2015 Regular Session

HOUSE BILL NO. 338

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#### BY REPRESENTATIVE DANAHAY

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, 1522, 1561(B)(3), 1576(B), 1603(A)(3), and 1625, and Sections 5 and 7 of Act No. 5 640 of the 2014 Regular Session of the Legislature and to enact R.S. 6 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),

AN ACT

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1603(A)(3), and 1625 are hereby amended and reenacted and R.S. 47:337.45(A)(4),

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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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,

or paid under protest to a vendor in accordance with law, shall be paid by the

taxpayer to the local collector; provided, however, that the amount paid for attorney

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fees shall be subject to the discretion of the court <u>or Board of Tax Appeals</u> as to reasonableness.

3 \* \* \*

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

\* \* \*

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

\* \* \*

#### §337.27. Venue

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

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1	§337.28.1.	Arbitrary a	ssessments 1	orohib	ited	
2			*	*	*	

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

\* \* \*

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

\* \* \*

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

\* \* \*

§337.45. Alternative remedies for the collection of taxes

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

25 \* \* \*

(4) Demand in reconvention, or third-party demand, in any court of competent jurisdiction or before the Board of Tax Appeals concerning collection of local taxes due, including any related interest, penalties, costs, and attorney fees due 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	ā <u>.</u>
10	(c) After the deadline to file an answer or defenses, after he has appeared
1	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	* * *

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

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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.

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2 reconventional demand for the refund or credit in the suit.  3 (2) If the refund claim would have been prescribed but for this Su the amount of the claim found to be due shall be credited or offset ago underpaid tax found to be due.  4 (3) Prescription shall not be suspended by the provisions of Para 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 concerning the concerning the concerning the concerning transport of the summary or ordinary proceeding.  10 (c) A final judgment has been rendered by a district court in summary or ordinary proceeding.  11 (a) The tax payer may appeal a denial of a claim for refund to the summary or ordinary proceeding and the concerning the c	taxpayer has filed a timely
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	ne date of the certified or
B. Any (1) A notice of disallowance, if issued, shall inform the taxp	
	nall inform the taxpayer that
he has ninety days from the date of the certified or registered mailing of the	tered mailing of that notice

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

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

\* \* \*

8 §337.86. Credit for taxes paid

\* \* \*

10 E.

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

22 \* \* \*

# §1401. Creation of Board of Tax Appeals

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

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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	В.
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	* * *

The jurisdiction of the board shall extend to the following:

§1407. Jurisdiction of the board

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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 <u>rules</u> , <u>orders</u> , <u>or</u> 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	* * *

§1413.	Rules	and	regu	lations
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D. By rule promulgated pursuant to this Section, the board may require that in any notice regarding a right to an appeal to the board, the collector shall include any certified or registered mail tracking number for the notice as well as the board's contact information, in a form specified by the board. The failure to include this information shall not extend the time within which any party may file an appeal with the board.

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

\* \* \*

### §1418. Definitions

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

\* \* \*

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

\* \* \*

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

for the Escrow Account in the same manner as specified in R.S. 13:475(A).	<u>(7)</u>	"Registry of the B	Board" means the	e record retained b	y the secretary	<u>/-cle</u>
for the Escrow Account in the same manner as specified in R.S. 13:475(A).						
	for the Esc	row Account in th	ie same manner	as specified in R.S.	S. 13:475(A).	

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§1434. Judicial review of decision of the board

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

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

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

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

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

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

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

- (2)(5) Except as to the amount, and to the extent not otherwise inconsistent with the provisions of this Section Subsection, the nature of the bond or security and the procedures for posting bond or providing other security shall be consistent with the provisions for providing security in connection with a suspensive appeal under the Code of Civil Procedure.
- (3) The other deadlines and rules governing the briefing and answering of an appeal filed pursuant to this Section shall be as provided for in civil matters under the Code of Civil Procedure and all applicable court rules.
- B. When a petition for review is lodged with an appellate court, the court or its clerk shall mail a copy of the petition to both the secretary-clerk of the board and the opposing party or his counsel.
- <u>C.(1)</u> Within ten days from the lodging of the petition, the appellate court shall command filing of the motion for review with the board, the board shall act upon the motion for review and, if granted, order a return date for the record to be 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

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applicable appellate court is timely filed with the applicable appellate court board,

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

### §1439. Escrow Account

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

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

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

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

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

in the case, shall be payable to the treasury and, after compliance with Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and Redemption Fund, the monies remaining shall be deposited in and credited to the state general fund as self-generated revenues of the Board of Tax Appeals, and may be expended within the board's administrative program.

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

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

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

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

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

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

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## §1522. Alternative dispute resolution

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

\* \* \*

#### §1561. Alternative remedies for the collection of taxes

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

22 \* \* \*

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

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

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

- (i) The claim for refund referenced in this Paragraph has been granted.
- (ii) The claim for refund referenced in this Paragraph is denied and the refund denial is final and nonappealable.
- (iii) A judgment of the Board of Tax Appeals concerning the refund referenced in this Paragraph has become final.

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

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(3) In any case when the penalty exceeds twenty-five thousand dollars, it can be waived by the secretary only after approval by the Board of Tax Appeals.

However, the secretary's waiver of a penalty as part of a voluntary disclosure 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

\* \* \*

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	$\underline{A.(1)}$ 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	SPEAKER OF THE HOUSE OF REPRESENTATIVES
	PRESIDENT OF THE SENATE
	PRESIDENT OF THE SENATE
	GOVERNOR OF THE STATE OF LOUISIANA
APPROVED:	

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