

SENATE BILL NO. 198

BY SENATOR PEACOCK

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

To amend and reenact R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (2)(a) and (E), 1439(C) and (F), 1481, 1483, 1574.1(E), and 1580(B)(3), to enact R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), 1621(B)(10), and 1623(G), and to repeal R.S. 47:1403(B)(6)(b), and 1621(F), 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; to review of Board of Tax Appeals rulings; to provide relative to tax related escrow accounts; to authorize the Board of Tax Appeals to use escrow account funds for certain purposes; to provide relative to the satisfaction of claims against the state; to authorize a simplified claim against the state procedure under certain circumstances; to provide relative to the enforcement of taxes collected on behalf of others; to provide relative to the prescription of taxes and tax refunds; to authorize tax refunds under certain circumstances; to provide for certain requirements; to repeal the prohibition of the payment of refunds under certain circumstances; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (2)(a) and (E), 1439(C) and (F), 1481, 1483, 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), 1621(B)(10), and 1623(G) 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~~ this
8 Subparagraph and Subparagraph (a) of this Paragraph shall be transferred by
9 the secretary within the first thirty days of each fiscal year and the Department of
10 State Civil Service, Board of Tax Appeals, may retain all funds which are transferred
11 as directed in ~~Subparagraphs (a) and (b) of this Paragraph~~ this Subparagraph and
12 Subparagraph (a) of this Paragraph.

13 * * *

14 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
15 powers

16 * * *

17 E. * * *

18 (4) If use tax collections pursuant to R.S. 47:302(K) yield insufficient
19 revenue to fulfill the dedication for the adjudication of local sales and use tax
20 matters that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to
21 the Department of State Civil Service, Board of Tax Appeals, Local Tax
22 Division, and there is no means of financing available to satisfy the dedication
23 pursuant to R.S. 47:337.102(I)(3), the remaining amount necessary to satisfy the
24 dedication shall be considered an actual expense of this commission pursuant
25 to Paragraph (3) of this Subsection, and payment of the interagency transfer
26 due shall be made from local sales and use tax collections of the commission. A
27 part of the interagency transfer due pursuant to Section 2 of Act 198 of the 2014
28 Regular Session of the Legislature may be designated as an actual expense of the
29 commission pursuant to Paragraph (3) of this Subsection, and payment of that
30 designated part may be made from state sales and use tax collections of the

1 commission.

2 * * *

3 §1403. Designation of officers; domicile; quorum; seal

4 * * *

5 B. * * *

6 (6)(a)(i) Upon the joint motion of all parties in any matter, or **for any case**
7 **filed by or against a local collector** pursuant to an election made by the local
8 collector in accordance with the provisions of Subparagraph (b) of this Paragraph,
9 a case filed with the board shall be heard in the board's Local Tax Division.

10 * * *

11 §1408. Power to administer oaths and issue rules, orders, or subpoenas

12 * * *

13 D.(1) **The An action may be brought in the Board of Tax Appeals**
14 **pursuant to the** provisions of R.S. 47:~~314~~, 337.33(A), 337.43, and 1547, **1574.1, or**
15 **1582** shall apply to the Board of Tax Appeals and its Local Tax Division in the same
16 manner as for a district court. In addition to the remedies otherwise provided for in
17 this Section, any interested party may file a motion or rule in any court of competent
18 jurisdiction alleging a violation of any order issued by the board or its local tax judge
19 pursuant to ~~R.S. 47:337.33, 337.43, and 1547~~ **applicable law**, and the district court
20 shall consider any violation shown to be a contempt of the court and shall
21 immediately punish the violator in accordance with R.S. 13:4611(1) and all other
22 applicable laws for contempt of court.

23 (2)(a) In addition to all other remedies provided for in this Section, the
24 failure to obey any order or subpoena issued under the authority of this Chapter shall
25 constitute contempt of court, and may be punished by the board or its local tax judge
26 in accordance with the provisions of **Section 2 of Chapter 4 of Title 1 of Book I of**
27 **the Louisiana Code of Civil Procedure**, R.S. 13:4611(1), **or any other laws**
28 **applicable to** and all other applicable laws for contempt of court. Any action finding
29 anyone in contempt pursuant to this Paragraph shall be subject to an appeal ~~by trial~~
30 ~~de novo in the Nineteenth Judicial District Court~~ **or supervisory writ as provided**

1 for in R.S. 47:1434 through 1436.

2 * * *

3 E.(1) The provisions of this Section may be enforced by any duly
4 commissioned person, shall be enforced by the sheriff wherever such person may be
5 found, and shall be enforced by the Department of Public Safety and Corrections,
6 office of state police, when a direct contempt occurs in a state building.

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

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

15 * * *

16 §1436. Determination of which appellate court has jurisdiction

17 * * *

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

20 * * *

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

26 * * *

27 §1439. Escrow Account

28 * * *

29 C. The account, and any related funds included therein, shall be subject to
30 audit by the legislative auditor. An annual report of account transactions concerning

1 state cases shall also be submitted to the Cash Management Review Board. An
 2 annual report of the account's transactions concerning local cases shall be submitted
 3 to the ~~local sales and use tax commission created pursuant to R.S. 47:302(K)(6)~~

4 Louisiana Uniform Local Sales Tax Board.

5 * * *

6 F.(1) The board may deposit into the account any funds received from a party
 7 for payment of the costs of service of process or for appeal costs, and it may pay the
 8 amounts received to the appropriate sheriff for service of process or the appropriate
 9 clerk of a court of appeals in the event of an appeal against a decision of the board
 10 pursuant to R.S. 47:1434.

11 (2) The board's Local Tax Division may deposit into the account any
 12 advance deposits for court costs and filing fees associated with its local cases,
 13 and upon issuance of an order taxing costs against those deposits it may transfer
 14 the relevant amounts to the Local Tax Division Expense Fund. The unused
 15 balance of these deposits shall be refunded to the depositor in the event that
 16 costs taxed against it are less than the amount of its advance deposit. The Local
 17 Tax Division Expense Fund shall be utilized, as directed by the local tax judge,
 18 exclusively for the Local Tax Division and its expenditures, including as
 19 provided for in Subsection G of this Section or pursuant to R.S. 47:1406.

20 (3) The board may utilize the escrow account to facilitate the operation
 21 of an online filing system, including the deposit of advance costs from
 22 subscribers and related payment of amounts collected related to that service.
 23 Notwithstanding any provision of this Section to the contrary, the board may
 24 utilize any interest earned on the account to facilitate an online filing system.

25 * * *

26 §1481. Authority of board to receive and consider claims against the state

27 A. Any person who has a claim against the State of Louisiana for money
 28 erroneously paid into the State Treasury, or for any other claim, may present such
 29 claim to the Board of Tax Appeals, in such form and together with such proofs as the
 30 Board of Tax Appeals may require by its rules and regulations. The board shall duly

1 examine into the justice, merits and correctness of each such claim presented to it,
2 and shall officially pass thereon.

3 **B. For purposes of this Part, except when the context clearly indicates**
4 **otherwise, the terms defined in this Section shall have the following meanings:**

5 **(1) "Current collections" shall first mean any current collections of the**
6 **particular tax at issue, and then current collections of any taxes collected**
7 **pursuant to Chapters 1, 2, Chapter 2-A, Chapter 2-B, or 5 of Subtitle II of Title**
8 **47 of the Louisiana Revised Statutes of 1950, as amended.**

9 **(2) "Department" shall mean the Department of Revenue.**

10 **(3) "Secretary" shall mean the secretary of the Department of Revenue.**

11 **C. The board and the secretary may enter into an agreement to allow**
12 **filing of claims against the state with the department on forms prescribed by the**
13 **secretary. Any claim filed with the department pursuant to this Subsection shall**
14 **be deemed a filing with the board for the purposes of this Part as of the date the**
15 **claim is filed with the secretary. Nothing in this Subsection shall restrict or limit**
16 **any other remedy available to a claimant under any other applicable law.**

17 * * *

18 §1483. Payment of approved claims

19 **A.(1)** If the claim is approved and it should be an amount not exceeding ~~one~~
20 **twenty** thousand dollars, the ~~chairman of the~~ Board of Tax Appeals shall issue a
21 warrant upon the State Treasurer, for the amount for which the same is approved,
22 **judgment for payment of an approved claim,** stating in said warrant **the judgment**
23 the amount, purposes, and reasons for which the same is drawn **the judgment.** If
24 said claim shall amount to more than ~~one~~ **twenty** thousand dollars; and is approved
25 by said Board of Tax Appeals, **the board,** the chairman, giving all the facts and
26 circumstances in connection therewith, shall report the same **judgment** to the ~~next~~
27 ~~session of the~~ legislature for its consideration **as provided for in this Part.** Provided
28 that where such claim accrues to more than one person, as for example, the heirs or
29 legatees of another, and the claim is determined by the board to be properly due and
30 owing, payment thereof to the party or parties asserting the same before the board

1 shall not be denied because of the failure or refusal of others to join in and assert
2 such claim, but in such event only the portion due such claimant or claimants shall
3 be paid and then only if the amount to be paid to each such claimant does not exceed
4 ~~one~~ twenty thousand dollars.

5 **B.(1) Any judgment issued by the board for the payment of an approved**
6 **claim when the amount approved does not exceed twenty thousand dollars shall**
7 **be paid out of current collections without interest following submission to the**
8 **secretary. The total amount of judgments paid in a fiscal year from current**
9 **collections pursuant to this Subsection shall not exceed two million dollars,**
10 **unless a higher amount for that fiscal year is approved by the Commissioner of**
11 **Administration and the Joint Legislative Committee on the Budget.**

12 **(2) The payment of judgments for approved claims shall be paid by the**
13 **secretary in the order in which the claims were approved by the board. If the**
14 **total amount of claims approved by the board and authorized for payment**
15 **under this Section exceeds the amount authorized pursuant to Paragraph (1) of**
16 **this Subsection in a fiscal year, the payment of any excess claims shall be issued**
17 **in the subsequent year in the same order of priority and with priority over any**
18 **claims subsequently approved by the board.**

19 **C. When the board approves a claim against the state and the amount**
20 **of the claim exceeds twenty thousand dollars but does not exceed two hundred**
21 **fifty thousand dollars, the claim shall be submitted to the litigation**
22 **subcommittee of the Joint Legislative Committee on the Budget for review prior**
23 **to the next regular session of the legislature. If the claim is approved by the**
24 **litigation subcommittee, the approved claim shall be paid out of current**
25 **collections without interest following submission of the authorization to the**
26 **secretary.**

27 **D. When the board has approved a claim against the state for erroneous**
28 **payments of state taxes and the claim is not paid in full pursuant to this Section,**
29 **is not paid pursuant to any provision of R.S. 47:1484, and is not fully**
30 **appropriated during the next regular session of the legislature following the**

1 date of the board's approval, the secretary and the claimant may agree that the
 2 payment of the claim may be taken as a nonrefundable offset against the
 3 particular tax at issue. If this offset exceeds the amount of taxes due for the
 4 claimant, any unused amount may be carried forward against subsequent tax
 5 liability for the same tax for a period not to exceed five years. The provisions of
 6 this Subsection shall not apply when the amount of the claim exceeds one
 7 million dollars.

8 * * *

9 §1561.1. Special authority to enforce collection of taxes collected or withheld;
 10 personal liability conform

11 * * *

12 C. An action may be brought before the Board of Tax Appeals or any
 13 court of competent jurisdiction in accordance with any of the provisions of R.S.
 14 47:1574, 1574.1, or 1582 to enforce the obligation of a taxpayer, dealer, or of any
 15 party subject to this Section.

16 * * *

17 §1574.1. Failure to pay tax collected from others; rule to cease business

18 * * *

19 E. The collection procedure provided for in this Section shall be in addition
 20 to any other collection procedure provided by law. When issuing an order
 21 pursuant to this Subsection, the Board of Tax Appeals or any other court of
 22 competent jurisdiction, upon proper showing, may render a money judgment
 23 against the taxpayer and in favor of the collector in the amount of any final and
 24 nonappealable assessment, together with all penalties, interest, attorney fees,
 25 and costs due.

26 * * *

27 §1580. Suspension and interruption of prescription

28 * * *

29 B. The running of such prescription shall also be suspended prior to the lapse
 30 of the prescriptive period set out in the Constitution of Louisiana as hereinafter

1 provided:

2 * * *

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

10 * * *

11 §1621. Refunds of overpayments authorized

12 * * *

13 B. The secretary shall make a refund of each overpayment where it is
14 determined that:

15 * * *

16 (10) The tax was overpaid due to payment pursuant to an
17 unconstitutional law, invalid or unenforceable rule or regulation, or because of
18 a mistake of law arising from the misinterpretation by the collector of the
19 provisions of any law or of any rule or regulation.

20 * * *

21 §1623. Prescription of refunds or credits

22 * * *

23 G. Notwithstanding any provision of law to the contrary, prescription
24 shall not be considered to have accrued until two years from the date of receipt
25 of the Department of Defense notice issued to the taxpayer pursuant to the
26 provisions of the federal law for any period in which the taxpayer received a
27 refund from the Internal Revenue Service concerning an adjustment to income
28 pursuant to the provisions of the Combat-Injured Veterans Tax Fairness Act
29 of 2016. This prescriptive period is limited to the corresponding Louisiana
30 income tax refund. A taxpayer may claim this Louisiana refund by amending

1 the Louisiana individual income tax return for the same period in which a
2 federal income tax refund was granted pursuant to the Combat-Injured
3 Veterans Tax Fairness Act of 2016. Alternatively, a taxpayer may claim a
4 Louisiana standard refund amount proportional to that of the federal standard
5 refund amount in accordance with rules promulgated by the secretary in
6 accordance with the Administrative Procedure Act.

7 Section 2. R.S. 47:1403(B)(6)(b) and 1621(F) are hereby repealed.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____