

2023 Regular Session

SENATE BILL NO. 5

BY SENATOR ALLAIN

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

TAX/AD VALOREM. Provides for alternatives in lieu of payment under protest for challenges to ad valorem tax assessments. (8/1/23)

AN ACT

To amend and reenact R.S. 47:1857(B)(1) and (2), 2134(B)(1), (D)(3), and (E)(1) and to enact R.S. 47:1989(G), and 2134(F), relative to ad valorem taxes; to provide for the security required for challenging the correctness or legality of ad valorem tax assessments; to provide for the timing of payments under protest or posting other security; to provide that a payment under protest is not required to appeal the 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 to the legality of an assessment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1857(B)(1) and (2), 2134(B)(1), (D)(3), and (E)(1) are hereby amended and reenacted and R.S. 47:1989(G) and 2134(F) are hereby enacted to read as follows:

§1857. Corrections and changes

* * *

B.(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

1 correctness or legality of any **determination related to** corrections and changes of
2 its assessed valuation for taxation by the Louisiana Tax Commission under this
3 Section, which suit must be instituted within thirty days after receipt of the notice
4 ordering the change. However, to state a cause of action, the petition instituting the
5 suit shall name the Louisiana Tax Commission as defendant and shall set forth not
6 only the correction or change of its assessed valuation for taxation made by the
7 Louisiana Tax Commission, but also the assessed valuation for taxation that the
8 company deems to be correct and legal and the reasons therefor.

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

17 * * *

18 §1989. Review of appeals by tax commission

19 * * *

20 **G. Notwithstanding any other law to the contrary, a taxpayer**
21 **challenging the correctness of an assessment pursuant to Article VII, Section**
22 **18(E) of the Constitution of Louisiana or other applicable law is not required**
23 **to make a payment under protest or post security while the correctness**
24 **challenge is pending before the commission or during the pendency of an appeal**
25 **of the commission's determination brought by any party other than the**
26 **taxpayer. When a taxpayer appeals the commission's determination, the amount**
27 **of the payment under protest or alternate security shall be based upon the**
28 **commission's determination.**

29 * * *

1 §2134. Suits to recover taxes paid under protest

2 * * *

3 B.(1)(a) A taxpayer challenging the correctness of an assessment under R.S.
4 47:1856, 1857, or 1998 shall timely pay the disputed amount of tax due under protest
5 to the officer or officers designated by law for the collection of this tax or timely file
6 a rule to set bond or other security pursuant to Subsection F of this Section. The
7 portion of the taxes that is paid by the taxpayer to the collecting officer or officers
8 that is neither in dispute nor the subject of a suit contesting the correctness of the
9 assessment shall not be made subject to the protest. The taxpayer shall submit
10 separate payments for the disputed amount of tax due and the amount that is not in
11 dispute and not subject to the protest.

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

16 * * *

17 D. * * *

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

24 * * *

25 E.(1) Upon request of a taxpayer and upon proper showing by the taxpayer
26 that the principle of law involved in an additional assessment is already pending
27 before the Board of Tax Appeals or the courts for judicial determination, the
28 taxpayer, upon agreement to abide by the pending decision of the Board of Tax
29 Appeals or the courts, may pay the additional assessment under protest pursuant to

1 posting of a bond or other security as provided in this Subsection.

2 (4) The posting of a bond or other security or the payment under protest
3 shall be made no later than thirty days after the mailing of the notice of the
4 decision of the court or the Board of Tax Appeals authorizing the posting of
5 bond or other security or requiring that a payment under protest be made.

6 (5) If the taxpayer timely files the suit or any petition or rule referred to
7 in this Subsection, no collection action shall be taken in connection with the
8 assessment of taxes, interest, and penalties that are the subject of the taxpayer's
9 cause of action, unless the taxpayer fails to post bond or other security or make
10 the payment under protest required by the court or board. The collector shall
11 be permitted to file a reconventional demand against the taxpayer in the cause
12 of action. A collector may procure an appraisal or conduct discovery concerning
13 the value and validity of security offered prior to the date for filing the
14 collector's response or opposition to a rule set for hearing under this Subsection.

15 (6) To the extent not inconsistent with this Subsection, the nature and
16 amount of the bond or security and the procedures for posting bond or
17 providing other security shall be consistent with the provisions for providing
18 security in connection with a suspensive appeal under the Code of Civil
19 Procedure.

20 (7) This Subsection shall not apply to amounts of tax that are not in
21 dispute and are not the subject of a correctness or legality challenge.

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

SB 5 Original

DIGEST
2023 Regular Session

Allain

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 provides 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 then 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.

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.

Effective August 1, 2023.

(Amends R.S. 47:1857(B)(1) and (2), 2134(B)(1), (D)(3), and (E)(1); adds R.S. 47:1989(G) and 2134(F))