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

DIGEST

Proposed law creates the Tax Court as a successor to the Board of Tax Appeals [BTA], and expands the jurisdiction of the Tax Court to local tax matters.

Proposed law requires all proceedings pending before the BTA on December 31, 2013 to remain with the Tax Court. However, the creation of the Tax Court cannot affect any proceeding, prosecution, action, suit, or appeal commenced before January 1, 2014, in any court of record, but any proceeding pending before a district court on December 31, 2013, that is within the jurisdiction of the Tax Court may be transferred to the Tax Court upon joint motion of all parties. The Chief Judge serves as an ex-officio, non-voting member of the BTA until December 31, 2013.

Proposed law grants jurisdiction to the Tax Court to hear and determine:

1. Questions of law or fact arising under the tax laws of the state.
2. Questions of law or fact arising under a local sales and use tax, occupational license tax, hotel or motel occupancy tax, or automobile rental tax
3. Questions of law or fact arising from any state or local fee administered or collected by the Department of Revenue, except:
 - (a) Alcoholic beverage and tobacco permit fees.
 - (b) Charitable gaming fees.
4. Questions of law or fact arising from any tax on the sale, lease, rental, or use of a vehicle, any vehicle registration license fee or tax, or any vehicle certificate of title fee.
5. Any matter over which the Tax Court has jurisdiction transferred to the Tax Court by a district court or from the Tax Court's small claims division.
6. An action by a taxpayer or collector seeking a judgment declaring that a rule of a Collector applicable to a tax or fee within the jurisdiction of the court is contrary to or inconsistent with law.

Proposed law excludes from the jurisdiction of the Tax Court:

1. The determination of any constitutional issue; however, with the consent of the parties or when ordered by a district court, the court may develop a record on the issue, certify the question to the district court, and make a recommendation. In addition, any party may

seek a declaratory judgment in district court on any constitutional issue. If the constitutional issue is raised in the small claims division, on motion of any party or the court, the matter must be removed to the Tax Court and the issue considered as provided above.

2. Ad valorem and other property taxes.
3. Insurance premium taxes.
4. Gaming taxes.
5. The collection or enforcement of any final, nonappealable assessment or judgment.
6. Any matter brought by a taxpayer where the taxpayer has not exhausted all other administrative remedies available, unless the taxpayer has paid under protest or has provided bond or other security.
7. Any criminal matter.
8. Any claim for damages or other action in tort.
9. Any matter involving the issuance or validity of a bond, or other financing, by the state or a political subdivision.

Proposed law requires each judge to issue written reasons for his judgment which must include a concise statement of the facts found by the court and the conclusions of law reached by the court.

Present law allows public accountants to represent parties before the BTA.

Proposed law does not allow it.

Proposed law establishes a "small claims division" which has concurrent jurisdiction when the amount in dispute, exclusive of penalties, interest, fees, and costs, is less than \$5,000.

Authorizes a case in the division to be heard by a hearing officer who may be an employee of the Court if all parties consent. A taxpayer who elects to proceed in the division instead of the Tax Court may not thereafter revoke the election and does not have any further right to appeal or bring suit. Hearings in the small claims division must be informal and the judge may hear testimony and receive evidence as he deems necessary for a just and equitable determination of the matter. A party may appear on his own behalf and, unless otherwise ordered by the judge, appear before the division by telephone, video conference, or similar communication equipment. A decision is a minute entry in the docket of the division and must include an explanation of the basis of the decision. The decision is not to be considered a precedent nor be given any force or effect in any other matter, hearing, or proceeding.

Proposed law specifies venue in East Baton Rouge Parish [EBR] for the state, and for locals where the tax is levied, and appeal is to the Court of Appeal of those parishes

For proceedings brought against the state and one or more local taxing authorities, either in EBR or in any parish where the tax is levied, and proceedings against one or more local taxing authorities located in more than one parish, in any parish where the tax being litigated is levied; both to be determined by the presiding judge with a view to securing reasonable opportunity to the parties and their witnesses to appear with as little inconvenience and expense as is practicable. Appeal is based upon court determination of the convenience of the parties and witnesses and the interest of justice. However, all parties, by joint motion filed with the court prior to hearing, may designate the Court of Appeal that will be the venue of any judicial review.

Authorizes the court to hold the hearing in a matter at any location in the state if all parties consent the judge determines. In addition, with consent of the parties, the hearing can be by telephone, video conference, or similar communication equipment.

Proposed law provides that the Tax Court consists of three Tax Judges appointed by the Governor after nomination by the Legislature. Each judge must have been admitted to the practice of law in the state for at least 5 years prior to his appointment, and meet either of the following criteria:

1. Be recognized as a Board Certified Tax Specialist by the Louisiana Board of Legal Specialization of the Louisiana State Bar Association.
2. Possess a Masters of Law (LLM).
3. Possess 7 years tax experience.

The Governor designates the chief judge for such term as he directs.

At the time of initial appointment, at least one judge appointed "should" be a resident of a parish in a different court of appeal circuit of the state from the remaining judges.

The judges are full-time unclassified employees of the court and must devote all of their time to their duties under the proposed law. They may not engage in the practice of law or hold any other public office or employment. They receive the same compensation and benefits as district court judges and are subject to the same mandatory retirement age as district court judges.

The first judge appointed serves until January 1, 2018; the second until January 1, 2019; and the third until January 1, 2017. Their successors are thereafter appointed for a term of 6 years.

Proposed law provides that the principal office and domicile of the Court is in East Baton Rouge Parish where the state must provide the court with adequate offices and a courtroom. However, the court may hold sessions at any place within the state. Upon request of a judge, a Court of Appeal is required to provide room in their courthouse for the hearings of the Court.

Proposed law requires all Tax Court fees, court costs, and other charges to be deposited in the "Tax Court Expense Fund", in the state treasury, to be appropriated and expended only for the expenses of the Tax Court. Interest on investment of money in the fund and all unencumbered and unexpended money in the fund at the close of the fiscal year is remitted to the state general fund.

Proposed law makes other changes to present law concerning the BTA and state and local tax matters, including:

1. Repeals the provision authorizing a taxpayer to require mandatory arbitration of local tax claims.
2. Deletes the requirement in present law that the BTA approve many actions of the DOR reducing penalties and canceling liens.
3. Removes the requirement that a taxpayer whose "claim against the state" has been rejected must petition the legislature for the right to sue on the claim.
4. Reduces from 90 to 60 days the time to appeal a local collector's disallowance of a refund claim.
5. Specifically authorizes the Tax Court to grant a judgement (a) ordering the payment of additional tax in a refund claim by a taxpayer and (b) ordering the payment of a refund or a credit against tax in a claim for taxes by a local collector provided that the claim for refund has not prescribed.

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

(Amends R.S. 26:354(I), 26:492(A), R.S. 36:458(F), R.S. 39:51.1(A)(1)(b), R.S. 47:15(14), 32(C), 114(F)(3), 295(C), 303(B)(5)(d), 303.1(G), 305.14(C), 305.18(C), 305.20(E), 305.53(2), 337.2(B)(1), (C)(4)(b)(iii), and (D), 337.27, 337.51, 337.54, 337.56, 337.63, 337.67, 337.77(F), 337.81, 647(B), Chapter 17 of Subtitle II of Title 47 to be comprised of R.S. 47:1401-1486, 1508.1(B), 1561, 1565, 1566(C), 1567, 1578 (B), 1580(A)(3), 1603(A), 1621(F), 1621.1(A), 1625, 1626, 1627, 1688, and 1689, and R.S. 49:967(A), R.S. 51:1310(C); adds R.S. 36:53(J) and R.S. 36:812, R.S. 47:337.2(A)(1)(c) and 337.81-A, and R.S. 49:992(D)(10); Repeals R.S. 36:4(B)(1)(p), R.S. 47:337.51.1)