

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), 337.71, 1401, 1407(1) and (3),

3 1408(D)(1), and 1434(A) and to enact R.S. 47:337.22(E), 337.33(E), and 1431(E),

4 relative to the administration, enforcement, and adjudication of state and local taxes;

5 to provide for certain collection procedures; to provide for the jurisdiction of the

6 Board of Tax Appeals; to provide for the filing of certain petitions with the Board

7 of Tax Appeals; to provide for the judicial review of decisions of the Board of Tax

8 Appeals; to authorize a local collector to extend a filing or payment deadline under

9 certain circumstances; to require the publication of certain extensions; to require the

10 waiver of penalties under certain circumstances; to provide for certain requirements

11 and limitations; to authorize the filing of certain actions; and to provide for related

12 matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:337.33(A)(1) and (5), 337.71, 1401, 1407(1) and (3), 1408(D)(1),

15 and 1434(A) are hereby amended and reenacted and R.S. 47:337.22(E), 337.33(E), and

16 1431(E) are hereby enacted to read as follows:

17 §337.22. Sales and use tax returns

18 * * *

19 E.(1) In the event of a presidential or gubernatorial declared disaster or

20 emergency covering a local collector's jurisdiction, a local collector may elect to

1 extend filing or payment deadlines related to the taxes collected pursuant to the
 2 provisions of this Chapter until the extended date for the same period specified for
 3 state sales and use taxes for the same period. Whenever an extension is granted by
 4 the local collector pursuant to this Subsection, interest and penalties shall not accrue
 5 on the tax during the period of the extension provided that the return and payment
 6 are received by the extended due date. Any decision to adopt an extension pursuant
 7 to this Subsection shall be provided to the Louisiana Uniform Local Sales Tax Board
 8 for publication on its website.

9 (2) The authority granted in this Subsection shall be in addition to any other
 10 authority provided by this Chapter.

11 * * *

12 §337.33. Failure to pay tax; rule to cease business

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

22 * * *

23 (5) The collection procedure provided for in this Subsection shall be in
 24 addition to any other collection procedure provided by law. When issuing an order
 25 pursuant to this Subsection, the Board of Tax Appeals or any court of competent
 26 jurisdiction, upon proper showing, may also render a money judgment against the
 27 taxpayer and in favor of the collector in the amount of any final and ~~non-appealable~~
 28 nonappealable assessment or other amount shown to have been actually collected

1 from others and not remitted to the collector, together with all penalties, interest,
2 attorney fees and costs due.

3 * * *

4 E. Neither the collector's consent to a continuance request nor the collector's
5 failure to object to the date that any court or the Board of Tax Appeals sets for the
6 hearing date of a rule brought pursuant to the provisions of this Section shall be
7 considered a waiver of the collector's right to proceed pursuant to the provisions of
8 this Section nor be deemed to convert a summary proceeding into an ordinary
9 proceeding.

10 §337.71. Waiver of penalty for delinquent filing or delinquent payment

11 A. If the failure to make any return at the time such return becomes due or
12 the filing of a return without remittance of the full amount due is attributable not to
13 the negligence of the taxpayer, but to other cause set forth in written form and
14 considered reasonable by the collector, the collector may remit or waive payment of
15 the whole or any part of the specific penalty provided for such failure.

16 B. Notwithstanding the provisions of Subsection A of this Section, a
17 taxpayer shall be eligible for a penalty waiver if the taxpayer establishes to the local
18 collector that his failure to file during the period of a presidential or gubernatorial
19 declared disaster or emergency was due to the inaccessibility of funds to pay the tax,
20 the unavailability of records or personnel necessary to prepare and file the return, or
21 confusion in good faith stemming from the extension of related state sales and use
22 tax filing deadlines.

23 * * *

24 §1401. Creation of Board of Tax Appeals

25 In order to provide effect to the provisions of Article V, Section 35 and
26 Article VII, Section 3(A) of the Constitution of Louisiana, a board that will ~~act as an~~
27 ~~appeal board to~~ hear and decide, at a minimum of expense to the taxpayer, questions
28 of law and fact arising from disputes or controversies between a taxpayer and any
29 collector of the ~~State~~ state of Louisiana or its political subdivisions in the

1 enforcement of any tax, excise, license, permit or any other tax, fee, penalty, receipt
 2 or other law administered by a collector, and to exercise other jurisdiction as
 3 provided by law, including jurisdiction as provided for in the Uniform Local Sales
 4 Tax Code, the Board of Tax Appeals, hereinafter referred to as the "board", is created
 5 as an independent agency ~~in the Department of State Civil Service, and~~ for the
 6 purposes of this Chapter. The Local Tax Division is created as an independent
 7 agency and authority within the board for the purposes of exercising jurisdiction over
 8 disputes involving local collectors.

9 * * *

10 §1407. Jurisdiction of the board

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

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

16 * * *

17 (3) All matters related to state or local taxes or fees, or other jurisdiction
 18 otherwise provided by law, including rules to cease business, ordinary collection
 19 suits, summary tax proceedings, rules to seek uniformity of interpretation of common
 20 sales and use tax law or local sales and use tax law, as provided in R.S.
 21 47:337.101(A)(2), and petitions concerning the validity of a collector's rules,
 22 regulations, or private letter rulings, as provided in R.S. 47:337.102.

23 * * *

24 §1408. Power to administer oaths and issue rules, orders, or subpoenas

25 * * *

26 D.(1) An action may be brought in the Board of Tax Appeals pursuant to the
 27 provisions of R.S. 47:314, ~~337.33(A)~~ 337.33, 337.43, 1547, 1574.1, or 1582, and the
 28 provisions of those Sections shall apply to the Board of Tax Appeals and its Local
 29 Tax Division in the same manner as for a district court. In addition to the remedies

1 otherwise provided for in this Section, any interested party may file a motion or rule
2 in any court of competent jurisdiction alleging a violation of any order issued by the
3 board or its local tax judge pursuant to applicable law, and the district court shall
4 consider any violation shown to be a contempt of the court and shall immediately
5 punish the violator in accordance with R.S. 13:4611(1) and all other applicable laws
6 for contempt of court.

7 * * *

8 §1431. ~~Taxpayer's petition~~ Filing of petition

9 * * *

10 E. Any collector, taxpayer, or other aggrieved party may file a petition or
11 pleading with the board concerning any matter provided for pursuant to R.S.
12 47:1407(3) or other applicable law. The Louisiana Uniform Local Sales Tax Board
13 may file an action for uniformity pursuant to R.S. 47:337.101 in the same manner as
14 a local collector.

15 * * *

16 §1434. Judicial review of decision of the board

17 A. Within thirty days of mailing the notice of the signing of a decision or
18 judgment of the board, any party may file a motion with the board for review of the
19 decision or judgment by the appropriate appellate court. The date of actual receipt
20 of a hand-delivered notice shall be deemed the date of mailing in the event the notice
21 of judgment is hand delivered in lieu of mailing.

22 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 561 Engrossed

2020 Regular Session

Dwight

Abstract: Provides for the administration, enforcement, and adjudication of state and local taxes and for the jurisdiction of the Board of Tax Appeals.

Present law requires a local collector to furnish or make available the necessary forms for filing returns and instructions to ensure full tax collection from dealers and an accounting

for the taxes due. Failure of any dealer to secure these forms shall not relieve the dealer from the payment of the tax at the time in the manner provided in present law.

Proposed law retains present law but provides that in the event of a presidential or gubernatorial declared disaster or emergency covering a local collector's jurisdiction, a local collector may elect to extend filing or payment deadlines until the extended date for the same period specified for state sales and use taxes for the same period. Proposed law prohibits interest and penalties from accruing on the tax during the period of the extension provided the return and payment are received by the extended due date.

Proposed law requires any decision to adopt an extension of the filing or payment deadline to be provided to the La. Uniform Local Sales Tax Board for publication on its website.

Present law authorizes the collector to take a rule on a taxpayer to show cause in not less than two nor more than 10 days, exclusive of holidays, why the taxpayer should not be ordered to cease from further business pursuits for failure to pay to the taxing authority sales and use tax amounts collected from others along with any interest, penalty, and costs related to the tax. Present law authorizes the Board of Tax Appeals (BTA) or a court to render a money judgment against the taxpayer in favor of the collector in the amount of any final and nonappealable assessment, together with all penalties, interest, attorney fees and costs.

Proposed law retains present law.

Present law limits the rule to amounts due as a result of assessments or judgments which have become final and nonappealable.

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 a collector to remit or waive payment of a specific penalty due, if the taxpayer's failure to timely file a return or the filing of a return without remittance of the full amount of tax due is attributable to a cause, other than the negligence of the taxpayer, that is submitted in writing and considered reasonable by the collector.

Proposed law retains present law but extends eligibility for the waiver of penalties if the taxpayer establishes that the failure to file a return during a presidential or gubernatorial declared disaster or emergency was due to the inaccessibility of funds to pay the tax, the unavailability of records or personnel necessary to prepare and file the return, or confusion stemming from the extension of related state sales and use tax filing deadlines.

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. Further authorizes the La. Uniform Local Sales Tax Board to file an action for uniformity in the same manner as a local collector.

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), 337.71, 1401, 1407(1) and (3), 1408(D)(1), and 1434(A); Adds R.S. 47:337.22(E), 337.33(E) and 1431(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Authorize a collector to extend filing or payment deadlines for the payment of local taxes until the extended date for the payment of state sales and use taxes in the event of a presidential or gubernatorial declared disaster or emergency covering a local collector's jurisdiction.
2. Prohibit interest and penalties from accruing on the tax during the period of the extension provided the return and payment are received by the extended due date.
3. Require decisions adopting an extension of the filing or payment deadline to be published on the La. Uniform Local Sales Tax Board's website.
4. Extend eligibility for the waiver of penalties if the taxpayer establishes that the failure to file a return during a presidential or gubernatorial declared disaster or emergency was due to the inaccessibility of funds to pay the tax, the unavailability of records or personnel to prepare and file the return, or confusion over the extension of related state sales and use tax filing deadlines.

5. Authorize the La. Uniform Local Sales Tax Board to file an action for uniformity in the same manner as a local collector.