
DIGEST

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HB 338 Engrossed

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 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 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 for purposes of state and local sales and use, income, and corporation franchise taxes.

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 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.

Proposed law authorizes the board and its Local Tax Division to enter into an agreement with the Judicial Administrators Office of the Supreme Court relative to the selection and compensation of ad hoc judges for the board or its Local Tax Division.

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), 1576(B), 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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add the filing of a petition with the Board of Tax Appeals as an alternative to filing suit for recovery of taxes paid under protest.
2. Add provisions for the agreement between the Board of Tax Appeals and the Supreme Court regarding compensation for ad hoc judges for the court, to include the formation of a panel of potential ad hoc judges and other matters concerning the selection of such judges.