

2020 Regular Session

SENATE BILL NO. 164

BY SENATOR ALLAIN

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

1 AN ACT

2 To amend and reenact R.S. 47:337.51(A)(2) and to enact R.S. 47:337.51(A)(4), 337.61(5),
3 and 337.80(A)(4) and (D), relative to local sales and use tax administration; to
4 provide relative to local sales and use tax disputes; to provide for guidelines for the
5 use of summary proceedings; to provide relative to interest on refunds of local sales
6 and use tax; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:337.51(A)(2) is hereby amended and reenacted and R.S.
9 47:337.51(A)(4), 337.61(5), and 337.80(A)(4) and (D) are hereby enacted to read as follows:

10 §337.51. Notice of assessment and right to appeal

11 A. * * *

12 (2) If no report has been timely filed, the collector shall send a notice by
13 certified mail to the taxpayer against whom the assessment is imposed at any address
14 obtainable from any private entity which will provide such address free of charge or
15 from any federal, state, or local government entity, including but not limited to the
16 United States Postal Service or from the United States Postal Service certified
17 software. This notice shall inform the taxpayer of the assessment and that he has

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

6 **(c) Taxpayers should consider any rights pursuant to R.S.**
7 **47:337.51(A)(4) and other applicable law.**

8 * * *

9 **(4) Notwithstanding any provision of law to the contrary, any person**
10 **who receives an assessment pursuant to the provisions of Paragraph (A)(2) of**
11 **this Section may take any action authorized in Paragraph (A)(1) of this Section**
12 **within the applicable deadline for action stated in the notice of assessment if the**
13 **assessment exceeds tax in the amount of one hundred thousand dollars or if the**
14 **person has never filed a return with that local collector, has never been the**
15 **subject of any action pursuant to the provisions of R.S. 47:337.45 by that local**
16 **collector, and has no physical presence in the state.**

17 * * *

18 §337.61. Collection by summary court proceeding authorized

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

26 * * *

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

29 **(a) The proceeding is for collection of a tax assessment that has become**

1 final, or to which the provisions of R.S. 47:337.54 or 337.55 apply.

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

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

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

8 (e) A taxpayer or dealer that fails to make and file any required return
9 or report where the collector estimates the tax due to be less than one hundred
10 thousand dollars.

11 * * *

12 §337.80. Interest on refunds or credits

13 A. Each collector shall compute on all refunds or credits and allow interest
14 as part of the refund or credit as follows:

15 * * *

16 (4)(a) Beginning January 1, 2021, notwithstanding Paragraphs (1), (2),
17 and (3) of this Subsection or any other provision of law to the contrary, on all
18 refunds or credits the collector shall compute and allow as part of the refund or
19 credit, interest from ninety days after the later of the due date of the return, the
20 date that the taxpayer gave the political subdivision notice of the taxpayer's
21 intention to file suit for the recovery of any taxes paid, the filing date of the
22 return or claim for refund on which the overpayment is claimed, or the date the
23 tax was paid.

24 (b) Interest shall be at the average prime or reference rate as computed
25 by the commissioner of financial institutions pursuant to R.S. 13:4202(B), per
26 year, but without the addition of one percentage point to the average prime or
27 reference rate and without regard to the limitations contained in R.S.
28 13:4202(B).

29 (c) An overpayment shall bear no interest if it is credited to the

1 taxpayer's account.

2 (d) For purposes of this Section, a claim for refund shall be submitted in
 3 the form and with the documentation provided for by rules promulgated by the
 4 Louisiana Uniform Local Sales Tax Board, pursuant to R.S. 47:337.102(C)(2).

5 * * *

6 D. The accrual of interest shall be suspended during any period of time
 7 that a delay in the issuance of a refund is attributable to the taxpayer's failure
 8 to provide information or documentation required by statute or regulation.

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

The original instrument was prepared by Leonore Heavey. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

SB 164 Reengrossed

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 and allows taxpayers to consider any right pursuant to proposed law or other applicable law.

Proposed law states that if the estimated tax amount exceeds \$100,000, a taxpayer who has never filed a return or has never been the subject of any actions pursuant to collection and has no physical presence in the state may take any action authorized by present law within the applicable deadline for action.

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.

- (5) A taxpayer or dealer has failed to make and file any required return or report where the collector estimates the tax due to be less than \$100,000.

Proposed law provides specific instructions on how collectors shall compute all refunds or credits and allow interest as part of the refund or credit.

Effective July 1, 2020.

(Amends R.S. 47:337.51(A)(2); adds R.S. 47:337.51(A)(4), 337.61(5) and 337.80(A)(4) and (D))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Authorizes certain tax payers to protest estimated assessments with the Board of Tax Appeals.
2. Allows collectors to use summary court proceedings for estimated tax amount of less than \$100,000.
3. Provides specific instructions on how collectors shall compute all refunds or credits and allows interest as part of the refund or credit.