

**ACT No. 210**

2015 Regular Session

HOUSE BILL NO. 338

BY REPRESENTATIVE DANAHAHAY

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), 1576(B), 1603(A)(3), and 1625, and Sections 5 and 7 of Act No.  
6 640 of the 2014 Regular Session of the Legislature and to enact R.S.  
7 47:337.45(A)(4), 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and  
8 (B)(6)(c), 1407(5), 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439,  
9 1561(A)(4) and (B)(4), 1580(B)(5), 1621(D)(4), and 1623(F), relative to the  
10 enforcement and adjudication of state and local taxes and the Board of Tax Appeals;  
11 to provide with respect to disputes concerning taxes; to provide for administration  
12 of the board; to provide with respect to certain revenues dedicated to the board; to  
13 establish an escrow account; to provide for the deposit, investment, and use of  
14 monies in the account; to establish a fund within the escrow account and provide for  
15 its sources of revenue and use; to provide for certain procedures and requirements  
16 relative to adjudication and appeals of certain cases involving state and local taxes;  
17 to provide with respect to compensation and benefits of officers of the board; to  
18 authorize certain agreements regarding the compensation and expenses of ad hoc  
19 judges; to provide for effectiveness; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

21 Section 1. R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27,  
22 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B), 337.81(A)(2) and  
23 (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438, 1522, 1561(B)(3), 1576(B),  
24 1603(A)(3), and 1625 are hereby amended and reenacted and R.S. 47:337.45(A)(4),

1 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c), 1407(5),  
2 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and (B)(4),  
3 1580(B)(5), 1621(D)(4), and 1623(F) are hereby enacted to read as follows:

4 §302. Imposition of tax

5 \* \* \*

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

7 \* \* \*

8 (7)

9 \* \* \*

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

20 \* \* \*

21 §337.13.1. Power to employ counsel; attorney fees

22 A.

23 \* \* \*

24 (2) If any taxes, penalties, or interest due and final under this Subtitle are  
25 referred to an attorney at law for a collection action, an additional charge for attorney  
26 fees, in the amount of ten percent of the taxes, penalties, and interest due, except  
27 with respect to amounts timely paid under protest with a return that is not delinquent,  
28 or paid under protest to a vendor in accordance with law, shall be paid by the  
29 taxpayer to the local collector; provided, however, that the amount paid for attorney

1 fees shall be subject to the discretion of the court or Board of Tax Appeals as to  
2 reasonableness.

3 \* \* \*

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

15 \* \* \*

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

23 \* \* \*

24 §337.27. Venue

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

29 \* \* \*

1 §337.28.1. Arbitrary assessments prohibited

2 \* \* \*

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

10 \* \* \*

11 §337.33. Failure to pay tax; rule to cease business

12 \* \* \*

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

19 \* \* \*

20 §337.45. Alternative remedies for the collection of taxes

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

25 \* \* \*

26 (4) Demand in reconvention, or third-party demand, in any court of  
27 competent jurisdiction or before the Board of Tax Appeals concerning collection of  
28 local taxes due, including any related interest, penalties, costs, and attorney fees due  
29 under applicable law.

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

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

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

10           (c) After the deadline to file an answer or defenses, after he has appeared  
11 or he has filed any responsive pleading or defenses in any proceeding or suit  
12 involving the same tax obligation is pending against him; and provided further, that  
13 ~~the.~~

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

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

21     \*       \*       \*

22            §337.51. Notice of assessment and right to appeal

23     \*       \*       \*

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

27     \*       \*       \*

28            (4) A collector may send to a dealer by regular mail a letter addressed in the  
29 same manner as provided in Subsection A of this Section to advise the dealer that the  
30 failure to collect certified or registered mail sent by the collector may result in the

1 loss of appeal rights concerning the uncollected notice of assessment. If the collector  
2 mails this letter on the same date as the collector mails a notice of assessment, any  
3 notice of assessment returned to the collector because a dealer failed to collect it  
4 following attempted delivery by the United States Postal Service shall be deemed to  
5 have been received by the dealer for the purposes of this Subsection on the date that  
6 the United States Postal Service record indicates that the United States Postal Service  
7 first attempted to deliver the notice of assessment to the dealer. A certificate of  
8 mailing or other proof of mailing from the United States Postal Service shall  
9 establish that this letter was transmitted by regular mail.

10 \* \* \*

11 §337.63. Remittance of tax under protest; suits to recover

12 A.

13 \* \* \*

14 (3) ~~If To the extent~~ the taxpayer prevails, the collector shall refund the  
15 amount to the claimant, with interest at the rate established pursuant to R.S.  
16 47:337.80, except as provided in Subsection E of this Section.

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

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

28 \* \* \*

29 E. When the collector has pursued collection of taxes pursuant to any remedy  
30 provided for in R.S. 47:337.45(A)(2) or (3) and the taxpayer has made a timely

1 payment under protest concerning the same tax obligation, and if the collector has  
2 deposited the monies into an interest-bearing account in accordance with this  
3 Section, the interest to be paid on the tax obligation to the party or parties adjudged  
4 to be entitled to the interest shall be that interest actually earned and received by the  
5 collector on the payment.

6 §337.64. Alternative remedy for dealers

7 \* \* \*

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

15 (2) If a valid petition contesting an assessment is timely filed with the Board  
16 of Tax Appeals pursuant to Paragraph (1) of this Subsection, the Board of Tax  
17 Appeals shall exercise the authority provided for in Subsection C of this Section in  
18 the same manner as a district court.

19 \* \* \*

20 §337.79. Prescription of refunds or credits

21 \* \* \*

22 C.(1) In any case where the collector pursues any remedy for collection of  
23 tax pursuant to R.S. 47:337.45, including the issuance of an assessment, the period  
24 of prescription for a refund or credit for the same tax periods and types of tax shall  
25 be suspended. However, the suspension of prescription provided for in this  
26 Subsection applies only in the following circumstances:

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

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

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

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

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

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

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

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

13   \*       \*       \*

14                  §337.81. Appeals from the collector's disallowance of refund claim

15                                   A.

16   \*       \*       \*

17                                   (2) The taxpayer may appeal a denial of a claim for refund to the Board of  
18                                   Tax Appeals, as provided by law. No appeal may be filed before the expiration of  
19                                   one year from the date of filing such claim unless the collector renders a decision  
20                                   thereon within that time, nor after the expiration of ninety days from the date of  
21                                   mailing by certified or registered mail by the collector to the taxpayer of a notice of  
22                                   the disallowance of the part of the claim to which the appeal relates, nor after the  
23                                   expiration of one hundred eighty days from the end of the expiration of the one year  
24                                   in which the collector failed to act.

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

29                                   B. ~~Any~~ (1) A notice of disallowance, if issued, shall inform the taxpayer that  
30                                   he has ninety days from the date of the certified or registered mailing of that notice



1 to appeal to the Board of Tax Appeals and that any consideration, reconsideration,  
 2 or action by the collector with respect to ~~such~~ the claim following the mailing of a  
 3 notice by certified or registered mail of disallowance shall not operate to extend the  
 4 period within which an appeal may be taken.

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

7 \* \* \*

8 §337.86. Credit for taxes paid

9 \* \* \*

10 E.

11 \* \* \*

12 (2)(a) The collector shall not impose penalties or interest on taxes  
 13 erroneously paid or remitted to another taxing authority unless the erroneous  
 14 payment or remittance was the result of gross negligence or due to intentional  
 15 conduct of bad faith ~~or gross negligence~~ on the part of the ~~persons collecting and~~  
 16 ~~remitting dealer that collected and remitted the~~ taxes or on the part of the taxpayer  
 17 that paid the taxes. In instances where a legitimate disagreement exists as to which  
 18 taxing authority is owed, the involved taxing authorities shall resolve the dispute  
 19 among themselves through any legal means provided by law, including the filing of  
 20 a rule or petition against the other taxing authority in the manner provided for in R.S.  
 21 47:337.101.

22 \* \* \*

23 §1401. Creation of Board of Tax Appeals

24 In order to provide a board that will act as an appeal board to hear and decide,  
 25 at a minimum of expense to the taxpayer, questions of law and fact arising from  
 26 disputes or controversies between a taxpayer and the collector of revenue of the State  
 27 of Louisiana in the enforcement of any tax, excise, license, permit or any other tax  
 28 law administered by the collector, and to exercise jurisdiction as provided for in the  
 29 Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as  
 30 the "board", is created as an independent agency in the Department of State Civil

1 Service, and for the purposes of this Chapter. The Local Tax Division is created as  
2 an independent agency and authority within the board for the purposes of exercising  
3 jurisdiction over disputes involving local collectors.

4 \* \* \*

5 §1403. Designation of officers; domicile; quorum; seal

6 A.

7 \* \* \*

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

12 B.

13 \* \* \*

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

19 (6)

20 \* \* \*

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

25 \* \* \*

26 §1407. Jurisdiction of the board

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

28 \* \* \*

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

4                   §1408. Power to administer oaths and issue rules, orders, or subpoenas

5   \*       \*       \*

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

15                  (2)(a) In addition to all other remedies provided for in this Section, the  
16                  failure to obey any order or subpoena issued under the authority of this Chapter shall  
17                  constitute contempt of court, and may be punished by the board or its local tax judge  
18                  in accordance with the provisions of R.S. 13:4611(1) and all other applicable laws  
19                  for contempt of court. Any action finding anyone in contempt pursuant to this  
20                  Paragraph shall be subject to an appeal by trial *de novo* in the Nineteenth Judicial  
21                  District Court.

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

25                  E. The provisions of this Section may be enforced by any duly  
26                  commissioned person, shall be enforced by the sheriff wherever such person may be  
27                  found, and shall be enforced by the Department of Public Safety and Corrections,  
28                  office of state police, when a direct contempt occurs in a state building.

29   \*       \*       \*

1 §1413. Rules and regulations

2 \* \* \*

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

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

14 \* \* \*

15 §1418. Definitions

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

18 \* \* \*

19 (4) "Petition" means a separate and distinct pleading filed against the  
20 relevant state collector or local collector with the board. A petition filed against a  
21 state collector shall not interrupt or suspend the time period within which a taxpayer  
22 must file a petition against any local collector, and a petition filed against a local  
23 collector shall not suspend or interrupt the time period within which a taxpayer must  
24 file a petition against a state collector or a different local collector.

25 \* \* \*

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

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

3                    \*           \*           \*

4                    §1434. Judicial review of decision of the board

5                    A.~~(†)~~ Within thirty days of the signing of a decision or judgment of the  
 6                    board, the collector or the taxpayer may file a petition motion with the appellate  
 7                    court board for review of the decision or judgment. ~~The party intending to file the~~  
 8                    ~~petition shall, prior to its filing, notify the board of this intention either at open~~  
 9                    ~~hearing or by motion~~ by the appropriate appellate court.

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

18                    (2) In lieu of posting the bond required by Paragraph (1) of this Subsection,  
 19                    a taxpayer may fulfill that requirement by paying into the Escrow Account for the  
 20                    Registry of the Board an amount not to exceed one and one-half times the tax,  
 21                    interest, penalties, and attorney fees, if any, found to be due as security pursuant to  
 22                    Paragraph (1) of this Subsection, together with any fees and costs due to the board.  
 23                    The payment of security pursuant to this Paragraph shall not suspend the running of  
 24                    interest otherwise provided for in Subtitle II of Title 47 of the Louisiana Revised  
 25                    Statutes of 1950, as amended, or in the applicable local ordinances.

26                    (3)(a) For any case in the Local Tax Division, an irrevocable letter of credit  
 27                    issued by a responsible financial institution shall not be accepted as security in lieu  
 28                    of a bond or a deposit into the Escrow Account of the Registry of the Board unless  
 29                    it is in the amount of the security otherwise required by Paragraph (1) of this

1            Subsection and permission is granted by the local tax judge prior to the expiration  
2            of the period for filing a motion for review pursuant to this Section.

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

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

14           ~~(2)~~(5) Except as to the amount, and to the extent not otherwise inconsistent  
15           with the provisions of this ~~Section~~ Subsection, the nature of the bond or security and  
16           the procedures for posting bond or providing other security shall be consistent with  
17           the provisions for providing security in connection with a suspensive appeal under  
18           the Code of Civil Procedure.

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

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

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

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

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

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

13                   D. The filing of a motion for a new trial, a motion for reconsideration, or the  
 14                   denial of any such motion does not extend the period within which a party must file  
 15                   a motion for review for a judgment pursuant to this Section. However, the board  
 16                   shall retain jurisdiction to make corrections to or revise a judgment until the  
 17                   appellate record is lodged with the appellate court. If any amended or revised  
 18                   judgment, or judgment following a new trial, is rendered pursuant to the provisions  
 19                   of Chapter 4 of Title VI of Book II of the Louisiana Code of Civil Procedure, the  
 20                   delay to file an appeal concerning the amended, revised, or new judgment shall run  
 21                   from the date of its signing.

22   \*           \*           \*

23                   §1438. Date judgment becomes final

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

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

29                   (2) If a ~~petition~~ motion for review of a judgment of the board by the  
 30                   applicable appellate court is timely filed with the ~~applicable appellate court~~ board,

1 the judgment of the board or subsequent judgment of the appellate court shall  
2 become final in the same manner, and at the same time, as provided for in civil  
3 matters under the Code of Civil Procedure.

4 §1439. Escrow Account

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

17 B. The fiscal agent may be held harmless for any distribution made that  
18 complies with the provisions of both this Section and any applicable policies  
19 specified for the account by the board or the Cash Management Review Board.

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

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

29 (2) In a case against only a state collector, one-tenth of one percent per  
30 month of the amount held in escrow for a case, not to exceed the actual amount of



1 interest earned on monies in the Escrow Account from deposits made by a taxpayer  
2 in the case, shall be payable to the treasury and, after compliance with Article VII,  
3 Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and  
4 Redemption Fund, the monies remaining shall be deposited in and credited to the  
5 state general fund as self-generated revenues of the Board of Tax Appeals, and may  
6 be expended within the board's administrative program.

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

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

16 F. The board may deposit into the account any funds received from a party  
17 for payment of the costs of service of process or for appeal costs, and it may pay the  
18 amounts received to the appropriate sheriff for service of process or the appropriate  
19 clerk of a court of appeals in the event of an appeal against a decision of the board  
20 pursuant to R.S. 47:1434.

21 G.(1) The local tax judge may also order the payment of monies from the  
22 Local Tax Division Expense Fund into the state treasury, and any amount so ordered  
23 that remains after compliance with Article VII, Section 9(B) of the Constitution of  
24 Louisiana, relative to the Bond Security and Redemption Fund, shall be deposited  
25 in and credited to the state general fund as self-generated revenues of the Local Tax  
26 Division of the Department of Civil Service, Board of Tax Appeals.

27 (2) Self-generated revenues of the Local Tax Division made available  
28 pursuant to the provisions of Paragraph (1) of this Subsection may be expended for  
29 any of the purposes specified in R.S. 47:1406, pursuant to the provisions of that  
30 Section restricting their exclusive use to the purposes of the Local Tax Division and

1           the provisions of that Section providing for their retention and carry forward for such  
2           purposes.

3   \*       \*       \*

4           §1522. Alternative dispute resolution

5                           The secretary of the Department of Revenue may enter into contracts with the  
6           approval of the attorney general, with individuals and organizations to conduct  
7           alternative dispute resolution to arbitrate or to mediate any issue in order to assist in  
8           the collection of any taxes, penalties, or interest due under Subtitle II of this Title in  
9           an aggregate amount not to exceed five million dollars when such procedures are  
10          deemed to be in the best interest of the state. The secretary of the Department of  
11          Revenue shall have the authority to contract for the allocation of any costs of  
12          alternative dispute resolution procedures. The secretary shall retain the authority to  
13          contract for the nonbinding mediation of any dispute under Subtitle II of this Title  
14          by any mediator qualified pursuant to R.S. 9:4106, or by any member of the Board  
15          of Tax Appeals.

16   \*       \*       \*

17          §1561. Alternative remedies for the collection of taxes

18                        A. In addition to following any of the special remedies provided in the  
19          various chapters of this Subtitle, the collector may, in his discretion, proceed to  
20          enforce the collection of any taxes due under this Subtitle by means of any of the  
21          following alternative remedies or procedures:

22   \*       \*       \*

23                           (4) Demand in reconvention, or third party demand, in any court of  
24          competent jurisdiction or before the Board of Tax Appeals concerning collection of  
25          state taxes due, including any related interest, penalties, costs, and attorney fees due  
26          under applicable law.

27                        B.

28   \*       \*       \*

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

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

6   \*       \*       \*

7                   §1576. Remittance of tax under protest; suits to recover

8   \*       \*       \*

9                   B. For income and corporation franchise tax purposes, in instances where the  
 10                   payment of tax under protest is required to be made before the amount of tax due is  
 11                   determinable, the taxpayer shall have thirty days from the due date of the tax return,  
 12                   or the extended due date of such return if applicable, to file suit or a petition with the  
 13                   Board of Tax Appeals for the recovery of such tax. If suit or a petition is filed within  
 14                   the thirty-day period and the taxpayer prevails, the secretary shall refund the amount  
 15                   to the claimant, with interest at the rate established pursuant to R.S. 13:4202  
 16                   computed pursuant to R.S. 47:287.657 or R.S. 47:617 in the case of corporation taxes  
 17                   or R.S. 47:115 in the case of individual income tax.

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 for the period for which a refund  
 26                   is requested, which shall suspend prescription for the same period in order for the  
 27                   secretary to determine whether the taxpayer owes any other liability under the  
 28                   provisions of R.S. 47:1622.

29                   (b) The collector may not assert a collection remedy against a taxpayer for  
 30                   a tax that would have been prescribed but for this Paragraph except through a

1 defense, answer, or reconventional demand in offset of an action concerning the  
2 claim for refund.

3 (c) The provisions of Subparagraph (a) of this Paragraph governing the  
4 suspension of prescription shall not apply in the following circumstances:

5 (i) The claim for refund referenced in this Paragraph has been granted.

6 (ii) The claim for refund referenced in this Paragraph is denied and the  
7 refund denial is final and nonappealable.

8 (iii) A judgment of the Board of Tax Appeals concerning the refund  
9 referenced in this Paragraph has become final.

10 \* \* \*

11 §1603. Waiver of penalty for delinquent filing or delinquent payment

12 A.

13 \* \* \*

14 (3) In any case when the penalty exceeds twenty-five thousand dollars, it can  
15 be waived by the secretary only after approval by the Board of Tax Appeals.  
16 However, the secretary's waiver of a penalty as part of a voluntary disclosure  
17 program shall not require the approval of the board.

18 \* \* \*

19 §1621. Refunds of overpayments authorized

20 \* \* \*

21 D.

22 \* \* \*

23 (4) The first payment owed pursuant to the provisions of Paragraph (2) of  
24 this Subsection shall be made within the time specified in Paragraph (3) of this  
25 Subsection, and any subsequent payments shall be made no later than the same date  
26 of the respective subsequent calendar years.

27 \* \* \*

28 §1623. Prescription of refunds or credits

29 \* \* \*

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

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

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

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

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

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

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

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

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

22                                      \*       \*       \*

23              §1625. Appeals from the collector's disallowance of refund claim

24              A.(1) If the collector fails to act on a properly filed claim for refund or credit  
25              within one year from the date received by him or if the collector denies the claim in  
26              whole or in part, the taxpayer claiming such refund or credit may appeal to the Board  
27              of Tax Appeals for a hearing on the claim filed. No appeal may be filed before the  
28              expiration of one year from the date of filing such claim unless the collector renders  
29              a decision thereon within that time, nor after the expiration of sixty days from the

1 date of mailing by registered mail by the collector to the taxpayer of a notice of the  
2 disallowance of the part of the claim to which such appeal relates.

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

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

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

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

21 Section 5. ~~The members of the Board of Tax Appeals on the effective date~~  
22 ~~of this Act shall continue to serve in such capacity at the pleasure of the governor~~  
23 ~~until the appointments to fixed terms are made in accordance with the provisions of~~  
24 ~~this Act.~~ Notwithstanding any provision of law to the contrary, a member of the  
25 board, including the local tax judge, shall be eligible for any assignment or  
26 appointment made pursuant to Article V, Section 5 or Section 22 of the Constitution  
27 of Louisiana, and ad hoc service pursuant to ~~that Section~~ those Sections shall not  
28 render a retired judge ineligible for an ad hoc appointment pursuant to R.S.  
29 47:1417(C)(2).

1           If any member of the board serving on ~~the effective date of this Act~~ June 12,  
 2           2014, is appointed to a fixed term pursuant to the provisions of ~~this Act~~ R.S.  
 3           47:1402, as amended by Act 640 of the 2014 Regular Session of the Legislature, his  
 4           appointment shall not require additional confirmation by the Senate if he was  
 5           confirmed or reconfirmed prior to ~~the effective date of this Act~~ June 12, 2014. The  
 6           additional compensation of the hearing judge of the Local Tax Division shall ~~initially~~  
 7           be equivalent to the compensation provided by the state for a part-time city court  
 8           judge, together with three-fifths of the salary provided for city judges in the city of  
 9           the board's official domicile, with any vacation leave accrued and paid in the same  
 10          manner as for such judges. Notwithstanding any other provision of law to the  
 11          contrary, the local tax judge may participate in and contribute to group insurance and  
 12          benefit plans in the same manner as any parish judge paid in part by the state and  
 13          shall be entitled to reimbursement for expenses incurred in the discharge of his duties  
 14          away from his parish of residence in the same amount as provided for under  
 15          applicable law and Supreme Court rules for such judges. The Local Tax Division  
 16          shall adopt formal written policies related to the implementation of this Section.

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

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

27          Section 4. The provisions of this Act amending R.S. 47:337.13.1, 337.28.1,  
 28          337.81(A)(2), 337.86, 1401, and 1403 are procedural and interpretive and shall be effective  
 29          on the effective date of Act No. 640 of the 2014 Regular Session of the Legislature.

1           Section 5.(A) The Board of Tax Appeals and its Local Tax Division are authorized  
2 to enter into an agreement with the Office of the Judicial Administrator of the Supreme  
3 Court for the formation of a panel of potential ad hoc hearing judges, this agreement may  
4 provide for any matter related to a process for randomly selecting a panel member to fulfill  
5 the requirements of R.S. 47:1417(C)(2) in the event of a recusal requiring an appointment  
6 pursuant to that Paragraph. The board and Office of the Judicial Administrator are also  
7 authorized to enter into an agreement concerning any matter related to administering the  
8 payment of the expenses or compensation, and related withholding, for any hearing judge  
9 as provided for in R.S. 47:1403 or 1417. This agreement may provide that any payments  
10 shall be subject to and comply with the limits and applicable Supreme Court policies for the  
11 assignment of retired judges to district courts. The relevant hearing judge in a case involving  
12 one or more local collectors may order that the related amounts taxed as fees or costs  
13 pursuant to those Sections be payable to the escrow account of the registry of the board for  
14 deposit in the Local Tax Division expense fund. In the event an agreement is entered into  
15 pursuant to the provisions of this Section, the fiscal agent shall pay from that fund all  
16 amounts necessary to satisfy any obligations under such agreement.

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

---

PRESIDENT OF THE SENATE

---

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_