

2020 Regular Session

SENATE BILL NO. 164

BY SENATOR ALLAIN

TAX/LOCAL. Provides relative to local sales and use tax adjudication. (7/1/20)

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AN ACT

To amend and reenact R.S. 47:337.48(A), 337.51(A)(2), and 337.63(B) and to enact R.S. 47:337.61(5), relative to local sales and use tax administration; to provide relative to local sales and use tax disputes; to provide for guidelines for the use of summary proceedings; to provide relative to access to the Board of Tax Appeals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:337.48(A), 337.51(A)(2), and 337.63(B) are hereby amended and reenacted and R.S. 47:337.61(5) is hereby enacted to read as follows:

§337.48. Determination and notice of tax due

A.~~(1)~~ If a taxpayer fails to make and file any return or report required by the provisions of the local ordinance and this Chapter, the collector shall determine the tax, penalty, and interest due by estimate or otherwise. Having determined the amount of tax, penalty, and interest due, the collector shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of this Chapter, or to any address that may be obtainable from any private entity which will provide such address free of charge or from any federal, state, or

1 local government entity, including but not limited to the U.S. Postal Service or from
 2 U.S. Postal Service certified software, setting out his determination and informing
 3 the person of his purpose to assess the amount so determined against him after
 4 fifteen calendar days from the date of the notice.

5 ~~(2) Notwithstanding any other provision of law to the contrary, a notice~~
 6 ~~issued pursuant to Paragraph (1) of this Subsection to a taxpayer or dealer who fails~~
 7 ~~to make and file any required report or return shall not be appealable to the Board of~~
 8 ~~Tax Appeals for redetermination of the notice of tax due issued pursuant to this~~
 9 ~~Section when the notice is solely for the periods and is in the amount stated on the~~
 10 ~~notice transmitted to such taxpayer or dealer pursuant to Paragraph (1) of this~~
 11 ~~Subsection. Nothing in this Paragraph shall prohibit any taxpayer or dealer from~~
 12 ~~proceeding to file suit pursuant to R.S. 47:337.63 or 337.64, or any other applicable~~
 13 ~~law.~~

14 * * *

15 §337.51. Notice of assessment and right to appeal

16 A. * * *

17 (2) If no report has been timely filed, the collector shall send a notice by
 18 certified mail to the taxpayer against whom the assessment is imposed at any address
 19 obtainable from any private entity which will provide such address free of charge or
 20 from any federal, state, or local government entity, including but not limited to the
 21 United States Postal Service or from the United States Postal Service certified
 22 software. This notice shall inform the taxpayer of the assessment and that he has
 23 thirty calendar days from the date of the notice to do either of the following:

24 (a) Pay the amount of the assessment.

25 (b) **Appeal to the Board of Tax Appeals for a redetermination of the**
 26 **assessment.**

27 (c) Pay under protest in accordance with R.S. 47:337.63 and then either file
 28 suit or file a petition with the Board of Tax Appeals, all as provided for in that
 29 Section.

* * *

§337.61. Collection by summary court proceeding authorized

In addition to any other procedure provided in this Chapter or elsewhere in the laws of this state, and for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, or other costs and charges arising, there is hereby provided a summary proceeding for the hearing and determination of all claims by or on behalf of the taxing authority, or by or on behalf of the collector, for taxes and for the penalties, interest, attorney fees, costs or other charges due thereon, by preference in all courts, all as follows:

* * *

(5) The provisions of this Section shall apply only in the following instances:

(a) The proceeding is for collection of a tax assessment that has become final, or to which the provisions of R.S. 47:337.54 or 337.55 apply.

(b) A jeopardy assessment has been or could be issued against the defendant pursuant to R.S. 47:337.53 for the same tax.

(c) A rule to cease business has been or is concurrently brought against the defendant pursuant to R.S. 47:337.33 or 337.46.

(d) The matter involves the special authority to enforce collection of taxes collected from others pursuant to R.S. 47:337.46.

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§337.63. Remittance of tax under protest; suits to recover

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~~B.~~ This Section shall afford a legal remedy and right of action in the Board of Tax Appeals as provided in this Section, or in any state court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of the sales and use tax of a taxing authority as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and

1 he shall be the sole necessary and proper party defendant in any such suit.

2 ~~(2) If the collector files suit against a taxpayer in district court pursuant to~~
 3 ~~R.S. 47:337.45(A)(3), and the taxpayer timely pays under protest, the district court~~
 4 ~~shall retain exclusive jurisdiction to adjudicate the matter to final judgment.~~

5 * * *

6 Section 2. This Act shall become effective July 1, 2020, if vetoed by the governor
 7 and subsequently approved by the legislature, this Act shall become effective on July 1, 2020
 8 or the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 164 Engrossed

2020 Regular Session

Allain

Present law requires local sales and use tax collectors to determine the tax, penalty, and interest due when a taxpayer fails to file a sales and use tax return and prohibits the taxpayer from appealing this estimated assessment to the Board of Tax Appeals.

Proposed law retains present law estimated assessment authority but allows taxpayers to protest the estimated assessments with the Board of Tax Appeals.

Present law authorizes local tax collectors to collect local sales and use tax by summary court proceeding.

Proposed law retains the ability of local collectors to use summary proceedings to collect local sales and use taxes, but limits the use of summary proceedings to the following circumstances:

- (1) The collection of a tax assessment that has become final, a bankruptcy receiver has been appointed for the taxpayer, or the taxpayer self-assessed the amount shown due on the return.
- (2) A jeopardy assessment has been or could be issued against the taxpayer.
- (3) A rule to cease business has been or is concurrently brought against the taxpayer.
- (4) The matter involves the collector's authority to enforce collection of taxes collected from others.

Present law does not allow a taxpayer who pays under protest to file suit with the Board of Tax Appeals once the collector has filed suit in district court.

Proposed law removes this limitation.

Effective July 1, 2020.

(Amends R.S. 47:337.48(A), 337.51(A)(2), and 337.63(B); adds R.S. 47:337.61(5))