
8 provided in R.S. 47:337.51, 337.53, or 337.81.

9 §1432. Notice; hearing; decision

10 ~~in~~ A. The taxpayer and the collector shall be afforded notice and opportunity
11 to be heard in each proceeding for the redetermination of an assessment, the
12 consideration of a payment under protest claim, or for the determination of an
13 overpayment notice and opportunity to be heard shall be given to the taxpayer and
14 ~~the collector and a~~ . A decision or judgment in such matters shall be made as quickly
15 as practicable.

16 B.(1) The board has no jurisdiction to declare a statute or ordinance
17 unconstitutional. When the taxpayer has pled the unconstitutionality of a statute or
18 ordinance, the board shall order the case transferred to the district court of proper
19 venue upon the motion of any party if the board finds that the case cannot be
20 resolved without reaching a declaration on the alleged unconstitutionality.

21 (2) A district court shall consider de novo the issues of unconstitutionality
22 pled in any case transferred to it pursuant to this Subsection, but upon the joint
23 motion of all parties and the attorney general, the board may develop a record and
24 make a recommendation to the district court on the issue.

25 C. Except upon the joint motion of all parties, the board shall not consolidate
26 a case against a local collector with a case against a state collector or with a case
27 against one or more other local collectors; however, nothing in this Part shall prevent
28 the board, upon the joint motion of all parties and when in the interest of justice and
29 efficiency, from ordering a consolidated hearing for the adjudication of pending

1 cases, provided that each party's own counsel or qualified representative and
2 witnesses may appear and present its case, and provided that the board shall render
3 a separate judgment for any case brought against a local collector, even when such
4 case is considered in a joint hearing together with another case or cases.

5 D. If an assessment of a local collector is appealed to the board for
6 redetermination that covers both a tax matter that is appealable to the board together
7 with a tax matter that is not appealable to the board, the local collector may either
8 consent to the board's adjudication of the matter or consent that the appealable
9 assessment should be reduced by a stipulated amount, and the local collector may
10 then immediately, and without any other delays provided for by law, issue a new
11 assessment for the stipulated amount. The taxpayer's rights and remedies concerning
12 the newly issued assessment shall run from the date of its issuance. The board shall
13 retain jurisdiction to adjudicate all other issues concerning the redetermination or
14 affirmation of the appealed assessment, but shall include the stipulated reduction in
15 its final judgment together with its other findings.

16 * * *

17 §1436. Determination of which ~~district~~ appellate court has jurisdiction

18 A. A decision or judgment of the board in a case against a state collector
19 may be reviewed as follows:

20 (1) In the case of an individual, by the ~~district~~ court of appeal for the ~~district~~
21 ~~whereof parish in which he is a resident~~ domiciled, or if not a ~~resident of~~ domiciled
22 in any district parish, then by the ~~district~~ court of appeal for the parish of East Baton
23 Rouge.

24 (2) In the case of a juridical person ~~other than an individual~~, except as
25 provided in ~~paragraphs (3), (4), and (5)~~ Paragraphs (3) and (4) of this Section
26 Subsection, by the ~~district~~ court of appeal for the parish of East Baton Rouge.

27 (3) In the case of a corporation which has a principal office or agency in
28 Louisiana, then by the ~~district~~ court of appeal for the ~~district~~ parish where such
29 principal office or agency is located.

1 §1451. Waiver of penalties

2 Whenever the state collector determines to waive or remit the whole or any
3 part of the penalty provided for failure to file any return at the time it became due,
4 the collector's determination ~~thereon, together with the taxpayer's affidavit stating~~
5 ~~the cause of his delay in filing~~, shall be submitted to the board for review. If the
6 board finds that the penalty may properly be waived or remitted pursuant to ~~R.S.~~
7 ~~47:1566~~ applicable law, it shall approve the action of the collector. Otherwise the
8 board shall reject the proposal to waive or remit, and it shall then be mandatory upon
9 the collector to assess and collect the penalty. Nothing in this Section shall be
10 construed to expand the jurisdiction of the board to reconsider or review a waiver of
11 penalties or any other discretionary functions of a local collector.

12 Section 3. R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and 337.101(A)(2)(c), (B), and
13 (C) are hereby repealed.

14 Section 4. The members of the Board of Tax Appeals on the effective date of this
15 Act shall continue to serve in such capacity at the pleasure of the governor until the
16 appointments to fixed terms are made in accordance with the provisions of this Act.
17 Notwithstanding any provision of law to the contrary, no term or service limitation shall
18 apply to any member appointed and serving on the board on the effective date of this Act
19 unless and until such appointment is for a full term of four years or six years, respectively,
20 as provided for in this Act.

21 Section 5. Within thirty days of the effective date of this Act, anyone with a matter
22 pending before an arbitration panel or who has properly and timely mailed a request for
23 arbitration that is pending, pursuant to R.S. 47:337.51.1 as it existed prior to this Act, may
24 exercise any right granted to appeal to the Board of Tax Appeals under this Act, or may pay
25 under protest in accordance with R.S. 47:337.63 and 337.64. An appeal may be taken from
26 an arbitration decision rendered prior to the effective date of this Act pursuant to R.S.
27 47:337.51.1(C) as it existed prior to this Act. The suspension of the running of prescription
28 pursuant to R.S. 47:337.51.1(A)(2) as it existed prior to this Act shall terminate on July 31,
29 2014.

1 Section 6. Upon the joint motion of all parties, a district court may transfer to the
2 Board of Tax Appeals for adjudication, any matter pending before it on the effective date of
3 this Act if the matter falls within the jurisdiction of the board following the effective date
4 of this Act. For a period of one year following the effective date of this Act, a district court
5 may transfer to the board any matter improperly filed in the district court which should have
6 been filed with the board, and the matter shall be deemed to have been filed with the board
7 on the date of its filing in the district court.

8 Section 7. The nomination or nominations made pursuant to R.S. 47:1402(D) may
9 be transmitted to the governor prior to the effective date of this Act.

10 Section 8. This Act shall take effect and become operative on July 1, 2014, if and
11 when the Act which originated as House Bill No. _____ of this 2014 Regular Session of
12 the Legislature is enacted and becomes effective.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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. 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.

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 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 for cases involving the state collector, and adds a requirement for the issuance of written reasons in cases involving a local collector. All written reasons shall be published on the board's website.

Present law authorizes rulemaking by the board.

Proposed law retains present law and 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 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, or determination of an overpayment. 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.

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

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, and the transfers of cases between district courts and the board.

Effective on July 1, 2014, if and when House Bill No. _____ 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; Adds R.S. 36:53(J) and R.S. 47:337.2(A)(1)(c), 337.81.1, 337.86(E)(1)(d), 1407(3), 1414(E), 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))