

SENATE BILL NO. 191

BY SENATOR REESE

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AN ACT

To amend and reenact R.S. 47:302(K)(7)(b), 1402(E)(1), 1403(A)(3) and (5) and (B)(4), 1406, 1417(C)(3), 1437(B), and 1565(C)(2) and to enact R.S. 47:1403(B)(7), relative to the enforcement and adjudication of state and local taxes and the Board of Tax Appeals; to provide with respect to disputes concerning taxes; to provide for tax administration; to provide with respect to certain revenues dedicated to the board; to provide for certain expenditures by the board; to provide relative to ad hoc judges; to provide relative to remote witness testimony; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(K)(7)(b), 1402(E)(1), 1403(A)(3) and (5) and (B)(4), 1406, 1417(C)(3), 1437(B), and 1565(C)(2) are hereby amended and reenacted and R.S. 47:1403(B)(7) is hereby enacted to read as follows:

§302. Imposition of tax

* * *

K. An additional tax shall be levied as follows:

* * *

(7)

* * *

(b) The amount **of local tax** specified in Item (a)(i) of this Paragraph as transferred to the Department of State Civil Service, Board of Tax Appeals, **Local Tax Division** shall be increased by fifty-five thousand dollars on July 1, 2015, by thirty-two thousand dollars on July 1, 2016, and by five thousand dollars on the first day of each of the subsequent fiscal years. The amounts specified in this Subparagraph and Subparagraph (a) of this Paragraph shall be transferred by the secretary within the first thirty days of each fiscal year and the Department of State Civil Service, Board of Tax Appeals, may retain all funds that are transferred as directed in this Subparagraph and Subparagraph ~~(b)~~**(a)** of this Paragraph. **The**

1 amount provided for in Item (a)(i) of this Paragraph shall also be increased
2 when necessary to conform to an amount appropriated by law.

3 * * *

4 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

5 * * *

6 E.(1) Notwithstanding any provision of law to the contrary, a board member
7 shall continue to serve until a successor has been appointed. No member may be
8 removed except by under either of the following circumstances:

9 (a) By induction into office of a successor, duly appointed and qualified
10 pursuant to this Section, upon expiration of a term of office ~~or for.~~

11 (b) For good cause shown, which shall be subject to judicial review;
12 provided that good cause shall mean those causes enumerated for removal by
13 suit pursuant to Article X, Section 25 of the Constitution of Louisiana, or its
14 successor.

15 * * *

16 §1403. Designation of officers; domicile; quorum; seal

17 A.

18 * * *

19 (3) ~~The~~ Notwithstanding any provision of law to the contrary, the member
20 appointed pursuant to R.S. 47:1402(D) shall be the hearing judge of the Local Tax
21 Division of the board. For the purposes of the Local Tax Division, the judge shall
22 exercise all jurisdiction, authority, and powers of the board and its chairman,
23 including the hearing of cases to be adjudicated in the division and the rendering of
24 orders and judgments in such cases. ~~The remainder of the board may temporarily~~
25 ~~exercise these functions during any vacancy in this appointment, but may not hear~~
26 ~~and render judgment in a case in the division.~~

27 * * *

28 (5) In the event of a vacancy lasting more than ~~ninety~~ thirty days or if the
29 local tax judge submits a written request for assistance, the supreme court is
30 authorized to make assignments or appointments for a local tax judge ad hoc in the

1 same manner as authorized pursuant to Article V, Section 5(A) of the Constitution
2 of Louisiana, ~~and~~. **Notwithstanding any provisions of law to the contrary**, any
3 **sitting or retired** ad hoc judge so assigned shall receive the compensation specified
4 in this Chapter for ad hoc appointment ~~due to recusal~~ **pursuant to this Paragraph**.

5 B.

6 * * *

7 (4) ~~With the consent of all parties or upon the request of the taxpayer in a~~
8 ~~pre-trial matter involving only a state collector, the~~ **The** board may allow for a
9 hearing to be held by telephone, video conference, or similar communication
10 equipment, including the administration of oaths in proceedings.

11 * * *

12 **(7) Notwithstanding any provision of law to the contrary, the chairman**
13 **may designate either of the following as a hearing judge for purposes of**
14 **Paragraph (2) of this Subsection:**

15 **(a) Any person who has been appointed as an ad hoc judge pursuant to**
16 **the provisions of this Chapter.**

17 **(b) With the approval of the supreme court, any judge eligible for**
18 **assignment pursuant to Article V, Section 5 of the Constitution of Louisiana**
19 **who is considered an ad hoc judge pursuant to this Chapter.**

20 * * *

21 §1406. Expenditures

22 The board is authorized to make ~~such~~ expenditures, (including expenditures
23 for personal services and for law books, books of reference and periodicals), as may
24 be necessary to efficiently execute the functions vested in the board. All
25 expenditures of the board shall be allowed and paid, out of any monies appropriated
26 for the purposes of the board. The board's self-generated revenue from local cases
27 ~~filed with the board pursuant to the provisions of the Uniform Local Sales Tax Code~~
28 shall be expended exclusively for the purposes of its Local Tax Division, and may
29 be retained by the board and carried forward for such purposes. **All funds held in**
30 **the board's Escrow Account shall be subject to the provisions of R.S. 47:1439**

1 and shall be expended in accordance with the restrictions of that Section.

2 * * *

3 §1417. Recusal; board members

4 * * *

5 C.

6 * * *

7 (3) Upon entry of an order of recusal concerning ~~the board member presiding~~
8 ~~over~~ a case in the Local Tax Division, the case shall be reassigned to be heard by an
9 ad hoc judge appointed by the supreme court pursuant to R.S. 47:1403(A)(5)
10 with any other board member eligible for that appointment in accordance with
11 Paragraph ~~(2)~~ of this Subsection, or, upon a joint motion of all parties it may either
12 be heard pursuant to Paragraph (1) of this Subsection or be transferred to the district
13 court of proper venue.

14 * * *

15 §1437. Effect of final judgment

16 * * *

17 B. When the decision or judgment of the board which has become final
18 contains a finding that the taxpayer is entitled to receive a refund or credit of an
19 overpayment, the collector shall promptly enter the credit or make the refund, as the
20 case may be, or otherwise comply with the terms of the final judgment.

21 * * *

22 §1565. Notice of assessment and right to appeal

23 * * *

24 C.

25 * * *

26 ~~(2)~~(a) The determination of an error of fact or of law under this Subsection
27 shall be solely that of the secretary except as otherwise provided in this
28 Subsection, and no action against the secretary with respect to the determination
29 shall be brought in any court, ~~nor shall any appeal relating thereto be brought before~~
30 ~~the Board of Tax Appeals~~, and no court shall have jurisdiction of any such action,

1 nor the Board of Tax Appeals except as provided in this Subsection of any such
2 ~~appeal~~, it being the intent of this Subsection only to permit the secretary to correct
3 manifest errors of fact or in the application of the law made by the secretary in
4 making the assessment; however, all reductions of assessments based on such errors,
5 except estimated assessments made due to the failure of the taxpayer to file a proper
6 tax return, must be approved and signed by the secretary, and the assistant secretary
7 or the deputy assistant secretary ~~of~~ supervising the office of legal affairs of the
8 Department of Revenue, and shall then be ~~approved~~ submitted for review by the
9 Board of Tax Appeals and if approved shall be signed by the chairman thereof.
10 Estimated assessments made due to the failure of the taxpayer to file a proper tax
11 return may be corrected by the acceptance of the proper tax return and must be
12 approved by the secretary or his designee.

13 (b) A person may petition the Board of Tax Appeals within thirty days
14 of receipt of a notice related to a seizure, levy, garnishment, offset, or other
15 collection action, whether occurred or intended, related to an assessment that
16 qualifies for relief pursuant to Paragraph (1) of this Subsection. If the board
17 finds clear and convincing evidence that the otherwise final assessment qualifies
18 for relief pursuant to Paragraph (1) of this Subsection it shall order that the
19 matter be referred to the secretary for review pursuant to provisions of this
20 Subsection, and the assessment shall not be collectible until such time as the
21 assessment has been redetermined pursuant to this Subsection. The secretary
22 shall submit any redetermination to the board for approval in the same manner
23 as provided in Subparagraph (a) of this Paragraph.

24 (c) A person who has been the subject of a collection action related to an
25 otherwise final assessment that qualifies for relief pursuant to this Subsection
26 may file a refund claim with the secretary within the applicable prescriptive
27 period pursuant to R.S. 47:1623 following the secretary's receipt of the funds.
28 Any refund authorized by this Subparagraph shall be additionally limited to
29 any amount actually collected by the secretary that was not actually due
30 considering a redetermination made pursuant to this Subsection due to the

1 **petition filed pursuant to this Paragraph.**

2 * * *

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____