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## DIGEST

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Stokes

HB No. 798

**Abstract:** Provides generally with respect to enforcement and adjudication of taxes, fees, and penalties collectable by the Dept. of Revenue, including the administration, jurisdiction, and procedures of the Board of Tax Appeals.

### General Tax Administration

Present law provides authority for the secretary of the Dept. of Revenue ("secretary") and ("department") to waive various taxes, fees, and penalties under certain amounts, and to waive liens, privileges, and mortgages in certain specific circumstances, all of which at some point require approval by the Board of Tax Appeals ("board").

Proposed law changes thresholds for approval by the board as follows:

- (1) Penalty for failure to file an annual tax return by a person who withholds wages for purposes of individual income tax, from \$5,000 to \$25,000.
- (2) Penalties generally with regard to income tax, from all waivers to waivers in excess of \$25,000.
- (3) Penalties generally with regard to delinquent filing or delinquent payment of any tax subject to collection by the department under certain circumstances, from \$5,000 to \$25,000.
- (4) Cancellation of a lien, privilege, or mortgage under certain circumstances, from board approval for all to no board approval.

Present law provides requirements for the filing of La. corporation income tax returns when there are I.R.S. adjustments to or an extension of time for the filing of a federal corporation income tax return. If a federal return is adjusted by the I.R.S., the taxpayer must within 60 days of the date of the adjustment, furnish a statement to the secretary disclosing the nature and amount of the adjustment. Further, the secretary is authorized to provide for an automatic extension of time for the filing of a state return of up to seven months when there has been an extension of time for the filing of the federal tax return.

Proposed law changes present law by requiring that the taxpayer file an amended tax return rather than a statement, and by increasing the time from the date of the federal adjustment for the filing

of the amended state tax return from 60 days to 180 days. Proposed law retains present law regarding the secretary's authority to grant an extension of time, and adds authority for the granting of an extension of time equal to that allowed for the federal return.

Present law authorizes the secretary to file suit by ordinary process for the collection of taxes. Present law further authorizes collection by expedited summary court proceeding for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, and other costs relating to taxes collected and administered by the department.

Proposed law retains present law but restricts the use of expedited summary court proceedings to the following instances:

- (1) The proceeding is for collection of a tax assessment that has become final or is for an assessment of a tax that is shown on the face of a tax return, or an assessment and claim in a bankruptcy or receivership proceeding.
- (2) A jeopardy assessment that has been or could be issued against a defendant.
- (3) A rule to cease business has been or is concurrently brought against the defendant.
- (4) The matter involves the special authority to enforce collection of taxes where a corporation, limited liability company, or limited partnership fails to file a return or remit income taxes withheld from the wages of its employees.

Present law provides procedures for the payment of tax under protest, which includes the taxpayer notifying the department of an intention to file suit to recover their payment.

Proposed law retains present law and adds the filing of a claim with the board as an option for a taxpayer who pays under protest and seeks to recover their payment.

Proposed law adds to present law authority for the secretary to promulgate rules and regulations in accordance with the Administrative Procedure Act concerning the waiver of penalties, including the establishment of a voluntary disclosure program.

### **Board of Tax Appeals - General provisions**

Present law allows the board to issue subpoenas and order depositions.

Proposed law retains present law and adds authorization for the board to compel written discovery.

Proposed law authorizes the voluntary recusal of a board member from any proceeding in which he cannot accord a fair and impartial hearing in the same manner as provided for judges by the La. Code of Civil Procedure. Proposed law provides for procedures governing the instance

where a party other than a board member requests the recusal of a board member. Proposed law further provides that the remainder of the board may adjudicate a case if a board member is recused, and provides that if all board members are recused then a retired judge may be appointed to adjudicate a case as an ad hoc judge for the board.

Present law allows the board to assign a single board member to serve as a hearing officer for a case and report back to the entire board.

Proposed law retains present law and adds authority for the single member to report back on the law.

Present law requires the board's decisions, orders, and judgments be published.

Proposed law retains present law and provides that the board's internal deliberative communications on its cases are to be considered judicial proceedings for purposes of present law governing public records.

Present law provides an exemption for the board from the Administrative Procedure Act, and provides certain exceptions to the exemption.

Proposed law deletes present law providing for the exceptions.

Proposed law provides that legislative oversight of rules promulgated by the board shall be performed by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law authorizes the board and the secretary to enter into an agreement for a fixed annual interagency transfer to the board as payment in lieu of filing fees owed by the secretary.

### **Board of Tax Appeals - Appeals of decisions of the board**

Present law establishes procedures for appeal of a decision of the board to a district court as follows: the department or taxpayer may appeal within 30 days of the date of the decision; before filing an appeal, the party intending to appeal must notify the board of their intention; a taxpayer appealing a decision where the board has found tax to be due must post a bond equal to one and one-half times the amount of the tax, interest, and other unspecified additional amounts required by present law.

Proposed law retains present law regarding an appeal of a decision of the board with respect to the notice for and timing of the filing of an appeal.

Proposed law changes present law by adding a limitation on the requirement for the posting of a bond to exclude from such requirement, any taxpayer who has paid under protest. Further, provisions are added specifying that the nature of the bond and procedures for posting bond shall

be consistent with those required for a suspensive appeal in a civil matter under the Code of Civil Procedure.

Proposed law further provides that deadlines other than for the time and notice for the initial filing of the appeal, and rules governing the briefing and answering of the appeal shall be the same as provided for in civil matters under the Code of Civil Procedure and all applicable court rules.

Proposed law changes the venue for appellate review of board decisions from a district court to a court of appeal. Proposed law adds provisions for the respective court of appeal to exercise supervisory jurisdiction over a case pending before the board in the same manner as provided for in a civil matter pending in a district court within its circuit.

Present law authorizes the appellate court to modify, reverse, or remand a decision of the board.

Proposed law retains present law and adds authorization for the appellate court to order that a case be immediately transferred to a district court to consider issues of constitutionality.

Present law provides for a myriad of time lines for a decision of the board to become final, some of which are obsolete as some steps and terms do not exist under contemporary allocation of appellate court authority.

Proposed law deletes present law and provides that a decision of the board becomes final under the following two circumstances: if the decision is not appealed within 30 days, or, if it is timely appealed, then the decision of the appellate court is final under the same rules and timing as is provided for in civil matters under the Code of Civil Procedure.

Present law contains provisions requiring that a party petition the legislature for permission to appeal a decision of the board in a claim against the state proceeding.

Proposed law removes provisions of present law requiring a petition to the legislature, and instead authorizes a suit on a claim against the state is allowed if that cause of action is otherwise allowed by law.

Authorizes the Board of Tax Appeals and the secretary of the Department of Revenue to enter into an agreement for a fixed annual interagency transfer as payment in lieu of filing fees owed by the secretary.

Authorizes the La. State Law Institute to revise the La. Revised Statutes of 1950, as amended to change certain references.

Effective July 1, 2014.

(Amends R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1576(A)(1) and (2), (C), and

(E), 1578(B)(2), (3), and (4)(a)(intro. para.), 1603(A), and 1688, and R.S. 49:967(A) and 968(B)(9); Adds R.S. 47:1417 and 1574(5))