

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. 47:337.64(C)(1), (2), (3), and (4), 1401, 1402(A)(1), 1403(C),
3 1434(A), the introductory paragraph of R.S. 47:1436(A), R.S. 47:1436(A)(3), the
4 introductory paragraph of R.S. 47:1436(B) and to enact R.S. 47:337.29(C),
5 337.46(C), 337.51(D), 337.64(C)(6) and (7), 337.77(H), 1565(D), and 1621(J), and
6 to repeal R.S. 47:337.51(B)(4) and 337.64(B)(2), relative to state and local taxes,
7 fees, and receipts and the Board of Tax Appeals; to provide with respect to the
8 collection, administration, disposition, enforcement, and adjudication of certain
9 taxes, fees, and other receipts; to provide with respect to disputes concerning certain
10 taxes and other claims against the state; to provide with respect to actions to establish
11 a claim; to provide relative to Board of Tax Appeals; and to provide for related
12 matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:337.64(C)(1), (2), (3), and (4), 1401, 1402(A)(1), 1403(C),
15 1434(A), the introductory paragraph of R.S. 47:1436(A), R.S. 47:1436(A)(3), the
16 introductory paragraph of R.S. 47:1436(B) are hereby amended and reenacted and R.S.
17 47:337.29(C), 337.46(C), 337.51(D), 337.64(C)(6) and (7), 337.77(H), 1565(D), and

1 1621(J), are hereby enacted to read as follows:

2 §337.29. Dealers required to keep records

3 * * *

4 **C. Any dealer shall have an obligation to use reasonable means to notify**
5 **and provide a collector with accurate and updated information pertaining to its**
6 **proper address and the names and contact information for those officers or**
7 **directors, or members or managers having direct control or supervision over**
8 **its local sales and use taxes and those charged with the responsibility of filing**
9 **a dealer's sales and use tax return with the collector. This obligation shall be**
10 **continuing and a dealer shall notify the collector of any changes, additions, or**
11 **deletions within thirty calendar days of any change.**

12 * * *

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 * * *

23 **D.(1) A collector may elect to send to a taxpayer or dealer by regular**
24 **mail a copy of the notice of assessment containing the same information and**
25 **addressed in the same manner as provided for in Subsection A of this Section.**
26 **If the collector mails this regular mail notice on the same date and to the same**
27 **address as the collector mails a notice of assessment by certified mail, then the**
28 **notice transmitted by regular mail shall be deemed to have been received by the**
29 **taxpayer or dealer on the earlier of the date that the United States Postal**

1 Service record indicates that it first attempted to deliver the notice of
 2 assessment to the taxpayer or dealer, or on the seventh business day from the
 3 date of mailing. A certificate of mailing or other proof of mailing from the
 4 United States Postal Service shall establish that this copy of the notice of
 5 assessment was transmitted by regular mail. Other evidence may be used to
 6 alternatively establish the presumption of delivery provided for in this
 7 Subsection, including an affidavit of the person who transmitted the notice
 8 attesting to the fact that it was transmitted in accordance with the provisions of
 9 this Subsection.

10 (2) Notwithstanding any provision of law to the contrary, if a collector,
 11 in his sole discretion, chooses not to send the letter provided for in Paragraph
 12 (1) of this Subsection, the absence of transmitting the notice by regular mail
 13 shall not be used to establish that a notice of assessment was either not mailed
 14 or not received.

15 (3) If a collector, in his sole discretion, sends the letter provided for in
 16 Paragraph (1) of this Subsection, the transmittal of the notice shall have no
 17 impact on the time within which the amount of the assessment is required to be
 18 paid or paid under protest, the time within which any appeal to the Board of
 19 Tax Appeals is required to be made as provided for in Subsection A of this
 20 Section, or the time within which the assessment becomes final as provided for
 21 in Subsection B of this Section.

* * *

§337.64. Alternative remedy for dealers

* * *

25 C.(1)(a) The taxpayer may file with the court or the Board of Tax Appeals
 26 a rule to set bond or other security, which shall be set for hearing within thirty days
 27 of the filing of the rule to set bond or other security, and shall attach to the petition
 28 evidence of the taxpayer's ability to post bond or other security.

29 (b) The term "other security" as set forth in this Section shall include but not

1 be limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts
2 receivable, or other encumbrance of assets.

3 (2)(a) The court may either order the posting of commercial bond or other
4 security in an amount determined by the court ~~not to be less than~~ **to be reasonable**
5 **security for** the amount of unpaid taxes, interest, and penalties demanded in the
6 assessment or may order the taxpayer to make a payment under protest pursuant to
7 the provisions of state law and this Chapter in **an amount determined by the court**
8 **to be reasonable security considering** the amount of such unpaid taxes, interest,
9 and penalties. The court may order that a portion of the unpaid taxes, interest, and
10 penalties be paid under protest and the balance secured by the posting of a bond or
11 other security as provided herein.

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

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

25 (4) If the taxpayer timely files the suit **or any petition or rule** referred to
26 herein, no collection action shall be taken in connection with the assessment of taxes,
27 interest, and penalties, which are the subject of the taxpayer's ~~suit~~ **cause of action**,
28 unless the taxpayer fails to post bond or other security or make the payment under
29 protest required by the **Board of Tax Appeals or** court; however, the collector shall

1 be permitted to file a reconventional demand against the taxpayer in ~~such suit.~~ **the**
 2 **cause of action. A collector may procure an appraisal or conduct discovery**
 3 **concerning the value and validity of security offered prior to the date for filing**
 4 **the collector's response or opposition to a rule set for hearing under Subsection**
 5 **C of this Section.**

6 * * *

7 **(6) The provisions of this Section shall be applicable to either dealers or**
 8 **other taxpayers, and any references herein to taxpayers shall also be applicable**
 9 **to dealers.**

10 **(7) In lieu of dismissal of the taxpayer's appeal in those instances where**
 11 **a taxpayer assessed pursuant to R.S. 47:337.50(A) has filed a timely appeal to**
 12 **the Board of Tax Appeals for redetermination of the assessment in the manner**
 13 **authorized by R.S. 47:337.51(A)(1) but not authorized under the applicable**
 14 **provisions of R.S. 47:337.51(A)(2), and following a contradictory hearing on a**
 15 **rule requested by any party, the Board of Tax Appeals may order the payment**
 16 **of bond, other security, or full or partial payment under protest, as provided for**
 17 **in this Section.**

18 * * *

19 §337.77. Refunds of overpayments authorized

20 * * *

21 **H.(1) A refund may be claimed pursuant to the provisions of this Section,**
 22 **subject to the other conditions or limitations of this Chapter, on an amount paid**
 23 **on an otherwise final assessment.**

24 **(2) The provisions of this Subsection shall not apply if the assessment**
 25 **became final following an appeal of the assessment to the Board of Tax Appeals,**
 26 **or if an assessment became final pursuant to a judgment in an action brought**
 27 **pursuant to R.S. 47:337.63 or 337.64.**

28 **(3) The provisions of this Subsection shall apply only if the taxpayer or**
 29 **dealer establishes that it did not receive the assessment prior to the deadline for**

1 **appealing that assessment, and the collector did not comply with the provisions**
2 **of R.S. 47:337.51(D).**

3 * * *

4 §1401. Creation of Board of Tax Appeals

5 In order to provide a board that will act as an appeal board to hear and decide,
6 at a minimum of expense to the taxpayer, questions of law and fact arising from
7 disputes or controversies between a taxpayer and ~~the any~~ collector of revenue of the
8 State of Louisiana in the enforcement of any tax, excise, license, permit or any other
9 **tax, fee, penalty, receipt or other** law administered by ~~the a~~ collector, and to
10 exercise ~~jurisdiction~~ **other jurisdiction as provided by law, including jurisdiction**
11 as provided for in the Uniform Local Sales Tax Code, the Board of Tax Appeals,
12 hereinafter referred to as the "board", is created as an independent agency in the
13 Department of State Civil Service, and for the purposes of this Chapter. The Local
14 Tax Division is created as an independent agency and authority within the board for
15 the purposes of exercising jurisdiction over disputes involving local collectors.

16 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

17 A.(1) The Board of Tax Appeals shall be composed of three members who
18 shall be attorneys **with tax law experience** and who shall be qualified electors of the
19 state. ~~At least two of the board members shall be attorneys with tax law experience.~~
20 At least ~~one~~ **two** of these ~~two~~ board members shall be certified as a Tax Law
21 Specialist by the Louisiana Board of Legal Specialization **or possess a Masters of**
22 **Law in Taxation or Tax Law**. Each member shall be appointed by the governor.
23 Vacancies shall be filled in the manner of the original appointment.

24 * * *

25 §1403. Designation of officers; domicile; quorum; seal

26 * * *

27 C. A majority of the members of the board shall constitute a quorum for the
28 transaction of the business of the board, except as otherwise provided in this Chapter.
29 A vacancy in the board shall not impair the powers nor affect the duties of the board,

1 nor of the remaining members of the board. In the event of a vacancy or in the
 2 absence of a board member, the chairman, or vice chairman during the absence of
 3 the chairman, may order a case involving a state collector to be heard in accordance
 4 with Paragraph (B)(2) of this Section, and the hearing judge shall render the
 5 judgment of the board. **Except as otherwise provided for in this Chapter, and**
 6 **specifically excluding any case assigned to the Local Tax Division, the entire**
 7 **board may participate in the disposition of any case heard by the Board of Tax**
 8 **Appeals.**

9 * * *

10 §1434. Judicial review of decision of the board

11 A. Within thirty days of the signing of a decision or judgment of the board,
 12 ~~the collector or the taxpayer~~ **any party** may file a motion with the board for review
 13 of the decision or judgment by the appropriate appellate court.

14 * * *

15 §1436. Determination of which appellate court has jurisdiction

16 A. A decision or judgment of the board in a case **by or** against a state
 17 collector may be reviewed as follows:

18 * * *

19 (3) In the case of a corporation **or other juridical person** which has a
 20 principal office or agency in Louisiana, then by the court of appeal for the parish
 21 where such principal office or agency is located.

22 * * *

23 B. A judgment of the board in a case **by or** against a local collector may be
 24 reviewed as follows:

25 * * *

26 §1565. Notice of assessment and right to appeal

27 * * *

28 **D.(1) The secretary may elect to send to a taxpayer or dealer by regular**
 29 **mail a copy of the notice of assessment containing the same information and**

1 addressed in the same manner as provided in Subsection A of this Section. If the
 2 secretary mails this regular mail notice within five business days of mailing the
 3 notice of assessment to the same address as the secretary mails the notice of
 4 assessment by certified mail, then the notice transmitted by regular mail shall
 5 be deemed to have been received by the taxpayer or dealer for the purposes of
 6 this Subsection on the earlier of the date that the United States Postal Service
 7 record indicates that it first attempted to deliver the notice of assessment to the
 8 taxpayer or dealer, or on the seventh business day from mailing. A certificate
 9 of mailing or other proof of mailing from the United States Postal Service shall
 10 establish that this copy of the notice of assessment was transmitted by regular
 11 mail. Other evidence may be used to alternatively establish the presumption of
 12 delivery provided for in this Subsection, including an affidavit of the person
 13 who transmitted the notice attesting to the fact that it was transmitted in
 14 accordance with the provisions of this Subsection.

15 (2) Notwithstanding any provision of law to the contrary, if the secretary
 16 in his sole discretion chooses not to send the letter provided for in Paragraph (1)
 17 of this Subsection, the absence of transmitting the notice by regular mail shall
 18 not be used to establish that a notice of assessment was either not mailed or not
 19 received.

20 (3) If the secretary in his sole discretion sends the letter provided for in
 21 Paragraph (1) of this Subsection, the transmittal of the notice shall have no
 22 impact on: the time within which the amount of the assessment is required to
 23 be paid or paid under protest, the time within which any appeal to the Board
 24 of Tax Appeals is required to be made as provided for in Subsection A of this
 25 Section, or the time within which the assessment becomes final as provided for
 26 in Subsection B of this Section.

* * *

§1621. Refunds of overpayments authorized

* * *

1 **J.(1) A refund may be claimed pursuant to the provisions of this Section,**
2 **subject to the other conditions or limitations of this Chapter, on an amount paid**
3 **on an otherwise final assessment.**

4 **(2) The provisions of this Subsection shall not apply if the assessment**
5 **became final following an appeal of the assessment to the Board of Tax Appeals,**
6 **or if an assessment became final pursuant to a judgment in an action brought**
7 **pursuant to R.S. 47:1576.**

8 **(3) The provisions of this Subsection shall apply only if the taxpayer or**
9 **dealer establishes that it did not receive the assessment prior to the deadline for**
10 **appealing that assessment, and the secretary did not comply with the provisions**
11 **of R.S. 47:1565(D).**

12 Section 2. R.S. 47:337.51(B)(4) and 337.64(B)(2) are hereby repealed in their
13 entirety.

14 **Section 3. The Local Tax Division of the Board of Tax Appeals may coordinate**
15 **with the Uniform Local Sales Tax Board created pursuant to R.S. 47:337.102**
16 **concerning the creation of an electronic filing platform, and the Local Tax Division and**
17 **the use of local funds dedicated to the operations of the Local Tax Division pursuant**
18 **to R.S. 47:302(K) shall not be subject to the provisions of Subpart C of Part I or of Part**
19 **V-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, as**
20 **amended.**

21 **Section 4. The provisions of this Act enacting R.S. 47:337.51(D), R.S.**
22 **47:337.77(H), R.S. 47:1565(D) and R.S. 47:1621(J) shall not be applicable to any**
23 **existing assessment issued by any collector or the secretary prior to July 1, 2018, nor**
24 **shall these provisions be applicable to any pending litigation in the courts or the**
25 **Louisiana Board of Tax Appeals existing prior to the effective date of this Act. The**
26 **remaining provisions of this Act are procedural and interpretive.**

27 Section 5. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 2 effective on the day following such approval.

The original instrument was prepared by Xavier I. Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

SB 420 Engrossed

2018 Regular Session

Johns

Present law provides for the Board of Tax Appeals, notice requirements for assessments, and administration of local sales taxes.

Proposed law requires that a dealer has an obligation to use reasonable means to notify and provide a collector with accurate and updated information pertaining to its proper address and the names and contact information for those officers or directors, or members or managers having direct control or supervision over its local sales and use taxes and those charged with the responsibility of filing a dealer's sales and use tax return with the collector. Provides that this is a continuing obligation and requires the dealer to notify the collector of any changes, additions, or deletions within thirty calendar days of any change.

Proposed law provides that an action to enforce collection may be brought before the Board of Tax Appeals or any court of competent jurisdiction.

Proposed law authorizes the collector to elect to send a notice of assessment to a taxpayer or dealer by regular mail containing the same information as sent by certified mail. Provides that if the regular mailing is on the same day as the mailing by certified mail, then the notice transmitted by regular mail is deemed to be received by the taxpayer or dealer on the earlier date indicated by the U.S. Postal Service of the first attempted delivery or on the seventh business day from the date of mailing. Provides that if the collector, in his sole discretion, does not send the letter by regular mail, the absence of transmitting the notice by regular mail shall not be used to establish that a notice of assessment was either not mailed or not received. Further provides that if the collector, in his sole discretion, sends the letter, then the transmittal of the notice shall have no impact on the time within which the amount of the assessment is required to be paid or paid under protest, the time within which any appeal to the Board of Tax Appeals is required to be made as provided in present law, or the time within which the assessment becomes final as provided in present law.

Present law authorizes a taxpayer to file with the court a rule to set bond or other security which shall set a hearing within thirty days of the filing to set bond or other security. Proposed law allows the taxpayer to file this rule with the Board of Tax Appeals.

Present law authorizes the court to either order posting a commercial bond or other security in an amount determined not to be less than the amount of unpaid taxes, interest, and penalties demanded in the assessment or order the taxpayer to make payment under protest. Proposed law provides that the amount determined by the court be a reasonable security for the amount of unpaid taxes, interest, and penalties.

Proposed law authorizes the Board of Tax Appeals to order the posting of commercial bond or other security in an amount to be determined by the board to be reasonable security for the amount of unpaid taxes, interest, and penalties demanded in the assessment, or may order the taxpayer to make a payment under protest of a reasonable security considering the amount of unpaid taxes, interest, and penalties.

Present law provides if the taxpayer timely files suit, then that no action be taken in connection with assessment of taxes, interest, and penalties unless the taxpayer fails to post

bond or other security or make payment under protest. Proposed law authorizes the collector to procure an appraisal or conduct discovery concerning the value and validity of the security offered prior to the date for filing his response or opposition to the rule set for hearing.

Proposed law provides that in lieu of dismissal of the taxpayer's appeal instances where a taxpayer has filed a timely appeal to the Board of Tax Appeals for redetermination of the assessment in the manner authorized by law following a contradictory hearing on a rule requested by any party, the Board of Tax Appeals may order the payment of bond, other security, or full or partial payment under protest, as provided in proposed law.

Proposed law authorizes a refund on an amount paid on an otherwise final assessment. Proposed law does not apply if the assessment becomes final following an appeal to the Board of Tax Appeals or if the assessment becomes final after judgment. Applies only if the taxpayer or dealer establishes that it did not receive the assessment prior to the deadline for appealing the assessment and the collector did not comply with provisions in proposed law.

Present law provides that the Board of Tax Appeals be composed of three members who are attorneys and are qualified electors, at least two members shall be attorneys with tax law experience and one of the two attorneys be certified as a Tax Law Specialist by the Louisiana Board of Legal Specialization.

Proposed law keeps the membership at three attorney members with tax law experience but requires that two members be certified as a Tax Law Specialist by the Louisiana Board of Legal Specialization or possess a Masters of Laws in Taxation or Tax Law.

Proposed law authorizes the Local Tax Division of the Board of Tax Appeals to coordinate with the Uniform Local Sales Tax Board concerning the creation of an electronic filing platform, and the Local Tax Division and the use of local funds dedicated to the operations of the Local Tax Division shall not be subject to the provisions concerning the office of technological services or information technology procurement services.

Proposed law provisions contained in R.S. 47:337.51(D), R.S. 47:337.77(H), R.S. 47:1565(D) and R.S. 47:1621(J) are not be applicable to any existing assessment issued by any collector or the secretary prior to July 1, 2018, nor shall these provisions be applicable to any pending litigation in the courts or the Louisiana Board of Tax Appeals existing prior to the effective date of proposed law.

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

(Amends R.S. 47:337.64(C)(1), (2), (3), and (4), 1401, 1402(A)(1), 1403(C), 1434(A), 1436(A)(intro para), 1436(A)(3), 1436(B)(intro para); adds R.S. 47:337.29(C), 337.46(C), 337.51(D), 337.64(C)(6) and (7), 337.77(H), 1565(D), and 1621(J); repeals R.S. 47:337.51(B)(4) and 337.64(B)(2))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Adds provisions concerning a dealer's obligation to use reasonable means to notify and provide a collector with accurate and updated information.
2. Adds provisions for the collector to send a notice of assessment by regular mail.
3. Adds provisions for timely filing a suit or any petition or rule in connection with assessment of taxes, interest, and penalties.

4. Adds provisions authorizing coordination between the Local Tax Division of the Board of Tax Appeals and the Uniform Local Sales Tax Board Division.
5. Adds provisions for prospective application of additions in proposed law.