

CONFERENCE COMMITTEE REPORT

SB 241

2022 Regular Session

Allain

June 4, 2022

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 241 by Senator Allain, recommend the following concerning the Engrossed bill:

1. That the amendment proposed by the House Committee on Ways and Means and adopted by the House on May 18, 2022 be rejected.
2. That the set of two House Floor Amendments (#5277) adopted by the House of Representatives on June 1, 2022 be rejected.
3. That the set of three House Floor Amendments (#5286) adopted by the House of Representatives on June 1, 2022 be rejected.
4. That the following amendments to the Engrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, after "reenact" delete the remainder of the line and insert "R.S. 47:1857(B), 2134(B)(1), (D)(3), and (E)(1) and to enact R.S. 47:1857(C), 1989(G), 2132(A)(3), and 2134(F), relative "

AMENDMENT NO. 2

On page 1, line 4, after "assessments;" insert "to provide for the timing of payments under protest or posting alternative security; to provide for the time period for determinations on claims for ad valorem taxes erroneously paid relative to public service properties;"

AMENDMENT NO. 3

On page 1, line 9, after "Section 1." delete the remainder of the line and insert: "R.S. 47:1857(B), 2134(B)(1), (D)(3), and (E)(1) are hereby amended and reenacted and R.S. 47:1857(C), 1989(G), 2132(A)(3),"

AMENDMENT NO. 4

On page 1, between lines 10 and 11, insert:

"§1857. Corrections and changes

* * *

B. Notwithstanding any other provision of law to the contrary, a company may present a claim to the Louisiana Tax Commission on the basis that the taxpayer made an error in its annual reporting pursuant to the provisions of R.S. 47:1852 within three years of the date of a payment. The Louisiana Tax Commission shall duly examine the merits and correctness of each claim presented to it pursuant to this Subsection and shall make a determination thereon within sixty days of the receipt of the claim. The Louisiana Tax Commission shall correct or change the assessment upon a showing of a clerical error or a showing by clear and convincing evidence of any other error. An overpayment determined as a result of a change or correction pursuant to this Section shall be issued as a refund pursuant to the provisions

of R.S. 47:2132, applied by the company as a credit against future ad valorem tax liability of that company in that jurisdiction at the discretion of the collector, or satisfied in any other manner agreed by the company and the collector.

(C)(1) Any company may institute suit in the Board of Tax Appeals or any court having jurisdiction of the cause of action for the purpose of contesting the correctness or legality of any **determination related to** corrections and changes of its assessed valuation for taxation by the Louisiana Tax Commission under this Section, which suit must be instituted within thirty days after receipt of the notice ordering the change. However, to state a cause of action, the petition instituting the suit shall name the Louisiana Tax Commission as defendant and shall set forth not only the correction or change of its assessed valuation for taxation made by the Louisiana Tax Commission, but also the assessed valuation for taxation that the company deems to be correct and legal and the reasons therefor.

(2) Any company that has filed suit under these provisions and whose taxes have become due shall pay such taxes under protest **as provided in R.S. 47:2134(B)** to the officer or officers designated by law for the collection of such taxes and shall cause notice or notices to issue in such suit to the officer or officers as provided in R.S. 47:2134(B). Upon receipt of such notice or notices, the amount paid under protest shall be segregated and invested by such officer or officers either in an interest-bearing account or in a certificate of deposit pending a final, nonappealable judgment in the suit.

(3) The provisions of R.S. 47:1856(D)(2), (3), and (4) shall be applicable to all actions instituted pursuant to this Section. All references to the reviewing court shall be deemed to mean either a district court of proper venue or the Board of Tax Appeals.

* * *

AMENDMENT NO. 5

On page 1, delete lines 13 through 17 and insert:

"G. Notwithstanding any other law to the contrary, a taxpayer challenging the correctness of an assessment pursuant to Article VII, Section 18(E) of the Constitution of Louisiana or other applicable law is not required to make a payment under protest or post security while the correctness challenge is pending before the commission or during the pendency of an appeal of the commission's determination brought by any party other than the taxpayer. When a taxpayer appeals the commission's determination, the amount of the payment under protest or alternate security shall be based upon the commission's determination."

AMENDMENT NO. 6

On page 2, between lines 1 and 2, insert:

"§2132. Refund of taxes erroneously paid

A. * * *

(3) For public service properties, the tax commission shall duly examine the merits and correctness of each claim presented to it and shall make a determination thereon within sixty days of the receipt of the claim.

* * *

AMENDMENT NO. 7

On page 2, between lines 3 and 4, insert:

"B.(1)(a) A taxpayer challenging the correctness of an assessment under R.S. 47:1856, 1857, or 1998 shall timely pay the disputed amount of tax due under protest to the officer or officers designated by law for the collection of this tax **or timely file a rule to set bond or other security pursuant to Subsection F of this Section.** The portion of the taxes that is paid by the taxpayer to the collecting officer or officers

that is neither in dispute nor the subject of a suit contesting the correctness of the assessment shall not be made subject to the protest. The taxpayer shall submit separate payments for the disputed amount of tax due and the amount that is not in dispute and not subject to the protest.

(b) Paying under protest or filing a rule to set bond or other security shall be considered timely if the payment is made or the rule is filed within the deadline to appeal to the Board of Tax Appeals or district court pursuant to R.S. 47:1856, 1857, or 1998.

* * *
D. * * *

(3) The right to sue for recovery of a tax paid under protest as provided in this Section shall afford a legal remedy and right of action at law in the **Board of Tax Appeals or** state or federal courts where any tax or the collection thereof is claimed to be an unlawful burden upon interstate commerce, or in violation of any act of the Congress of the United States, the Constitution of the United States, or the Constitution of Louisiana.

* * *"

AMENDMENT NO. 8

On page 2, line 17, after "**F.(1)**" change "**Any**" to "**Notwithstanding any provision of law to the contrary, any**"

AMENDMENT NO. 9

On page 3, after line 28, insert:

"Section 2. The provisions of this Act shall apply to any appeal of an action of the Louisiana Tax Commission in connection with public service property that is pending before the Board of Tax Appeals on the effective date of this Act.

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

Respectfully submitted,

Senators:

Representatives:

President Patrick "Page" Cortez

Speaker Clay Schexnayder

Senator R. L. Bret Allain II

Representative Stuart J. Bishop

Senator Mike Reese

Representative Gerald "Beau" Beaulieu, IV

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

CONFERENCE COMMITTEE REPORT DIGEST

SB 241

2022 Regular Session

Allain

Keyword and summary of the bill as proposed by the Conference Committee

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

Report rejects House amendments which would have:

1. Removed the requirement that a taxpayer either make a payment under protest of the disputed amount of the tax or post security for the disputed amount of the ad valorem tax while a correctness challenge is pending.
2. Removed the tax commission's right of an appeal to a district court following a determination by the Board of Tax Appeals (BTA) that the tax commission's decision to refuse to approve a claim for a refund and repayment of taxes erroneously paid in connection with public service property was incorrect matters pending before the BTA or eligible for appeal on July 1, 2022.

Report amends the bill to:

1. Authorize companies to present claims on the basis of an error on its report of a public service property within three years of the date of a payment and authorize the La. Tax Commission to correct or change an assessment upon a showing by of a clerical error or a showing by clear and convincing evidence of any other error. An overpayment determined as a result of a change will be refunded or credited against future ad valorem tax liabilities as agreed by the company and the collector.
2. Provide that no payment under protest or post alternative security is required to be posted while a correctness challenge is pending before the commission or during the pendency of an appeal of the commission's determination brought by any party other than the taxpayer.
2. Provide for the timing of Louisiana Tax Commission determinations on claims for ad valorem taxes erroneously paid relative to public service properties.
3. Provide for the timing required to make a payment under protest or file a rule to set bond of the disputed amount when a taxpayer appeals the commission's determination.
4. Provide that the provisions of proposed law will apply to appeals of actions of the La. Tax Commission regarding public service properties that are pending before the Board of Tax Appeals on the effective date of the Act.
5. Add a signature of the governor effective date.
6. Make technical changes.

Digest of the bill as proposed by the Conference Committee

Present law authorizes the La. Tax Commission to correct or change the assessment of any company with respect to public service properties.

Proposed law authorizes companies to present claims on the basis of an error on its report of a public service property within three years of the date of a payment and authorizes the La. Tax Commission to correct or change an assessment upon a showing by of a clerical error or a showing by clear and convincing evidence of any other error. An overpayment determined as a result of a change will be refunded or credited against future ad valorem tax liabilities as agreed by the company and the collector.

Present law 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.

Proposed law changes present law by providing that a taxpayer challenging the correctness of an assessment who has timely filed an appeal with the La. Tax Commission shall not be required to make a payment under protest or post security while the correctness challenge is pending before the commission or during an appeal of the commission's determination brought by any party other than the taxpayer.

Proposed law provides that when a taxpayer appeals the determination of the La. Tax Commission that the payment under protest or filing a rule to set bond or other security is timely if the payment is made or the rule is filed within the applicable appeal deadline.

Present law requires that the La. Tax Commission shall examine the merits of each claim against a political subdivision for erroneous taxes paid within 30 days of the receipt of the claim, but does not relative to the examination of claims for erroneous taxes for public service properties.

Proposed law requires that the La. Tax Commission shall examine the merits of each claim against a political subdivision for erroneous taxes paid within 60 days of the receipt of the claim relative to public service properties.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

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

Proposed law provides that the provisions of proposed law will apply to appeals of actions of the La. Tax Commission regarding public service properties that are pending before the Board of Tax Appeals on the date that proposed law becomes effective.

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

(Amends R.S. 47:1857(B), 2134(B)(1), (D)(3), and (E)(1); adds R.S. 47:1857(C), 1989(G), 2132(A)(3), and 2134(F))