

2015 Regular Session

HOUSE BILL NO. 338

BY REPRESENTATIVE DANAHAAY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX APPEALS/BOARD: Provides with respect to the enforcement and adjudication of state and local taxes and the Board of Tax Appeals

1 AN ACT

2 To amend and reenact R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27,

3 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B),

4 337.81(A)(2) and (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438,

5 1522, 1561(B)(3), 1603(A)(3), and 1625, and Sections 5 and 7 of Act No. 640 of the

6 2014 Regular Session of the Legislature, and to enact R.S. 47:337.45(A)(4),

7 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c),

8 1407(5), 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and

9 (B)(4), 1580(B)(5), 1621(D)(4), and 1623(F), relative to the enforcement and

10 adjudication of state and local taxes and the Board of Tax Appeals; to provide with

11 respect to disputes concerning taxes; to provide for administration of the board; to

12 provide with respect to certain revenues dedicated to the board; to establish an

13 escrow account; to provide for the deposit, investment, and use of monies in the

14 account; to establish a fund within the escrow account and provide for its sources of

15 revenue and use; to provide for certain procedures and requirements relative to

16 adjudication and appeals of certain cases involving state and local taxes; to provide

17 with respect to compensation and benefits of officers of the board; to authorize

18 certain agreements regarding the compensation and expenses of ad hoc judges; to

19 provide for effectiveness; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27,
3 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B), 337.81(A)(2) and
4 (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438, 1522, 1561(B)(3), 1603(A)(3),
5 and 1625 are hereby amended and reenacted, and R.S. 47:337.45(A)(4), 337.51(B)(4),
6 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c), 1407(5), 1408(D) and (E),
7 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and (B)(4), 1580(B)(5), 1621(D)(4),
8 and 1623(F) are hereby enacted, to read as follows:

9 §302. Imposition of tax

10 * * *

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

12 * * *

13 (7)

14 * * *

15 (b) The amount specified in Subparagraph (a) of this Paragraph as
16 transferred to the Department of State Civil Service, Board of Tax Appeals, shall be
17 increased by fifty-five thousand dollars on July 1, 2015, and by five thousand dollars
18 on the first day of each of the ~~four~~ two subsequent fiscal years when the amount
19 distributed pursuant to this Subsection in the fiscal year immediately preceding that
20 date actually exceeds the amount distributed in Fiscal Year 2013-2014. The amounts
21 specified in Subparagraphs (a) and (b) of this Paragraph shall be transferred by the
22 secretary within the first thirty days of each fiscal year and the Department of State
23 Civil Service, Board of Tax Appeals, may retain all funds which are transferred as
24 directed in Subparagraphs (a) and (b) of this Paragraph.

25 * * *

26 §337.13.1. Power to employ counsel; attorney fees

27 A.

28 * * *

1 (2) If any taxes, penalties, or interest due and final under this Subtitle are
 2 referred to an attorney at law for a collection action, an additional charge for attorney
 3 fees, in the amount of ten percent of the taxes, penalties, and interest due, except
 4 with respect to amounts timely paid under protest with a return that is not delinquent,
 5 or paid under protest to a vendor in accordance with law, shall be paid by the
 6 taxpayer to the local collector; provided, however, that the amount paid for attorney
 7 fees shall be subject to the discretion of the court or Board of Tax Appeals as to
 8 reasonableness.

9 * * *

10 B.(1) Except as otherwise provided for in Paragraph (3) of Subsection A of
 11 this Section, the prevailing party in a dispute, contest, or other controversy involving
 12 the determination of sales and use tax due shall be entitled to reimbursement of
 13 attorney fees and costs, not to exceed ten percent of the taxes, penalties, and interest
 14 at issue, unless the position of the non-prevailing party is substantially justified. The
 15 prevailing party is defined as the party which has substantially prevailed with respect
 16 to the amount in controversy or substantially prevailed with respect to the most
 17 significant issue or set of issues presented. A position is substantially justified if it
 18 has a reasonable basis in law and fact. The reimbursement amount for attorney fees
 19 and costs shall be subject to the discretion of the court or Board of Tax Appeals as
 20 to reasonableness.

21 * * *

22 C. A local collector may waive the attorney fee award as provided for in this
 23 Section. A waiver of attorney fees by a local collector shall be considered timely if
 24 the notice of the waiver is mailed to a taxpayer by certified mail, return receipt
 25 requested, within thirty days of the service of process, or if it is waived in the
 26 collector's initial answer to a petition filed in the Board of Tax Appeals. If a local
 27 collector timely waives its attorney fee award, a taxpayer may not recover attorney
 28 fees as provided for in Subsection B of this Section.

29 * * *

1 §337.27. Venue

2 An action to enforce the collection of a sales or use tax, including any
3 applicable interest, penalties, or other charges, levied by a taxing authority may be
4 brought in the parish in which the taxing authority is situated, or in the Board of Tax
5 Appeals as provided by law.

6 * * *

7 §337.28.1. Arbitrary assessments prohibited

8 * * *

9 B. If the assessment by the collector is determined by a court of competent
10 jurisdiction or the Board of Tax Appeals to be an arbitrary assessment, the
11 assessment shall neither interrupt nor suspend prescription, and the dealer shall be
12 reimbursed by the collector for reasonable costs of litigation. The amount of costs
13 recoverable under this Section shall not exceed ten percent of the taxes, interest, and
14 penalty that were arbitrarily assessed, which amount shall be subject to the discretion
15 of the court, or Board of Tax Appeals, as to reasonableness.

16 * * *

17 §337.33. Failure to pay tax; rule to cease business

18 A.

19 * * *

20 (5) The collection procedure provided for in this Subsection shall be in
21 addition to any other collection procedure provided by law. When issuing an order
22 pursuant to this Subsection, the Board of Tax Appeals or any court of competent
23 jurisdiction, upon proper showing, may also render a money judgment against the
24 taxpayer and in favor of the collector in the amount of any final and non-appealable
25 assessment, together with all penalties, interest, attorney's fees and costs due.

26 * * *

27 §337.45. Alternative remedies for the collection of taxes

28 A.

29 * * *

1 (4) Demand in reconvention, or third party demand, in any court of
 2 competent jurisdiction or before the Board of Tax Appeals concerning collection of
 3 local taxes due, including any related interest, penalties, costs, and attorney's fees
 4 due under applicable law.

5 B.(1) The collector may choose which of these procedures he will pursue in
 6 each case, and the counter-remedies and delays to which the taxpayer will be entitled
 7 will be only those which are not inconsistent with the proceeding initiated by the
 8 collector, provided that in every case the taxpayer shall be entitled to proceed under
 9 R.S. 47:337.63, except ~~(a)~~ after in the following circumstances:

10 (a) After he has filed a petition with the Board of Tax Appeals for a
 11 redetermination of the assessment, ~~(b) when~~.

12 (b) When an assessment for the tax in question has become final, ~~or (c) when~~
 13 a.

14 (c) After the deadline to file an answer or defenses, after having appeared in
 15 or filed any responsive pleading or defenses in any proceeding or suit involving the
 16 same tax obligation is pending against him; and provided further, that the.

17 (d) When an incidental demand for the same tax obligation is pending against
 18 him in a suit by the collector concerning collection of the same tax obligation.

19 (2) The fact that the collector has initiated proceedings under the assessment
 20 and distraint procedure will not preclude him from thereafter proceeding by
 21 summary or ordinary court proceedings for the enforcement of the same tax
 22 obligation.

* * *

§337.51. Notice of assessment and right to appeal

* * *

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

* * *

1 (4) A collector may send to a dealer by regular mail a letter addressed in the
2 same manner as provided in Subsection A of this Section to advise the dealer that the
3 failure to collect certified or registered mail sent by the collector may result in the
4 loss of appeal rights concerning the uncollected notice of assessment. If the collector
5 mails this letter on the same date as the collector mails a notice of assessment then
6 any notice of assessment returned to the collector because a dealer failed to collect
7 it following attempted delivery by the United States Postal Service shall be deemed
8 to have been received by the dealer for the purposes of this Subsection on the date
9 that the United States Postal Service record indicates that the United States Postal
10 Service first attempted to deliver the notice of assessment to the dealer. A certificate
11 of mailing or other proof of mailing from the United States Postal Service shall
12 establish that this letter was transmitted by regular mail.

* * *

14 §337.63. Remittance of tax under protest; suits to recover

15 A.

* * *

17 (3) ~~If~~ To the extent the taxpayer prevails, the collector shall refund the
18 amount to the claimant, with interest at the rate established pursuant to R.S.
19 47:337.80, except as provided in Subsection E of this Section.

20 B.(1) This Section shall afford a legal remedy and right of action in the
21 Board of Tax Appeals as provided in this Section, or in any state court having
22 jurisdiction of the parties and subject matter, for a full and complete adjudication of
23 any and all questions arising in the enforcement of the sales and use tax of a taxing
24 authority as to the legality of any tax accrued or accruing or the method of
25 enforcement thereof. In such action, service of process upon the collector shall be
26 sufficient service, and he shall be the sole necessary and proper party defendant in
27 any such suit.

1 (2) If the collector files suit against a taxpayer in district court pursuant to
2 R.S. 47:337.45(A)(3), and the taxpayer timely pays under protest, the district court
3 shall retain exclusive jurisdiction to adjudicate the matter to final judgment.

4 * * *

5 E. When the collector has pursued collection of taxes pursuant to any remedy
6 provided for in R.S. 47:337.45(A)(2) or (3) and the taxpayer has made a timely
7 payment under protest concerning the same tax obligation, and if the collector has
8 deposited the monies into an interest bearing account in accordance with this
9 Section, then the interest to be paid on the tax obligation to the party or parties
10 adjudged to be entitled to the interest shall be that interest actually earned and
11 received by the collector on the payment.

12 §337.64. Alternative remedy for dealers

13 * * *

14 B. (1) If the taxpayer files suit in any state court of competent jurisdiction,
15 or a petition before the Board of Tax Appeals, contesting the assessment within the
16 time provided by law and satisfies the alternative remedies provided for in
17 Subsection C of this Section, no collection action shall be taken in connection with
18 the assessment of taxes, interest, and penalties, which are the subject of the
19 taxpayer's suit; however, the collector shall be permitted to file a reconventional
20 demand against the taxpayer in such suit.

21 (2) If a valid petition contesting an assessment is timely filed in the Board
22 of Tax Appeals pursuant to Paragraph (1) of this Subsection then the Board of Tax
23 Appeals shall exercise the authority provided for in Subsection C of this Section in
24 the same manner as a district court.

25 * * *

26 §337.79. Prescription of refunds or credits

27 * * *

28 C.(1) In any case where the collector pursues any remedy for collection of
29 tax pursuant to R.S. 47:337.45, including the issuance of an assessment, the period

1 of prescription for a refund or credit for the same tax periods and types of tax shall
2 be suspended. However, the suspension of prescription provided for in this
3 Subsection applies only in the following circumstances:

4 (a) When an assessment has been issued and the taxpayer has submitted a
5 refund claim that is received by the collector prior to the assessment becoming final.

6 (b) When a summary proceeding has been filed and the taxpayer has timely
7 pleaded such claim for refund as an offset or credit in the summary proceeding.

8 (c) When an ordinary suit has been filed and the taxpayer has filed a timely
9 reconventional demand for the refund or credit in the suit.

10 (2) If the refund claim would have been prescribed but for this Subsection,
11 the amount of the claim found to be due shall be credited or offset against the
12 underpaid tax found to be due.

13 (3) Prescription shall not be suspended by the provisions of Paragraph (1)
14 of this Subsection if any of the following occur:

15 (a) An assessment has become final and nonappealable.

16 (b) A judgment of the Board of Tax Appeals concerning the collection
17 remedy referenced in Paragraph (1) of this Subsection has become final.

18 (c) A final judgment has been rendered by a district court in a related
19 summary or ordinary proceeding.

20 * * *

21 §337.81. Appeals from the collector's disallowance of refund claim

22 A.

23 * * *

24 (2) The taxpayer may appeal a denial of a claim for refund to the Board of
25 Tax Appeals, as provided by law. No appeal may be filed before the expiration of
26 one year from the date of filing such claim unless the collector renders a decision
27 thereon within that time, nor after the expiration of ninety days from the date of
28 mailing by certified or registered mail by the collector to the taxpayer of a notice of
29 the disallowance of the part of the claim to which such appeal relates, nor after the

1 expiration of one hundred eighty days from the end of the expiration of the one year
2 in which the collector failed to act.

3 (3) A taxpayer's proper appeal to the Board of Tax Appeals filed within
4 ninety days from the date on any notice of disallowance issued shall also establish
5 that the appeal was filed within ninety days from the date of the certified or
6 registered mailing of the notice.

7 B. ~~Any~~ (1) A notice of disallowance, if issued, shall inform the taxpayer that
8 he has ninety days from the date of the certified or registered mailing of that notice
9 to appeal to the Board of Tax Appeals, and that any consideration, reconsideration,
10 or action by the collector with respect to such claim following the mailing of a notice
11 by certified or registered mail of disallowance shall not operate to extend the period
12 within which an appeal may be taken.

13 (2) The failure to transmit this notice does not extend the separate and
14 distinct prescriptive period that runs following one year of inaction by the collector.

15 * * *

16 §337.86. Credit for taxes paid

17 * * *

18 E.

19 * * *

20 (2)(a) The collector shall not impose penalties or interest on taxes
21 erroneously paid or remitted to another taxing authority unless the erroneous
22 payment or remittance was the result of gross negligence or due to intentional
23 conduct of bad faith ~~or gross negligence~~ on the part of the ~~persons collecting and~~
24 ~~remitting~~ dealer that collected and remitted the taxes or on the part of the taxpayer
25 that paid the taxes. In instances where a legitimate disagreement exists as to which
26 taxing authority is owed, the involved taxing authorities shall resolve the dispute
27 among themselves through any legal means provided by law, including the filing of

1 a rule or petition against the other taxing authority in the manner provided for in R.S.
2 47:337.101.

3 * * *

4 §1401. Creation of Board of Tax Appeals

5 In order to provide a board that will act as an appeal board to hear and decide,
6 at a minimum of expense to the taxpayer, questions of law and fact arising from
7 disputes or controversies between a taxpayer and the collector of revenue of the State
8 of Louisiana in the enforcement of any tax, excise, license, permit or any other tax
9 law administered by the collector, and to exercise jurisdiction as provided for in the
10 Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as
11 the "board", is created as an independent agency in the Department of State Civil
12 Service, and for the purposes of this Chapter. The Local Tax Division is created as
13 an independent agency and authority within the board for the purposes of exercising
14 jurisdiction over disputes involving local collectors.

15 * * *

16 §1403. Designation of officers; domicile; quorum; seal

17 A.

18 * * *

19 (4) The local tax judge provided for in Paragraph (3) of this Subsection is
20 recognized as having been created as a distinct position in the unclassified service
21 for the purposes of Article X of the Constitution of Louisiana, and shall serve as
22 agency head for the Local Tax Division.

23 B.

24 * * *

25 (5) Upon the motion of the local collector, a hearing on the merits in a matter
26 involving only local taxing authorities from a single parish shall be held in that
27 parish. The respective district or other local court shall make available any facilities
28 necessary for the hearing, and any relevant expenses may be taxed as costs, including
29 any costs for a hearing judge in the same amount as specified in R.S. 47:1417(C)(2).

1 (6)

2 * * *

3 (c) For any case assigned to be heard in the Local Tax Division, all
4 references to the Board of Tax Appeals in this Chapter or in Chapter 2-D of this
5 Subtitle shall mean the board's Local Tax Division, with the board's authority
6 exercised by its judge pursuant to R.S. 47:1403(A)(3).

7 * * *

8 §1407. Jurisdiction of the board

9 The jurisdiction of the board shall extend to the following:

10 * * *

11 (5) Incidental demands authorized by law in any action pending before the
12 board in the same manner as in a district court pursuant to Code of Civil Procedure
13 Article 1031.

14 §1408. Power to administer oaths and issue rules, orders, or subpoenas

15 * * *

16 D.(1) The provisions of R.S. 47:337.33(A), 337.43, and 1547 shall apply to
17 the Board of Tax Appeals and its Local Tax Division in the same manner as for a
18 district court. In addition to the remedies otherwise provided for in this Section, any
19 interested party may file a motion or rule in any court of competent jurisdiction
20 alleging a violation of any order issued by the board or its local tax judge pursuant
21 to R.S. 47:337.33, 337.43, and 1547, and the district court shall consider any
22 violation shown to be a contempt of the court and shall immediately punish the
23 violator in accordance with R.S. 13:4611(1) and all other applicable laws for
24 contempt of court.

25 (2)(a) In addition to all other remedies provided for in this Section, the
26 failure to obey any order or subpoena issued under the authority of this Chapter shall
27 constitute contempt of court, and may be punished by the board or its local tax judge
28 in accordance with the provisions of R.S. 13:4611(1) and all other applicable laws
29 for contempt of court. Any action finding anyone in contempt pursuant to this

1 Paragraph shall be subject to an appeal by trial *de novo* in the Nineteenth Judicial
2 District Court.

3 (b) The board, through any member or its counsel, may appear in any
4 proceeding to oppose an appeal pursuant to this Paragraph and may otherwise appear
5 in defense of its jurisdiction.

6 E. The provisions of this Section may be enforced by any duly
7 commissioned person, shall be enforced by the sheriff wherever such person may be
8 found, and shall be enforced by the Department of Public Safety and Corrections,
9 office of State Police, when a direct contempt occurs in a state building.

10 * * *

11 §1413. Rules and regulations

12 * * *

13 D. By rule promulgated pursuant to this Section, the board may require that
14 in any notice regarding a right to an appeal to the board, the collector shall include
15 any certified or registered mail tracking number for the notice as well as the board's
16 contact information, in a form specified by the board. The failure to include this
17 information shall not extend the time within which any party may file an appeal with
18 the board.

19 E. Notwithstanding any other provision of law to the contrary, the board may
20 issue orders in the same manner as a district court in the exercise of its jurisdiction
21 or to effectuate its jurisdiction under this Chapter. Any standing orders generally
22 applicable to all cases, including those related to the timeliness and methods of
23 filing, shall be published on the board's website.

24 * * *

25 §1418. Definitions

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

28 * * *

1 (4) "Petition" means a separate and distinct pleading filed against the
 2 relevant state collector or local collector in the board. A petition filed against a state
 3 collector shall not interrupt or suspend the time period within which a taxpayer must
 4 file a petition against any local collector, and a petition filed against a local collector
 5 shall not suspend or interrupt the time period within which a taxpayer must file a
 6 petition against a state collector or a different local collector.

7 * * *

8 (6) "Escrow Account" means the account with a bank or financial institution
 9 selected as fiscal agent by the Board of Tax Appeals with the approval of the Cash
 10 Management Review Board, pursuant to R.S. 47:1439.

11 (7) "Registry of the Board" means the record retained by the secretary-clerk
 12 for the Escrow Account in the same manner as specified in R.S. 13:475(A).

13 * * *

14 §1434. Judicial review of decision of the board
 15 A.~~(1)~~ Within thirty days of the signing of a decision or judgment of the
 16 board, the collector or the taxpayer may file a ~~petition~~ motion with the ~~appellate~~
 17 ~~court~~ board for review of the decision or judgment. ~~The party intending to file the~~
 18 ~~petition shall, prior to its filing, notify the board of this intention either at open~~
 19 ~~hearing or by motion~~ by the appropriate appellate court.

20 B.(1) In any case where the board has found any tax to be due, except in any
 21 payment under protest petition, the taxpayer shall post a bond ~~when giving the notice~~
 22 ~~of intention to file a petition~~ when filing a motion for review, with surety in a form
 23 approved by the board for the payment of the tax as finally determined, together with
 24 any interest, additional amounts or additions to the tax provided for by law, including
 25 applicable penalties and ~~attorney~~ attorney's fees. The bond shall be payable to the
 26 collector in an amount not to exceed one and one-half times the tax, interest,
 27 penalties, and attorney fees, if any, found to be due.

28 (2) In lieu of posting the bond required by Paragraph (1) of this Subsection,
 29 a taxpayer may fulfill that requirement by paying into the Escrow Account for the

1 Registry of the Board an amount not to exceed one and one-half times the tax,
2 interest, penalties, and attorney's fees, if any, found to be due as security under that
3 Paragraph, together with any fees and costs due to the board. The payment of
4 security pursuant to this Paragraph shall not suspend the running of interest
5 otherwise provided for in Subtitle II of Title 47 of the Louisiana Revised Statutes of
6 1950, as amended, or in the applicable local ordinances.

7 (3)(a) For any case in the Local Tax Division, an irrevocable letter of credit
8 issued by a responsible financial institution shall not be accepted as security in lieu
9 of a bond or a deposit into the Escrow Account of the Registry of the Board unless
10 it is in the amount of the security otherwise required by Paragraph (1) of this
11 Subsection and permission is granted by the local tax judge prior to the expiration
12 of the period for filing a motion for review pursuant to this Section.

13 (b) Any such request for approval pursuant to this Paragraph shall be made
14 either by joint motion or by contradictory motion, and any contradictory motion shall
15 be set for an expedited hearing. If any such contradictory motion is filed within ten
16 days of the signing of judgment, it shall be set for hearing so that a decision will be
17 rendered at least seven days prior to the expiration of the period for filing a motion
18 for review pursuant to this Section. During any absence, the local tax judge may
19 delegate this review to any member of the board, and the chairman may act when the
20 local tax judge is not available.

21 ~~The~~ (4) If required, the posting of such the security bond, or payment into
22 escrow, shall be a condition precedent to the filing of any ~~petition~~ motion for review
23 in any appellate court with the board.

24 ~~(2)~~(5) Except as to the amount, and to the extent not otherwise inconsistent
25 with the provisions of this ~~Section~~ Subsection, the nature of the bond or security and
26 the procedures for posting bond or providing other security shall be consistent with
27 the provisions for providing security in connection with a suspensive appeal under
28 the Code of Civil Procedure.

1 ~~(3) The other deadlines and rules governing the briefing and answering of~~
2 ~~an appeal filed pursuant to this Section shall be as provided for in civil matters under~~
3 ~~the Code of Civil Procedure and all applicable court rules.~~

4 ~~B. When a petition for review is lodged with an appellate court, the court or~~
5 ~~its clerk shall mail a copy of the petition to both the secretary-clerk of the board and~~
6 ~~the opposing party or his counsel.~~

7 C.(1) Within ten days from the lodging of the petition, the appellate court
8 shall command filing of the motion for review with the board, the board shall act
9 upon the motion for review and, if granted, order a return date for the record to be
10 submitted to the appellate court.

11 (2) If the movant owes unpaid or taxed fees or costs to the board, the return
12 date shall be set as thirty days from the payment of these costs. If such costs are not
13 owed, the return date shall be thirty days from the filing of the motion for review.

14 (3) On or before the return date, the secretary-clerk of the board to shall send
15 ~~the appellate court, within thirty days from the date thereof, the original transcript~~
16 ~~of the record, together with all exhibits and evidence thereto attached; which record~~
17 ~~shall be the basis for any action on review and the decision of the appellate court~~
18 ~~shall be rendered upon that record as made up before the board. The record, and any~~
19 ~~designation thereof, shall be prepared in accordance with applicable court rules.~~

20 (4) The other deadlines and rules governing the briefing and answering of
21 an appeal filed pursuant to this Section shall be as provided for in civil matters under
22 the Code of Civil Procedure and all applicable court rules.

23 D. The filing of a motion for a new trial, a motion for reconsideration, or the
24 denial of any such motion does not extend the period within which a party must file
25 a motion for review for a judgment pursuant to this Section. However, the board
26 shall retain jurisdiction to make corrections to or revise a judgment until the
27 appellate record is lodged with the appellate court. If any amended or revised
28 judgment, or judgment following a new trial, is rendered pursuant to the provisions
29 of Chapter 4 of Title VI of Book II of the Louisiana Code of Civil Procedure, the

1 delay to file an appeal concerning the amended, revised, or new judgment shall run
2 from the date of its signing.

3 * * *

4 §1438. Date judgment becomes final

5 For the purposes of this Title, the date on which a decision or judgment of the
6 board becomes final shall be determined as provided in this Section. The decision
7 or judgment of the board shall become final in either of the following circumstances:

8 (1) Upon the expiration of the time allowed for filing a ~~petition~~ motion for
9 review, if no such ~~petition~~ motion has been duly filed within such time.

10 (2) If a ~~petition~~ motion for review of a judgment of the board by the
11 applicable appellate court is timely filed with the ~~applicable appellate court~~ board,
12 the judgment of the board or subsequent judgment of the appellate court shall
13 become final in the same manner, and at the same time, as provided for in civil
14 matters under the Code of Civil Procedure.

15 §1439. Escrow Account

16 A. The Board of Tax Appeals, with approval of the Cash Management
17 Review Board, shall select a bank or financial institution to serve as fiscal agent of
18 its Escrow Account, hereinafter referred to as "account". This fiscal agent shall only
19 distribute funds from the account on the seventh business day following receipt of
20 a certified copy of an order signed by the chairman of the Board of Tax Appeals, or
21 its local tax judge, or a duly appointed ad hoc judge, as applicable, and attested to by
22 its secretary-clerk who shall affix the board's seal, or upon receipt of a certified final
23 non-appealable order of the relevant appellate or higher court. No such order shall
24 be issued until there is a final and non-appealable judgment in the underlying case.
25 No such order shall be issued except upon a joint motion of all parties, or following
26 a contradictory hearing after service on all parties. The order shall specify the
27 amount payable to the collector, or taxpayer, or the amounts for each.

1 B. The fiscal agent may only be held harmless for any distribution made that
2 complies with the provisions of both this Section and any applicable policies
3 specified for the account by the Cash Management Review Board.

4 C. The account, and any related funds included therein, shall be subject to
5 audit by the legislative auditor. An annual report of account transactions concerning
6 state cases shall also be submitted to the Cash Management Review Board. An
7 annual report of the account's transactions concerning local cases shall be submitted
8 to the local sales and use tax commission created pursuant to R.S. 47:302(K)(6).

9 D.(1) Except as provided for in Paragraphs (2) and (3) of this Subsection, the
10 actual amount of interest earned on a taxpayer's deposits held in the Escrow Account
11 shall be added to the principal sum held on deposit in the Escrow Account for that
12 taxpayer and case, and shall be disbursed pursuant to Subsection A of this Section.

13 (2) In a case against only a state collector, one-tenth of one percent per
14 month of the amount held in escrow for a case, not to exceed the actual amount of
15 interest earned on monies in the Escrow Account from deposits made by a taxpayer
16 in the case, shall be payable to the treasury and, after compliance with Article VII,
17 Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and
18 Redemption Fund, the monies remaining shall be deposited in and credited to the
19 state general fund as self-generated revenues of the Board of Tax Appeals, and may
20 be expended within the board's administrative program.

21 (3) In a case against a local collector, one-tenth of one percent per month of
22 the amount held in escrow for a case, not to exceed the actual amount of interest
23 earned on monies in the Escrow Account from deposits made by a taxpayer in the
24 case, shall be deposited in and credited to the Local Tax Division Expense Fund,
25 which is hereby created within the account.

26 E. The board, or its Local Tax Division, may assess a fee related to the
27 optional methods of posting security provided for in R.S. 47:1434(B). This amount
28 shall be determined pursuant to rules and regulations promulgated in accordance
29 with R.S. 47:1413.

1 of this Title by any mediator qualified pursuant to R.S. 9:4106, or by any member
2 of the Board of Tax Appeals.

3 * * *

4 §1561. Alternative remedies for the collection of taxes

5 A.

6 * * *

7 (4) Demand in reconvention, or third party demand, in any court of
8 competent jurisdiction or before the Board of Tax Appeals concerning collection of
9 state taxes due, including any related interest, penalties, costs, and attorney's fees due
10 under applicable law.

11 B.

12 * * *

13 (3) ~~When a~~ After the deadline to file an answer or defenses, after he has
14 appeared in, or after he has filed any responsive pleading or defenses in any
15 proceeding or suit involving the same tax obligation is pending against him.

16 (4) When a third party demand for the same tax obligation is pending against
17 him in a suit by the collector concerning collection of the same tax obligation.

18 * * *

19 §1580. Suspension and interruption of prescription

20 * * *

21 B. The running of such prescription shall also be suspended prior to the lapse
22 of the prescriptive period set out in the Constitution of Louisiana as hereinafter
23 provided:

24 * * *

25 (5)(a) By the filing of a claim for refund as to the period for which a refund
26 is requested, which shall suspend prescription for the same period for the secretary
27 to determine whether the taxpayer owes any other liability under the provisions of
28 R.S. 47:1622.

1 §1623. Prescription of refunds or credits

2 * * *

3 F.(1) Provided that in any case where the secretary pursues any remedy for
4 the collection of tax pursuant to R.S. 47:1561, including the issuance of an
5 assessment, then the period of prescription for a refund or credit for the same types
6 of tax and tax periods shall be suspended. However, the suspension of prescription
7 authorized in this Subsection applies only in any of the following circumstances:

8 (a) When an assessment has been issued and the taxpayer has submitted a
9 refund claim that is received by the collector prior to the assessment becoming final.

10 (b) When a summary proceeding has been filed and the taxpayer has timely
11 appealed such claim for refund as an offset or credit in the summary proceeding.

12 (c) When an ordinary suit has been filed and the taxpayer has filed a timely
13 reconventional demand for such refund or credit in such suit.

14 (2) If the refund claim would have been prescribed, but for this Subsection,
15 the amount of the claim found due shall be credited or offset against the underpaid
16 tax found due.

17 (3) Prescription shall not be suspended pursuant to the provisions of
18 Paragraph (1) of this Subsection in any of the following circumstances:

19 (a) An assessment has become final and non-appealable.

20 (b) A judgment of the Board of Tax Appeals concerning the collection
21 remedy referenced in Paragraph (1) of this Subsection has become final.

22 (c) A final judgment has been rendered by a district court in a related
23 summary or ordinary proceeding.

24 * * *

25 §1625. Appeals from the collector's disallowance of refund claim

26 A.(1) If the collector fails to act on a properly filed claim for refund or credit
27 within one year from the date received by him or if the collector denies the claim in
28 whole or in part, the taxpayer claiming such refund or credit may appeal to the Board
29 of Tax Appeals for a hearing on the claim filed. No appeal may be filed before the

1 expiration of one year from the date of filing such claim unless the collector renders
2 a decision thereon within that time, nor after the expiration of sixty days from the
3 date of mailing by registered mail by the collector to the taxpayer of a notice of the
4 disallowance of the part of the claim to which such appeal relates.

5 (2) A taxpayer's proper appeal to the Board of Tax Appeals within sixty days
6 from the date on any notice of disallowance issued shall also establish that the appeal
7 was filed within sixty days from the date of certified or registered mailing of the
8 notice.

9 Any B. A notice of disallowance, if issued, shall inform the tax payer that
10 he has sixty days from the date of the certified or registered mailing of that notice to
11 appeal to the Board of Tax Appeals, and that any consideration, reconsideration, or
12 action by the collector with respect to such claim following the mailing of a notice
13 by registered mail of disallowance shall not operate to extend the period within
14 which an appeal may be taken.

15 C. In answering any such appeal, the collector is authorized to assert a
16 demand for any tax and additions thereto that he may deem is due for the period
17 involved in the claim for refund or credit, and the Board of Tax Appeals shall have
18 jurisdiction to determine the correct amount of tax for the period in controversy and
19 to render judgment ordering the refunding or crediting or any overpayment or the
20 payment of any additional tax, interest and penalty found to be due.

21 Section 2. Section 5 of Act No. 640 of the 2014 Regular Session of the Legislature,
22 is hereby amended to read as follows:

23 ~~Section 5. The members of the Board of Tax Appeals on the effective date~~
24 ~~of this Act shall continue to serve in such capacity at the pleasure of the governor~~
25 ~~until the appointments to fixed terms are made in accordance with the provisions of~~
26 ~~this Act.~~ Notwithstanding any provision of law to the contrary, a member of the
27 board, including the local tax judge, shall be eligible for any assignment or
28 appointment made pursuant to Article V, Section 5 or Section 22 of the Constitution
29 of Louisiana, and ad hoc service pursuant to ~~that Section~~ those Sections shall not

1 render a retired judge ineligible for an ad hoc appointment pursuant to R.S.
2 47:1417(C)(2).

3 If any member of the board serving on ~~the effective date of this Act~~ June 12,
4 2014 is appointed to a fixed term pursuant to the provisions of ~~this Act~~ R.S. 47:1402,
5 as amended by Act 640 of the 2014 Regular Session of the Legislature, his
6 appointment shall not require additional confirmation by the Senate if he was
7 confirmed or reconfirmed prior to ~~the effective date of this Act~~ June 12, 2014. The
8 additional compensation of the hearing judge of the Local Tax Division shall ~~initially~~
9 be equivalent to the compensation provided by the state for a part-time city court
10 judge, together with three-fifths of the salary provided for city judges in the city of
11 the board's official domicile, with any vacation leave accrued and paid in the same
12 manner as for such judges. Notwithstanding any other provision of law to the
13 contrary, the local tax judge may participate in and contribute to group insurance and
14 benefit plans in the same manner as any parish judge paid in part by the state and
15 shall be entitled to reimbursement for expenses incurred in the discharge of his duties
16 away from his parish of residence in the same amount as provided for under
17 applicable law and Supreme Court rules for such judges. The Local Tax Division
18 shall adopt formal written policies related to the implementation of this Section.

19 Section 3. Section 7 of Act No. 640 of the 2014 Regular Session of the Legislature,
20 is hereby amended to read as follows:

21 Section 7. Upon the joint motion of all parties, a district court may transfer
22 to the Board of Tax Appeals for adjudication, any matter pending before it on ~~the~~
23 ~~effective date of this Act~~ June 12, 2014, if the matter falls within the jurisdiction of
24 the board ~~following the effective date of this Act.~~ For a period of one year following
25 ~~the effective date of this Act,~~ a on or after June 12, 2014. A district court may
26 transfer to the board any matter improperly filed in the district court which should
27 have been filed with the board, and the matter shall be deemed to have been filed
28 with the board on the date of its filing in the district court.

1 Section 4. The provisions of this Act amending R.S. 47:337.13.1, 337.28.1,
2 337.81(A)(2), 337.86, 1401, and 1403 are procedural and interpretive and shall be effective
3 on the effective date of Act No. 640 of the 2014 Regular Session of the Legislature.

4 Section 5.(A) The Board of Tax Appeals and its Local Tax Division are authorized
5 to enter into an agreement with the Judicial Administrator's Office of the Supreme Court for
6 administering the payment of the expenses or compensation, and related withholding, for any
7 hearing judge as provided for in R.S. 47:1403 or 1417. This agreement may provide that any
8 payments shall be subject to and comply with the limits and applicable Supreme Court
9 policies for the assignment of retired judges to district courts. The relevant hearing judge
10 in a case involving one or more local collectors may order that the related amounts taxed as
11 fees or costs pursuant to those Sections be payable to the Escrow Account of the Registry
12 of the Board for deposit in the Local Tax Division Expense Fund. In the event an agreement
13 is entered into pursuant to the provisions of this Section, the fiscal agent shall, upon warrant
14 of the State Judicial Administrator, or their designee, pay from that fund all amounts
15 necessary to satisfy any obligations under such agreement.

16 (B) If any payments for fees or costs provided for in Subsection A of this Section
17 are not received from the relevant parties within sixty days, or are otherwise insufficient to
18 pay the full amount owed, then the amount required to make the payments owed pursuant
19 to this Section shall be paid from the fees and self-generated revenues of the Board of Tax
20 Appeals or its Local Tax Division pursuant to an order of the chairman or local tax judge,
21 as applicable to the case. In no event shall the amounts referenced in this Section ever
22 become the liability of the Judicial Administrator's Office of the Supreme Court or the
23 judiciary. If payment is made from fees and self-generated revenues of the Board of Tax
24 Appeals or its Local Tax Division as provided in this Section, then any amount later
25 recovered from the parties pursuant to R.S. 47:1403 or 1417 shall be deposited into the state
26 treasury and, after compliance with Article VII, Section 9(B) of the Constitution of
27 Louisiana, relative to the Bond Security and Redemption Fund, all remaining monies shall
28 be deposited in and credited to the state general fund as self-generated revenues of the Board
29 of Tax Appeals or its Local Tax Division, as applicable.

1 (C) Notwithstanding any provision of law to the contrary, in order to satisfy any
2 anticipated obligations reasonably expected pursuant to the provisions of R.S. 47:1403,
3 1417, or this Act, the local tax judge, following consultation with the Judicial Budgetary
4 Control Council, the Judicial Administrator, or their designee, may order that the requisite
5 amount from the Local Tax Division's surplus local fees and self-generated or surplus local
6 interagency revenues be paid into the Local Tax Division Expense Fund. This provision
7 shall not authorize the transfer of any funds encumbered for Local Tax Division
8 expenditures at the end of a fiscal year, shall not authorize the transfer of any surplus funds
9 carried forward and actually appropriated for the Local Tax Division's use in the subsequent
10 fiscal year, and shall not be applicable to any of the board's state funds in the administrative
11 program.

12 Section 6. The operations of the Board of Tax Appeals are essential to the collection
13 of state and local tax revenue. For the purposes of expenditure classification, all budget
14 activities of the Local Tax Division shall be classified in the same manner as the board's
15 essential activities that are directly required for collection of state general fund revenues
16 recognized by the Revenue Estimating Conference. The delegated purchasing authority of
17 the Local Tax Division in relation to the expenditure of local funds dedicated to the Local
18 Tax Division pursuant to R.S. 47:302(K) shall not be reduced below the amount specified
19 for small purchases pursuant to R.S. 39:1596.

20 Section 7. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 effective on the day following such approval.

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)]

HB 338 Original

2015 Regular Session

Danahay

Abstract: Procedures and requirements related to the collection and adjudication of state and local taxes, including various changes regarding the administration, membership, and authority of the Board of Tax Appeals.

Present law establishes the Board of Tax Appeals ("board") to act as an appeal board to hear and decide questions of law and fact arising from disputes between a taxpayer or dealer and the state revenue collector in the enforcement of any tax, excise, license, permit or any other tax law administered by the collector, and between taxpayers or dealers and local sales and use tax collectors.

Administration

Present law provides funding for the board through an annual dedication of \$132,000 of use tax proceeds from the local government share of the use tax collections from sales by remote dealers for purposes of the board. This amount increases by \$5,000 on July 1, 2015. An increase of an additional \$5,000 per year is authorized for four subsequent years in which the total amount distributed to local government from such use tax proceeds exceeds the amount distributed in FY 2014.

Proposed law retains present law, but changes the amount dedicated to the board from the local share of use tax proceeds as follows.

- (1) Increase for July 1, 2015 from \$5,000 to \$55,000
- (2) Number of years in which the dedication may increase by \$5,000 from four to two years.

Present law establishes the board as an independent agency within the Dept. of State Civil Service.

Proposed law retains present law and establishes the Local Tax Division ("local division") of the board as an independent agency within the board for purposes of exercising jurisdiction over disputes involving to local collectors.

Proposed law authorizes the board to establish an Escrow Account ("account") with the approval of the Cash Management Review Board, and to select a bank or financial institution to serve as its fiscal agent. The fiscal agent is authorized to distribute monies from the account pursuant to an order signed by the chairman of the board, its local tax judge, or a duly appointed ad hoc judge, or upon receipt of a certified non-appealable order of the relevant appellate or higher court.

Proposed law provides for the disposition of interest earned on monies deposited into the account for specific cases by taxpayers, a state collector, or a local collector.

Proposed law subjects the account transactions to audit by the legislative auditor, and requires annual reports to the Cash Management Review Board and the local sales and use tax commission established by present law with respect to transactions involving the state and local collectors, respectively.

Proposed law authorizes certain agreements between the board and its local tax division and the Judicial Administrator's Office of the Supreme Court regarding the compensation and expenses of ad hoc judges.

Membership

Present law provides that the board is comprised of three members, one with a term of six years, and two with terms of four years. Officers of the board are designated, including a specific member to serve as hearing judge for the Local Tax Division of the board. Member compensation is set by the governor, and the hearing judge of the Local Tax Division receives extra compensation equivalent to the compensation provided by the state for a part-time city court judge.

Proposed law retains present law and provides that the judge of the Local Tax Division, to be known as the "local tax judge", shall be a distinct position in the unclassified service for purposes of the La. constitution governing public officials and employees.

Proposed law retains present law and provides for additional compensation and benefits for the hearing judge of the Local Tax Division as follows: additional compensation in the amount of three-fifths of the salary provided for city court judges in the city of Baton Rouge, the ability to earn vacation leave and pay in the same manner as those city court judges, eligibility for participation in group insurance plans in the same manner as any parish court judge partially paid by the state, and eligibility to be reimbursed expenses in the same manner as allowed for such judges.

Adjudication of cases

Present law provides that if a local collector hires a private attorney to assist in the collection of taxes, penalties, or interest due under present law, then the taxpayer shall be charged an additional 10% of the amount owed, with that amount of the extra charge subject to approval of the court.

Proposed law retains present law and adds authorization for board approval of the reasonableness of the attorney's fees charged in the same manner as in a district court.

Present law provides for alternative remedies available to local collectors for the collection of taxes owed, which include assessment and distraint, summary court proceeding, or ordinary lawsuit.

Proposed law retains present law and adds a demand in reconvention, and a third party demand as additional remedies in any court or before the board.

Present law provides procedures for a suit by a taxpayer to recover taxes which he paid under protest, and authorizes the payment of interest on the amount at issue if the taxpayer prevails.

Proposed law retains present law and adds the option of filing a pleading with the board as an alternative to filing suit in district court to recover taxes paid under protest.

Present law imposes a three year limit on the amount of time in which a taxpayer may claim a refund or credit of an overpayment of taxes.

Proposed law retains present law and provides for circumstances in which the time limit may be suspended.

Present law requires that a taxpayer appealing a decision of the board post a bond as security which is payable to the collector in an amount not to exceed one and one-half times the tax, interest, penalties, and attorney's fees.

Proposed law retains present law and adds authority for the taxpayer to fulfill the requirement for posting bond by paying into the account an amount equal to the amount required for security under present law.

Proposed law authorizes the board or its Local Tax Division to assess a fee related to the optional methods of posting security as provided in proposed law.

The provisions of proposed law amending R.S. 337.13.1, 337.28.1, 337.81(A)(2), 337.86, 1401, and 1403 shall be effective on the effective date of Act No. 640 of the 2014 Regular Session of the Legislature as the nature of such amendments is procedural and curative as relates to that Act of the legislature.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27, 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B), 337.81(A)(2) and (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438, 1522, 1561(B)(3), 1603(A)(3), and 1625, and §§5 and 7 of Act No. 640 of 2014 R.S.; Adds R.S. 47:337.45(A)(4), 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c), 1407(5), 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and (B)(4), 1580(B)(5), 1621(D)(4), and 1623(F))