

SENATE BILL NO. 420

BY SENATOR JOHNS

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AN ACT

To amend and reenact R.S. 47:337.64(C)(1), (2), (3), and (4), 1401, 1402(A)(1), 1403(C), 1434(A), the introductory paragraph of R.S. 47:1436(A), R.S. 47:1436(A)(3), and the introductory paragraph of R.S. 47:1436(B) and to enact 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), and to repeal R.S. 47:337.51(B)(4) and 337.64(B)(2), relative to state and local taxes, fees, and receipts and the Board of Tax Appeals; to provide with respect to the collection, administration, disposition, enforcement, and adjudication of certain taxes, fees, and other receipts; to provide with respect to disputes concerning certain taxes and other claims against the state; to provide with respect to actions to establish a claim; to provide relative to Board of Tax Appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:337.64(C)(1), (2), (3), and (4), 1401, 1402(A)(1), 1403(C), 1434(A), the introductory paragraph of R.S. 47:1436(A), R.S. 47:1436(A)(3), and the introductory paragraph of R.S. 47:1436(B) are hereby amended and reenacted and 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) are hereby enacted to read as follows:

§337.29. Dealers required to keep records

* * *

C. Any dealer shall have 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. This obligation shall be

1 continuing and a dealer shall notify the collector of any changes, additions, or
2 deletions within thirty calendar days of any change.

3 * * *

4 §337.46. Special authority to enforce collection of taxes collected or withheld;
5 personal liability of certain officers and directors

6 * * *

7 C. An action may be brought before the Board of Tax Appeals or any
8 court of competent jurisdiction pursuant to any of the provisions of R.S.
9 47:337.33 or 337.61 to enforce the obligation of a taxpayer, dealer, or of any
10 party subject to this Section.

11 * * *

12 §337.51. Notice of assessment and right to appeal

13 * * *

14 D.(1) A collector may elect to send to a taxpayer or dealer by regular
15 mail a copy of the notice of assessment containing the same information and
16 addressed in the same manner as provided for in Subsection A of this Section.
17 If the collector mails this regular mail notice on the same date and to the same
18 address as the collector mails a notice of assessment by certified mail, then the
19 notice transmitted by regular mail shall be deemed to have been received by the
20 taxpayer or dealer on the earlier of the date that the United States Postal
21 Service record indicates that it first attempted to deliver the notice of
22 assessment to the taxpayer or dealer, or on the seventh business day from the
23 date of mailing. A certificate of mailing or other proof of mailing from the
24 United States Postal Service shall establish that this copy of the notice of
25 assessment was transmitted by regular mail. Other evidence may be used to
26 alternatively establish the presumption of delivery provided for in this
27 Subsection, including an affidavit of the person who transmitted the notice
28 attesting to the fact that it was transmitted in accordance with the provisions of
29 this Subsection.

30 (2) Notwithstanding any provision of law to the contrary, if a collector,

1 in his sole discretion, chooses not to send the copy of the notice of assessment
 2 provided for in Paragraph (1) of this Subsection, the absence of transmitting the
 3 notice by regular mail shall not be used to establish that a notice of assessment
 4 was either not mailed or not received.

5 (3) If a collector, in his sole discretion, sends the copy of the notice of
 6 assessment provided for in Paragraph (1) of this Subsection, the transmittal of
 7 the notice shall have no impact on the time within which the amount of the
 8 assessment is required to be paid or paid under protest, or, as provided in this
 9 Section, the time within which the assessment becomes final or the time within
 10 which an appeal may be made to the Board of Tax Appeals.

11 * * *

12 §337.64. Alternative remedy for dealers

13 * * *

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

18 (b) The term "other security" as set forth in this Section shall include but not
 19 be limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts
 20 receivable, or other encumbrance of assets.

21 (2)(a)The court may either order the posting of commercial bond or other
 22 security in an amount determined by the court ~~not to be less than~~ to be reasonable
 23 security for the amount of unpaid taxes, interest, and penalties demanded in the
 24 assessment or may order the taxpayer to make a payment under protest pursuant to
 25 the provisions of state law and this Chapter in an amount determined by the court
 26 to be reasonable security considering the amount of such unpaid taxes, interest,
 27 and penalties. The court may order that a portion of the unpaid taxes, interest, and
 28 penalties be paid under protest and the balance secured by the posting of a bond or
 29 other security as provided ~~herein~~ in this Section.

30 (b) The Board of Tax Appeals may order the posting of commercial bond

1 or other security in an amount to be determined by the board to be reasonable
 2 security for the amount of unpaid taxes, interest, and penalties demanded in the
 3 assessment, or may order the taxpayer to make a payment under protest
 4 pursuant to the provisions of state law and this Chapter in an amount
 5 determined by the board to be reasonable security considering the amount of
 6 such unpaid taxes, interest, and penalties. The board may order that a portion
 7 of the unpaid taxes, interest, and penalties be paid under protest and the
 8 balance secured by the posting of a bond or other security as provided in this
 9 Section.

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

14 (4) If the taxpayer timely files the suit or any petition or rule referred to
 15 herein in this Section, no collection action shall be taken in connection with the
 16 assessment of taxes, interest, and penalties, which are the subject of the taxpayer's
 17 suit cause of action, unless the taxpayer fails to post bond or other security or make
 18 the payment under protest required by the Board of Tax Appeals or court; however,
 19 the collector shall be permitted to file a reconventional demand against the taxpayer
 20 in such suit: the cause of action. A collector may procure an appraisal or conduct
 21 discovery concerning the value and validity of security offered prior to the date
 22 for filing the collector's response or opposition to a rule set for hearing under
 23 this Subsection.

24 * * *

25 (6) The provisions of this Section shall be applicable to either dealers or
 26 other taxpayers, and any references in this Section to taxpayers shall also be
 27 applicable to dealers.

28 (7) In lieu of dismissal of the taxpayer's appeal in those instances where
 29 a taxpayer assessed pursuant to R.S. 47:337.50(A) has filed a timely appeal to
 30 the Board of Tax Appeals for redetermination of the assessment in the manner

1 authorized by R.S. 47:337.51(A)(1) but not authorized under the applicable
2 provisions of R.S. 47:337.51(A)(2), and following a contradictory hearing on a
3 rule requested by any party, the Board of Tax Appeals may order the payment
4 of bond, other security, or full or partial payment under protest, as provided for
5 in this Section.

6 * * *

7 §337.77. Refunds of overpayments authorized

8 * * *

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

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

16 (3) The provisions of this Subsection shall apply only if the taxpayer or
17 dealer establishes that it did not receive the assessment prior to the deadline for
18 appealing that assessment, and the collector did not comply with the provisions
19 of R.S. 47:337.51(D).

20 * * *

21 §1401. Creation of Board of Tax Appeals

22 In order to provide a board that will act as an appeal board to hear and decide,
23 at a minimum of expense to the taxpayer, questions of law and fact arising from
24 disputes or controversies between a taxpayer and ~~the any~~ collector ~~of revenue~~ of the
25 State of Louisiana in the enforcement of any tax, excise, license, permit or any other
26 tax, fee, penalty, receipt or other law administered by ~~the a~~ collector, and to
27 ~~exercise jurisdiction~~ other jurisdiction as provided by law, including jurisdiction
28 as provided for in the Uniform Local Sales Tax Code, the Board of Tax Appeals,
29 hereinafter referred to as the "board", is created as an independent agency in the
30 Department of State Civil Service, and for the purposes of this Chapter. The Local

1 Tax Division is created as an independent agency and authority within the board for
2 the purposes of 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~~ **two** of these ~~two~~ board members shall be certified as a Tax Law
8 Specialist by the Louisiana Board of Legal Specialization **or possess a Masters of**
9 **Law in Taxation or Tax Law**. Each member shall be appointed by the governor.

10 Vacancies shall be filled in the manner of the original appointment.

11 * * *

12 §1403. Designation of officers; domicile; quorum; seal

13 * * *

14 C. A majority of the members of the board shall constitute a quorum for the
15 transaction of the business of the board, except as otherwise provided in this Chapter.

16 A vacancy in the board shall not impair the powers nor affect the duties of the board,
17 nor of the remaining members of the board. In the event of a vacancy or in the
18 absence of a board member, the chairman, or vice chairman during the absence of
19 the chairman, may order a case involving a state collector to be heard in accordance
20 with Paragraph (B)(2) of this Section, and the hearing judge shall render the
21 judgment of the board. **Except as otherwise provided for in this Chapter, and**
22 **specifically excluding any case assigned to the Local Tax Division, the entire**
23 **board may participate in the disposition of any case heard by the Board of Tax**
24 **Appeals.**

25 * * *

26 §1434. Judicial review of decision of the board

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

30 * * *

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 §1565. Notice of assessment and right to appeal

13 * * *

14 D.(1) The secretary may elect to send to a taxpayer or dealer by regular
15 mail a copy of the notice of assessment containing the same information and
16 addressed in the same manner as provided in Subsection A of this Section. If the
17 secretary mails this regular mail notice within five business days of mailing the
18 notice of assessment to the same address as the secretary mails the notice of
19 assessment by certified mail, then the notice transmitted by regular mail shall
20 be deemed to have been received by the taxpayer or dealer for the purposes of
21 this Subsection on the earlier of the date that the United States Postal Service
22 record indicates that it first attempted to deliver the notice of assessment to the
23 taxpayer or dealer, or on the seventh business day from mailing. A certificate
24 of mailing or other proof of mailing from the United States Postal Service shall
25 establish that this copy of the notice of assessment was transmitted by regular
26 mail. Other evidence may be used to alternatively establish the presumption of
27 delivery provided for in this Subsection, including an affidavit of the person
28 who transmitted the notice attesting to the fact that it was transmitted in
29 accordance with the provisions of this Subsection.

30 (2) Notwithstanding any provision of law to the contrary, if the secretary

1 in his sole discretion chooses not to send the copy of the notice of assessment
2 provided for in Paragraph (1) of this Subsection, the absence of transmitting the
3 notice by regular mail shall not be used to establish that a notice of assessment
4 was either not mailed or not received.

5 (3) If the secretary in his sole discretion sends the copy of the notice of
6 assessment provided for in Paragraph (1) of this Subsection, the transmittal of
7 the notice shall have no impact on: the time within which the amount of the
8 assessment is required to be paid or paid under protest, or, as provided in this
9 Section, the time within which the assessment becomes final or the time within
10 which an appeal may be made to the Board of Tax Appeals.

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 an action brought
20 pursuant to R.S. 47:1576.

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

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

27 Section 3. The Local Tax Division of the Board of Tax Appeals may coordinate
28 with the Uniform Local Sales Tax Board created pursuant to R.S. 47:337.102
29 concerning the creation of an electronic filing platform, and the Board of Tax Appeals,
30 its Local Tax Division and the use of local funds dedicated to the operations of the

1 Local Tax Division pursuant to R.S. 47:302(K) shall not be subject to the provisions of
2 Subpart C of Part I or of Part V-A of Chapter 1 of Subtitle I of Title 39 of the
3 Louisiana Revised Statutes of 1950, as amended.

4 Section 4. The provisions of this Act enacting R.S. 47:337.51(D), R.S.
5 47:337.77(H), R.S. 47:1565(D) and R.S. 47:1621(J) shall not be applicable to any
6 existing assessment issued by any collector or the secretary prior to July 1, 2018, nor
7 shall these provisions be applicable to any pending litigation in the courts or the
8 Louisiana Board of Tax Appeals existing prior to the effective date of this Act. The
9 remaining provisions of this Act are procedural and interpretive.

10 Section 5. This Act shall become effective upon signature by the governor or, if not
11 signed by the governor, upon expiration of the time for bills to become law without signature
12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
14 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____