

2019 Regular Session

SENATE BILL NO. 198

BY SENATOR PEACOCK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES. Provides for administration, disposition, enforcement, and adjudication of state and local taxes and for the Board of Tax Appeals. (gov sig)

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AN ACT

To amend and reenact R.S. 47:302(K)(7)(b), 1408(E), 1439(C) and (F), 1574.1(E), and 1580(B)(3), and to enact R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), and 1623(E)(3), relative to administration, disposition, enforcement, and adjudication of state and local taxes and the Board of Tax Appeals; to provide relative to the funding of the local tax division of the Board of Tax Appeals; to provide relative to service of Board of Tax Appeals orders; review of Board of Tax Appeals rulings; to provide relative to tax related escrow accounts; to provide relative to the enforcement of taxes collected on behalf of others; to provide relative to the prescription of taxes and tax refunds; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(K)(7)(b), 1408(E), 1439(C) and (F), 1574.1(E), and 1580(B)(3) are hereby amended and reenacted and R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), and 1623(E)(3) are hereby enacted to read as follows:

§302. Imposition of tax

\* \* \*

K. An additional tax shall be levied as follows:

1 \* \* \*

2 (7) \* \* \*

3 (b) The amount specified in Item (a)(i) of this Paragraph as transferred to the  
4 Department of State Civil Service, Board of Tax Appeals, shall be increased by fifty-  
5 five thousand dollars on July 1, 2015, by thirty-two thousand dollars on July 1, 2016,  
6 and by five thousand dollars on the first day of each of the ~~two~~ six subsequent fiscal  
7 years. The amounts specified in Subparagraphs (a) and (b) of this Paragraph shall be  
8 transferred by the secretary within the first thirty days of each fiscal year and the  
9 Department of State Civil Service, Board of Tax Appeals, may retain all funds which  
10 are transferred as directed in Subparagraphs (a) and (b) of this Paragraph.

11 \* \* \*

12 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
13 powers

14 \* \* \*

15 E. \* \* \*

16 **(4) If use tax collections pursuant to R.S. 47:302(K) yield insufficient**  
17 **revenue to fulfill the dedication for the adjudication of local sales and use tax**  
18 **matters that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to**  
19 **the Department of State Civil Service, Board of Tax Appeals, Local Tax**  
20 **Division, and there is no means of financing available to satisfy the dedication**  
21 **pursuant to R.S. 47:337.102(I)(3), the remaining amount necessary to satisfy the**  
22 **dedication shall be considered an actual expense of this commission pursuant**  
23 **to Paragraph (3) of this Subsection, and payment of the interagency transfer**  
24 **due shall be made from that source.**

25 \* \* \*

26 §1408. Power to administer oaths and issue rules, orders, or subpoenas

27 \* \* \*

28 E.**(1)** The provisions of this Section may be enforced by any duly  
29 commissioned person, shall be enforced by the sheriff wherever such person may be

1 found, and shall be enforced by the Department of Public Safety and Corrections,  
2 office of state police, when a direct contempt occurs in a state building.

3 (2) The service of papers filed with the board, or of the orders or  
4 judgments of the board, may be made in accordance with any of the provisions  
5 of the Louisiana Code of Civil Procedure or in accordance with the provisions  
6 of R.S. 47:1411.

7 (3) Upon request of either the chairman or the local tax judge, any  
8 officer or employee of the board may be issued a commission pursuant to the  
9 provisions of R.S. 40:1379.1 in order to further any of the provisions of this  
10 Section.

11 \* \* \*

12 §1436. Determination of which appellate court has jurisdiction

13\* \* \*

14 B. A judgment of the board in a case by or against a local collector may be  
15 reviewed as follows:

16 \* \* \*

17 (3) In the respective court of appeal for the parish of the appellee for any  
18 case appealed by a local collector appealing a ruling issued against another local  
19 collector pursuant to R.S. 47:337.101, and if there are appellees from different  
20 circuits then in the court of appeal designated by the board as having the most  
21 connection to the matter at issue.

22\* \* \*

23 §1439. Escrow Account

24 \* \* \*

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



1 pursuant to this Subsection, the Board of Tax Appeals or any other court of  
 2 competent jurisdiction, upon proper showing, may render a money judgment  
 3 against the taxpayer and in favor of the collector in the amount of any final and  
 4 nonappealable assessment, together with all penalties, interest, attorney fees,  
 5 and costs due.

6\* \* \*

7 §1580. Suspension and interruption of prescription

8\* \* \*

9 B. The running of such prescription shall also be suspended prior to the lapse  
 10 of the prescriptive period set out in the Constitution of Louisiana as hereinafter  
 11 provided:

12 \* \* \*

13 (3) With respect to income tax, for any period from the time of the  
 14 commencement of an audit or examination of a taxpayer by the United States  
 15 Internal Revenue Service, or during the period that assessment of tax remains  
 16 open pursuant to the provisions of 26 U.S.C. 6501 resulting in an adjustment to  
 17 the taxpayer's United States income tax, until one year from the time the secretary  
 18 of the Department of Revenue is notified by said taxpayer or the federal government  
 19 of an agreed change to the taxpayer's United States income tax return.

20 \* \* \*

21 §1623. Prescription of refunds or credits

22 \* \* \*

23 E. Provided that where a refund or credit relates to an overpayment of income  
 24 tax, the running of prescription shall be suspended by means of:

25 \* \* \*

26 (3) The issuance of an overpayment by the Internal Revenue Service  
 27 following agreement concerning an adjustment to income pursuant to the  
 28 provisions of the Combat-Injured Veterans Tax Fairness Act of 2016.

29 \* \* \*

1           Section 2. This Act shall become effective upon signature by the governor or, if not  
2 signed by the governor, upon expiration of the time for bills to become law without signature  
3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Leonore Heavey.

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## DIGEST

SB 198 Original

2019 Regular Session

Peacock

Present law provides that the transfer of funds from the local share of the catalog tax to the Department of State Civil Service, Board of Tax Appeals will be increased by \$5,000 a year on the first day of the fiscal year for each of the two fiscal years after 2016-17.

Proposed law changes the number of fiscal years the transfer of local funds will be increased after 2016-17 from two to six fiscal years.

Proposed law provides that if the proceeds from the local portion of the catalog tax are insufficient to cover the funds transfer that the remaining amount necessary to satisfy the funds dedication, it shall be considered an expense of the Louisiana Sales and Use Tax Commission for Remote Sellers and that payment shall be made via interagency transfer from the fee it charges for collection of local taxes.

Present law authorizes the Board of Tax Appeals to administer oaths and issue orders and subpoenas and further provides for the enforcement of orders and subpoenas by duly commissioned persons, including the local sheriff or state police in certain circumstances.

Proposed law provides that service of papers filed with the board or orders of the board may also be made as provided by the Code of Civil Procedure or by registered mail.

Present law provides for the review of judgments of the Board of Tax Appeals.

Proposed law provides that in matters in which a local collector is appealing a ruling against another local collector that review is proper in the court of appeal for either the parish of the appellee or the parish that has the most connection to the matter.

Present law requires taxes paid under protest to be placed in escrow and be distributed by the fiscal agent only upon notice of a final, nonappealable judgment. The fiscal agent is selected by the Board of Tax Appeals with the approval of the Cash Management Review Board. The escrow account is subject to audit by the legislative auditor and an annual report is required.

Proposed law retains present law escrow provisions, but corrects the reference to the recipient of the annual report related local sales tax related transactions to the Uniform Local Sales Tax Board.

Proposed law authorizes advance deposits of local filing fees to be held in the escrow account pending an order taxing costs in a case.

Present law provides for personal liability for officers, directors, managers, and members of corporations, limited liability companies, and limited partnerships who withhold wages from

employees or collect sales and use tax and who willfully fail to remit these taxes to the collector.

Proposed law retains present law and authorizes the collector to bring an action before the Board of Tax Appeals or other court of competent jurisdiction to enforce the obligation of taxpayers to remit taxes to the state they have actually collected from others, and authorizes a money judgment for any amounts that were actually collected from others and not remitted to the state.

Proposed law authorizes the Board of Tax Appeals or court to render a judgment for the payment of tax, interest, penalties, attorney's fees, and costs when the collector prevails in an action against a taxpayer that collects, but fails to remit withholding and sales and use taxes.

Present law provides for the suspension of prescription for the assessment of taxes.

Proposed law provides that solely for final adjustments actually made to federal income tax, the period during which prescription is suspended for state income taxes shall run concurrent to the period for which the tax period remains open under federal income tax law.

Present law provides for the prescription of refund claims.

Proposed law suspends the prescriptive period for refunds when the refund relates to the issuance of an overpayment due to an adjustment of income by the Internal Revenue Service under the provisions of the Combat-Injured Veterans Tax Fairness Act of 2016.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:302(K)(7)(b), 1408(E), 1439(C) and (F), 1574.1(E), and 1580(B)(3); adds R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), and 1623(E)(3))