

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 561

2020 Regular Session

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

### Synopsis of Senate Amendments

1. Authorizes the Louisiana Sales and Use Tax Commission for Remote Sellers to enter into certain cooperative endeavor agreements.
2. Provides for the time line for appointments, selection of officers, filling of vacancies, and review of compensation for the Board of Tax Appeals.
3. Defines "dealer" to include any person who operates, maintains, or facilitates a peer-to-peer vehicle sharing program and provides definitions for the purposes of the program.
4. Requires the state sales tax collected pursuant to a peer-to-peer vehicle sharing program to be filed and paid electronically to the secretary of the Dept. of Revenue.
5. Removes the six-year limitation on the transfer of the additional \$5,000 of sales tax collections to the Board of Tax Appeals for its Local Tax Division thereby requiring the transfer of sales tax collections into perpetuity.

### Digest of Bill as Finally Passed by Senate

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 presidentially or gubernatorially 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 other related good cause stemming from the extension of related state sales and use tax filing deadlines.

Proposed law authorizes the Louisiana Sales and Use Tax Commission for Remote Sellers to enter into cooperative endeavor agreements for the purpose of facilitating the operation of an online filing system, including the deposit of advance costs from subscribers and related payment of amounts collected related to that service.

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.

Proposed law provides for the time line for appointments, selection of officers, and filling of vacancies for the Board of Tax Appeals.

Present law requires the governor to establish the compensation to be paid to members of the Board of Tax Appeals, including any additional compensation for its officers.

Proposed law removes the requirement that the governor establish board compensation, continues the current compensation of the board, including any additional compensation for its officers, and prohibits a member's compensation from reductions during his term of office.

Proposed law requires that beginning Jan. 1, 2024, the board's regular salary is subject to review and recommendation by the Judicial Compensation Commission and legislative

approval. Proposed law further authorizes annual adjustments related to reimbursement of expenses or per diem to be approved by the supreme court.

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.

Present law defines "dealer" to include every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction.

Proposed law retains present law and further defines "dealer" to mean any person who operates, maintains, or facilitates a peer-to-peer vehicle sharing program and collects any amount required to be paid as part of a vehicle sharing program agreement whereby a shared vehicle owner leases or rents a shared vehicle to a shared vehicle driver in this state. For purposes of the peer-to-peer vehicle sharing program, proposed law provides for the following definitions:

- (1) "Vehicle sharing program agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer vehicle sharing program.
- (2) "Peer-to-peer vehicle sharing" means the authorized use of a vehicle by a person other than the vehicle's owner through a peer-to-peer car sharing program.
- (3) "Peer-to-peer vehicle sharing program" means a business platform that connects a shared vehicle owner with a shared vehicle driver to enable the sharing of vehicles for financial consideration.
- (4) "Shared vehicle" means a vehicle that is available for sharing through a peer-to-peer vehicle sharing program.
- (5) "Shared vehicle driver" means a person authorized to drive the shared vehicle by the shared vehicle owner under a vehicle sharing program agreement.
- (6) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a shared vehicle made available for sharing to shared vehicle drivers through a peer-to-peer vehicle sharing program.

Proposed law requires the state sales tax and automobile rental tax collected by dealers who operate, maintain, or facilitate a peer-to-peer vehicle sharing program to be filed and paid electronically to the secretary of the Dept. of Revenue (DOR).

Present law requires, beginning July 1, 2016, the secretary of DOR to transfer \$219,000 from

the state sales and use tax collections to the BTA each year for purposes of its Local Tax Division. Further requires this amount to be increased by \$5,000 on July 1st of each of the next *six* subsequent fiscal years.

Proposed law changes present law by removing the limitation of the additional \$5,000 transfer of sales tax collections to the Board of Tax Appeals for *six* subsequent fiscal years thereby requiring the transfer of sales tax collections into perpetuity.

Effective July 1, 2020, except that provisions relative to the peer-to-peer vehicle sharing program are effective Jan. 1, 2021.

(Amends R.S. 47:302(K)(7)(b), 337.33(A)(1) and (5), 337.71, 551(B), 1401, 1402(C), (D)(1), (E)(1), and (F), 1403(A)(3), 1407(1), (3), and (7), 1408(D)(1), and 1434(A); Adds R.S. 47:301(4)(n), 303(I), 337.22(E), 337.33(E), 340(E)(6), 1403(A)(5), and 1431(E))