

2022 Regular Session

SENATE BILL NO. 444

BY SENATOR ALLAIN

TAX/TAXATION. Provides relative to tax administration and the Board of Tax Appeals.  
(2/3 - CA7s2.1(A)) (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:1408(D)(1), 1418(7)(d), 1432(A), 1574.2(A), the introductory

3 paragraph of 1574.2(B), and 1574.2(D) and to enact R.S. 47:338.223, 1408(D)(3),

4 and 1574.2(E), (F), and (G), relative to tax administration and the Board of Tax

5 Appeals; to provide for the administration of certain occupancy taxes; to authorize

6 the board to issue protective orders; to provide relative to notice and the opportunity

7 to be heard for all matters and all parties before the board; to provide for the

8 jurisdiction of the board; to authorize the board to issue preliminary injunctions

9 during suits to enjoin certain tax preparers; to authorize the secretary of revenue to

10 issue cease and desist orders to tax preparers who engage in certain conduct; to

11 impose penalties on preparers who violate injunctions or orders; to provide for an

12 effective date; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:1408(D)(1), 1418(7)(d), 1432(A), 1574.2(A), the introductory

15 paragraph of 1574.2(B), and 1574.2(D) are hereby amended and reenacted and R.S.

16 47:338.223, 1408(D)(3), and 1574.2(E), (F), and (G) are hereby enacted to read as follows:

17 **§338.223. Collection and administration of occupancy taxes**

1                    **A. All occupancy taxes administered or collected by the secretary of the**  
 2                    **Department of Revenue shall be subject to the provisions of Chapter 18 of this**  
 3                    **Subtitle.**

4                    **B. All occupancy taxes levied pursuant to this Part may be collected as**  
 5                    **provided for in this Chapter and shall be subject to review pursuant to the**  
 6                    **provisions of this Chapter.**

7                    **C. Any request for a refund of occupancy tax that was paid but not**  
 8                    **actually due shall be made in accordance with the provisions of this Chapter.**

9    \*        \*        \*

10                  §1408. Power to administer oaths and issue rules, orders, or subpoenas

11    \*        \*        \*

12                    D.(1) An action may be brought in the Board of Tax Appeals pursuant to the  
 13                    provisions of R.S. 47:314, 337.33, 337.43, 1547, 1574.1, **1574.2**, or 1582, and the  
 14                    provisions of those Sections shall apply to the Board of Tax Appeals and its Local  
 15                    Tax Division in the same manner as for a district court. In addition to the remedies  
 16                    otherwise provided for in this Section, any interested party may file a motion or rule  
 17                    in any court of competent jurisdiction alleging a violation of any order issued by the  
 18                    board or its local tax judge pursuant to applicable law, and the district court shall  
 19                    consider any violation shown to be a contempt of the court and shall immediately  
 20                    punish the violator in accordance with R.S. 13:4611(1) and all other applicable laws  
 21                    for contempt of court.

22    \*        \*        \*

23                    **(3) The authority pursuant to Article 1426 of the Louisiana Code of Civil**  
 24                    **Procedure shall apply to the board and its Local Tax Division in the same**  
 25                    **manner as for a district court, and the board may issue an order in accordance**  
 26                    **with the provisions of that Article concerning any subpoena or other discovery**  
 27                    **pursuant to this Title.**

28    \*        \*        \*

29                  §1418. Definitions

1 For purposes of this Chapter, except when the context requires otherwise, the  
2 words and expressions defined in this Section shall have the following meanings:

3 \* \* \*

4 (7) "State collector" means any of the following:

5 \* \* \*

6 (d) Any other collector of state taxes or fees, or any other state agency where  
7 an agency action is appealable to the board **or is related to state taxes or fees,**  
8 **including contracts.**

9 \* \* \*

10 §1432. Notice; hearing; decision

11 A. The taxpayer, the collector, and other parties to proceedings pursuant to  
12 this Chapter shall be afforded notice and opportunity to be heard in each proceeding  
13 for the ~~trial of any~~ redetermination of an assessment, the consideration of a payment  
14 under protest petition, ~~for the determination of an overpayment, or~~ **the consideration**  
15 **of any** other matter to be tried, **heard, or considered** pursuant to the provisions of  
16 this Chapter. A decision or judgment in these matters shall be made as quickly as  
17 practicable.

18 \* \* \*

19 §1574.2. Suit to enjoin certain preparers; **cease and desist order**

20 A. ~~(1)(a)~~ In a court of competent jurisdiction **or the Board of Tax Appeals,**  
21 the secretary may commence suit to enjoin any preparer from further engaging in any  
22 conduct described in Subsection B of this Section or from further action as a  
23 preparer.

24 **(b) During the pendency of a suit to enjoin, the court or Board of Tax**  
25 **Appeals may issue a temporary restraining order or preliminary injunction**  
26 **upon a showing by the secretary that continued conduct by the preparer creates**  
27 **an immediate threat to taxpayers. Any application for a preliminary injunction**  
28 **shall be assigned for hearing not less than two nor more than ten days after**  
29 **service of the notice. If the suit is pending in the Board of Tax Appeals, the**

1 hearing and issuance of a preliminary injunction may be conducted by the  
2 chairman or any member of the board designated by him.

3 (2)(a) If the secretary finds that a preparer has engaged in any conduct  
4 described in Subsection B of this Section and that continued conduct creates an  
5 immediate threat to taxpayers, the secretary may issue an order to the preparer,  
6 directing the preparer to cease and desist from the activity or conduct.

7 (b) The order shall be issued in the name of the state of Louisiana under  
8 the official seal of the secretary of the Department of Revenue and shall be  
9 served by certified mail or personal service.

10 (c) If the preparer to whom the secretary directs a cease and desist order  
11 does not cease and desist the activity or conduct immediately after service of the  
12 order, the secretary may demand a penalty of twenty-five dollars per return for  
13 each violation in the suit to enjoin provided for in Paragraph (1) of this  
14 Subsection.

15 (d) Nothing in this Paragraph shall authorize the secretary to issue a  
16 cease and desist order to any certified public accountant, enrolled agent or  
17 attorney at law, as defined at R.S. 47:1414.

18 (e) The secretary shall not be required to issue an order to cease and  
19 desist before seeking an injunction pursuant to Paragraph (1) of this Subsection.

20 B. In any action under ~~Subsection A~~ Paragraph (A)(1) of this Section, the  
21 court may enjoin the preparer from further engaging in any conduct specified in this  
22 Subsection if the court finds that injunctive relief is appropriate to prevent the  
23 recurrence of this conduct. The court may enjoin conduct when a preparer has done  
24 any of the following:

25 \* \* \*

26 D. Notwithstanding any provision of law to the contrary, if a preparer  
27 is prohibited from preparing returns as part of a criminal prosecution brought  
28 pursuant to this Title, whether by consent or otherwise, this prohibition shall  
29 have the same effect and be subject to the same enforcement provisions as an

1 **injunction issued under this Section without the necessity of a separate suit to**  
2 **enjoin. The criminal court's imposition of a prohibition or the acceptance of a**  
3 **plea agreement containing such prohibition shall serve as the injunction order**  
4 **for purposes of this Section.**

5 **E.**(1) For purposes of this Section, the term "preparer" shall mean any of the  
6 following:

7 (a) Any person who prepares any return, report, claim for refund, or other  
8 claim that is filed with the secretary of the Department of Revenue.

9 (b) Any person who owns or operates a business, the primary activity of  
10 which is the preparation of any return, report, claim for refund, or other claim that  
11 is filed with the secretary of the Department of Revenue, and employs one or more  
12 persons in such business.

13 (c) Any person who prepares a substantial portion of a return, report, claim  
14 for refund, or other claim that is filed with the secretary of the Department of  
15 Revenue and does not sign as the preparer, but rather has the taxpayer sign as if the  
16 return, report, claim for refund, or other claim were self-prepared.

17 (2) Nothing in this Subsection shall be construed to include in the definition  
18 of "preparer" either of the following:

19 (a) Any employee who prepares a return, report, claim for refund, or other  
20 claim for the employer by whom he is regularly and continuously employed.

21 (b) An attorney or other tax advisor whose association with a return, report,  
22 claim for refund, or other claim is limited to that of rendering advice to a taxpayer  
23 or preparer and was not otherwise involved in preparing the return, report, claim for  
24 refund, or other claim for which advice was rendered.

25 **F.(1) Any preparer who violates an injunction or order pursuant to this**  
26 **Section shall pay a penalty of not less than fifty dollars for each return, report,**  
27 **claim for refund, or other claim prepared in violation of the injunction.**

28 **(2) The penalty provided for by this Subsection shall be an obligation**  
29 **that may be assessed, collected, and enforced against the preparer in the same**

1           manner as if it were a tax due.

2                   G.(1) If the secretary files a motion alleging a violation of an injunction  
3                   or order issued pursuant to this Section, a hearing shall be held in not less than  
4                   two days or more than ten days, exclusive of holidays, to determine whether a  
5                   violation has occurred.

6                   (2) Upon a showing by the secretary that there has been a violation of the  
7                   injunction, the court or Board of Tax Appeals shall consider the violation to be  
8                   a contempt of the court and shall punish the violator in accordance with law,  
9                   and every violation of the injunction shall be considered as a separate act of  
10                  contempt.

11           Section 2. This Act shall become effective upon signature by the governor or, if not  
12           signed by the governor, upon expiration of the time for bills to become law without signature  
13           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
14           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
15           effective on the day following such approval.

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

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DIGEST

SB 444 Engrossed

2022 Regular Session

Allain

Present law provides for administrative and procedural provisions applicable to tax collection.

Proposed law provides that present law tax collection and administrative provisions shall apply to occupancy taxes collected or administered by the Dept. of Revenue.

Proposed law provides that present law tax collection and administrative provisions may be applied by local collectors to certain occupancy taxes collected or administered by local governing authorities.

Proposed law requires that refund requests of certain occupancy taxes that were paid when not actually due be processed using present law administrative procedures applicable to refund claims.

Present law establishes the Board of Tax Appeals (BTA) and authorizes the BTA to administer oaths and issue rules, orders, and subpoenas.

Proposed law authorizes the BTA to issue protective orders to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including orders concerning any subpoena or other discovery.

Present law defines a state collector to include:

- (1) The secretary of the Dept. of Revenue and other duly authorized assistants.
- (2) The assistant secretary of the office of motor vehicles and duly authorized assistants.
- (3) The commissioner of alcohol and tobacco control.
- (4) Any other collector of state taxes or fees, or other state agency where an agency action is appealable to the BTA.
- (5) The agent or successor of any of the offices above when administering a state tax or fee.

Proposed law expands the present law definition of state collector to include state agencies in which the agency action is related to state taxes or fees, including contracts.

Present law requires the taxpayer, the collector, and other parties to proceedings before the Board of Tax Appeals to receive notice and an opportunity to be heard in each proceeding for the trial of any redetermination of an assessment, the consideration of a payment under protest petition, for the determination of an overpayment, or other matters to be tried pursuant to the provisions of present law.

Proposed law makes technical corrections to present law to correctly describe the scope of present law provisions for grammatical consistency and to clarify language regarding the multiple types of proceedings that come before the Board.

Present law authorizes courts to enjoin tax preparers that engage in criminal, fraudulent, frivolous, or willful or reckless conduct if the court finds that injunctive relief is appropriate to prevent the recurrence of the conduct.

Proposed law authorizes the Dept. of Revenue to issue cease and desist orders to certain tax preparers that engage in criminal, fraudulent, frivolous, or willful or reckless conduct if the continued conduct creates an immediate threat to taxpayers, however the department may not issue cease and desist orders under proposed law to CPAs, enrolled agents, or attorneys.

Proposed law authorizes the BTA to issue a temporary restraining order or preliminary injunction while a suit to enjoin is pending if the secretary shows that continued conduct by the preparer creates an immediate threat to taxpayers.

Proposed law provides that if a tax preparer is prohibited from preparing returns as part of a criminal prosecution that prohibition will serve as the injunction order without the department being required to file a separate suit.

Proposed law imposes a penalty of at least \$50 per violation for each return, report, claim for refund, or other claim filed by a tax preparer who violates an injunction, cease and desist, or temporary restraining order.

Proposed law provides that a hearing on a motion alleging a violation of an injunction or order by a tax preparer shall be held within 10 days and further provides that each such violation shall be considered an act of contempt.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:1408(D)(1), 1418(7)(d), 1432(A), 1574.2(A), (B)(intro para), and (D); adds R.S. 47:338.223, 1408(D)(3), and 1574.2(E), (F), and (G))