

Regular Session, 2014

HOUSE BILL NO. 798

BY REPRESENTATIVE STOKES

TAX/STATE: Provides relative to the enforcement and adjudication of state taxes

1 AN ACT

2 To amend and reenact R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 299.9,
3 299.39, 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486,
4 1508.1(B), 1561, 1565(C)(3), 1574(introductory paragraph), 1576(A)(1) and (2), (C),
5 and (E), 1578(B)(2), (3), and (4)(a)(introductory paragraph), 1603(A), and 1688, and
6 to enact R.S. 47:1574(5), relative to the enforcement and adjudication of state taxes;
7 to provide with respect to disputes concerning taxes, fees, and claims against the
8 state; to provide with respect to the authority of the secretary of the Department of
9 Revenue regarding the collection and enforcement of taxes and fees; to provide for
10 the jurisdiction, authority, and procedures of the Board of Tax Appeals; to provide
11 for appellate jurisdiction for decisions of the Board of Tax Appeals; to provide for
12 legislative oversight of Board of Tax Appeals rulemaking; to direct the Louisiana
13 State Law Institute to change certain references to the Board of Tax Appeals in
14 certain provisions of current law; to provide for effectiveness; and to provide for
15 related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 299.9, 299.39,
18 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561,
19 1565(C)(3), 1574(introductory paragraph), 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3),
20 and (4)(a)(introductory paragraph), 1603(A), and 1688 are hereby amended and reenacted,
21 and R.S. 47:1574(5) is hereby enacted, to read as follows:

1 §15. Taxpayer's Bill of Rights

2 There is hereby established a Taxpayer's Bill of Rights to guarantee that the
3 rights, privacy, and property of Louisiana taxpayers are safeguarded and protected
4 during tax assessment, collection, and enforcement processes administered under the
5 tax laws of this state. This Taxpayer's Bill of Rights consists of a statement, in
6 nontechnical terms, of the rights and obligations of the Department of Revenue and
7 taxpayers. The rights afforded taxpayers to assure that their privacy and property are
8 safeguarded and protected during tax assessment and collection are available only
9 insofar as they are implemented in accordance with the Constitution of Louisiana and
10 Louisiana Revised Statutes of 1950 or the administrative rules of the Department of
11 Revenue. The rights assured Louisiana taxpayers are:

12 * * *

13 (14) The right to a hearing in order to dispute an assessment of taxes,
14 interest, and penalties by timely filing an appeal with the Board of Tax Appeals ~~in~~
15 ~~accordance with R.S. 47:1414, 1431, and 1481~~ as provided by law. A taxpayer shall
16 not be required to pay the disputed tax, interest, and penalties in order to exercise this
17 right.

18 * * *

19 §114. Returns and payment of tax

20 * * *

21 F. Penalty provision.

22 * * *

23 (3) If the failure to timely submit the annual return is attributable, not to the
24 negligence of the taxpayer, but to other causes set forth in written form and
25 considered reasonable by the secretary, the secretary may remit or waive payments
26 of the whole or any part of the specific penalty provided for such failure. In any case
27 where the penalty exceeds twenty-five thousand dollars, it can be waived by the
28 secretary only after approval by the Board of Tax Appeals.

29 * * *

1 §287.614. Time and place for filing returns; information concerning federal return;
2 extension of time to file

3 * * *

4 C. Any corporation whose federal income tax return is adjusted by the
5 Internal Revenue Service must ~~furnish a statement to the secretary disclosing the~~
6 ~~nature and amount of such adjustments~~ file an amended return within sixty one
7 hundred eighty days of the ~~taxpayer's receipt~~ final determination of such adjustments
8 from the Internal Revenue Service.

9 D.

10 * * *

11 (3) The secretary may grant an extension of time to file a Louisiana income
12 tax return for a specific taxable period if the taxpayer has received an automatic
13 extension of time to file a federal income tax return for that taxable period. The
14 method for taxpayer notification of the secretary that an automatic federal extension
15 was obtained shall be established by rule. The secretary may otherwise provide for
16 the automatic extension of time to file a corporation return not to exceed seven
17 months, or the extended due date of the federal income tax return, whichever is later.

18 * * *

19 §295. Tax imposed on individuals; administration

20 * * *

21 C. The secretary of the Department of Revenue shall administer and enforce
22 this Part. He may adopt, prescribe, and from time to time alter and enforce
23 reasonable rules, orders, and regulations for the purpose of implementing this Part.
24 He may, ~~with the approval of the Board of Tax Appeals~~, upon making a record of his
25 reasons therefor, waive, reduce, or compromise any of the taxes, penalties, or interest
26 or other amounts provided by this Part. In any case when the penalty exceeds
27 twenty-five thousand dollars, it can be waived by the secretary only after approval
28 by the Board of Tax Appeals.

29 * * *

1 §299.9. Remittance; equivalent of refund

2 The remittance by the secretary to the claiming agency and the sending of the
3 notice of offset by ~~certified~~ mail to the address shown on the individual's return shall
4 be deemed to be, to the extent of the remittance, a refund to the individual and to any
5 other person who has a claim to such refund. The secretary shall refund to the
6 individual any amount not remitted to a claimant pursuant to an offset request.

7 * * *

8 §299.39. Remittance; equivalent of refund

9 The remittance by the secretary to the claimant and the sending of the notice
10 of offset by ~~certified~~ mail to the address shown on the individual's return shall be
11 deemed to be, to the extent of the remittance, a refund to the individual and to any
12 other person who has a claim to such refund. The secretary shall refund to the
13 individual any amount not remitted to a claimant pursuant to an offset request.

14 * * *

15 §1407. Jurisdiction of the board

16 The jurisdiction of the board shall extend to the following:

17 (1) All matters relating to appeals for the redetermination of assessments, or
18 for the determination of overpayments, or payment under protest petitions, as
19 provided in R.S. 47:1431 through ~~47:1438~~.

20 * * *

21 §1408. Power to administer oaths and issue subpoenas

22 A. For purposes of enforcing or administering this Chapter, any member of
23 the board, ~~or and the secretary-clerk for the board;~~ shall have the ~~power to~~ following
24 powers:

25 (1) Any board member and the secretary-clerk may administer oaths and take
26 affidavits, ~~and any member of the board shall have the power to.~~

27 (2) Any board member may compel discovery, subpoena issue subpoenas,
28 and require the attendance of witnesses and the production of books, papers, and

1 documents pertaining to the matter under inquiry, at any designated place of hearing;
2 and to .

3 (3) Any board member may examine ~~such~~ witnesses, and may require the
4 taking of ~~deposition~~ depositions before any person competent to administer oaths,
5 either within or without the state, ~~upon notice to the interested party~~ in like manner
6 that depositions of witnesses are taken or discovery is compelled in civil actions in
7 the district courts of the state.

8 B. Any party to a matter pending before the board may summon witnesses
9 or require the production of papers, other documents, answers to requests for
10 admissions, or answers to interrogatories in the same manner as witnesses are
11 summoned, discovery completed, or papers required to be produced in civil actions
12 in the district courts of the state.

13 C. ~~In case of failure of~~ If any person fails to comply with any order or
14 subpoena issued under authority of this Chapter, or ~~the refusal of a witness~~ refuses
15 to testify to any matter regarding which he may be lawfully interrogated, ~~the~~ a judge
16 of the district court of the parish in which such person either resides, ~~or the parish in~~
17 ~~which such person~~ or may be personally served, or any other judge with personal
18 jurisdiction over such person, on application of the board or any member thereof,
19 shall immediately compel obedience by ordering the issuance of an instanter
20 subpoena, or other appropriate process for contempt, or a rule as in the case of
21 disobedience of the requirements of a subpoena issued from such court or a refusal
22 to testify therein.

23 §1409. Witness fees and mileage

24 Any person summoned or whose deposition is taken shall receive the same
25 fees and mileage as would be allowed in a civil action pending in the district courts
26 and the expense thereof shall be paid by the person summoning such witness or
27 causing the deposition to be taken. These expenses may be assessed as costs by the
28 board.

29 * * *

1 §1414. Persons authorized to appear before the board

2 * * *

3 C. Certified public accountants duly qualified and licensed under the laws
4 of the state ~~or public accountants~~ shall be entitled to represent any taxpayer or other
5 contestant in any matter to which the jurisdiction of the board shall extend, provided
6 that the board may, in its discretion, permit certified public accountants, duly
7 qualified and licensed under the laws of the several states or the District of Columbia
8 ~~and public accountants~~ to represent any taxpayer or other contestant in any matter
9 to which the board's jurisdiction shall extend, in the same manner as such certified
10 public accountants ~~and public accountants~~ are permitted to practice in Louisiana.

11 * * *

12 §1416. Stenographic reports of hearings

13 The board shall, upon the request of any party to a matter before it or may
14 upon its own motion, order that the hearing before it shall be reported by a
15 stenographer, or be otherwise recorded and transcribed pursuant to regulation or rule
16 of the board, and the expense thereof shall be paid by the board out of the
17 appropriation for the board. The board may contract for the report of such
18 proceedings or designate the reporter of the board to report such proceedings. The
19 board may supply copies of the transcript of the proceedings to ~~any one~~ anyone
20 requesting the same and may fix the fee for purchasing such copies.

21 * * *

22 §1433. Publication of opinions and decisions

23 The board shall provide for the publication of such of its reports, opinions
24 and decisions or judgments as are of public interest, in such form as it may deem best
25 adapted for public convenience and use, and such authorized publication shall be
26 competent evidence of the reports of the board ~~therein contained in~~ for purposes of
27 all courts of the state, without any further proof or authentication thereof. The
28 board's internal deliberations concerning a pending matter shall be considered
29 judicial proceedings for the purposes of R.S. 42:17(B).

1 §1434. Judicial review of decision of the board

2 ~~After A.(1) Within thirty days of the signing of a decision or judgment of~~
3 ~~the board, the collector or the taxpayer may, within thirty calendar days after such~~
4 ~~decision or judgment has been rendered and signed, file a petition with the district~~
5 ~~appellate court in accordance with the provisions hereinafter set out, for review of~~
6 ~~the said decision or judgment of the board. The party filing such~~ intending to file
7 the petition shall, prior to its filing, notify the board of this intention before the filing
8 ~~of same, either at open hearing or by motion, notify the board of his intention to file~~
9 ~~such petition for review. Provided that when~~ In any case where the board has found
10 any tax to be due, except in any payment under protest petition, a the taxpayer must,
11 shall post a bond when giving the notice of intention to file a petition for review,
12 ~~post bond, with surety in a form approved by the board conditioned upon for the~~
13 payment of the tax as finally determined, together with any interest, additional
14 amounts or additions to the tax provided for by law, including applicable penalties
15 and attorney fees. The bond must be payable to the collector, in an amount not to
16 exceed one and one-half times the said tax, interest, and penalty penalties, and
17 attorney fees, if any, found to be due in said decision or judgment of the board, and
18 ~~the.~~ The posting of such bond shall be a condition precedent to the filing of any
19 petition for review in any district appellate court.

20 (2) Except as to the amount, and to the extent not otherwise inconsistent with
21 the provisions of this Section, the nature of the bond or security and the procedures
22 for posting bond or providing other security shall be consistent with the provisions
23 for providing security in connection with a suspensive appeal under the Code of
24 Civil Procedure.

25 ~~Thereafter, and within the thirty calendar days from the date of the rendering~~
26 ~~and signing of such decision or judgment of the board, the taxpayer may file his~~
27 ~~petition for review with the proper district court, setting forth specifically any errors~~
28 ~~which may have been committed by the board in reaching its decision or judgment.~~

1 (3) The other deadlines and rules governing the briefing and answering of
2 an appeal filed pursuant to this Section shall be as provided for in civil matters under
3 the Code of Civil Procedure and all applicable court rules.

4 B. When the district judge has ordered the review, a copy of the order and
5 petition shall be mailed a petition for review is lodged with an appellate court, the
6 court or its clerk shall mail a copy of the petition to both the secretary-clerk of the
7 board; and the opposing party or his counsel ~~representing him, and the order.~~ Within
8 ten days from the lodging of the petition, the appellate court shall command the
9 secretary-clerk of the board to send ~~up~~ the appellate court, within ~~twenty~~ thirty days
10 from the date thereof, the original transcript of the record, together with all exhibits
11 and evidence thereto attached; which record shall be the basis for any action on
12 review and the decision of the ~~district~~ appellate court shall be rendered upon ~~the said~~
13 that record as made up before the board.

14 §1435. Jurisdiction of ~~district~~ courts to review decisions of the board

15 A. The district courts of appeal shall have exclusive jurisdiction to review
16 the decisions or judgments of the board, and the judgment of any such court shall be
17 subject to further ~~appeal, suspensive only,~~ review in accordance with the law relating
18 to civil matters. ~~If a suspensive appeal is taken from a judgment of the district court~~
19 ~~no further bond need be posted and the bond originally posted remains in full force~~
20 ~~and effect to guarantee the payment of any tax, interest, and penalty until final~~
21 ~~decision of the court.~~

22 B. The court of appeal where a case would be appealable pursuant to R.S.
23 47:1436 may exercise supervisory jurisdiction over the case pending before the
24 board in the same manner as provided for in a civil matter pending in a district court
25 within its circuit. The supreme court may exercise supervisory jurisdiction over the
26 board in all of its cases, in the same manner as provided for in civil matters.

27 C. Upon such review, such the courts shall have the power to affirm or, if the
28 decision or judgment of the board is not in accordance with law or is manifestly
29 erroneous on the facts considering the record as a whole, to modify, or to reverse the

1 decision or judgment of the board, with or without remanding the case for further
2 proceedings ~~as justice may require.~~ An appellate court may also remand a case with
3 an order that it be immediately transferred to the district court pursuant to R.S.
4 47:1432(B).

5 * * *

6 §1438. Date judgment becomes final

7 For the purposes of this Title, the date on which a decision or judgment of the
8 board becomes final shall be determined as provided herein. The decision or
9 judgment of the board shall become final in either of the following circumstances:

10 (1) Upon the expiration of the time allowed for filing a petition for review,
11 if no such petition has been duly filed within such time; ~~or~~

12 (2) ~~Upon the expiration of the time allowed for filing a petition for appeal,~~
13 ~~if the decision or judgment of the board has been affirmed or the petition for review~~
14 ~~dismissed by the district court, and no appeal has been taken; or~~

15 (3) ~~Upon dismissal of the appeal, if the decision or judgment of the board has~~
16 ~~been affirmed or the petition for review dismissed by the district court; or~~

17 (4) ~~Upon the expiration of thirty days from the date of issuance of the~~
18 ~~mandate of the supreme court, if such court directs that the decision or judgment of~~
19 ~~the board be affirmed or the petition for review dismissed.~~

20 ~~If the Supreme Court directs that the decision or judgment of the board be~~
21 ~~modified or reversed, the decision or judgment of the board rendered in accordance~~
22 ~~with the mandate of the supreme court shall become final upon the expiration of~~
23 ~~thirty days from the time it was rendered, unless within such thirty days either the~~
24 ~~collector or the taxpayer has instituted proceedings to have such decision or~~
25 ~~judgment corrected to accord with the mandate, in which event the decision or~~
26 ~~judgment of the board shall become final when so corrected.~~

27 ~~If the decision or judgment of the board is modified or reversed by the district~~
28 ~~court, and if the time allowed for taking an appeal has expired and no such appeal~~
29 ~~has been taken; or if the appeal has been dismissed; or if the decision of the court has~~

1 ~~been affirmed by the supreme court, then the decision or judgment of the board~~
2 ~~rendered in accordance with the mandate of the district court shall become final on~~
3 ~~the expiration of thirty days from the time such decision or judgment of the board~~
4 ~~was rendered, unless within such thirty days either the collector or the taxpayer has~~
5 ~~instituted proceedings to have such decision corrected so that it will accord with the~~
6 ~~mandate, in which event the decision or judgment of the board shall become final~~
7 ~~when so corrected.~~

8 ~~If the Supreme Court orders a rehearing, or if the case is remanded by the~~
9 ~~district court to the board for rehearing, and if the time allowed for taking an appeal~~
10 ~~has expired, and no such petition has been duly filed; or if the appeal has been~~
11 ~~dismissed, or if the decision of the court has been affirmed by the supreme court,~~
12 ~~then the decision or judgment of the board rendered upon such rehearing shall~~
13 ~~become final in the same manner as though no prior decision or judgment of the~~
14 ~~board has been rendered.~~

15 ~~As used in this section, the term "district court" means any district court of~~
16 ~~the State of Louisiana having jurisdiction to review the decision or judgment of the~~
17 ~~board; and the term "mandate" in case a mandate has been recalled prior to the~~
18 ~~expiration of thirty days from date of issuance thereof, means the final mandate.~~

19 If a petition for review of a judgment of the board is timely filed with the applicable
20 appellate court, the judgment of the appellate court shall become final in the same
21 manner, and at the same time, as provided for in civil matters under the Code of Civil
22 Procedure.

23 * * *

24 §1486. No appeal from action of board

25 An action of the board rejecting or refusing to approve any claim under this
26 Part may not be appealed to the courts. However, nothing contained in this Part shall
27 deny a claimant whose claim has been rejected by the board the right to ~~petition the~~

1 legislature for permission to sue on the claim in a court of proper jurisdiction when
2 such cause of action is otherwise allowed by law.

3 * * *

4 §1508.1. Unauthorized disclosure of information

5 * * *

6 B. Nothing contained in this Section shall be construed to prevent such
7 persons from disclosing a return of a taxpayer or the records of the secretary as
8 authorized by law in any Board of Tax Appeals or other judicial proceeding in which
9 the state or any political subdivision thereof is a party.

10 * * *

11 §1561. Alternative remedies for the collection of taxes

12 A. In addition to following any of the special remedies provided in the
13 various chapters of this ~~sub~~title Subtitle, the collector may, in his discretion, proceed
14 to enforce the collection of any taxes due under this ~~sub~~title Subtitle by means of any
15 of the following alternative remedies or procedures:

16 (1) Assessment and distraint, as provided in R.S. 47:1562 through ~~47:1573~~.

17 (2) Summary court proceeding, as provided in R.S. 47:1574.

18 (3) Ordinary suit under the provisions of the general laws regulating actions
19 for the enforcement of obligations.

20 B. The collector may choose which of these procedures he ~~will~~ shall pursue
21 in each case, and the counter-remedies and delays to which the taxpayer ~~will~~ shall
22 be entitled ~~will~~ shall be only those which are not inconsistent with the proceeding
23 initiated by the collector, provided that in every case the taxpayer shall be entitled
24 to proceed under R.S. 47:1576 except ~~(a) after~~ under any of the following
25 circumstances:

26 (1) After he has filed a petition with the ~~board of tax appeals~~ Board of Tax
27 Appeals for a redetermination of the assessment, ~~or (b) when.~~

1 (2) When an assessment for the tax in question has become final ~~or (c) when.~~

2 (3) When a suit involving the same tax obligation is pending against him;
3 ~~and provided further, that the.~~

4 C. The fact that the collector has initiated proceedings under the assessment
5 and distraint procedure ~~will~~ shall not preclude him from thereafter proceeding by
6 summary or ordinary court proceedings for the enforcement of the same tax
7 obligation.

8 * * *

9 §1565. Notice of assessment and right to appeal

10 * * *

11 C.

12 * * *

13 (3) The remedies of a taxpayer aggrieved by any action of the secretary are
14 by appeal to the ~~board of tax appeals~~ Board of Tax Appeals or by payment of the
15 disputed tax under protest and suit or petition to recover as provided in this Subtitle.

16 * * *

17 §1574. Collection by summary court proceeding authorized

18 In addition to any other procedure provided in this ~~Sub-title~~ Subtitle or
19 elsewhere in the laws of this state; and for the purpose of facilitating and expediting
20 the determination and trial of all claims for taxes, penalties, interest, attorney fees,
21 or other costs and charges arising under this ~~Sub-title~~ Subtitle, there is hereby
22 provided a summary proceeding for the hearing and determination of all claims by
23 or on behalf of the state, or by or on behalf of the collector, for taxes, excises, and
24 licenses and for the penalties, interest, attorney fees, costs or other charges due
25 thereon, by preference in all courts, all as follows:

26 * * *

27 (5) The provisions of this Section shall apply only in the following instances:

28 (a) The proceeding is for collection of a tax assessment that has become
29 final, or to which the provisions of RS. 47:1567 or 1568 apply.

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1 (b) A jeopardy assessment has been or could be issued against the defendant
 2 pursuant to R.S. 47:1566 for the same tax.

3 (c) A rule to cease business has been or is concurrently brought against the
 4 defendant pursuant to R.S. 47:314, 1574.1, or 1582.

5 (d) The matter also involves the special authority to enforce collection of
 6 taxes collected or withheld from others pursuant to R.S. 47:1561.1.

7 * * *

8 §1576. Remittance of tax under protest; suits to recover

9 A.(1)(a) Except as otherwise provided in Subsection B of this Section, any
 10 taxpayer protesting the payment of any amount found due by the secretary of the
 11 Department of Revenue, or the enforcement of any provision of the tax laws in
 12 relation thereto, shall remit to the Department of Revenue the amount due and at that
 13 time shall give notice of intention to either file suit for the ~~or file a petition with the~~
 14 Board of Tax Appeals for purposes of recovery of such tax.

15 (b) In the case of sales or use taxes that are required to be collected and
 16 remitted by a selling dealer as provided for in R.S. 47:304, the purchaser, in order
 17 to avail himself of the alternative remedy provided by this Section, shall remit
 18 protested sales or use tax to the selling dealer, and shall retain copies of
 19 documentation evidencing the amount of the sales or use tax paid to the dealer on the
 20 transactions. On or before the twentieth day of the month following the month of the
 21 transactions on which the selling dealer charged the tax, the purchaser shall inform
 22 the department by certified mail or other reasonable means of the dates and amounts
 23 of the protested taxes that were charged by the selling dealer, and shall give notice
 24 of the purchaser's intention to either file suit for ~~or file a petition with the Board of~~
 25 Tax Appeals for purposes of recovery of the tax.

26 (2) Upon receipt of this notice, the amount remitted to the Department of
 27 Revenue or the amount of protested taxes that have been paid to the selling dealer
 28 shall be placed in an escrow account and held by the secretary or his duly authorized
 29 representative for a period of thirty days. If suit is filed for recovery of the tax

1 within the thirty-day period, or if a petition is filed with the Board of Tax Appeals
2 for recovery of the tax paid within the thirty-day period, the funds in the escrow
3 account shall be further held pending the outcome of the suit, the petition, or an
4 appeal therefrom.

5 * * *

6 C. This Section shall afford a legal remedy and right of action in the Board
7 of Tax Appeals as provided by law, or in any state court having jurisdiction of the
8 parties and subject matter, for a full and complete adjudication of any and all
9 questions arising in the enforcement of this Subtitle as to the legality of any tax
10 accrued or accruing or the method of enforcement thereof. In such action, service
11 of process upon the secretary shall be sufficient service, and he shall be the sole
12 necessary and proper party defendant in any such suit.

13 * * *

14 E. Upon request of a taxpayer and upon proper showing by such taxpayer
15 that the principle of law involved in an additional assessment is already pending
16 before the courts for judicial determination or pending before the Board of Tax
17 Appeals, the taxpayer, upon agreement to abide by the decision of the courts, the
18 Board of Tax Appeals, or by a final judgment of a court upon a timely appeal of a
19 decision of the Board of Tax Appeals, may remit the additional assessment under
20 protest, but need not file an additional suit or petition. In such cases, the tax so paid
21 under protest shall be placed in an escrow account and held by the secretary until the
22 question of law involved has been determined by the courts, the Board of Tax
23 Appeals, or by a final judgment of a court upon a timely appeal of a decision of the
24 Board of Tax Appeals, and shall then be disposed of as therein provided.

25 * * *

26 §1578. Cancellation of lien, privilege, and mortgage; compromises

27 * * *

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are additions.

1 B. In other cases, the secretary may authorize the cancellation or release of
2 a lien, privilege, or mortgage subject to the following terms and conditions:

3 * * *

4 (2) ~~Subject to approval by the Board of Tax Appeals, the~~ The secretary may
5 authorize the release of any real property from the effect and operation of any lien,
6 privilege, mortgage, or other encumbrance, recorded by virtue of this Subtitle,
7 provided, that the secretary is satisfied that the remaining real property belonging
8 to the tax debtor and upon which said lien, privilege, and mortgage bears, is valued
9 at not less than the amount of the remaining tax obligation, including all penalties,
10 interest and other costs incurred, and the amount of all prior liens upon such
11 property. In determining the value of the remaining property, due consideration shall
12 be given to prior ranking encumbrances, if any exist on said property.

13 (3) ~~Subject to the approval of the Board of Tax Appeals, the~~ The secretary
14 may issue a certificate of release of any part of the property subject to any lien,
15 privilege, mortgage, or other encumbrance recorded by virtue of this Subtitle, if there
16 is paid over to the secretary in partial satisfaction of the liability an amount
17 determined by the secretary, which shall not be less than the value, as determined by
18 the secretary, of the interest of the state of Louisiana in the part to be released, or the
19 secretary determines at any time that the interest of the state of Louisiana in the part
20 to be released has no value. In determining the value of the interest of the state of
21 Louisiana in the part to be released, the secretary shall give consideration to the
22 value of the part and to all prior ranking liens or other encumbrances existing on the
23 part to be released.

24 (4)(a) Notwithstanding any other provision of this Chapter, the secretary,
25 with the approval of two assistant secretaries ~~and the Board of Tax Appeals,~~ may
26 compromise any judgments for taxes of five hundred thousand dollars or less
27 exclusive of interest and penalty, including assessments for such amounts which are
28 equivalent to judgments upon a determination that any of the following apply:

29 * * *

1 §1603. Waiver of penalty for delinquent filing or delinquent payment

2 A. (1) If the failure to make any return at the time such return becomes due
3 or the filing of a return without remittance of the full amount due, is attributable, not
4 to the negligence of the taxpayer, but to other cause set forth in written form and
5 considered reasonable by the secretary of the Department of Revenue, the secretary
6 may remit or waive payment of the whole or any part of the specific penalty
7 provided for such failure; ~~but in,~~

8 (2)(a) In order to promote the effective administration of the tax laws of this
9 state, the secretary may also promulgate rules and regulations pursuant to the
10 Administrative Procedure Act concerning the waiver of penalties, including but not
11 limited to the establishment of a voluntary disclosure program.

12 (b) The secretary may, pursuant to the rules and regulations referenced in
13 Subparagraph (a) of this Paragraph, remit or waive the payment of the whole or any
14 part of the penalties provided for in this Subtitle.

15 (3) In any case when the penalty exceeds twenty-five thousand dollars, it can
16 be waived by the secretary only after approval by the ~~board of tax appeals~~ Board of
17 Tax Appeals.

18 * * *

19 §1688. Suspension of dealer's permit

20 Whenever the ~~collector of revenue~~ secretary determines that a dealer holding
21 a permit under R.S. 47:1683 has violated any of the provisions of this Part, he shall
22 suspend the permit of such dealer for a period of not less than six months nor more
23 than one year; provided that any dealer aggrieved by such action on the part of the
24 ~~collector~~ secretary may appeal suspensively to the ~~board of tax appeals~~ Board of Tax
25 Appeals.

26 Section 2. The Board of Tax Appeals and the secretary of the Department of
27 Revenue may enter into an agreement for a fixed annual interagency transfer to the board
28 as payment in lieu of filing fees owed by the secretary.

1 Section 3. The Louisiana State Law Institute is authorized and directed to revise the
 2 Louisiana Revised Statutes of 1950, as amended, by changing all references to the "board
 3 of tax appeals" to "Board of Tax Appeals".

4 Section 4. This Act shall become effective on July 1, 2014; if vetoed by the governor
 5 and subsequently approved by the legislature, this Act shall become effective on July 1,
 6 2014, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Stokes

HB No. 798

Abstract: Provides generally with respect to enforcement and adjudication of taxes, fees, and penalties collectable by the Dept. of Revenue, including the administration, jurisdiction, and procedures of the Board of Tax Appeals.

General Tax Administration

Present law provides authority for the secretary of the Dept. of Revenue (secretary) and (department) to waive various taxes, fees, and penalties under certain amounts, and to waive liens, privileges, and mortgages in certain specific circumstances, all of which at some point require approval by the Board of Tax Appeals (board).

Proposed law changes thresholds for approval by the board as follows:

- (1) Penalty for failure to file an annual tax return by a person who withholds wages for purposes of individual income tax, from \$5,000 to \$25,000.
- (2) Penalties generally with regard to income tax, from all waivers to waivers in excess of \$25,000.
- (3) Penalties generally with regard to delinquent filing or delinquent payment of any tax subject to collection by the department under certain circumstances, from \$5,000 to \$25,000.
- (4) Cancellation of a lien, privilege, or mortgage under certain circumstances, from board approval for all to no board approval.

Present law provides requirements for the filing of La. corporation income tax returns when there are I.R.S. adjustments to or an extension of time for the filing of a federal corporation income tax return. If a federal return is adjusted by the I.R.S., the taxpayer must within 60 days of the date of the adjustment, furnish a statement to the secretary disclosing the nature and amount of the adjustment. Further, the secretary is authorized to provide for an automatic extension of time for the filing of a state return of up to seven months when there has been an extension of time for the filing of the federal tax return.

Proposed law changes present law by requiring that the taxpayer file an amended tax return rather than a statement, and by increasing the time from the date of the federal adjustment for the filing of the amended state tax return from 60 days to 180 days. Proposed law retains

present law regarding the secretary's authority to grant an extension of time, and adds authority for the granting of an extension of time equal to that allowed for the federal return.

Present law requires the secretary to notify a taxpayer by certified mail of an offset to his tax refund due to either amounts owed to a state agency or outstanding child or spousal support payments.

Proposed law retains present law but changes the method of notification from certified mail to mail.

Present law authorizes the secretary to file suit by ordinary process for the collection of taxes. Present law further authorizes collection by expedited summary court proceeding for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, and other costs relating to taxes collected and administered by the department.

Proposed law retains present law but restricts the use of expedited summary court proceedings to the following instances:

- (1) The proceeding is for collection of a tax assessment that has become final or is for an assessment of a tax that is shown on the face of a tax return, or an assessment and claim in a bankruptcy or receivership proceeding.
- (2) A jeopardy assessment that has been or could be issued against a defendant.
- (3) A rule to cease business has been or is concurrently brought against the defendant.
- (4) The matter involves the special authority to enforce collection of taxes where a corporation, limited liability company, or limited partnership fails to file a return or remit income taxes withheld from the wages of its employees.

Present law provides procedures for the payment of tax under protest, which includes the taxpayer notifying the department of an intention to file suit to recover their payment.

Proposed law retains present law and adds the filing of a petition with the board as an option for a taxpayer who pays under protest and seeks to recover their payment.

Proposed law adds authority for the secretary to promulgate rules and regulations in accordance with the Administrative Procedure Act concerning the waiver of penalties, including the establishment of a voluntary disclosure program.

Board of Tax Appeals - General provisions

Present law allows the board to issue subpoenas and order depositions.

Proposed law retains present law and adds authorization for the board to compel written discovery.

Present law allows the board to assign a single board member to serve as a hearing officer for a case and report back to the entire board.

Proposed law retains present law and adds authority for the single member to report back on the law.

Present law requires that the board's decisions, orders, and judgments be published.

Proposed law retains present law and provides that the board's internal deliberative communications on its cases are to be considered judicial proceedings for purposes of present law governing public records.

Proposed law authorizes the board and the secretary to enter into an agreement for a fixed annual interagency transfer to the board as payment in lieu of filing fees owed by the secretary.

Board of Tax Appeals - Appeals of decisions of the board

Present law establishes procedures for appeal of a decision of the board to a district court as follows: the department or taxpayer may appeal within 30 days of the date of the decision; before filing an appeal, the party intending to appeal must notify the board of their intention; a taxpayer appealing a decision where the board has found tax to be due must post a bond equal to one and one-half times the amount of the tax, interest, and other unspecified additional amounts required by present law.

Proposed law retains present law regarding an appeal of a decision of the board with respect to the notice for and timing of the filing of an appeal.

Proposed law changes present law by adding a limitation on the requirement for the posting of a bond to exclude from such requirement, any taxpayer who has paid under protest. Further, provisions are added specifying that the nature of the bond and procedures for posting bond shall be consistent with those required for a suspensive appeal in a civil matter under the Code of Civil Procedure.

Proposed law further provides that deadlines other than for the time and notice for the initial filing of the appeal, and rules governing the briefing and answering of the appeal shall be the same as provided for in civil matters under the Code of Civil Procedure and all applicable court rules.

Proposed law changes the venue for appellate review of board decisions from a district court to a court of appeal. Proposed law adds provisions for the respective court of appeal to exercise supervisory jurisdiction over a case pending before the board in the same manner as provided for in a civil matter pending in a district court within its circuit.

Present law authorizes the appellate court to modify, reverse, or remand a decision of the board.

Proposed law retains present law and adds authorization for the appellate court to order that a case be immediately transferred to a district court to consider issues of constitutionality.

Present law provides for a myriad of time lines for a decision of the board to become final, some of which are obsolete as some steps and terms do not exist under contemporary allocation of appellate court authority.

Proposed law deletes present law and provides that a decision of the board becomes final under the following two circumstances: if the decision is not appealed within 30 days, or, if it is timely appealed, then the decision of the appellate court is final under the same rules and timing as is provided for in civil matters under the Code of Civil Procedure.

Present law contains provisions requiring that a party petition the legislature for permission to appeal a decision of the board in a claim against the state proceeding.

Proposed law removes provisions of present law requiring a petition to the legislature, and instead authorizes a suit on a claim against the state if that cause of action is otherwise allowed by law.

Authorizes the Board of Tax Appeals and the secretary of the Department of Revenue to enter into an agreement for a fixed annual interagency transfer as payment in lieu of filing fees owed by the secretary.

Authorizes the La. State Law Institute to revise the La. Revised Statutes of 1950, as amended to change certain references.

Effective July 1, 2014.

(Amends R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 299.9, 299.39, 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1565(C)(3), 1574(intro. para.), 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(intro. para.), 1603(A), and 1688; Adds R.S. 47:1574(5))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added La. Dept. of Revenue enforcement and collection provisions regarding taxpayer notification of an offset to his tax refund due to amounts owed to a state agency for child or spousal support. The taxpayer notification method is changed from certified mail to mail.
2. Deleted provisions governing recusal of members of the Board of Tax Appeals.
3. Deleted proposed law regarding changes to the Administrative Procedure Act governing legislative oversight of rulemaking by the Board of Tax Appeals.

House Floor Amendments to the engrossed bill.

1. Made technical amendments.