

2020 Regular Session

HOUSE BILL NO. 561

BY REPRESENTATIVE DWIGHT

TAX/TAXATION: Provides for the administration, enforcement, and adjudication of state and local taxes and for the jurisdiction of the Board of Tax Appeals

1 AN ACT

2 To amend and reenact R.S. 47:337.33(A)(1) and (5), 1401, 1407(1) and (3), 1408(D)(1), and
3 1434(A) and to enact R.S. 47:337.33(E) and 1431(E), relative to the administration,
4 enforcement, and adjudication of state and local taxes; to provide for certain
5 collection procedures; to provide for the jurisdiction of the Board of Tax Appeals;
6 to provide for the filing of certain petitions with the Board of Tax Appeals; to
7 provide for the judicial review of decisions of the Board of Tax Appeals; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 47:337.33(A)(1) and (5), 1401, 1407(1) and (3), 1408(D)(1), and
11 1434(A) are hereby amended and reenacted and R.S. 47:337.33(E) and 1431(E) are hereby
12 enacted to read as follows:

13 §337.33. Failure to pay tax; rule to cease business

14 A.(1) On motion in a court of competent jurisdiction, the collector may take
15 a rule on a taxpayer, to show cause in not less than two or more than ten days,
16 exclusive of holidays, why the taxpayer should not be ordered to cease from further
17 pursuit of his business for failure to pay to the taxing authority amounts collected
18 from others by his business as sales and use tax, along with any interest, penalty, and
19 costs related to such tax. Such rule may be taken only for amounts due as a result
20 of assessments or judgments which have become final and nonappealable or for

1 amounts shown to have been actually collected from others and not remitted to the
2 collector.

3 * * *

4 (5) The collection procedure provided for in this Subsection shall be in
5 addition to any other collection procedure provided by law. When issuing an order
6 pursuant to this Subsection, the Board of Tax Appeals or any court of competent
7 jurisdiction, upon proper showing, may also render a money judgment against the
8 taxpayer and in favor of the collector in the amount of any final and ~~non-appealable~~
9 nonappealable assessment or other amount shown to have been actually collected
10 from others and not remitted to the collector, together with all penalties, interest,
11 attorney fees and costs due.

12 * * *

13 E. Neither the collector's consent to a continuance request nor the collector's
14 failure to object to the date that any court or the Board of Tax Appeals sets for the
15 hearing date of a rule brought pursuant to the provisions of this Section shall be
16 considered a waiver of the collector's right to proceed pursuant to the provisions of
17 this Section nor be deemed to convert a summary proceeding into an ordinary
18 proceeding.

19 * * *

20 §1401. Creation of Board of Tax Appeals

21 In order to provide effect to the provisions of Article V, Section 35 and
22 Article VII, Section 3(A) of the Constitution of Louisiana, a board that will ~~act as an~~
23 ~~appeal board~~ to hear and decide, at a minimum of expense to the taxpayer, questions
24 of law and fact arising from disputes or controversies between a taxpayer and any
25 collector of the ~~State~~ state of Louisiana or its political subdivisions in the
26 enforcement of any tax, excise, license, permit or any other tax, fee, penalty, receipt
27 or other law administered by a collector, and to exercise other jurisdiction as
28 provided by law, including jurisdiction as provided for in the Uniform Local Sales
29 Tax Code, the Board of Tax Appeals, hereinafter referred to as the "board", is created

1 as an independent agency ~~in the Department of State Civil Service, and~~ for the
2 purposes of this Chapter. The Local Tax Division is created as an independent
3 agency and authority within the board for the purposes of exercising jurisdiction over
4 disputes involving local collectors.

5 * * *

6 §1407. Jurisdiction of the board

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

8 (1) All matters relating to appeals for the redetermination of assessments, ~~or~~
9 ~~for the determination of overpayments, or payment under protest petitions, or other~~
10 matters within its jurisdiction, as provided in R.S. 47:1431 through 1438 or other
11 applicable law.

12 * * *

13 (3) All matters related to state or local taxes or fees, or other jurisdiction
14 otherwise provided by law, including rules to cease business, ordinary collection
15 suits, summary tax proceedings, rules to seek uniformity of interpretation of common
16 sales and use tax law or local sales and use tax law, as provided in R.S.
17 47:337.101(A)(2), and petitions concerning the validity of a collector's rules,
18 regulations, or private letter rulings, as provided in R.S. 47:337.102.

19 * * *

20 §1408. Power to administer oaths and issue rules, orders, or subpoenas

21 * * *

22 D.(1) An action may be brought in the Board of Tax Appeals pursuant to the
23 provisions of R.S. 47:314, ~~337.33(A)~~ 337.33, 337.43, 1547, 1574.1, or 1582, and the
24 provisions of those Sections shall apply to the Board of Tax Appeals and its Local
25 Tax Division in the same manner as for a district court. In addition to the remedies
26 otherwise provided for in this Section, any interested party may file a motion or rule
27 in any court of competent jurisdiction alleging a violation of any order issued by the
28 board or its local tax judge pursuant to applicable law, and the district court shall
29 consider any violation shown to be a contempt of the court and shall immediately

Proposed law retains present law but extends authority for the rule to also apply to amounts shown to have been actually collected from others and not remitted to the collector.

Proposed law provides that neither the collector's consent to a continuance request nor the collector's failure to object to the date that any court or the BTA sets for the hearing date of a rule brought pursuant to present law shall be considered a waiver of the collector's right to proceed nor be deemed to convert a summary proceeding into an ordinary proceeding.

Present law authorizes the establishment of the BTA, as an independent agency in the Dept. of State Civil Service, to hear and decide, at a minimum of expense to the taxpayer, questions of law and fact arising from disputes or controversies between a taxpayer and any state collector in the enforcement of any tax, excise, license, permit or any other tax, fee, penalty, receipt or other law administered by a collector, and to exercise other jurisdiction as provided by law.

Proposed law retains present law but extends jurisdiction of the BTA to controversies between a taxpayer and political subdivisions of the state and removes references to the BTA being an independent agency within the Dept. of State Civil Service.

Present law extends the jurisdiction of the BTA to all matters relating to appeals for the redetermination of assessments, the determination of overpayments, or payment under protest petitions. Additionally extends jurisdiction of the BTA to all matters related to state or local taxes or fees, or other jurisdiction provided by present law, including rules to seek uniformity of interpretation of common sales and use tax law or local sales and use tax law and petitions concerning the validity of a collector's rules, regulations, or private letter rulings.

Proposed law retains present law but specifically extends jurisdiction of the BTA to rules to cease business, ordinary collection suits, summary tax proceedings and other matters in accordance with present law.

Present law establishes a procedure for a taxpayer to appeal to the BTA including the filing of a payment under protest petition. Present law prohibits an aggrieved party from petitioning the BTA to declare a law unconstitutional on the basis of its failure to meet the constitutional requirements for the passage of laws by the legislature.

Proposed law retains present law but authorizes any collector, taxpayer, or other aggrieved party to file a petition or pleading with the BTA for any matter within the jurisdiction of the BTA.

Present law authorizes any party to file a motion for the review of a decision of the BTA by the appropriate appellate court within 30 days of the signing of a decision or judgment by the BTA.

Proposed law retains present law but specifies that the 30-day period for appealing a decision of the BTA begins from the mailing of the notice of the judgment. Further provides that the date of actual receipt of a hand-delivered notice shall be deemed the date of mailing in the event the notice of judgment is hand delivered in lieu of mailing.

(Amends R.S. 47:337.33(A)(1) and (5), 1401, 1407(1) and (3), 1408(D)(1), and 1434(A); Adds R.S. 47:337.33(E) and 1431(E))