SLS 18RS-647

ORIGINAL

2018 Regular Session

SENATE BILL NO. 420

BY SENATOR JOHNS

MOVABLE PROPERTY. Provides with respect to administration, disposition, enforcement, and adjudication of state and local taxes, fees, and receipts and the Board of Tax Appeals. (gov sig)

1	AN ACT
2	To amend and reenact R.S. 9:168, R.S. 47:337.46, 337.51(A)(2) and (3), 337.64(C)(1), (2),
3	(3), (6), (7), 337.77(H), 1401, 1402(A), 1403(C), 1434(A), 1436(A)(3) and the
4	introductory paragraph of (B), and 1621(J), relative to state and local taxes, fees, and
5	receipts and the Board of Tax Appeals; to provide with respect to the collection,
6	administration, disposition, enforcement, and adjudication of certain taxes, fees, and
7	other receipts; to provide with respect to disputes concerning certain taxes,
8	unclaimed property, and other claims against the state; to provide with respect to
9	actions to establish a claim; to provide relative to Board of Tax Appeals; and to
10	provide for related matters.
11	Be it enacted by the Legislature of Louisiana:
12	Section 1. R.S. 9:168 is hereby amended and reenacted to read as follows:
13	§168. Action to establish claim
14	After receipt of a written decision by the administrator reflecting the
15	administrator's determination that a holder must remit an amount under any
16	provision of this Chapter, the holder may within thirty days of the date of the
17	written decision file a written protest with the administrator requesting a

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1	formal redetermination. A person aggrieved by a decision of the administrator or
2	whose request for formal redetermination or claim filed pursuant to R.S. 9:167
3	has not been acted upon within ninety days after its filing may maintain an action de
4	novo to establish the claim or otherwise adjudicate the dispute before the Board
5	of Tax Appeals or in a court of competent jurisdiction in this state, naming the
6	administrator as a defendant. The action shall be brought within ninety days after the
7	decision of the administrator or, if the administrator has failed to allow or deny the
8	claim , or issue a written final decision on a request for formal redetermination,
9	the action shall be brought within one hundred eighty days after its filing.
10	Section 2. R.S. 47:337.46, 337.51(A)(2) and (3), 337.64(C)(1), (2), (3), (6), (7),
11	337.77(H), 1401, 1402(A), 1403(C), 1434(A), 1436(A)(3), and the introductory paragraph
12	of (B) and 1621(J) are hereby amended and reenacted to read as follows:
13	§337.46. Special authority to enforce collection of taxes collected or withheld;
14	personal liability of certain officers and directors
15	* * *
16	C. An action may be brought before the Board of Tax Appeals or any
17	court of competent jurisdiction pursuant to any of the provisions of R.S.
18	47:337.33 or 337.61 to enforce the obligation of a taxpayer, dealer, or of any
19	party subject to this Section.
20	* * *
21	§337.51. Notice of assessment and right to appeal
22	А.
23	* * *
24	(2) If no report has been timely filed, the collector shall send a notice by
25	certified mail to the taxpayer against whom the assessment is imposed at any address
26	obtainable from any private entity which will provide such address free of charge or
27	from any federal, state, or local government entity, including but not limited to the
28	United States Postal Service or from the United States Postal Service certified
29	software. This notice shall inform the taxpayer of the assessment and that he has

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1	thirty calendar days from the date of the notice to do either of the following:	
2	(a) Pay the amount of the assessment.	
3	(b) Appeal to the Board of Tax Appeals for determination of the	
4	assessment.	
5	(c) Pay under protest in accordance with R.S. 47:337.63 and then either file	
6	suit or file a petition with the Board of Tax Appeals, all as provided for in that	
7	Section.	
8	(3) If the taxpayer has not paid under protest in accordance with the	
9	provisions of R.S. 47:337.63, or pursued an alternative remedy in accordance with	
10	R.S. 47:337.64, or filed an appeal with the Board of Tax Appeals within the thirty-	
11	day period provided for in Paragraph (1) of this Subsection, the assessment shall be	
12	final and shall be collectible by distraint and sale as provided in this Part. If an	
13	appeal for a redetermination of the assessment has been timely and properly filed,	
14	the assessment shall not be collectible by distraint and sale until such time as the	
15	assessment has been redetermined or affirmed by the Board of Tax Appeals or the	
16	court which last reviews the matter.	
17	* * *	
18	§337.64. Alternative remedy for dealers	
19	* * *	
20	C.(1)(a) The taxpayer may file with the court a rule to set bond or other	
21	security, which shall be set for hearing within thirty days of the filing of the rule to	
22	set bond or other security, and shall attach to the petition evidence of the taxpayer's	
23	ability to post bond or other security.	
24	(b) The term "other security" as set forth in this Section shall include but not	
25	be limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts	
26	receivable, or other encumbrance of assets.	
27	(2)(a) The court may either order the posting of commercial bond or other	
28	security in an amount determined by the court not to be less than the amount of	
29	unpaid taxes, interest, and penalties demanded in the assessment or may order the	

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taxpayer to make a payment under protest pursuant to the provisions of state law and
this Chapter in the amount of such unpaid taxes, interest, and penalties. The court
may order that a portion of the unpaid taxes, interest, and penalties be paid under
protest and the balance secured by the posting of a bond or other security as provided
herein.

(b) The Board of Tax Appeals may order the posting of commercial bond 6 7 or other security in an amount to be determined by the Board to be reasonable 8 security for the amount of unpaid taxes, interest, and penalties demanded in the 9 assessment, or may order the taxpayer to make a payment under protest 10 pursuant to the provisions of state law and this Chapter in an amount 11 determined by the board to be reasonable security considering the amount of such unpaid taxes, interest, and penalties. The board may order that a portion 12 13 of the unpaid taxes, interest, and penalties be paid under protest and the 14 balance secured by the posting of a bond or other security as provided herein.

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

20 (6) The provisions of this Section shall be applicable to either dealers or
 21 other taxpayers, and any references herein to taxpayers shall also be applicable
 22 to dealers.

*

23(7) In lieu of dismissal of the taxpayer's appeal in those instances where24a taxpayer assessed pursuant to R.S. 47:337.50(A) has filed a timely appeal to25the Board of Tax Appeals for redetermination of the assessment in the manner26authorized by R.S. 47:337.51(A)(1) but not authorized under the then applicable27provisions of R.S. 47:337.51(A)(2), and following a contradictory hearing on a28rule requested by any party, the Board of Tax Appeals may order the payment29of bond, other security, or full or partial payment under protest, as provided for

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1	in this Section.
2	* * *
3	§337.77. Refunds of overpayments authorized
4	* * *
5	H.(1) A refund may be claimed pursuant to the provisions of this Section,
6	subject to the other conditions or limitations of this Chapter, on an amount paid
7	on an otherwise final assessment.
8	(2) The provisions of this Subsection shall not apply if the assessment
9	became final following an appeal of the assessment to the Board of Tax Appeals,
10	or if an assessment became final pursuant to a judgment in a payment under
11	protest action brought pursuant to R.S. 47:337.63.
12	(3) The provisions of this Section shall not apply if the collector
13	establishes that the taxpayer received delivery of the Notice of Assessment
14	provided for in R.S. 47:337.51 at least ten business days prior to the deadline for
15	appealing that assessment. The presumption of delivery on the date of
16	attempted delivery by the United States Postal Service, as provided for in R.S.
17	47:337.51(B)(4), shall be applicable to any taxpayer who fails to collect his letter
18	after due notice pursuant to the provisions of that Paragraph.
19	* * *
20	§1401. Creation of Board of Tax Appeals
21	In order to provide a board that will act as an appeal board to hear and decide,
22	at a minimum of expense to the taxpayer, questions of law and fact arising from
23	disputes or controversies between a taxpayer and the any collector of revenue of the
24	State of Louisiana in the enforcement of any tax, excise, license, permit or any other
25	tax, fee, penalty, receipt or other law administered by the a collector, and to
26	exercise jurisdiction other jurisdictions, including jurisdiction as provided for in
27	the Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred
28	to as the "board", is created as an independent agency in the Department of State
29	Civil Service, and for the purposes of this Chapter. The Local Tax Division is created

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1	as an independent agency and authority within the board for the purposes of
2	exercising jurisdiction over disputes involving local collectors.
3	§1402. Membership of board; qualifications; appointment; term; vacancy; salary
4	A.(1) The Board of Tax Appeals shall be composed of three members who
5	shall be attorneys with tax law experience and who shall be qualified electors of the
6	state. At least two of the board members shall be attorneys with tax law experience.
7	At least one of these two board members shall be certified as a Tax Law Specialist
8	by the Louisiana Board of Legal Specialization. Each member shall be appointed by
9	the governor. Vacancies shall be filled in the manner of the original appointment.
10	* * *
11	§1403. Designation of officers; domicile; quorum; seal
12	* * *
13	C. A majority of the members of the board shall constitute a quorum for the
14	transaction of the business of the board, except as otherwise provided in this Chapter.
15	A vacancy in the board shall not impair the powers nor affect the duties of the board,
16	nor of the remaining members of the board. In the event of a vacancy or in the
17	absence of a board member, the chairman, or vice chairman during the absence of
18	the chairman, may order a case involving a state collector to be heard in accordance
19	with Paragraph (B)(2) of this Section, and the hearing judge shall render the
20	judgment of the board. Except as otherwise provided for in this Chapter, and
21	specifically excluding any case assigned to the Local Tax Division, the entire
22	board may participate in the disposition of any case heard by the Board of Tax
23	<u>Appeals.</u>
24	* * *
25	§1434. Judicial review of decision of the board
26	A. Within thirty days of the signing of a decision or judgment of the board,
27	the collector or the taxpayer any party may file a motion with the board for review
28	of the decision or judgment by the appropriate appellate court.

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1	§1436. Determination of which appellate court has jurisdiction		
2	A. A decision or judgment of the board in a case by or against a state		
3	collector may be reviewed as follows:		
4	* * *		
5	(3) In the case of a corporation or other juridical person which has a		
6	principal office or agency in Louisiana, then by the court of appeal for the parish		
7	where such principal office or agency is located.		
8	* * *		
9	B. A judgment of the board in a case by or against a local collector may be		
10	reviewed as follows:		
11	* * *		
12	§1621. Refunds of overpayments authorized		
13	* * *		
14	J.(1) A refund may be claimed pursuant to the provisions of this Section,		
15	subject to the other conditions or limitations of this Chapter, on an amount paid		
16	on an otherwise final assessment.		
17	(2) The provisions of this Subsection shall not apply if the assessment		
18	became final following an appeal of the assessment to the Board of Tax Appeals,		
19	or if an assessment became final pursuant to a judgment in a payment under		
20	protest action brought pursuant to R.S. 47:1565.		
21	(3) The provisions of this Subsection shall not apply if the collector		
22	establishes that the taxpayer received delivery of the Notice of Assessment		
23	provided for in R.S. 47:1565 at least ten business days prior to the deadline for		
24	appealing that assessment.		
25	(4) A collector may elect to send to a taxpayer or dealer by regular mail		
26	a letter addressed in the same manner as provided in R.S. 47:1565(A) of this		
27	Section to advise that the failure to collect certified or registered mail sent by		
28	the collector may result in the loss of appeal rights concerning the uncollected		
29	notice of assessment. If the collector mails this letter on the same date as the		

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1	collector mails a notice of assessment pursuant to R.S. 47:1565(A), then any
2	notice of assessment returned to the collector because a dealer failed to collect
3	it following attempted delivery by the United States Postal Service shall be
4	deemed to have been received for the purposes of this Subsection on the date
5	that the United States Postal Service record indicates that the United States
6	Postal Service first attempted to deliver the notice of assessment to the dealer.
7	A certificate of mailing of other proof of mailing from the United States Postal
8	Service shall establish that this letter was transmitted by regular mail, and if
9	this regular mailed notice is not returned to the secretary as undeliverable then
10	there shall be a presumption concerning the delivery of the notice of assessment
11	as provided for in this paragraph.
12	Section 3. The Local Tax Division of the Board of Tax Appeals is authorized to
13	coordinate with the Uniform Local Sales Tax Board created pursuant to R.S.
14	47:337.102 concerning the creation of an electronic filing platform, and the Local Tax
15	Division and the use of local funds dedicated to the operations of the Local Tax Division
16	pursuant to R.S. 47:302(K) shall not be subject to the provisions of Subpart C of Part
17	I or of Part V-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes
18	of 1950, as amended.
19	Section 4. This Act shall become effective upon signature by the governor or, if not
20	signed by the governor, upon expiration of the time for bills to become law without signature
21	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
22	vetoed by the governor and subsequently approved by the legislature, this Act shall become

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

	DIGEST	
SB 420 Original	2018 Regular Session	Johns

<u>Proposed law</u> provides relative to the Board of Tax Appeals and its powers, duties, functions, membership, officers, and procedures.

<u>Proposed law</u> provides procedures for the establishment of a claim, notice of assessment, appeals, and related actions, including refunds for overpayment. Sets forth procedures and

Page 8 of 9 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions. requirements for the posting of commercial bonds or other security for the amount of unpaid, taxes, interest, and penalties. Provides procedures for payment under protest. Provides for redetermination of an assessment and for judicial review.

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

(Amends R.S. 9:168, R.S. 47:337.46, 337.51(A)(2) and (3), 337.64(C)(1), (2), (3), (6), (7), 337.77(H), 1401, 1402(A), 1403(C), 1434(A), 1436(A)(3)(intro para), (B), and 1621(J))