

Regular Session, 2014

HOUSE BILL NO. 863

BY REPRESENTATIVES DANAHAY, JOHNSON, RITCHIE, ROBIDEAUX,
WHITNEY, AND WILLMOTT

TAX APPEALS/BOARD: Authorizes and provides for the adjudication of certain state and local tax disputes by the Board of Tax Appeals

1 AN ACT

2 To amend and reenact R.S. 36:801.1(A) and R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and
3 (B), 337.48(A), 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2),
4 (B), and (D), 337.67(B)(3), (C)(3), and (D)(2), 337.77(F), 337.81(A)(2) and (C),
5 337.86(E)(2)(a), 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431,
6 1432, 1436, 1437, and 1451, and R.S. 49:967(A) and 968(B)(9), to enact R.S.
7 36:53(J) and R.S. 47:337.2(A)(1)(c), 337.77(G), 337.81.1, 337.86(E)(1)(d), 1407(3),
8 1414(E), 1417, and 1418, and to repeal R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and
9 337.101(A)(2)(c), (B), and (C), relative to disputes concerning taxes, fees, and
10 claims against the state and its political subdivisions; to provide relative to the
11 composition, compensation, procedures, and jurisdiction of the Board of Tax
12 Appeals; to provide for the dedication of certain revenues for support of the board;
13 to transfer the board to the Department of State Civil Service; to provide with respect
14 to procedures for collection and adjudication of local sales and use tax; to provide
15 for redetermination of certain local sales and use tax assessments and overpayments;
16 to authorize the transfer of certain cases to and from the board and certain courts; to
17 provide for definitions; to provide for effectiveness; and to provide for related
18 matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. R.S. 36:801.1(A) is hereby amended and reenacted and R.S. 36:53(J) is
21 hereby enacted to read as follows:

1 §53. Transfer of boards, commissions, departments, and agencies to Department of
2 State Civil Service

3 * * *

4 J. The Board of Tax Appeals is placed within the Department of State Civil
5 Service as an independent agency and shall exercise its powers, duties, functions,
6 and responsibilities in the manner provided for agencies transferred in accordance
7 with the provisions of R.S. 36:801.1. The State Civil Service Commission, the
8 Department of State Civil Service, and its director shall in no way interfere with,
9 review, or change the decisions or operations of the agency so placed. There shall
10 be a Local Tax Division of the Board of Tax Appeals.

11 * * *

12 §801.1. Transfer; retention of all functions

13 A. The agencies transferred by the provisions of R.S. 36:4(B)(1)(dd),~~(B)~~
14 and (18) and (D), 4.1(C) and (G), 53(H) and (J), 209(R), 259(J), 409(N), 509(O),
15 651(D), and 725(A) shall continue to be comprised and selected as provided by law.

16 * * *

17 Section 2. R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and (B), 337.48(A),
18 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2), (B), and (D),
19 337.67(B)(3), (C)(3), and (D)(2), 337.77(F), 337.81(A)(2) and (C), 337.86(E)(2)(a),
20 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431, 1432, 1436, 1437, and
21 1451 are hereby amended and reenacted and R.S. 47:337.2(A)(1)(c), 337.77(G), 337.81.1,
22 337.86(E)(1)(d), 1407(3), 1414(E), 1417, and 1418 are hereby enacted to read as follows:

23 §302. Imposition of tax

24 * * *

25 K. An additional tax shall be levied as follows:

26 * * *

27 (7) ~~Pursuant~~ From the avails of the tax levied under this Subsection, the
28 amount of one hundred and twenty thousand dollars shall be dedicated to and
29 appropriated for support of the Board of Tax Appeals, Department of State Civil

1 of this Subtitle shall be interpreted by the Board of Tax Appeals and the courts of
2 this state to have the same meaning and application as the provisions in those
3 Chapters.

4 * * *

5 §337.45. Alternative remedies for the collection of taxes

6 A. In addition to following any of the special remedies provided in this
7 Chapter, the collector may, in his discretion, proceed to enforce the collection of any
8 taxes due under the local ordinance by means of any of the following alternative
9 remedies or procedures:

10 (1) Assessment and distraint, as provided in R.S. 47:337.48 through 337.60;
11 ~~provided that a taxpayer may utilize the mandatory arbitration procedure provided~~
12 ~~for in R.S. 47:337.51.1.~~

13 * * *

14 B. The collector may choose which of these procedures he will pursue in
15 each case, and the counter-remedies and delays to which the taxpayer will be entitled
16 will be only those which are not inconsistent with the proceeding initiated by the
17 collector, provided that in every case the taxpayer shall be entitled to proceed under
18 R.S. 47:337.63, except (a) after he has filed a petition with the Board of Tax Appeals
19 for a redetermination of the assessment, (b) when an assessment for the tax in
20 question has become final, or (c) when a suit involving the same tax obligation
21 is pending against him; and provided further, that the fact that the collector has
22 initiated proceedings under the assessment and distraint procedure will not preclude
23 him from thereafter proceeding by summary or ordinary court proceedings for the
24 enforcement of the same tax obligation.

25 * * *

26 §337.48. Determination and notice of tax due

27 A.(1) If a taxpayer fails to make and file any return or report required by the
28 provisions of the local ordinance and this Chapter, the collector shall determine the
29 tax, penalty, and interest due by estimate or otherwise. Having determined the

1 amount of tax, penalty, and interest due, the collector shall send by mail a notice to
2 the taxpayer at the address given in the last report filed by him pursuant to the
3 provisions of this Chapter, or to any address that may be obtainable from any private
4 entity which will provide such address free of charge or from any federal, state, or
5 local government entity, including but not limited to the U.S. Postal Service or from
6 U.S. Postal Service certified software, setting out his determination and informing
7 the person of his purpose to assess the amount so determined against him after
8 fifteen calendar days from the date of the notice.

9 (2) Notwithstanding any other provision of law to the contrary, a notice
10 issued pursuant to Paragraph (1) of this Subsection to a taxpayer or dealer who fails
11 to make and file any required report or return shall not be appealable to the Board of
12 Tax Appeals for redetermination of the notice of tax due issued pursuant to this
13 Section when the notice is solely for the periods and is in the amount stated on the
14 notice transmitted to such taxpayer or dealer pursuant to Paragraph (1) of this
15 Subsection. Nothing in this Paragraph shall prohibit any taxpayer or dealer from
16 proceeding to file suit pursuant R.S. 47:337.63 or 337.64, or any other applicable
17 law.

18 * * *

19 §337.51. Notice of assessment and right to appeal ~~or arbitration~~

20 A.(1) Having assessed the amount determined to be due, the collector shall
21 send a notice by certified mail to the taxpayer against whom the assessment is
22 imposed at the address given in the last report filed by ~~said~~ the taxpayer, or to any
23 address obtainable from any private entity which will provide such address free of
24 charge or from any federal, state, or local government entity, including but not
25 limited to the United States Postal Service or from the United States Postal Service
26 certified software. This notice shall inform the taxpayer of the assessment and that
27 he has thirty calendar days from the date of the notice to do any of the following:

28 (a) Pay the amount of the assessment.

1 **(b) Appeal to the Board of Tax Appeals for redetermination of the**
2 **assessment.**

3 **(c) Pay under protest in accordance with R.S. 47:337.63, and then either file**
4 **suit or file a petition with the Board of Tax Appeals all as provided for in that**
5 **Section.**

6 **(2) If no report has been timely filed, the collector shall send a notice by**
7 **certified mail to the taxpayer against whom the assessment is imposed at any address**
8 **obtainable from any private entity which will provide such address free of charge or**
9 **from any federal, state, or local government entity, including but not limited to the**
10 **United States Postal Service or from the United States Postal Service certified**
11 **software. This notice shall inform the taxpayer of the assessment and that he has**
12 **thirty calendar days from the date of the notice to ~~(a) pay the amount of the~~**
13 **assessment; ~~(b) request mandatory arbitration pursuant to R.S. 47:337.51.1 or; (c)~~**
14 **pay do either of the following:**

15 **(a) Pay the amount of the assessment.**

16 **(b) Pay under protest in accordance with R.S. 47:337.63 and then either file**
17 **suit or file a petition with the Board of Tax Appeals, all as provided for in that**
18 **Section ~~or request mandatory arbitration pursuant to R.S. 47:337.51.1.~~**

19 **(3) If the taxpayer has not paid under protest in accordance with the**
20 **provisions of R.S. 47:337.63, or pursued an alternative remedy in accordance with**
21 **R.S. 47:337.64, or filed an appeal with the Board of Tax Appeals within the thirty-**
22 **day period provided for in Paragraph (1) of this Subsection, the assessment shall be**
23 **final and shall be collectible by distraint and sale as provided in this Part. If an**
24 **appeal for a redetermination of the assessment has been timely and properly filed,**
25 **the assessment shall not be collectible by distraint and sale until such time as the**
26 **assessment has been redetermined or affirmed by the Board of Tax Appeals or the**
27 **court which last reviews the matter.**

1 Subsection only to permit the collector to correct manifest errors of fact or in the
 2 application of the law made by the collector in making the assessment; however, all
 3 reductions of assessments based on such errors, except estimated assessments made
 4 due to the failure of the taxpayer to file a proper tax return, must be approved and
 5 signed by the collector. Estimated assessments made due to the failure of the
 6 taxpayer to file a proper tax return may be corrected by the acceptance of the proper
 7 tax return and must be approved by the collector or his designee.

8 * * *

9 §337.53. Assessment and notice when tax is in jeopardy

10 * * *

11 C. The taxpayer against whom the assessment lies can stay distraint of his
 12 property, or sale of his property already distrained, as the case may be, only by the
 13 immediate payment of the assessment or by posting with the collector a surety bond
 14 for twice the amount of such assessment, or of a lower amount acceptable to the
 15 collector, with such sureties as the collector deems necessary. The taxpayer shall
 16 have sixty calendar days from the date of payment, or the date of posting bond, to
 17 appeal to ~~a court of competent jurisdiction~~ the Board of Tax Appeals for a
 18 redetermination of the assessment. During this period, the collector shall hold any
 19 payment made in an escrow account. If the taxpayer does not appeal, the collector
 20 shall immediately credit such payment to tax collections or proceed to collect from
 21 sureties, if any were given. In the event of an appeal, such payment or demand for
 22 payment from sureties given shall be held in abeyance pending the redetermination
 23 or affirmation of the assessment by the Board of Tax Appeals or the court which last
 24 reviews the matter. Final payment, or collection from sureties, will be for the
 25 amount of the affirmed or redetermined assessment.

26 §337.54. Assessment and claims in bankruptcy and receivership

27 Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy
 28 proceeding, or the appointment of a receiver for any taxpayer in a receivership
 29 proceeding, before any court of this state or of the United States, the collector may

1 immediately make a determination from any available information or by estimate or
 2 otherwise, of the amount of tax, penalty and interest the taxpayer is liable to pay and
 3 immediately assess ~~said~~ this amount, and by a writing to be retained as a part of his
 4 official records indicate that such assessment has been made. Such assessment may
 5 be made whenever a tax becomes due under the provisions of this Chapter,
 6 regardless of whether it is then payable or not. Claims for such assessments, and
 7 additional interest and attorney fees thereon, shall be presented for adjudication in
 8 accordance with law to the court before which the bankruptcy or receivership
 9 proceeding is pending despite the pendency of delays before assessment provided in
 10 R.S. 47:337.48 through 337.51, or the pendency of an appeal to the collector, the
 11 Board of Tax Appeals, or the courts for a redetermination. However, no petition for
 12 the redetermination of an assessment shall be filed with the collector, the Board of
 13 Tax Appeals, or the courts after an adjudication of bankruptcy or the appointment of
 14 a receiver, unless the petition is accompanied by a certified copy of an order of the
 15 court before which the bankruptcy or receivership proceedings is pending,
 16 authorizing the trustee or receiver to prosecute such appeal.

* * *

18 §337.63. Remittance of tax under protest; suits to recover

19 A.(1)(a) Any taxpayer protesting the payment of any amount found due by
 20 the collector or the enforcement of any provision of law in relation thereto shall
 21 remit to the collector the amount due and at that time shall give notice of intention
 22 to file suit for the recovery of such tax or shall remit to the collector the amount due,
 23 and ~~make a written request for mandatory arbitration pursuant to R.S. 47:337.51.1~~
 24 at that time give notice of intention to file a petition with the Board of Tax Appeals,
 25 as provided in this Section.

26 (b) In the case of sales or use taxes that are required to be collected and
 27 remitted by a selling dealer as provided for in R.S. 47:337.17, the purchaser, in order
 28 to avail himself of the alternative remedy provided by this Section, shall remit
 29 protested sales or use tax to the selling dealer, and shall retain copies of

1 documentation evidencing the amount of the sales or use tax paid to the dealer on the
 2 transactions. On or before the twentieth day of the month following the month of the
 3 transactions on which the selling dealer charged the tax, the purchaser shall inform
 4 the collector by certified mail or other reasonable means of the dates and amounts
 5 of the protested taxes that were charged by the selling dealer, and shall give notice
 6 of the purchaser's intention to file suit for recovery of the tax or to ~~make a written~~
 7 ~~request for mandatory arbitration pursuant to R.S. 47:337.51.1~~ file a petition for
 8 recovery of the tax with the Board of Tax Appeals, as provided by law.

9 (2) Upon receipt of this notice, the amount remitted to the collector or the
 10 amount of protested taxes that have been paid to the selling dealer shall be placed in
 11 an escrow account and held by the collector or his duly authorized representative for
 12 a period of thirty days. If suit is filed for recovery of the tax or a ~~written request for~~
 13 ~~mandatory arbitration is mailed as provided for in R.S. 47:337.51.1~~ petition is filed
 14 with the Board of Tax Appeals for recovery of the tax, within the thirty-day period,
 15 the funds in the escrow account shall be further held pending the outcome of the suit
 16 or ~~the arbitration proceeding~~ petition with the Board of Tax Appeals or appeal
 17 therefrom.

18 * * *

19 B. This Section shall afford a legal remedy and right of action in the Board
 20 of Tax Appeals as provided in this Section, or in any state court having jurisdiction
 21 of the parties and subject matter, for a full and complete adjudication of any and all
 22 questions arising in the enforcement of the sales and use tax of a taxing authority as
 23 to the legality of any tax accrued or accruing or the method of enforcement thereof.
 24 In such action, service of process upon the collector shall be sufficient service, and
 25 he shall be the sole necessary and proper party defendant in any such suit.

26 * * *

27 D. Upon request of a taxpayer and upon proper showing by such taxpayer
 28 that the principle of law involved in an additional assessment is already pending
 29 before the courts for judicial determination or before ~~an arbitration panel as provided~~

1 §337.86. Credit for taxes paid

2 * * *

3 E.(1) Notwithstanding any other law to the contrary, no person shall be taxed
4 with respect to a particular event more than once, provided that the person collecting
5 and remitting taxes can produce to the collector documentary evidence to show a
6 good faith effort to recover taxes paid to the incorrect taxing authority. Such
7 documentary evidence shall consist of the following:

8 * * *

9 (d) Notwithstanding any provision of law to the contrary, any taxpayer who
10 receives an assessment and who has complied with any applicable provisions of
11 Subparagraphs (a) through (c) of this Paragraph, may within thirty calendar days of
12 the date of notice, take any action specified in R.S. 47:337.51(A)(1).

13 (2)(a) The collector shall not impose penalties or interest on taxes
14 erroneously paid to another taxing authority unless the erroneous payment was the
15 result of intentional conduct ~~of~~ or gross negligence on the part of the persons
16 collecting and remitting taxes. In instances where a legitimate disagreement exists
17 as to which taxing authority is owed, the involved taxing authorities shall resolve the
18 dispute among themselves through any legal means, including the filing of a rule or
19 petition in the manner provided for in R.S. 47:337.101.

20 * * *

21 §337.101. Procedures to seek uniformity of interpretation of common or local sales
22 tax law

23 A.

24 * * *

25 (2) Such taxpayer or collector may proceed to seek uniformity of
26 interpretation of a rule, regulation, policy or interpretation of sales and use tax laws,
27 ordinances, rules, or regulations in accordance with any remedy available under
28 applicable law, including the following procedures:

1 (a) A rule to seek uniformity of interpretation of common sales tax law or
2 local sales tax law in any court of competent jurisdiction, or in the Board of Tax
3 Appeals.

4 * * *

5 §1401. Creation of board of tax appeals

6 In order to provide a board that will act as an appeal board to hear and decide,
7 at a minimum of expense to the taxpayer, questions of law and fact arising from
8 disputes or controversies between a taxpayer and the collector of revenue of the State
9 of Louisiana in the enforcement of any tax, excise, license, permit or any other tax
10 law administered by the collector, and to exercise jurisdiction as provided for in the
11 Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as
12 the board, is created as an independent agency in the ~~executive department of the~~
13 ~~state government~~ Department of State Civil Service, and for the purposes of this
14 Chapter.

15 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

16 A. The Board of Tax Appeals shall be composed of three members who shall
17 be qualified electors of the state. At least two of the board members shall be
18 attorneys who have been admitted to the practice of law in Louisiana for at least five
19 years, and at least one of the board members shall be certified as a Tax Law
20 Specialist by the Louisiana Board of Legal Specialization. Each member shall be
21 appointed by the governor ~~and shall serve at the pleasure of the governor.~~ Vacancies
22 shall be filled in the manner of the original appointment.

23 B. Each appointment to the board by the governor shall be submitted to the
24 Senate for confirmation.

25 C. The ~~term of members in office prior to twelve o'clock noon on July 16,~~
26 ~~1984 shall be deemed to have terminated as of July 16, 1984; however, any such~~
27 ~~member shall remain in office until his successor is appointed and takes office~~
28 governor shall make the following appointments on or before September 1, 2014:
29 one member with a term expiring February 1, 2016, and one member with a term

1 expiring February 1, 2018. Any subsequent appointments pursuant to this
2 Subsection shall be for either a fixed term of four years or for the remainder of an
3 unexpired term.

4 D.(1) On or before August 1, 2014, the governor shall appoint one member
5 to a term expiring February 1, 2020, from a list of qualified nominees provided by
6 the nominating committee established pursuant to this Subsection. Any subsequent
7 appointments pursuant to this Subsection shall be for either a fixed term of six years
8 or for the remainder of an unexpired term.

9 (2) The nominating committee shall be responsible for developing a list of
10 not less than one, nor more than three, qualified nominees for any vacancy. Any
11 person nominated by the committee must be an attorney with experience in
12 Louisiana sales tax law, and at least one nominee shall be certified as a Tax Law
13 Specialist by the Louisiana Board of Legal Specialization.

14 (3) The Local Tax Division Nominating Committee is hereby established to
15 be comprised of eight members who shall be either an attorney licensed to practice
16 law in Louisiana, a certified public accountant, or a parish tax administrator. The
17 committee shall be comprised of the following members:

18 (a) A representative of the Louisiana Association of Business and Industry.

19 (b) A representative of the Society of Louisiana Certified Public
20 Accountants, selected in consultation with the Business and Industry Committee of
21 the Louisiana Association of Tax Administrators.

22 (c) Two representatives of the section on taxation of the Louisiana State Bar
23 Association, with one selected in consultation with the National Bar Association
24 Greater New Orleans Chapter Louis A. Martinet Society.

25 (d) A representative of the Louisiana Municipal Association.

26 (e) A representative of the Police Jury Association of Louisiana.

27 (f) A representative of the Louisiana School Boards Association.

28 (g) A representative of the Louisiana Sheriffs' Association.

1 (4) The secretary-clerk of the board shall maintain the records of the
2 nominating committee, and shall call an organizational meeting of the nominating
3 committee in order for the nominating committee to elect its chairman. The
4 chairman, or a majority of committee members, may call meetings of the committee,
5 and shall provide advance notice of all meetings to the members and to the
6 appointing entities referenced in Paragraph (3) of this Subsection.

7 (5) Six members shall constitute a quorum for the transaction of committee
8 business, and each nomination must be approved by a favorable vote of at least five
9 committee members.

10 E.(1) A board member shall continue to serve until a successor has been
11 appointed. No member may be removed during an unexpired term of office except
12 for good cause shown, which shall be subject to judicial review.

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

20 F. The governor shall establish the compensation to be paid to members of
21 the board, including any additional compensation for its officers. A member's
22 compensation shall not be reduced during their unexpired term of office.

23 §1403. Designation of ~~chairman~~ officers; domicile; quorum; seal

24 A.(1) The governor shall designate a chairman from the membership of the
25 Board of Tax Appeals.

26 (2) The member other than the chairman with the longest service on the
27 board shall be its vice chairman, and shall perform duties as may be specified in the
28 rules of the board and delegated by the chairman.

1 (3) The member appointed pursuant to R.S. 47:1402(D) shall be the hearing
2 judge of the Local Tax Division of the board. For the purposes of the Local Tax
3 Division, the judge shall exercise all jurisdiction, authority, and powers of the board
4 and its chairman, including the hearing of cases to be adjudicated in the division and
5 the rendering of orders and judgments in such cases. The remainder of the board
6 may temporarily exercise these functions during any vacancy in this appointment,
7 but may hear and render judgment in a case in the division only if this appointment
8 remains vacant for more than ninety days.

9 B.(1) The principal office and domicile of the board shall be at Baton Rouge,
10 Louisiana.

11 (2) The board may hold meetings at any place within the state, and any
12 member, when designated by the chairman, may act as a hearing judge and conduct
13 hearings for the purpose of receiving testimony, argument, or both and reporting his
14 findings of fact, law, or both to the board for decision or judgment.

15 (3) The time and place of meetings and hearings shall be designated by the
16 chairman, with a view of securing reasonable opportunity to taxpayers to appear
17 before the board with as little inconvenience and expense to taxpayers parties and
18 witnesses as is practicable.

19 (4) With the consent of all parties or upon the request of the taxpayer in a
20 pre-trial matter involving only a state collector, the board may allow for a hearing
21 to be held by telephone, video conference, or similar communication equipment,
22 including the administration of oaths in proceedings.

23 (5) Upon the motion of the local collector, a hearing in a matter involving
24 only local taxing authorities from a single parish shall be held in that parish. The
25 respective district or other local court shall make available any facilities necessary
26 for the hearing, and any relevant expenses may be taxed as costs.

27 (6)(a)(i) Upon the joint motion of all parties in any matter, or pursuant to an
28 election made by the local collector in accordance with the provisions of

1 Subparagraph (b) of this Paragraph, a case filed with the board shall be heard in the
2 board's Local Tax Division.

3 (ii) A case designated to be heard in the Local Tax Division shall be
4 adjudicated as provided for in R.S. 47:1403(A)(3).

5 (iii) A case designated to be heard in the Local Tax Division may thereafter
6 instead be heard and adjudicated by the entire board only upon the joint motion of
7 all parties. However, any board member may exercise the powers granted in R.S.
8 47:1408, and the chairman may issue other non-dispositive orders concerning cases
9 in the division upon the joint motion of all parties or, in the absence of and at the
10 direction of the hearing judge.

11 (b) A local collector may elect in advance to have all cases against that local
12 collector heard in the Local Tax Division. Such election shall be made, or repealed,
13 in the form of an affidavit executed by the local collector. The affidavit shall be
14 effective only for those cases filed with the board against that local collector at least
15 ninety days after the filing of the affidavit with the board's secretary-clerk. The
16 secretary-clerk shall publish a list on the board's website identifying the respective
17 dates on which any such affidavits were filed.

18 * * *

19 §1407. Jurisdiction of the board

20 The jurisdiction of the board shall extend to the following:

21 * * *

22 (3) All matters related to other jurisdiction otherwise provided by law,
23 including rules to seek uniformity of interpretation of common sales and use tax law
24 or local sales and use tax law, as provided in R.S. 47:337.101(A)(2).

25 * * *

26 §1410. Findings of fact, decisions, and opinions

27 A. The board shall, in each case heard by it, or in any matter referred to it by
28 the collector or in each case submitted to it upon stipulations of agreement and fact,

1 ~~make~~ issue written findings of fact and conclusions of law and make and file a
2 written decision or judgment thereon.

3 B.(1) The board may, in its discretion, issue ~~an opinion in writing~~ written
4 reasons in addition to its ~~findings of fact and~~ decision or judgment.

5 (2) Upon the request of any party, the board shall issue written reasons in
6 addition to its judgment in a case.

7 (3) Any additional written reasons issued pursuant to this Subsection shall
8 be published on the board's website.

9 * * *

10 §1413. Rules and regulations

11 A. In all other matters regarding the conduct of its hearings, the board may
12 prescribe and promulgate rules and regulations not inconsistent with law or the
13 provisions of this Chapter, ~~which rules and regulations when prescribed, adopted and~~
14 ~~promulgated.~~ Upon promulgation, the rules and regulations shall be binding upon
15 parties litigant in any cause over which the jurisdiction of this board shall extend.

16 B. Rules related to the establishment of fees chargeable for filings and for
17 services rendered by the board shall be subject to review, suspension, or veto
18 pursuant to R.S. 49:968 through 970.

19 C. The rules and regulations of the board shall be annually reviewed, and
20 may be revised as necessary to provide relative to a prompt adjudication of cases
21 filed against local collectors.

22 §1414. Persons authorized to appear before the board

23 * * *

24 E. A local collector may be represented by any designated employee of the
25 local collector.

26 * * *

1 §1417. Recusal; board members

2 A. In accordance with the provisions of the Code of Civil Procedure, a board
3 member may voluntarily recuse himself and withdraw from any proceeding in which
4 he cannot accord a fair and impartial hearing or consideration.

5 B.(1) Any party may also request the recusal of a board member by filing a
6 motion for recusal promptly upon learning of the basis for the disqualification,
7 stating with particularity the grounds upon which it is claimed that a fair and
8 impartial hearing cannot be accorded.

9 (2) The issue shall be determined promptly by the remaining board members
10 in accordance with the rules of the Code of Civil Procedure concerning the recusal
11 of district judges.

12 C.(1) Upon the entry of an order of recusal concerning a board member or
13 members, the remaining board members may hear and decide the case, or the
14 chairman may assign the case to be heard in accordance with R.S. 47:1403(B)(2),
15 and the board member acting as hearing judge shall render the judgment of the
16 board.

17 (2) If all board members are recused, the chairman shall promptly notify the
18 chief justice of the Louisiana Supreme Court, who shall appoint a retired judge to
19 adjudicate the case as a hearing judge ad hoc for the board and to render the
20 judgment of the board in the matter. For purposes of this Subsection, any person
21 who has held office as a judge pursuant to Article V, Section 22 of the Constitution
22 of Louisiana may be appointed. The retired judge shall be compensated pursuant to
23 R.S. 11:1384 from funds available to the board, and these expenses may be assessed
24 as costs.

25 (3) Upon entry of an order of recusal concerning the board member presiding
26 over a case in the Local Tax Division, the case shall be reassigned to be heard in
27 accordance with Paragraph (2) of this Subsection, or, upon a joint motion of all
28 parties it may either be heard pursuant to Paragraph (1) of this Subsection or be
29 transferred to the district court of proper venue.

1 D. Notwithstanding any provision of law to the contrary, including Chapter
2 15 of Title 42 of the Louisiana Revised Statutes of 1950, as amended, if any member
3 of the board is recused from a case pursuant to this Section, he may continue to serve
4 as a member of the board while the remainder of the board adjudicates a taxpayer's
5 appeal or claim, but the board member shall have no participation or involvement in
6 any case in which he is recused.

7 §1418. Definitions

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

10 (1) "Board" means the Board of Tax Appeals.

11 (2) "Collector" means the state collector or a local collector, unless specified
12 otherwise.

13 (3) "Local collector" means any of the following:

14 (a) The individual or entity designated as the single collector of the sales and
15 use taxes of any parish, municipality, school board, any other unit of local
16 government, and any special district whose boundary is not coterminous with the
17 state, and their duly authorized assistants in relation to a tax levied by any local
18 political subdivision within the jurisdiction of the Board of Tax Appeals.

19 (b) The agent or successor to any of the above, including any joint
20 commission, authority, or other duly constituted single collection entity, created by
21 an agreement, when administering or collecting the taxes of any local political
22 subdivision within the jurisdiction of the Board of Tax Appeals.

23 (4) "Petition" means a separate and distinct pleading filed against the
24 relevant state collector or local collector. A petition filed against a state collector
25 shall not interrupt or suspend the time period within which a taxpayer must file a
26 petition against any local collector, and a petition filed against a local collector shall
27 not suspend or interrupt the time period within which a taxpayer must file a petition
28 against a state collector or a different local collector.

29 (5) "State collector" means any of the following:

1 (a) The secretary of the Department of Revenue, including the secretary's
2 duly authorized assistants, when used in reference to any tax or fee administered by
3 the department.

4 (b) The assistant secretary of the office of motor vehicles within the
5 Department of Public Safety and Corrections, including the assistant secretary's duly
6 authorized assistants, when used in reference to any state tax or fee administered by
7 the office and within the jurisdiction of the Board of Tax Appeals.

8 (c) The commissioner of the office of alcohol and tobacco control, within the
9 Department of Revenue, when used in relation to any state tax or fee administered
10 by the office and within the jurisdiction of the Board of Tax Appeals.

11 (d) The agent or successor of any of the foregoing offices when
12 administering a state tax or fee within the jurisdiction of the Board of Tax Appeals.

13 * * *

14 §1431. Taxpayer's petition

15 A. Whenever a taxpayer is aggrieved by an assessment made by the state
16 collector, or by the state collector's action or failure to act on a claim for refund or
17 credit of an overpayment, such taxpayer may appeal to the board for a
18 redetermination of the assessment or a determination of the alleged overpayment, by
19 filing a petition with the board within the respective periods set forth in R.S.
20 47:1565, 1566, and ~~47:1625~~.

21 B. If a taxpayer has complied with the provisions of R.S. 47:337.63 or 1576,
22 the taxpayer may file a payment under protest petition with the board within the
23 respective periods set forth therein.

24 C. If a taxpayer disputes an assessment made by a local collector, or a local
25 collector's action or failure to act on a claim for a refund or credit of an overpayment,
26 the taxpayer may appeal to the board for a redetermination of the assessment or a
27 determination of the alleged overpayment, by filing a petition with the board as
28 provided in R.S. 47:337.51, 337.53, or 337.81.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1432. Notice; hearing; decision

2 ~~In~~ A. The taxpayer and the collector shall be afforded notice and opportunity
3 to be heard in each proceeding for the redetermination of an assessment, the
4 consideration of a payment under protest petition, or for the determination of an
5 overpayment notice and opportunity to be heard shall be given to the taxpayer and
6 the collector and a . A decision or judgment in such matters shall be made as quickly
7 as practicable.

8 B.(1) The board has no jurisdiction to declare a statute or ordinance
9 unconstitutional. When the taxpayer or collector has pled the unconstitutionality of
10 a statute or ordinance, the board shall order the case transferred to the district court
11 of proper venue upon the motion of any party if the board finds that the case cannot
12 be resolved without reaching a declaration on the alleged unconstitutionality.

13 (2) A district court shall consider de novo the issues of unconstitutionality
14 pled in any case transferred to it pursuant to this Subsection, but upon the joint
15 motion of all parties and the attorney general, the board may develop a record and
16 make a recommendation to the district court on the issue.

17 C. Except upon the joint motion of all parties, the board shall not consolidate
18 a case against a local collector with a case against a state collector or with a case
19 against one or more other local collectors; however, nothing in this Part shall prevent
20 the board, upon the joint motion of all parties and when in the interest of justice and
21 efficiency, from ordering a consolidated hearing for the adjudication of pending
22 cases, provided that each party's own counsel or qualified representative and
23 witnesses may appear and present its case, and provided that the board shall render
24 a separate judgment for any case brought against a local collector, even when such
25 case is considered in a joint hearing together with another case or cases.

26 D. If an assessment of a local collector is appealed to the board for
27 redetermination that covers both a sales and use tax matter that is appealable to the
28 board together with a tax matter that is not appealable to the board, the local
29 collector may either consent to the board's adjudication of the matter or consent that

1 penalty. Nothing in this Section shall be construed to expand the jurisdiction of the
2 board to reconsider or review a waiver of penalties or any other discretionary
3 functions of a local collector.

4 Section 3. R.S. 49:967(A) and 968(B)(9) are hereby amended and reenacted to read
5 as follows:

6 §967. Exemptions from provisions of Chapter

7 A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not
8 be applicable to the Board of Tax Appeals, the Department of Revenue, with the
9 exception of the Louisiana Tax Commission that shall continue to be governed by
10 this Chapter in its entirety, unless otherwise specifically provided by law, and the
11 administrator of the Louisiana Employment Security Law; however, the provisions
12 of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall
13 be applicable to such ~~board~~, department, and administrator.

14 * * *

15 §968. Review of agency rules; fees

16 * * *

17 B. Prior to the adoption, amendment, or repeal of any rule or the adoption,
18 increasing, or decreasing of any fee, the agency shall submit a report relative to such
19 proposed rule change or fee adoption, increase, or decrease to the appropriate
20 standing committees of the legislature and the presiding officers of the respective
21 houses as provided in this Section. The report shall be so submitted on the same day
22 the notice of the intended action is submitted to the Louisiana Register for
23 publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to
24 each standing committee electronically if electronic means are available. If no
25 electronic means are available, the report shall be submitted at the committee's office
26 in the state capitol by certified mail with return receipt requested or by messenger
27 who shall provide a receipt for signature. The electronic receipt by the committee,

1 return receipt or the messenger's receipt shall be proof of receipt of the report by the
2 committee.

3 * * *

4 (9) The Department of Civil Service and all of the agencies made a part of
5 it shall submit the report to the House Committee on House and Governmental
6 Affairs and the Senate Committee on Senate and Governmental Affairs; however,
7 the Board of Tax Appeals shall submit the report to the House Committee on Ways
8 and Means and the Senate Committee on Revenue and Fiscal Affairs.

9 * * *

10 Section 4. R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and 337.101(A)(2)(c), (B), and
11 (C) are hereby repealed.

12 Section 5. The members of the Board of Tax Appeals on the effective date of this
13 Act shall continue to serve in such capacity at the pleasure of the governor until the
14 appointments to fixed terms are made in accordance with the provisions of this Act.
15 Notwithstanding any provision of law to the contrary, no term or service limitation shall
16 apply to any member appointed and serving on the board on the effective date of this Act
17 unless and until such appointment is for a full term of four years or six years, respectively,
18 as provided for in this Act.

19 Section 6. Within thirty days of the effective date of this Act, anyone with a matter
20 pending before an arbitration panel or who has properly and timely mailed a request for
21 arbitration that is pending, pursuant to R.S. 47:337.51.1 as it existed prior to this Act, may
22 exercise any right granted to appeal to the Board of Tax Appeals under this Act, or may pay
23 under protest in accordance with R.S. 47:337.63 and 337.64. An appeal may be taken from
24 an arbitration decision rendered prior to the effective date of this Act pursuant to R.S.
25 47:337.51.1(C) as it existed prior to this Act. The suspension of the running of prescription
26 pursuant to R.S. 47:337.51.1(A)(2) as it existed prior to this Act shall terminate on July 31,
27 2014.

28 Section 7. Upon the joint motion of all parties, a district court may transfer to the
29 Board of Tax Appeals for adjudication, any matter pending before it on the effective date of

1 this Act if the matter falls within the jurisdiction of the board following the effective date
2 of this Act. For a period of one year following the effective date of this Act, a district court
3 may transfer to the board any matter improperly filed in the district court which should have
4 been filed with the board, and the matter shall be deemed to have been filed with the board
5 on the date of its filing in the district court.

6 Section 8. The one hundred eighty day deadline to appeal a local collector's inaction
7 on a refund claim to the Board of Tax Appeals pursuant to R.S. 47:337.81(A)(2) shall not
8 restrict any appeal filed with the Board of Tax Appeals prior to January 1, 2015.

9 Section 9. Any case filed with the Board of Tax Appeals against a local collector
10 prior to January 1, 2015, shall be heard in the board's Local Tax Division pursuant to the
11 provisions of R.S. 47:1403(B)(6)(a) unless the local collector in its initial answer to the
12 taxpayer's petition prays to have the case heard by the entire board.

13 Section 10. The nomination or nominations made pursuant to R.S. 47:1402(D) may
14 be transmitted to the governor prior to the effective date of this Act.

15 Section 11. This Act shall take effect and become operative on July 1, 2014, if and
16 when the Act which originated as House Bill No. 798 of this 2014 Regular Session of the
17 Legislature is enacted and becomes effective.

18 If vetoed by the governor and subsequently approved by the legislature, this Act shall
19 become effective on July 1, 2014, or on the day following such approval by the legislature,
20 whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Danahay

HB No. 863

Abstract: Provides for the composition, powers, function, and jurisdiction of the Board of Tax Appeals, adding jurisdiction over local sales and use tax disputes.

General Provisions

Present law establishes the various offices and agencies of the state within the 20 state departments. Offices within each department have varying levels of administrative and operational independence from the secretary of the department.

Present law establishes the Board of Tax Appeals (hereinafter "board") as an independent agency in the Executive Department of the state government.

Proposed law changes present law by transferring the board from the Executive Department to the Department of State Civil Service as an independent quasi-judicial agency.

Present law authorizes the board to act as an appeal board to hear and decide questions of law and fact arising from disputes between a taxpayer and the state revenue collector in the enforcement of any tax, excise, license, permit or any other tax law administered by the collector.

Proposed law retains present law and adds jurisdiction for certain disputes between taxpayers or dealers and local sales and use tax collectors.

Membership

Present law provides for the membership of the board: three members, all being qualified electors of the state, appointed by and serving at the pleasure of the governor. Member vacancies are filled in the same manner as appointments.

Proposed law retains present law and adds membership criteria and appointment requirements.

Proposed law requires the governor to appoint attorneys as board members, and requires that one member be a Board Certified Tax Law Specialist. On or before Aug. 1, 2014, one of the three members shall be selected from a list of up to three nominees provided by a nominating committee established by proposed law. The term of this member expires Feb. 1, 2020, with subsequent appointments for a fixed term of six years. On or before Sept. 1, 2014, the remaining two members shall be appointed, one with a term expiring Feb. 1, 2016, and one with a term expiring Feb. 1, 2018. Subsequent appointments for these members shall be for either a fixed term of four years or for the remainder of an unexpired term.

Proposed law establishes the Local Tax Division Nominating Committee for purposes of developing a list of one to three nominees to be considered by the governor for board membership for the appointment to be made on or before Aug. 1, 2014. Proposed law provides for the membership and function of the committee, which is composed of representatives of various local government and business interests.

Proposed law provides that a member shall serve until the appointment of a successor. The removal of a member during an unexpired term of office shall be subject to judicial review. Proposed law further provides procedures for the reappointment of board members.

Proposed law authorizes the governor to set the compensation of board members and prohibits the reduction of a member's compensation during their unexpired term of office.

Proposed law provides with respect to the terms of office of members serving on the board on the effective date of proposed law.

Administration

Present law provides for the distribution of certain tax proceeds to each parish. The monies are transmitted by the secretary of the Dept. of Revenue to each parishes' central local sales and use tax collector for distribution on a pro rata basis to each political subdivision within the parish which levies a sales and use tax or receives a portion of the proceeds of a parishwide levy.

Proposed law retains present law and adds an annual dedication of \$120,000 of use tax proceeds for purposes of the board, the allocation to occur before the distributions are made to the parishes pursuant to present law.

Present law provides for the domicile of the board and the conduct of its hearings.

Proposed law authorizes the voluntary recusal of a board member from any proceeding in which he cannot accord a fair and impartial hearing in the same manner as provided for judges by the Code of Civil Procedure. Proposed law provides for procedures governing the instance where a party other than a board member requests the recusal of a board member. Proposed law further provides that the remainder of the board may adjudicate a case if a board member is recused, and provides that if all board members are recused then a retired judge may be appointed to adjudicate a case as an ad hoc judge for the board.

Proposed law retains present law and adds an authorization for board hearings by telephone, video conference, or similar communication equipment if the case involves a state collector and such a hearing is requested by the taxpayer, or with the consent of all parties. Further, in a matter involving only local taxing authorities in a single parish and upon the motion of the local collector, a hearing may be held in that parish at the facilities of a local court. Expenses for such a hearing may be taxed as costs.

Present law grants the board discretion to issue written reasons with its decisions.

Proposed law retains present law and adds a requirement for the issuance of written reasons for judgment upon the request of any party. All written reasons shall be published on the board's website.

Present law authorizes rulemaking by the board and provides an exemption for the board from the Administrative Procedure Act. Present law also provides certain exceptions to the exemption.

Proposed law deletes present law providing for the exceptions and otherwise retains present law.

Proposed law adds a requirement that any rule related to a fee be subject to legislative and gubernatorial oversight and veto in accordance with the Administrative Procedure Act.

Proposed law provides that legislative oversight of rules promulgated by the board shall be performed by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law provides that the board member appointed at the recommendation of the Local Tax Division Nominating Committee shall be the hearing judge for cases designated for hearing in the Local Tax Division. Proposed law further establishes procedures for the designation of cases for hearing in the Local Tax Division and authorizes a local collector to elect by affidavit to have all cases involving that collector be heard in the Local Tax Division.

Proposed law establishes procedures and requirements for the filing of petitions and issuance of notices and decisions with respect to hearings for the redetermination of an assessment, consideration of a payment under protest petition, determination of an overpayment, or appeal of a denial of or inaction on a refund claim. The board is prohibited from ruling on the constitutionality of a statute or ordinance, and provides for the transfer of cases to the applicable district court.

Proposed law provides conditions and limitations on the consolidation of cases by the board, particularly with respect to cases involving local collectors.

Present law establishes district court jurisdiction for appellate review of a decision of the board, with determination of the particular court being governed by the domicile of the taxpayer or as stipulated by all parties.

Proposed law changes present law by changing the appellate jurisdiction from a district court to a court of appeal. Proposed law further provides that the appeal in a local case shall be to the court of appeal for the parish of the local tax collector.

Present law grants the board approval authority for waivers of penalties in matters involving the state collector.

Proposed law retains present law and adds an exclusion from the board's jurisdiction for any review of a penalty waiver or other discretionary function of a local collector.

Jurisdiction over local sales and use tax disputes

Present law establishes the Uniform Local Sales Tax Code which applies in the assessment, collection, administration, and enforcement of the sales and use tax of any local taxing authority.

Present law provides that present law governing the assessment, collection, administration, and adjudication of local sales and use tax shall be interpreted by the courts of La. to have the same meanings as those provisions of present law regarding state sales and use tax assessment, collection, administration, and adjudication.

Proposed law expands the board's jurisdiction to include questions of law and fact arising from disputes and controversies between a taxpayer or dealer and a collector of local sales and use tax. Proposed law further provides that the board shall interpret provisions of present law governing the assessment, collection, administration, and adjudication of local sales and use tax in the same manner as courts of La.

Present law provides with respect to the remedies available for the resolution of disputes between taxpayers or dealers and collectors regarding assessments and refunds. Present law provides that a request for a mandatory arbitration proceeding may be exercised by a taxpayer or dealer in specific circumstances.

Proposed law removes arbitration as a remedy for a taxpayer or dealer and instead provides for an appeal to the board for redetermination of an assessment or overpayment at issue, or a resolution of the dispute.

Present law authorizes a local collector to choose to either collect taxes by assessment, or by filing a suit or summary proceeding in a district court.

Proposed law retains present law.

Proposed law prohibits a taxpayer who fails to file a return or report to appeal their assessment to the board unless the tax was paid to another parish with a timely refund request.

Present law provides that a taxpayer may pay a disputed tax under protest and then file suit in district court within applicable deadlines for a full adjudication of any and all questions in the enforcement or legality of any tax or method of enforcement.

Proposed law retains present law and adds a petition to the board as an optional additional legal remedy for the adjudication of such questions.

Present law provides district court jurisdiction as the venue for a dispute over a collector's disallowance or inaction concerning a taxpayer's refund request.

Proposed law changes present law for the venue for such disputes from a district court to the board.

Present law provides for the interruption of the prescriptive period of a tax by the filing of a pleading in a court by any party.

Proposed law retains present law and adds provisions for the filing of a pleading with the board by any party as means of interrupting prescription.

Proposed law retains present law and adds such actions to the board's jurisdiction.

Present law provides that an appeal of an assessment pending in a district court shall not delay the filing of an assessment by the collector for taxes owed by a taxpayer in bankruptcy.

Proposed law retains present law and provides that an appeal pending before the board shall not delay the filing of an assessment for taxes owed by a taxpayer in bankruptcy.

Present law provides for an appeal to a court for redetermination of an assessment for a taxpayer whose property is subject to distraint and sale due to a suspicion by the collector that the collection of the tax is in jeopardy and who has paid the assessment.

Proposed law changes present law by changing the authority for redetermination of the jeopardy assessment from a district court to the board.

Proposed law establishes transitional provisions governing the disposition of cases pending before an arbitration panel, the transfers of cases between district courts and the board, and certain cases filed with the board prior to Jan. 1, 2015.

Effective on July 1, 2014, if and when House Bill No. 798 of this 2014 R.S. is enacted and becomes effective.

(Amends R.S. 36:801.1(A) and R.S. 47:302(K)(7), 337.2(D), 337.45(A)(1) and (B), 337.48(A), 337.51(A), (B), and (C)(2), 337.53(C), 337.54, 337.63(A)(1) and (2), (B), and (D), 337.67(B)(3), (C)(3), and (D)(2), 337.77(F), 337.81(A)(2) and (C), 337.86(E)(2)(a), 337.101(A)(2)(a), 1401, 1402, 1403(A) and (B), 1410, 1413, 1431, 1432, 1436, 1437, and 1451 and R.S. 49:967(A) and 968(B)(9); Adds R.S. 36:53(J) and R.S. 47:337.2(A)(1)(c), 337.77(G), 337.81.1, 337.86(E)(1)(d), 1407(3), 1414(E), 1417, and 1418; Repeals R.S. 36:4(B)(1)(p) and R.S. 47:337.51.1 and 337.101(A)(2)(c), (B), and (C))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Added methods for the filing of local sales and use tax disputes with the Board of Tax Appeals.
2. Added provisions governing the function and administration of the Local Tax Division, particularly with respect to the hearing judge and procedures for designation of cases to be assigned to the division.
3. Added requirement that written reasons for judgment be provided at the request of any party.
4. Added conditions and procedures for the recusal of board members.

5. Added provisions of the Administrative Procedure Act governing the board and removes certain exceptions to exemptions, and adds provisions for rules oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.
6. Added transitional provisions relating to certain claims filed with the board prior to Jan. 1, 2015.

House Floor Amendments to the engrossed bill.

1. Changed the references for the filing of a "claim" with the board to the filing of a "petition" with the board.