

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 573

2021 Regular Session

Stefanski

TAX COMMISSION, STATE: Provides for the administration, review, and adjudication of ad valorem tax assessments

Synopsis of Senate Amendments

1. Extends the jurisdiction of the Board of Tax Appeals to matters related to state or local taxes or fees, concerning taxing districts and related proceeds, or to contracts related to tax matters.
2. Defines a "local collector" to include any other political subdivision of the state or other local taxing district.
3. Requires rules promulgated by the La. Tax Commission to be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs and authorizes the commission to use emergency rulemaking procedures when necessary for the effective administration of ad valorem taxes.
4. Authorizes a property owner to also provide an email address to an assessor when a property owner is making a written request for notice of the current year's assessment of his property. Further provides that if an email address is provided, the assessor shall email written notice of the assessed value of the property on the first day for the inspection of the assessment lists.
5. Repeals present law prohibition against petitioning the Board of Tax Appeals to declare a law unconstitutional on the basis of its failure to meet the constitutional requirements for the passage of laws by the legislature.
6. Changes the effective date of proposed law from August 1, 2021, to Jan. 1, 2022, and provides for the applicability of proposed law.

Digest of Bill as Finally Passed by Senate

Present law provides for the establishment of the Board of Tax Appeals (board) to hear and decide disputes between taxpayers and any state or local tax collector. Present law provides for the membership, qualifications, and appointments to the board.

Proposed law retains present law as it relates to the board but expands the qualifications of a nominee for a board position to include a person who has La. tax law experience rather than a person with La. *sales* tax law experience.

Proposed law increases the membership of the Local Tax Division Nominating Committee from eight to ten members by adding a member who represents the La. Assessor's Association and a representative selected by the Pelican Institute after consultation with the La. Chamber of Commerce Foundation. Further expands the qualifications for members of the nominating committee to include a certified La. assessor.

Present law provides for the jurisdiction of the board which includes petitions for declaratory judgment or actions related to the constitutionality of a law or ordinance or the validity of a regulation concerning a state or local tax or fee.

Proposed law retains present law but adds that the board's jurisdiction over petitions for declaratory judgement or other actions extends to matters related to state or local taxes or

fees, concerning taxing districts and related proceeds, or relating to contracts related to tax matters.

Present law defines a "local collector" as an individual or entity responsible for collecting occupational license or occupancy taxes, or local taxes or fees except those tax matters within the jurisdiction of the La. Tax Commission (commission).

Proposed law adds ad valorem taxes to the taxes a local collector may collect and removes the exclusion for tax matters within the jurisdiction of the commission. Proposed law further defines a local collector to include an assessor or the commission if it is a party to a proceeding related to appeals for the redetermination of an assessment or the determination of an overpayment and any other political subdivision of the state or other local taxing district.

Present law authorizes a taxpayer to appeal to the board for a redetermination of an assessment or a determination of an overpayment when a taxpayer is aggrieved by an assessment made by a state collector or by a state collector's action or failure to act on a claim for refund or credit of an overpayment. Present law establishes a procedure for a taxpayer to file a petition for payment of taxes under protest.

Proposed law retains present law but specifies that a taxpayer must comply with the present law procedure related to suits for payment of taxes under protest.

Proposed law sets forth a procedure for a relevant party who is aggrieved by an action of a local collector, assessor, or the commission, if the action is appealable to the board. Further authorizes an intervention by and joinder of the relevant assessor as permitted or required by present law. Proposed law excludes actions concerning local tax sales, the nullification of tax sales, or the contesting of the seizure of movables for collection from this procedure.

Present law requires the taxpayer and the collector to get notice and an opportunity to be heard in each proceeding for the redetermination of an assessment, the consideration of a payment under protest petition, or for the determination of an overpayment. Further requires decisions or judgments to be made as quickly as practicable.

Proposed law retains present law but adds a requirement that other parties to proceedings be afforded notice and an opportunity to be heard.

Present law authorizes an aggrieved party to petition the board for declaratory judgment or other action related to the constitutionality of a law or ordinance or validity of a regulation concerning any matter relating to any state or local tax or fee excluding those tax matters within the jurisdiction of the La. Tax Commission pursuant to the provisions of present constitution (Art. VII, Sec. 18(E)).

Proposed law retains present law.

Present law prohibits an aggrieved party from petitioning the board to declare a law unconstitutional on the basis of its failure to meet the constitutional requirements for the passage of laws by the legislature.

Proposed law repeals present law.

Present law authorizes the commission to adopt, amend, or revise rules and guidelines after public hearings held in accordance with present law (the Administrative Procedure Act).

Proposed law retains present law but requires rules promulgated by the commission to be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs and authorizes the commission to use emergency rulemaking procedures when necessary for the effective administration of ad valorem taxes.

Present law provides for the determination of the appellate court that has jurisdiction over decisions or judgments of the board including the court of appeal for the parish where the tax is being litigated, the court the parties stipulate to have jurisdiction, or the court of appeal for the parish of the appellee for a case appealed by a collector.

Proposed law retains present law but provides that if none of the options for review in present law are applicable, the judgment may be reviewed by the court of appeal designated by the board that has the most connection to the matter or, if none, the court of appeal for East Baton Rouge Parish.

Present law requires the board to select a fiscal agent for its escrow account used to distribute funds pursuant to certified copies of an order. Further requires the account to be subject to audit by the legislative auditor and for an annual report of account transactions concerning state cases to be submitted to the Cash Management Review Board and an annual report of the account transactions concerning local tax cases to be submitted to the La. Uniform Local Sales Tax Board.

Proposed law retains present law but changes the entity to which the annual report for state tax cases must be submitted from the Cash Management Review Board to the secretary of the Dept. of Revenue and specifies that the annual report regarding local tax cases applies to local *sales* tax cases.

Proposed law requires an annual report of the account's transactions concerning local ad valorem tax cases to be submitted to the written designee for the La. Sheriff's Association and the written designee for the La. Assessor's Association.

Present law requires the commission to assess public service properties for purposes of ad valorem taxes. Further requires the commission to give notice of the initial determination of the assessed valuation in writing to a company and the initial determination becomes final if no protest is filed with the commission within 30 days after receipt by the company of the notice of the initial determination. Present law provides for a procedure for a company to protest an initial valuation and a procedure for the company to appeal decisions of the commission.

Proposed law retains present law but authorizes parties to appeal to the board in suits contesting the valuation or assessment of public service properties when the suit affects assessments of property in more than one parish. Further clarifies that references to "reviewing court" in proposed law include the board.

Present law authorizes the commission to correct or change the assessment of any company in order to make the assessment conform to facts. A company may institute a suit to contest the correctness or legality of any corrections and changes of its assessed valuation by the commission.

Proposed law retains present law related to the authorization for a company to contest the correctness of an assessment but specifies that these suits shall be subject to provisions of present law related to appeals of the final determination of the assessed value of property by the commission.

Present law requires an assessor to annually assess and value property within the assessor's jurisdiction for purposes of ad valorem property taxes. Further provides for the assessment procedure and time line an assessor is required to follow in order to notify a property owner of the assessed value of his property. Present law also sets forth a procedure for a property owner to contest a property's valuation including the establishment of boards of review which consists of the governing authorities in each parish.

Present law requires the commission to conduct public hearings within 10 days of receipt of the assessment lists to hear real and personal property appeals of taxpayers, tax-recipient bodies, or assessors from actions of the board of review.

Proposed law retains present law but requires a review of the correctness of an assessment by an assessor to be confined to review of evidence presented to the assessor prior to the close of the deadline for filing a complaint with the board of review. If a taxpayer makes application to present additional evidence before the date set for hearing on the appeal and the commission finds that the additional evidence is material and there were reasons for failure to timely present the evidence to the assessor, the commission may order the assessor to take the additional evidence. Authorizes an assessor to modify the assessment because of the additional evidence and to notify the commission of modifications within 15 calendar days of receipt of the additional evidence.

Proposed law provides that good reason for failure to timely present information to the assessor is presumed to exist for reports and related attachments of any appraiser or other expert ordered prior to the deadline for filing a complaint with the board of review if the report and attachments are submitted to the assessor within 30 days of receipt of the reports and attachments by the taxpayer and at least 25 days prior to a hearing before the commission.

Proposed law provides that good reason for failure to timely present documents or evidence is always presumed to exist when the otherwise admissible document or evidence is not available to the taxpayer at the time of the deadline for submission to the assessor but is provided to the assessor within 15 days of availability or consists of documents or records of income or expenses concerning the valuation of oil and gas property when the taxpayer has timely provided all information required by rule and the documents or records are supplemental to the submission.

Proposed law exempts documents or records of income or expenses concerning the valuation of oil and gas property from the presumption of good reason for failing to timely present documents or evidence if the documents were available to the taxpayer but not timely provided in response to the assessor's request.

Proposed law authorizes witnesses to be used to authenticate or explain documents which are otherwise admissible and provides for the use of publicly accessible data, guides, and resources.

Proposed law provides that a decision of the commission to deny a taxpayer's application to present additional evidence shall, at the option of the taxpayer, be considered a final determination for purposes of appeal or be subject to immediate review by application for supervisory writ to the court of appeal. Further provides that except as ordered by a court of appeal, no stay of the proceedings before the La. Tax Commission may be issued pursuant to an action to deny a taxpayer's application to present additional evidence.

Proposed law in appeals of the correctness of assessments, authorizes the commission to independently appraise property and to enter that appraisal into evidence for consideration on review of the correctness of the assessment.

Proposed law sets forth the actions the commission or a district court may take when reviewing the correctness of an assessment by an assessor and provides for specific reasons that may warrant the commission or the district court to reverse or modify the assessor's assessment.

Present law authorizes a property owner to make a written request for notice of the current year's assessment of his property no sooner than the first day of June of that year. Proposed law requires the request to be received by the assessor of the parish or district in which the property is located no later than June 15th of that same year.

Proposed law retains present law but authorizes a property owner to also provide an email address to the assessor. If an email address is provided, the assessor shall email written notice of the assessed value of the related property on the first day for the inspection of the assessment lists.

Proposed law provides that if an assessor receives additional information from a taxpayer after the assessment lists have been certified to the board of review but before the filing of a complaint with the board of review, the assessor may modify the assessment to make a reduction based on the additional evidence. Reductions in assessments shall be communicated to the taxpayer and the board of review no less than 24 hours prior to the board of review's public hearing.

Present law authorizes a taxpayer who is dissatisfied with the final determination of the commission concerning the correctness of an assessment to file a suit within 30 days of the entry of a final decision of the commission in the district court for the parish where the commission is domiciled or the district court of the parish where the property is located.

Present law establishes a procedure for claims against a political subdivision for ad valorem taxes erroneously paid to the political subdivision which includes presenting the claim to the commission within three years of the date of the payment. Further provides a procedure for a taxpayer who prevails in their claim to present a claim to the commission to receive a refund of the payments. Authorizes an appeal to the district court if an assessor or the commission refuses to approve a claim for a refund.

Proposed law retains present law but authorizes a taxpayer to also appeal to the board.

Present law establishes a procedure for a taxpayer to challenge the correctness of an assessment or a legality challenge by timely paying the disputed amount under protest to the tax collector. Present law provides for the proper party defendants who must be included in these suits.

Proposed law retains present law but provides for the proper party defendants who must be included in a correctness challenge related to appeals of actions by a board of review related to the inspection of assessment lists and notification and review of assessments and appeals of final determinations by the commission. Further provides that a legality challenge may be brought by a petition for recovery of a tax paid under protest before the board which shall provide a legal remedy and right of action for a full and complete adjudication of all questions arising in connection with the tax.

Present law authorizes a taxpayer, in cases of an additional assessment, to pay the additional assessment under protest without having to file an additional suit if the taxpayer shows that the principle of law involved in an additional assessment is already pending before the court for judicial determination and if the taxpayer agrees to abide by the pending court's decision.

Proposed law retains present law but specifies that the assessment under protest may also be under consideration by the board.

Present law requires forms filed by a taxpayer to be considered confidential and limits use solely for purposes of administering the provisions of present law and for verifying eligibility for tax credits. Exempts these forms from the provisions of present law concerning public records; however, the forms are admissible in evidence and subject to discovery in judicial or administrative proceedings.

Proposed law retains present law but specifies that the admissibility of the forms into evidence shall be subject to present law protections related to use of confidential information provided by court order. Further provides that forms shall include all information provided by a taxpayer to an assessor.

Proposed law provides that the provisions of proposed law amending R.S. 47:1989 shall be prospective only and shall not be applicable to any case pending before the La. Tax Commission or in any court on Jan. 1, 2022. The remaining provisions of proposed law are procedural, but the provisions of proposed law amending R.S. 47:1998 shall not be applicable to any case pending in any court on Jan. 1, 2022.

Effective Jan. 1, 2022.

(Amends R.S. 47:1402(D)(2), (3)(intro. para.), and (5), 1403(B)(6)(c), 1407(3) and (7), 1418(4)(b) and (c), 1431(B), 1432(A), 1436(B), 1437(A), 1439(C), 1856(D)(2) and (3) and (G), 1857(B)(1), 1989(C), 1998(A)(1)(a) and (b)(i) and (D), 2132(D), 2134(B)(3), (D), and (E)(1), and 2327; Adds R.S. 47:1402(D)(3)(h) and (i), 1403(B)(6)(d), 1418(4)(d) and (e), 1431(F), 1432(B), 1837(G)(3), 1856(H), 1857(B)(3), 1992(A)(3) and (B)(3) and 1998(H) and (I); Repeals R.S. 47:1431(D)(2) and 1432(D))