SLS 22RS-437 ENGROSSED

2022 Regular Session

SENATE BILL NO. 241

BY SENATOR ALLAIN

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TAX/TAXATION. Provides for alternatives in lieu of payment under protest for certain ad valorem taxes. (8/1/22)

AN ACT

2 To amend and reenact R.S. 47:2134(E)(1) and enact R.S. 47:1989(G) and 2134(F), relative to security required for challenging the correctness or legality of ad valorem tax 3 assessments; to provide that a payment under protest is not required to appeal the 4 5 correctness of an assessment to the Louisiana Tax Commission; to provide for the posting of a bond or other security in lieu of a payment under protest for challenges 6 7 to the legality of an assessment; and to provide for related matters. 8 Be it enacted by the Legislature of Louisiana: 9 Section 1. R.S. 47:2134(E)(1) is hereby amended and reenacted and R.S. 47:1989(G) 10 and 2134(F) are hereby enacted to read as follows: 11 §1989. Review of appeals by tax commission 12 13 G. A taxpayer challenging the correctness of an assessment who has timely filed an appeal with the Louisiana Tax Commission shall either make a 14 15 payment under protest of the disputed amount of tax as provided in R.S. 16 47:2134(B)(1) or post security for the disputed amount as provided in R.S. 17 47:2134(F).

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2 §2134. Suits to recover taxes paid under protest

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E.(1) Upon request of a taxpayer and upon proper showing by the taxpayer that the principle of law involved in an additional assessment is already pending before the Board of Tax Appeals or the courts for judicial determination, the taxpayer, upon agreement to abide by the pending decision of the Board of Tax Appeals or the courts, may pay the additional assessment under protest **pursuant to**Subsection B or C of this Section or file a rule to set bond or other security

pursuant to Subsection F of this Section but need not file an additional suit. In such cases, the tax paid under protest shall be segregated and held by the collecting officer or officers until the question of law involved has been determined by the courts, the Board of Tax Appeals, or finally decided by the courts on appeal, and shall then be disposed of as provided in the final decision of the Board of Tax Appeals or courts, as applicable.

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F.(1) Any taxpayer challenging the correctness or legality of any assessment whose remedy requires making a payment under protest pursuant to Subsection B or C of this Section may in the alternative comply with the provisions of this Subsection rather than making a payment under protest.

- (2)(a) On or before the date on which the taxes are due, the taxpayer may file with the court or the Board of Tax Appeals a rule to set bond or other security, which shall be set for hearing within thirty days of the filing of the rule to set bond or other security, and shall attach to the petition evidence of the taxpayer's ability to post bond or other security.
- (b) The term "other security" as set forth in this Subsection shall include but not be limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts receivable, or other encumbrance of assets.
  - (3) The court or the Board of Tax Appeals may either order the posting

1	of commercial bond or other security in an amount determined by the court or
2	the board to be reasonable security for the amount of unpaid taxes, interest, and
3	penalties demanded in the assessment or may order the taxpayer to make a
4	payment under protest in an amount determined in its discretion to be
5	reasonable security considering the amount of unpaid taxes, interest, and
6	penalties. The court or board may order that a portion of the unpaid taxes,
7	interest, and penalties be paid under protest and the balance secured by the
8	posting of a bond or other security as provided in this Subsection.
9	(4) The posting of a bond or other security or the payment under protest
10	shall be made no later than thirty days after the mailing of the notice of the
11	decision of the court or the Board of Tax Appeals authorizing the posting of
12	bond or other security or requiring that a payment under protest be made.
13	(5) If the taxpayer timely files the suit or any petition or rule referred to
14	in this Subsection, no collection action shall be taken in connection with the
15	assessment of taxes, interest, and penalties that are the subject of the taxpayer's
16	cause of action, unless the taxpayer fails to post bond or other security or make
17	the payment under protest required by the court or board. The collector shall
18	be permitted to file a reconventional demand against the taxpayer in the cause
19	of action. A collector may procure an appraisal or conduct discovery concerning
20	the value and validity of security offered prior to the date for filing the
21	collector's response or opposition to a rule set for hearing under this Subsection.
22	(6) To the extent not inconsistent with this Subsection, the nature and
23	amount of the bond or security and the procedures for posting bond or
24	providing other security shall be consistent with the provisions for providing
25	security in connection with a suspensive appeal under the Code of Civil
26	Procedure.
27	(7) This Subsection shall not apply to amounts of tax that are not in
28	dispute and are not the subject of a correctness or legality challenge.

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

## DIGEST

SB 241 Engrossed

2022 Regular Session

Allain

<u>Present law</u> requires the payment under protest of the disputed amount of tax when a taxpayer challenges the correctness of an ad valorem tax assessment or the legality of an ad valorem tax assessment.

<u>Proposed law provides</u> that a taxpayer challenging the correctness of an assessment who has timely filed an appeal with the Louisiana Tax Commission shall either make a payment under protest of the disputed amount of the tax or post security for the disputed amount.

<u>Proposed law</u> provides for an alternative method of providing security in lieu of a payment under protest in the case of a taxpayer filing a legality challenge with a court or the Board of Tax Appeals.

<u>Proposed law</u> authorizes the taxpayer, on or before the date on which the taxes are due, to file a rule to set bond or other security with the court or the board which shall be set for hearing within 30 days.

<u>Proposed law</u> authorizes the court or the board to order that a portion of the disputed amount be paid under protest and the balance secured by the posting of a bond or other security.

<u>Proposed law</u> authorizes the collector to file a reconventional demand against the taxpayer in the cause of action in which a bond or alternative security is provided and further provides that the collector may procure an appraisal or conduct discovery concerning the value and validity of security offered.

<u>Proposed law</u> requires that the posting of a bond or other security for ad valorem tax challenges shall be consistent with the provisions for providing security in connection with a suspensive appeal under the Code of Civil Procedure.

<u>Proposed law</u> does not apply to amounts of tax that are not in dispute and are not the subject of a correctness or legality challenge.

Effective August 1, 2022.

(Amends R.S. 47:2134(E)(1); adds R.S. 47:1989(G) and 2134(F))

## Summary of Amendments Adopted by Senate

## <u>Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill</u>

- 1. Adds provision that <u>proposed law</u> does not apply to amounts of tax that are not in dispute and are not the subject of a correctness or legality challenge.
- 2. Adds internal references for clarification.
- 3. Provides for technical changes.