

Regular Session, 2010

HOUSE BILL NO. 605

BY REPRESENTATIVE ELLINGTON

TAX/TAXATION: Authorizes a taxpayer to recover attorney fees under certain circumstances

1 AN ACT

2 To amend and reenact R.S. 47:337.13.1, relative to tax collection; to provide relative to the  
3 authority of local collectors to employ private counsel; to authorize the recovery of  
4 attorney fees under certain circumstances; to provide for certain limitations; to  
5 provide for an effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 47:337.13.1 is hereby amended and reenacted to read as follows:

8 §337.13.1. Power to employ counsel; attorney fees

9 A. The local collector is authorized to employ private counsel to assist in the  
10 collection of any taxes, penalties, or interest due under this Subtitle, or to represent  
11 him in any proceeding under this Subtitle. If any taxes, penalties, or interest due  
12 under this Subtitle are referred to an attorney at law for collection, an additional  
13 charge for attorney fees, in the amount of ten percent of the taxes, penalties, and  
14 interest due, except with respect to amounts timely paid under protest with a return  
15 that is not delinquent, or paid under protest to a vendor in accordance with law, shall  
16 be paid by the taxpayer; provided, however, that the amount paid to the attorney shall  
17 be subject to the discretion of the court as to reasonableness.

18 B. Any taxpayer who successfully defends a collection action or recovers a  
19 refund under the provisions of this Subtitle shall be entitled to recover attorney fees.  
20 The amount of attorney fees recoverable by the taxpayer shall be computed as ten  
21 percent of the total amount recovered by the taxpayer, including tax, interest, and  
22 penalties. The term "total amount recovered by the taxpayer" shall include the

1        difference between the assessed amount of tax, interest, and penalties and the  
 2        amounts required to be paid by the taxpayer pursuant to a final, non-appealable  
 3        judgment or settlement. The provisions of this Subsection shall only apply to  
 4        matters referred to private counsel by the local collector.

5                C. A taxpayer and local collector may by mutual, written consent agree to  
 6        waive the attorney fee provisions of this Section.

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

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#### 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)]

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Ellington

HB No. 605

**Abstract:** Authorizes a taxpayer to recover attorney fees if the taxpayer successfully defends a collection action or recovers a refund in an action initiated by the private counsel of a local tax collector.

Present law authorizes a local collector to employ private counsel to assist in the collection of taxes, penalties, or interest due under present law, or to represent him in any proceeding. If taxes, penalties, or interest due are referred to an attorney for collection, an additional charge for attorney fees, in the amount of 10% of the taxes, penalties, and interest due shall be paid by the taxpayer. Present law makes an exception for amounts timely paid under protest with a return that is not delinquent or paid under protest to a vendor.

Proposed law retains present law but adds that any taxpayer who successfully defends a collection action or recovers a refund shall be entitled to recover attorney fees in the amount of 10% of the total amount recovered by the taxpayer, including tax, interest, and penalties. Further provides that the "total amount recovered by the taxpayer" shall include the difference between the assessed amount of tax, interest, and penalties, and the amounts required to be paid by the taxpayer pursuant to a final, non-appealable judgement or settlement. Limits proposed law to matters referred to private counsel by the local collector.

Proposed law authorizes a taxpayer and local collector to agree to waive, by mutual, written consent, the attorney fee provisions of present law and proposed law.

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

(Amends R.S. 47:337.13.1)