

2023 Regular Session

SENATE BILL NO. 5

BY SENATOR ALLAIN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/AD VALOREM. Provides for alternatives in lieu of payment under protest for challenges to ad valorem tax assessments. (8/1/23)

1 AN ACT
2 To amend and reenact R.S. 47:1857(B)(1) and (2), 1998(A)(2) and (B)(3), 2134(B)(1) and
3 (4), (C)(4), (D)(3), and (E) and to enact R.S. 47:1989(G), and 2134(F), relative to ad
4 valorem taxes; to provide for the security required for challenging the correctness or
5 legality of ad valorem tax assessments; to provide for the timing of payments under
6 protest or posting other security; to provide that a payment under protest is not
7 required to appeal the correctness of an assessment to the Louisiana Tax
8 Commission; to provide for the posting of a bond or other security in lieu of a
9 payment under protest for challenges to the legality of an assessment; to provide for
10 interest and penalties; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:1857(B)(1) and (2), 1998(A)(2) and (B)(3), 2134(B)(1) and (4),
13 (C)(4), (D)(3), and (E) are hereby amended and reenacted and R.S. 47:1989(G) and 2134(F)
14 are hereby enacted to read as follows:

15 §1857. Corrections and changes

16 * * *

17 B.(1) Any company may institute suit in the Board of Tax Appeals or any

1 court having jurisdiction of the cause of action for the purpose of contesting the
 2 correctness or legality of any **determination related to** corrections and changes of
 3 its assessed valuation for taxation by the Louisiana Tax Commission under this
 4 Section, which suit must be instituted within thirty days after receipt of the notice
 5 ordering the change. However, to state a cause of action, the petition instituting the
 6 suit shall name the Louisiana Tax Commission as defendant and shall set forth not
 7 only the correction or change of its assessed valuation for taxation made by the
 8 Louisiana Tax Commission, but also the assessed valuation for taxation that the
 9 company deems to be correct and legal and the reasons therefor.

10 (2) Any company that has filed suit under these provisions and whose taxes
 11 have become due shall pay such taxes under protest **as provided in R.S. 47:2134(B)**
 12 to the officer or officers designated by law for the collection of such taxes and shall
 13 cause notice or notices to issue in such suit to the officer or officers as provided in
 14 R.S. 47:2134(B). Upon receipt of such notice or notices, the amount paid under
 15 protest shall be segregated and invested by such officer or officers either in an
 16 interest-bearing account or in a certificate of deposit pending a final, nonappealable
 17 judgment in the suit.

18 * * *

19 §1989. Review of appeals by tax commission

20 * * *

21 **G. Notwithstanding any other law to the contrary, a taxpayer**
 22 **challenging the correctness of an assessment pursuant to Article VII, Section**
 23 **18(E) of the Constitution of Louisiana or other applicable law is not required**
 24 **to make a payment under protest or post security while the correctness**
 25 **challenge is pending before the commission or during the pendency of an appeal**
 26 **of the commission's determination brought by any party other than the**
 27 **taxpayer. When a taxpayer appeals the commission's determination, the amount**
 28 **of the payment under protest or alternate security shall be based upon the**
 29 **commission's determination.**

1 * * *

2 §1998. Judicial review; generally

3 A.(1) * * *

4 (2) Any taxpayer who has filed suit under this provision and whose taxes
5 have become due shall pay such taxes under protest **or timely file a rule to set bond**
6 **or other security pursuant to R.S. 47:2134** and shall cause to issue notice to the
7 officer designated by law for the collection of such tax under the provisions of R.S.
8 47:2134(B), and shall cause service of process to be made on the Louisiana Tax
9 Commission as the officer designated by law to assess the property as provided for
10 in R.S. 47:2134(B). However, the portion of taxes that is not in dispute shall be paid
11 without being made subject to the protest.

12 B.(1) * * *

13 (3) Any taxpayer in the state who has filed suit under these provisions and
14 whose taxes have become due shall pay said taxes under protest **or timely file a rule**
15 **to set bond or other security pursuant to R.S. 47:2134** and shall cause to issue a
16 notice to the officer designated by law for the collection of such tax under the
17 provisions of R.S. 47:2134(B), and shall cause service of process to be made on the
18 Louisiana Tax Commission as provided for in R.S. 47:2134(B). However, the portion
19 of taxes that is not in dispute shall be paid without being made subject to the protest.

20 * * *

21 §2134. Suits to recover taxes paid under protest

22 * * *

23 B.(1)(a) A taxpayer challenging the correctness of an assessment under R.S.
24 47:1856, 1857, or 1998 shall timely pay the disputed amount of tax due under protest
25 to the officer or officers designated by law for the collection of this tax **or timely file**
26 **a rule to set bond or other security pursuant to Subsection F of this Section.** The
27 portion of the taxes that is paid by the taxpayer to the collecting officer or officers
28 that is neither in dispute nor the subject of a suit contesting the correctness of the
29 assessment shall not be made subject to the protest. The taxpayer shall submit

1 separate payments for the disputed amount of tax due and the amount that is not in
2 dispute and not subject to the protest.

3 **(b) Paying under protest or filing a rule to set bond or other security**
4 **shall be considered timely if the payment is made or the rule is filed within the**
5 **deadline to appeal to the Board of Tax Appeals or district court pursuant to**
6 **R.S. 47:1856, 1857, or 1998.**

7 * * *

8 (4) If the taxpayer prevails, the collecting officer or officers shall refund the
9 amount to the taxpayer with interest at the actual rate earned on the money paid
10 under protest in the escrow account during the period from the date such funds were
11 received by the collecting officer or officers to the date of the refund. If the taxpayer
12 does not prevail, the taxpayer shall be liable for the additional taxes together with
13 interest at the rate set forth above during the period from the date the ~~notice of~~
14 ~~intention to file suit for recovery of taxes was given to the officer until the date the~~
15 ~~taxes are paid.~~ **taxes were due under R.S. 47:2127 until the date the taxes are**
16 **paid, or in the case of taxes paid under protest, until the date of the payment**
17 **under protest.**

18 C.(1) * * *

19 (4) If the taxpayer prevails, the collecting officer or officers shall refund such
20 amount to the taxpayer with interest at the actual rate earned on the money paid
21 under protest in the escrow account during the period from the date such funds were
22 received by the collecting officer or officers to the date of the refund. If the taxpayer
23 does not prevail, the taxpayer shall be liable for the additional taxes together with
24 interest at the rate set forth above during the period from the date the ~~notice of~~
25 ~~intention to file suit for recovery of taxes was given to the officer until the date the~~
26 ~~taxes are paid.~~ **taxes were due under R.S. 47:2127 until the date the taxes are**
27 **paid, or in the case of taxes paid under protest, until the date of the payment**
28 **under protest.**

29 D. * * *

1 (3) The right to sue for recovery of a tax paid under protest **or other security**
 2 as provided in this Section shall afford a legal remedy and right of action at law in
 3 the **Board of Tax Appeals or** state or federal courts where any tax or the collection
 4 thereof is claimed to be an unlawful burden upon interstate commerce, or in violation
 5 of any act of the Congress of the United States, the Constitution of the United States,
 6 or the Constitution of Louisiana.

7 * * *

8 E.(1) Upon request of a taxpayer and upon proper showing by the taxpayer
 9 that the principle of law involved in an additional assessment is already pending
 10 before the Board of Tax Appeals or the courts for judicial determination, the
 11 taxpayer, upon agreement to abide by the pending decision of the Board of Tax
 12 Appeals or the courts, may pay the additional assessment under protest **pursuant to**
 13 **Subsection B or C of this Section or file a rule to set bond or other security**
 14 **pursuant to Subsection F of this Section** but need not file an additional suit. In
 15 such cases, the tax paid under protest **or other security** shall be segregated and held
 16 by the collecting officer or officers until the question of law involved has been
 17 determined by the courts, the Board of Tax Appeals, or finally decided by the courts
 18 on appeal, and shall then be disposed of as provided in the final decision of the
 19 Board of Tax Appeals or courts, as applicable.

20 (2) If the taxpayer prevails, the officer or officers shall refund such amount
 21 to the taxpayer with interest at the actual rate earned on the money paid under protest
 22 in the escrow account during the period from the date such funds were received by
 23 the officer or officers to the date of the refund. If the taxpayer does not prevail, the
 24 taxpayer shall be liable for the additional taxes together with interest at the rate set
 25 forth above during the period from the date the ~~notice of intention to file suit for~~
 26 ~~recovery of taxes was given to the officer until the date the taxes are paid.~~ **taxes**
 27 **were due under R.S. 47:2127 until the date the taxes are paid, or in the case of**
 28 **taxes paid under protest, until the date of the payment under protest.**

29 **F.(1) Notwithstanding any provision of law to the contrary, any taxpayer**

1 challenging the correctness or legality of any assessment whose remedy requires
2 making a payment under protest pursuant to Subsection B or C of this Section
3 may in the alternative comply with the provisions of this Subsection rather than
4 making a payment under protest.

5 (2)(a)(i) On or before the date on which the taxes are due, the taxpayer
6 challenging the legality of any assessment may file with the court or the Board
7 of Tax Appeals a rule to set bond or other security, which shall be set for
8 hearing within thirty days of the filing of the rule to set bond or other security,
9 and shall attach to the petition evidence of the taxpayer's ability to post bond
10 or other security.

11 (ii) Within the deadline to appeal to the Board of Tax Appeals or district
12 court pursuant to R.S. 47:1856, 1857, or 1998, the taxpayer challenging the
13 correctness of any assessment may file with the court or the Board of Tax
14 Appeals a rule to set bond or other security, which shall be set for hearing
15 within thirty days of the filing of the rule to set bond or other security, and shall
16 attach to the petition evidence of the taxpayer's ability to post bond or other
17 security.

18 (b) The term "other security" as used in this Subsection shall include but
19 not be limited to a pledge, collateral assignment, lien, mortgage, factoring of
20 accounts receivable, or other encumbrance of assets.

21 (3) The court or the Board of Tax Appeals may order either the posting
22 of commercial bond or other security in an amount determined by the court or
23 the board to be reasonable security for the amount of unpaid taxes and interest
24 demand in the assessment or may order the taxpayer to make a payment
25 under protest in an amount determined in its discretion to be reasonable
26 security considering the amount of unpaid taxes and interest. The court or
27 board may order that a portion of the unpaid taxes and interest be paid under
28 protest and the balance secured by the posting of a bond or other security as
29 provided in this Subsection.

1 **(4) The posting of a bond or other security or the payment under protest**
 2 **shall be made no later than thirty days after the mailing of the notice of the**
 3 **decision of the court or the Board of Tax Appeals authorizing the posting of**
 4 **bond or other security or requiring that a payment under protest be made.**

5 **(5) If the taxpayer timely files the suit or any petition or rule referred to**
 6 **in this Subsection, no collection action shall be taken in connection with the**
 7 **assessment of taxes and interest that are the subject of the taxpayer's cause of**
 8 **action, unless the taxpayer fails to post bond or other security or make the**
 9 **payment under protest required by the court or board. The collector shall be**
 10 **permitted to file a reconventional demand against the taxpayer in the cause of**
 11 **action. A collector may procure an appraisal or conduct discovery concerning**
 12 **the value and validity of other security, as that term is described in**
 13 **Subparagraph (F)(2)(b) of this Subsection, offered prior to the date for filing**
 14 **the collector's response or opposition to a rule set for hearing under this**
 15 **Subsection.**

16 **(6) To the extent not inconsistent with this Subsection, the nature and**
 17 **amount of the bond or security and the procedures for posting bond or**
 18 **providing other security shall be consistent with the provisions for providing**
 19 **security in connection with a suspensive appeal under the Code of Civil**
 20 **Procedure.**

21 **(7) This Subsection shall not apply to amounts of tax that are not in**
 22 **dispute and are not the subject of a correctness or legality challenge.**

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

Present law requires the payment under protest of the disputed amount of tax when a taxpayer challenges the correctness of an ad valorem tax assessment or the legality of an ad valorem tax assessment.

Proposed law provides that a taxpayer challenging the correctness of an assessment who has timely filed an appeal with the La. Tax Commission shall not be required to make a payment

under protest or post security while the correctness challenge is pending before the commission or during an appeal of the commission's determination brought by any party other than the taxpayer.

Proposed law provides that when a taxpayer appeals the determination of the La. Tax Commission then the payment under protest or filing a rule to set bond or other security is timely if the payment is made or the rule is filed within the applicable appeal deadline.

Proposed law provides for an alternative method of providing security in lieu of a payment under protest in the case of a taxpayer filing a legality challenge with a court or the Board of Tax Appeals.

Proposed law authorizes the taxpayer, on or before the date on which the taxes are due, to file a rule to set bond or other security with the court or the board which shall be set for hearing within 30 days.

Proposed law authorizes the court or the board to order that a portion of the disputed amount be paid under protest and the balance secured by the posting of a bond or other security.

Proposed law authorizes the collector to file a reconventional demand against the taxpayer in the cause of action in which a bond or alternative security is provided and further provides that the collector may procure an appraisal or conduct discovery concerning the value and validity of security offered.

Proposed law requires that the posting of a bond or other security for ad valorem tax challenges shall be consistent with the provisions for providing security in connection with a suspensive appeal under the Code of Civil Procedure.

Proposed law does not apply to amounts of tax that are not in dispute and are not the subject of a correctness or legality challenge.

Present law provides that interest is calculated at a rate from the date the notice of intention to file suit for recovery of taxes was give to the officer until the date the taxes are paid.

Proposed law provides that interest is calculated at a rate from the date the taxes were due under R.S. 47:2127 until the date the taxes are paid.

Effective August 1, 2023.

(Amends R.S. 47:1857(B)(1) and (2), 1998(A)(2) and (B)(3), 2134(B)(1) and (4), (C)(4), (D)(3), and (E); adds R.S. 47:1989(G) and 2134(F))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Adds provision that allows taxpayers to timely file a rule to set bond or other security pursuant to present law in addition to paying the tax due under protest.
2. Clarifies that interest runs from the date the taxes are due to the date the taxes are paid.
3. Provides timelines by which a rule to set bond shall be filed.
4. Limits when a collector is authorized to conduct discovery concerning the value of validity to situations when "other security" as defined in law is

provided in lieu of a payment under protest or providing a bond.

5. Makes technical changes.