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## DIGEST

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Thierry

HB No. 585

**Abstract:** Creates the Tax Court and abolishes the Board of Tax Appeal.

Proposed law establishes the Tax Court within the La. Court of Appeals and abolishes the Board of Tax Appeals.

Proposed law provides with respect to the minimum number of Tax Court judges, their method of selection, criteria, term, vacancy, compensation and retirement age.

Proposed law provides with respect to the chief judge and the duties.

Proposed law provides that the Tax Court office shall be domiciled in the La. Court of Appeals office in EBR Parish.

Proposed law provides that the court may hold sessions at the Courts of Appeals within the parish of the taxpayer's domicile and that the parish governing authority (except EBR) upon the judge's request shall provide room in the courthouse or a neutral site at the parish seat when hearings are held within that parish.

Proposed law provides that there shall be a seal judicially noticed. The seal may be used to authenticate the official acts of the court or any judge, but failure to use the seal shall not invalidate any such act.

Proposed law provides that there will be staff consisting of a clerk, who shall serve as clerk of the Tax Court and shall be an ex officio notary public for the purposes of the court and the division, and shall give bond with good and solvent surety conditioned upon the faithful performance of his duties in the sum of \$10,000. The clerk shall be the custodian of the docket and records of all proceedings in the Tax Court.

Proposed law provides for the duties of the clerk and staff: administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, and other documents deemed necessary as evidence carrying out their duties.

Proposed law provides that no clerk or other employee of the court shall act as an attorney, counselor, or accountant in the matter of any tax or fee within the jurisdiction of the court.

Proposed law provides that the Tax Court shall have jurisdiction to hear and determine:

(1) A question of law or fact arising under the tax laws of the state administered by the LDR, including penalties, interest, fees imposed by the state not specifically excepted by proposed law, and costs related thereto, claims for refund of an overpayment or credit, and claims against the state for taxes paid erroneously pursuant to present law (R.S. 47:16.51 et seq.)

(2) A question of law or fact arising from any state fee administered or collected by the LDR.

(3) A question of law or fact arising from any state tax or fee administered or collected by the Office of Charitable Gaming or pursuant to Title 27 of the La. Revised Statutes of 1950.

(4) A question of law or fact arising from any state fee administered or collected by the Office of Alcohol and Tobacco Control.

(5) Any matter over which the Tax Court has jurisdiction transferred to the court by a district court or the La. State and Local Sales Tax Commission.

(6) An action by a taxpayer or collector seeking a judgment declaring that a rule of the LDR applicable to a tax or fee within the jurisdiction of the court is contrary to or inconsistent with law.

(7) The underpayment of taxes on natural resources levied pursuant to present law (R.S. 47:631, et seq.)

(8) Lien Cancellations.

(9) Penalty Waivers.

Proposed law provides that jurisdiction of the Tax Court, shall not extend to:

(1) Ad valorem taxes within the jurisdiction of the La. Tax Commission or other property taxes.

(2) Insurance premium taxes.

(3) The collection or enforcement of any final nonappealable assessment or judgment.

(4) Any matter brought by a taxpayer where the taxpayer has not exhausted all other administrative remedies available, unless the taxpayer paid the amount in dispute under protest or has provided bond or other security pursuant to and authorized by law.

(5) Any criminal matter.

(6) Any claim for damages or other action in tort.

Proposed law provides that the venue and place of hearing for proceedings brought against the state shall be the Court of Appeal Circuit where the taxpayer is domiciled or at the Tax Court in EBR, at the election of the taxpayer and proceedings brought against the state shall be subject to review by the Court of Appeal Circuit for the parish of venue. Hearings may be held at other locations provided that all parties consent. If there is not mutual consent, the judge shall determine the best location with as little inconvenience and expense as is practicable.

Proposed law provides that all matters over which the Tax Court has jurisdiction shall be filed with the Court of Appeal Circuit where the taxpayer is domiciled or at the Tax Court in East Baton Rouge Parish, and filing fees paid to, the clerk of the Court of Appeal Circuit or Tax Court, depending on where suit is instituted.

Proposed law provides that a suit shall be filed with the clerk of the Court of Appeal Circuit or Tax Court in the manner provided for civil actions in district court within the applicable time period set forth in law. The pleadings in the petition shall set forth the basis of jurisdiction and venue.

Proposed law provides that the Tax Court shall develop forms and information and make them available in any reasonable manner the court determines as well as convenience regarding filing, filing fees and follow-up.

Proposed law provides that the proceedings shall be governed first by the administrative provisions of Title 47 of the La. Revised Statutes of 1950, then by the Code of Civil Procedure to the extent that such provisions do not conflict with administrative provisions of Title 47 of the La. Revised Statutes of 1950, and thereafter by the administrative provisions of Title 47 of the La. Revised Statutes of 1950 when in conflict with the Code of Civil Procedure.

Proposed law provides that the court may order consolidated or expedited proceedings.

Proposed law provides that the court rules regulate service of process.

Proposed law provides that evidence in the Tax Court shall be governed by the provisions of the Code of Evidence applicable to non-jury trials.

Proposed law provides that persons authorized to appear before the court may be a party who represents himself, a La. licensed attorney at law, an enrolled agent, a CPA, at the discretion of the court, a licensed attorney at law, under the laws of another state or DC or a CPA licensed under the laws of another state or DC and who gives evidence of his qualifications satisfactory to the court.

Proposed law provides that each judge of the court shall have the power to administer oaths and take affidavits, subpoena and require the attendance of witnesses and the production of printed material pertaining to the matter under inquiry, to examine witnesses, and to require the taking of depositions before any person competent to administer oaths, either within or without the state, upon notice to the interested party in like manner that depositions of witnesses are taken in civil actions in the district courts of the state. Parties may summon witnesses or require production of documents.

Proposed law provides that failure to comply with a subpoena or the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the district judge where the person resides, or the parish in which such person may be personally served, on application of the Tax Court judge or upon motion by any party, shall compel obedience by ordering the issuance of an instant subpoena, or other appropriate process for contempt, or a rule as in the case of disobedience of the requirements of a subpoena issued from the district court or a refusal to testify therein.

Proposed law provides that unless required for the disposition of ex parte matters authorized by law, a presiding judge shall not communicate in connection with any issue of fact or law, with

any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Proposed law provides that in accordance with the rules governing district judges in the state, a judge shall voluntarily recuse himself and withdraw from any proceeding in which he cannot accord a fair and impartial hearing or consideration or when required governing rules.

Proposed law provides that any party may request the disqualification of a judge by filing a motion to disqualify the judge supported by an affidavit, promptly upon learning of the basis for the disqualification, stating the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded and the issue shall be determined promptly by the chief judge or other judges of the court if the affidavit affects the chief judge, with hearings conducted accordingly.

Proposed law provides that any person summoned or whose deposition is taken shall receive the same fees and mileage as would be allowed in a civil action pending in the district courts and the expense thereof shall be paid by the party summoning such witness or causing the deposition to be taken and such expenses may be assessed as costs of court by the presiding judge or magistrate.

Proposed law provides that filing fees and other charges authorized by law and paid to the court shall be collected by the clerk and expended for expenses necessary in the operation of the court as appropriated.

Proposed law provides for a filing fee of \$300, and the filing fee for the small claims division shall be \$50; however, the Tax Court may, by rule, revise such filing fees up to a maximum filing fee of \$500 for the Tax Court and up to a maximum of \$100 for the small claims division. The Tax Court also may, by rule, establish other fees chargeable for services rendered by the court and its small claims division, including fees for service of process.

Proposed law provides that each judge shall make a minute entry and issue signed written reasons for the judgment which include a concise statement of the facts found by the court and the conclusions of law reached by the court. The court shall adopt rules and regulations to address confidentiality of taxpayer information and proceedings before it.

Proposed law provides that each judgment of the court and written reasons for the judgment shall be published in the manner which the court deems most effective and practicable.

Proposed law provides that a judgment shall be binding upon all parties and with certain exceptions, shall be final and definitive.

Proposed law provides that a judgment shall be subject to rehearing, reopening, or reconsideration by the court, within 10 days from the date of its entry, based on any ground provided for such action in the provisions of the Code of Civil Procedure applicable to nonjury proceedings.

Proposed law provides that the petition of a party for rehearing, reconsideration, or review, and the order of the court granting it, shall set forth the grounds which justify the action. Nothing in proposed law shall prevent rehearing, reopening, or reconsideration of a matter because of fraud, perjury or fictitious evidence. The matter may be heard again but the evidence confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing is timely filed, the period within which judicial review under the applicable statute must be sought shall run from the final disposition of the application.

Proposed law provides that for the convenience of the parties and witnesses and in the interest of justice, the court upon petition for rehearing, reconsideration, or review of the venue for any review of the judgment, after contradictory hearing, may establish a different venue, if venue was determined pursuant to present law (R.S. 47:16.9(B)(2), or (4).

Proposed law provides that a final judgment or order of the court shall be subject to judicial review by the Court of Appeal Circuit for the parish of venue. Interlocutory, nonfinal, and nonappealable judgments and orders shall be reviewable as provided by the Code of Civil Procedure.

Proposed law provides that proceedings for review may be instituted by filing a petition with the Court of Appeal Circuit for the parish of venue within 30 calendar days after mailing notice of the judgment. If a rehearing is requested, the request shall be made within 30 calendar days after mailing notice of the denial of the rehearing request or the notice of the judgment.

Proposed law provides that a party seeking judicial review of the judgment of the Tax Court shall provide bond as provided by law, except as specifically exempted by law or unless the party is a taxpayer seeking a refund of taxes paid and no additional amount has been found due.

Proposed law provides that when the Court of Appeal judge has ordered a review, a copy of the order and petition shall be mailed to the clerk of the Tax Court and to each party or counsel of record. The order shall command the clerk to send up, within 20 days from the date thereof, the original transcript of the record, together with all exhibits and evidence attached.

Proposed law provides that if, before the date set for hearing, application is made to the court for additional evidence, that additional evidence is shown to be material and that there were good reasons for failure to present it in the proceeding before the Tax Court, the court may order that the additional evidence be taken before the Tax Court upon conditions determined by the court. The Tax Court may modify its findings and judgment by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Proposed law provides that a review shall be conducted by the reviewing court without a jury and shall be confined to the record and in cases of alleged procedural irregularities in procedure before the Tax Court, not shown in the record, proof thereon may be taken in the court. The reviewing court, upon request, may hear oral argument and receive written briefs

Proposed law provides that the reviewing court may affirm, amend, modify, or remand the judgment of the Tax Court or remand the matter for further proceedings, may reverse or modify the judgment if the Tax Court is clearly erroneous as determined by the reviewing court. The reviewing court shall make its own determination and conclusions of fact based upon its own evaluation of the record reviewed in its entirety. Where the Tax Court has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the Tax Court's determination of credibility of witnesses.

Proposed law provides that the secretary shall in writing also notify the taxpayer of his right to appeal to the Tax Court.

Proposed law provides that the chief judge of the Tax Court shall submit a written annual report to the governor, the legislature, and the supreme court.

Proposed law provides that the court may prescribe and promulgate rules in accordance with the APA with legislative review solely by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law provides that any person having a claim against the state for taxes under the jurisdiction of the Tax Court which were erroneously paid into the state treasury, may present such claim to the court, in such form and together with proof as the court may require by rule or regulation and shall consider, examine and investigate evidence, and pass judgment on the claim.

Proposed law provides that, with certain exceptions, claims against the state which have been approved by the Tax Court shall be payable from monies appropriated to the Tax Court for the satisfaction of claims.

Proposed law provides that an action of the Tax Court rejecting or refusing to approve any claim may not be appealed to the courts; however, nothing contained in this Part shall deny a claimant whose claim has been rejected by the court the right to sue in a court of jurisdiction.

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

(Amends R.S. 13:312(1)(a), R.S. 26:354(I), 492(A), 458(F), R.S. 39:51.1(A)(1)(b), R.S. 47:15(14), 114(F)(3), 295(C), 303(B)(5)(d), 303.1(G), 305.14(C), 305.18(C), 305.20(E), 305.53(B)(2), 1508.1(B), 1520(B), 1561, 1565(A) and (B), 1566(C), 1567, 1578(B)(2), (3) and (4)(a), 1580(A)(3), 1603(A), 1621(F), 1625 through 1627, 1688, 1689; Adds R.S. 13:312(B), 47:16.1 through 26 and 16.31 through 34; Repeals R.S. 36:4(B)(1)(p), R.S. 47:1401 through 1416, 1431 through 1438, 1451, 1471 and 1481 through 1486)