

RÉSUMÉ DIGEST

ACT 210 (HB 338)

2015 Regular Session

Danahay

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

Administration

Prior law provided funding for the board through an annual dedication of \$132,000 of use tax proceeds from the local government share of the use tax collections from sales by remote dealers. This amount was to increase by \$5,000 on July 1, 2015, and thereafter be increased an additional \$5,000 per year in the four subsequent years in which the total amount distributed to local government from such use tax proceeds would exceed the amount distributed in FY 2014.

New law changes the interval for and amount of increase in the annual dedication for the board, as follows:

- (1) The additional amount dedicated beginning July 1, 2015, is increased from \$5,000 to \$55,000.
- (2) Number of years in which the dedication may increase by \$5,000 is reduced from four to two years.

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

New law establishes the Local Tax Division (local division) of the board as an independent agency within the board for purposes of exercising jurisdiction over disputes involving local collectors.

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

New law authorizes a taxpayer to fulfill the requirement for posting bond when appealing a decision of the board by paying into the account an amount equal to the amount required for the posting of security for purposes of an appeal under existing law. New law also authorizes the board or its local division to assess a fee related to this optional method of posting security.

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

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

New law authorizes certain agreements between the board and its local division and the Office of the Judicial Administrator of the Supreme Court regarding the selection of, and compensation and expenses to be paid to, ad hoc judges.

Membership

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

New law provides that the hearing judge of the local division, to be known as the "local tax judge", shall be a distinct position in the unclassified service for purposes of the La. constitution governing public officials and employees.

New law provides for additional compensation and benefits for the local tax judge as follows:

- (1) Additional compensation in the amount of three-fifths of the salary provided for city court judges in the city of Baton Rouge.
- (2) The ability to receive reimbursement of expenses, to earn vacation leave, and to participate in group insurance plans, all in the same manner as a judge paid in part by the state.

Adjudication of cases

Existing law provides that if a local collector hires a private attorney to assist in the collection of taxes, penalties, or interest due under existing law, then the taxpayer shall be charged for the attorney fees equal to 10% of the amount owed, with that amount of the extra charge subject to approval of the district court.

New law adds authorization for board approval of the reasonableness of the attorney fees charged in the same manner as in a district court.

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

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

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

New law adds the option of filing a pleading with the board as an alternative to filing suit in district court to recover taxes paid under protest for purposes of state and local sales and use, income, and corporation franchise taxes.

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

New law provides for circumstances in which the time limit on the claiming of a refund or a credit of an overpayment of taxes may be suspended.

The provisions of new law amending R.S. 337.13.1, 337.28.1, 337.81(A)(2), 337.86, 1401, and 1403 become effective June 12, 2014, which is the effective date of Act No. 640 of the 2014 Regular Session of the Legislature, since the nature of such amendments is procedural and curative as it relates to that Act of the legislature.

Effective upon signature of the governor (June 23, 2015).

(Amends R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27, 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B), 337.81(A)(2) and (B),

337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438, 1522, 1561(B)(3), 1576(B), 1603(A)(3), and 1625, and §§5 and 7 of Act No. 640 of 2014 R.S.; Adds R.S. 47:337.45(A)(4), 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c), 1407(5), 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and (B)(4), 1580(B)(5), 1621(D)(4), and 1623(F))