

SENATE BILL NO. 444

BY SENATOR ALLAIN

1 AN ACT

2 To amend and reenact R.S. 47:1402(E)(2), 1408(D)(1), 1418(7)(d), 1432(A), 1574.2(A), the  
3 introductory paragraph of 1574.2(B), and 1574.2(D) and to enact R.S. 47:338.223,  
4 1408(D)(3), and 1574.2(E), (F), and (G), relative to tax administration and the Board  
5 of Tax Appeals; to provide for terms of board members; to provide for the  
6 administration of certain occupancy taxes; to authorize the board to issue protective  
7 orders; to provide relative to notice and the opportunity to be heard for all matters  
8 and all parties before the board; to provide for the jurisdiction of the board; to  
9 authorize the board to issue preliminary injunctions during suits to enjoin certain tax  
10 preparers; to authorize the secretary of revenue to issue cease and desist orders to tax  
11 preparers who engage in certain conduct; to impose penalties on preparers who  
12 violate injunctions or orders; to provide for an effective date; and to provide for  
13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 47:1402(E)(2), 1408(D)(1), 1418(7)(d), 1432(A), 1574.2(A), the  
16 introductory paragraph of 1574.2(B), and 1574.2(D) are hereby amended and reenacted and  
17 R.S. 47:338.223, 1408(D)(3), and 1574.2(E), (F), and (G) are hereby enacted to read as  
18 follows:

19 **§338.223. Collection and administration of occupancy taxes**

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

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

26 **C. Any request for a refund of occupancy tax that was paid but not**

1 actually due shall be made in accordance with the provisions of this Chapter.

2 \* \* \*

3 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

4 \* \* \*

5 E.

6 \* \* \*

7 (2) A member who has served on the board for more than ~~two and one-half~~  
8 ~~terms occurring within~~ three consecutive **full** terms shall be ineligible for  
9 reappointment to the board until at least two years from the last day of his last  
10 appointment. However, a member may be reappointed notwithstanding any other  
11 provision of law to the contrary, if nominated pursuant to Subsection D of this  
12 Section, and service pursuant to that Subsection is not counted for the purposes of  
13 any term or service limitation.

14 \* \* \*

15 §1408. Power to administer oaths and issue rules, orders, or subpoenas

16 \* \* \*

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

27 \* \* \*

28 **(3) The authority pursuant to Article 1426 of the Louisiana Code of Civil**  
29 **Procedure shall apply to the board and its Local Tax Division in the same**  
30 **manner as for a district court, and the board may issue an order in accordance**

1 with the provisions of that Article concerning any subpoena or other discovery  
 2 pursuant to this Title.

3 \* \* \*

4 §1418. Definitions

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

7 \* \* \*

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

9 \* \* \*

10 (d) Any other collector of state taxes or fees, or any other state agency where  
 11 an agency action is appealable to the board or is related to state taxes or fees,  
 12 including contracts.

13 \* \* \*

14 §1432. Notice; hearing; decision

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

22 \* \* \*

23 §1574.2. Suit to enjoin certain preparers; cease and desist order

24 A. (1)(a) In a court of competent jurisdiction or the Board of Tax Appeals,  
 25 the secretary may commence suit to enjoin any preparer from further engaging in any  
 26 conduct described in Subsection B of this Section or from further action as a  
 27 preparer.

28 (b) During the pendency of a suit to enjoin, the court or Board of Tax  
 29 Appeals may issue a temporary restraining order or preliminary injunction  
 30 upon a showing by the secretary that continued conduct by the preparer creates

1 an immediate threat to taxpayers. Any application for a preliminary injunction  
 2 shall be assigned for hearing not less than two nor more than ten days after  
 3 service of the notice. If the suit is pending in the Board of Tax Appeals, the  
 4 hearing and issuance of a preliminary injunction may be conducted by the  
 5 chairman or any member of the board designated by him.

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

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

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

18 (d) Nothing in this Paragraph shall authorize the secretary to issue a  
 19 cease and desist order to any certified public accountant, enrolled agent, or  
 20 attorney at law who is authorized to appear before the board pursuant to R.S.  
 21 47:1414.

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

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

29 \* \* \*

30 D. Notwithstanding any provision of law to the contrary, if a preparer

1 **is prohibited from preparing returns as part of a criminal prosecution brought**  
2 **pursuant to this Title, whether by consent or otherwise, this prohibition shall**  
3 **have the same effect and be subject to the same enforcement provisions as an**  
4 **injunction issued under this Section without the necessity of a separate suit to**  
5 **enjoin. The criminal court's imposition of a prohibition or the acceptance of a**  
6 **plea agreement containing such prohibition shall serve as the injunction order**  
7 **for purposes of this Section.**

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

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

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

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

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

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

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

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

1                   **(2) The penalty provided for by this Subsection shall be an obligation**  
2                   **that may be assessed, collected, and enforced against the preparer in the same**  
3                   **manner as if it were a tax due.**

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

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

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

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_