

CONFERENCE COMMITTEE REPORT

HB 425

2017 Regular Session

Magee

June 8, 2017

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

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 425 by Representative Magee, recommend the following concerning the Reengrossed bill:

1. That Senate Committee Amendment Nos. 1 through 4 by the Senate Committee on Revenue and Fiscal Affairs (#2161) be adopted.
2. That Senate Committee Amendment Nos. 5 and 6 by the Senate Committee on Revenue and Fiscal Affairs (#2161) be rejected.
3. That the following amendments to the reengrossed bill be adopted:

AMENDMENT NO. 1

On page 3, delete lines 3 through 6 in their entirety, and insert the following:

"(2)(a) If a taxpayer pays ad valorem taxes under protest, the taxpayer shall notify the Department of Revenue by submitting a copy of the payment under protest notice, along with a copy of the lawsuit that was filed. Notice shall be provided to the department within five business days of the date the lawsuit is filed. If the taxpayer prevails in the suit against the political subdivision, the amount of the credit issued under the provisions of this Section for ad valorem taxes paid by the taxpayer that the court determined not to be due shall be subject to recapture by the department as provided for in R.S. 47:1621(E), with interest at the rate provided in R.S. 9:3500(B)(1), except as may be otherwise provided in Subsection G of this Section. The taxpayer and the local taxing authorities shall notify the department of the decision by submitting a copy of the final, non-appealable judgment to the department.

(b) Any action by the Department of Revenue to recapture the tax credits shall be initiated within two years from the date that the department receives notice of the final judgment in the suit related to the payment of the taxes under protest.

G. Commencing no later than January 31, 2016, the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall review the credit authorized pursuant to the provisions of this Section to determine if the economic benefit provided by such credit outweighs the loss of revenue realized by the state as a result of awarding such credit. The House and Senate committees shall make a specific recommendation no later than March 1, 2017, to either continue the credit or to terminate the credit. (1) Notwithstanding any contrary provision of R.S. 47:2134(C), if a suit is timely filed and the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters, the collecting officer or officers shall not be required to segregate the amount paid under protest or hold the amount paid under protest in escrow pending the outcome of the suit.

(2) The Department of Revenue shall not pursue any action to recapture credits issued for ad valorem taxes related to a suit challenging the legality of the ad

valorem tax on vessels in Outer Continental Shelf Lands Act waters if the taxpayer prevails, the collecting officer or officers was not required to segregate or escrow the amount paid in accordance with this Subsection, and the taxpayer does not receive a refund of the ad valorem taxes paid from the collecting officer or officers.

(3) In the event the taxpayer prevails in a suit challenging the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Acts waters and the collecting officer or officers refunds any amount paid under protest that was not required to be segregated or held in escrow, the taxpayer shall file an amended tax return within sixty days of the date of issuance of the refund reflecting the amount of the refund and any interest paid on the refunded amount as a reduction in the ad valorem tax credit originally received for the taxes paid under protest. Any taxpayer failing to file an amended return as set forth in this Subsection shall be subject to the penalty provided for in R.S. 47:1602.

(4) This Subsection shall not apply to any payment under protest made by a taxpayer challenging the correctness of an assessment as provided in R.S. 47:2134(B).

Section 2. The provisions of this Act shall apply to income tax periods beginning on and after January 1, 2017, and corporation franchise tax periods beginning on and after January 1, 2018."

Respectfully submitted,

Representative Tanner Magee

Senator Jean-Paul J. Morrell

Representative Neil C. Abramson

Senator R.L. Bret Allain, II

Representative Blake Miguez

Senator Jay Luneau

 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)]

CONFERENCE COMMITTEE REPORT DIGEST
HB 425
2017 Regular Session
Magee
Keyword and oneliner of the instrument as it left the House

TAX CREDITS: Removes the restriction against taxes paid under protest concerning claims for the ad valorem tax credit for certain offshore vessels

Report adopts Senate amendments to:

1. Make technical changes to title and enacting clause.

Report rejects Senate amendments which would have:

1. Added an exception to the application of underpayment interest if the taxpayer repays the credit within 30 days of the final judgment.
2. Limited the ability of the taxpayer to claim the credit if the protest relates to a challenge to the tax based on the Louisiana constitution.

Report amends the bill to:

1. Add a requirement that the taxpayer notify the Dept. of Revenue of the finality of the judgment.
2. Add a prohibition on the initiation of a recapture action for amounts of tax credits by the Dept. of Revenue under certain circumstances if the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters.
3. Add an exception to the requirement that a collector of ad valorem taxes segregate a payment under a protest if the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters, as provided in proposed law.
4. Add a requirement that a taxpayer who prevails in a suit for taxes paid under protest if the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters and receives a refund shall file an amended tax return within 60 days of the date of issuance of the refund that reflects all amounts refunded as a reduction against the ad valorem tax credit originally received by that taxpayer for the taxes paid under protest. In such case, a taxpayer who fails to file an amended tax return shall be subject to penalties as provided in present law.
5. Make technical changes to applicability provision.

Digest of the bill as proposed by the Conference Committee

Present law authorizes an income and corporation franchise tax credit for ad valorem taxes paid without protest on vessels in Outer Continental Shelf Lands Act Waters which have been certified by the taxpayer to the assessor as being principally located in such areas within the calendar year immediately preceding the taxable year of assessment of the vessel.

Proposed law changes present law by removing the restriction on eligibility for the credit for taxes which have been paid under protest.

Proposed law adds requirements concerning taxpayer notification to the Dept. of Revenue that they have paid ad valorem taxes under protest, which include the submission of copies of the payment under protest notice and the suit that was filed. Requires the notice to the department be made within five business days of the filing of the suit. If the taxpayer prevails in the suit against the political subdivision, the amount of the credit issued under proposed law for ad valorem taxes paid by the taxpayer that are determined by the court to not be due to the political subdivision shall be subject to recapture by the department as provided in present law, with judicial interest as provided in present law, except as may be otherwise provided in proposed law concerning a suit filed in which the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters.

Proposed law requires the taxpayer to notify the Dept. of Revenue when the judgment is final and provides that the department has two years to recapture the credit after receiving notice of a final judgment.

Present law requires that collectors of ad valorem taxes segregate payments under protest and hold the payment pending the outcome of a suit challenging the tax that is filed within 30 days of the date the payment under protest is made.

Proposed law provides an exception to the requirement in present law for a collector of ad valorem taxes to segregate a payment under protest if the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters.

Proposed law prohibits the Dept. of Revenue from pursuing action to recapture credits issued for ad valorem taxes related to a suit for taxes paid under protest if the taxpayer prevails in the suit and if the sole challenge in the suit is a challenge of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters, the collecting officer or officers was not required to segregate or escrow the amount paid in accordance with proposed law, and the taxpayer does not receive a refund of the ad valorem taxes paid from the collecting officer or officers.

Proposed law requires the filing of an amended tax return by a taxpayer who prevails in a suit for taxes paid under protest if the sole challenge in the suit is that of the legality of the ad valorem tax on vessels in Outer Continental Shelf Lands Act waters and the collecting officer or officers refunds any amount paid under protest that was not required to be segregated or held in escrow. The amended return shall be filed within 60 days of the issuance of the refund and reflect the amount of the refund and any interest paid on the refunded amount as a reduction in the ad valorem tax credit originally received for the taxes paid under protest. A taxpayer who fails to file an amended return as set forth in proposed law shall be subject to penalties as provided in present law.

Present law requires that beginning Jan. 1, 2016, the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall review the tax credit for purposes of determining if the economic benefit of the credit outweighs the cost to the state. The committees are required to make a recommendation to the House of Representatives and the Senate by March 1, 2017, regarding whether to retain or terminate the credit.

Proposed law removes this expired provision.

Applicable to income tax periods beginning on and after January 1, 2017, and franchise tax periods beginning on and after January 1, 2018.

Effective July 1, 2017.

(Amends R.S. 47:6006.1(A), (D)(2), (F), and (G))