

Regular Session, 2010

HOUSE BILL NO. 666

BY REPRESENTATIVE NOWLIN

TAX/SALES-USE, LOCAL: Authorizes the prevailing party in certain collection actions to recover attorney fees and costs 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.(1) The local collector is authorized to employ private counsel to assist in
10 the collection of any taxes, penalties, or interest due under this Subtitle, or to
11 represent him in any dispute, contest, or other controversy involving the
12 determination of sales and use tax due, or in any other proceeding under this Subtitle.
13 The attorney fees and legal expenses incurred by the local collector for the
14 employment of private counsel shall be reimbursed to him by the local taxing
15 authorities and recoverable as a deduction from current collections, unless such
16 attorney fees and legal expenses are recoverable as a reimbursement from the
17 taxpayer.

18 (2) If any taxes, penalties, or interest due and final under this Subtitle are
19 referred to an attorney at law for a collection action, an additional charge for attorney
20 fees, in the amount of ten percent of the taxes, penalties, and interest due, except
21 with respect to amounts timely paid under protest with a return that is not delinquent,
22 or paid under protest to a vendor in accordance with law, shall be paid by the

1 taxpayer to the local collector; provided, however, that the amount paid ~~to the~~
2 ~~attorney~~ for attorney fees shall be subject to the discretion of the court as to
3 reasonableness.

4 (3) A taxpayer shall not be subject to the payment of attorney fees unless the
5 local collector is the prevailing party entitled to reimbursement of attorney fees and
6 costs as provided for in Subsection B of this Section.

7 B.(1) Except as otherwise provided for in Paragraph (3) of Subsection A of
8 this Section, the prevailing party in a dispute, contest, or other controversy involving
9 the determination of sales and use tax due shall be entitled to reimbursement of
10 attorney fees and costs, not to exceed ten percent of the taxes, penalties, and interest
11 at issue, unless the position of the non-prevailing party is substantially justified. The
12 prevailing party is defined as the party which has substantially prevailed with respect
13 to the amount in controversy or substantially prevailed with respect to the most
14 significant issue or set of issues presented. A position is substantially justified if it
15 has a reasonable basis in law and fact. The reimbursement amount for attorney fees
16 and costs shall be subject to the discretion of the court as to reasonableness.

17 (2) The provisions of this Subsection shall not apply to amounts timely paid
18 under protest by the taxpayer with a return that is not delinquent, or paid under
19 protest to a vendor in accordance with law, as provided for in Subsection A of this
20 Section.

21 (3) A local collector, which is a non-prevailing party in a dispute, contest,
22 or other controversy involving the determination of sales and use tax due shall be
23 reimbursed by the local taxing authorities for attorney fees and costs incurred by the
24 tax collector and recoverable as a deduction from current collections.

25 (4) The provisions of this Subsection shall apply only to matters referred to
26 private counsel by the local collector.

27 C. A local collector may waive the attorney fee award as provided for in this
28 Section. A waiver of attorney fees by a local collector shall be considered timely if
29 the notice of the waiver is mailed to a taxpayer by certified mail, return receipt

1 requested, within thirty days of the service of process. If a local collector timely
 2 waives its attorney fee award, a taxpayer may not recover attorney fees as provided
 3 for in Subsection B of this Section.

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

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)]

Nowlin

HB No. 666

Abstract: Authorizes the prevailing party in certain collection actions to recover attorney fees and costs under certain circumstances.

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 changes present law by adding authorization for a local collector to employ private counsel in any dispute, contest, or other controversy involving the determination of sales and use tax due.

Proposed law further requires that attorney fees and legal expenses incurred by a local collector for the employment of private counsel be reimbursed to the local collector by the local taxing authorities and recoverable as a deduction from current collections, unless such attorney fees and legal expenses are recoverable as a reimbursement from the taxpayer.

Proposed law provides that a taxpayer shall not be subject to the payment of attorney fees unless the local collector is the prevailing party entitled to reimbursement of attorney fees and costs. Further provides that the reimbursement of attorney fees and costs shall not exceed 10% of the taxes, penalties, and interest at issue, unless the position of the non-prevailing party is substantially justified. Proposed law defines "prevailing party". A position is substantially justified if it has a reasonable basis in law and fact. The reimbursement amount for attorney fees and costs shall be subject to the discretion of the court as to reasonableness.

Proposed law provides that the provisions of proposed law shall not apply to amounts timely paid under protest by the taxpayer with a return that is not delinquent or paid under protest to a vendor in accordance with law.

Proposed law provides that a local collector, which is a non-prevailing party in a dispute, contest, or other controversy involving the determination of sales and use tax, shall be reimbursed by the local taxing authorities for attorney fees and costs incurred by the tax collector, which amounts shall be recoverable as a deduction from current collections.

Proposed law provides that the provisions of proposed law shall only apply to matters referred to private counsel by the local collector.

Proposed law provides that a local collector may waive the attorney fee award, and the waiver shall be considered timely if the notice of the waiver is mailed to a taxpayer by certified mail, return receipt requested, within 30 days of service of process. If a local collector timely waives its attorney fee award, a taxpayer may not recover attorney fees.

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

(Amends R.S. 47:337.13.1)

Summary of Amendments Adopted by House

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

1. Added authorization for a local collector to employ private counsel in any dispute, contest, or other controversy involving the determination of sales and use tax due.
2. Changed the bill from one which authorizes a taxpayer who successfully defends a collection action to recover attorney fees and costs to one which authorizes the prevailing party in a collection action to be entitled to the reimbursement of attorney fees and costs.
3. Added definitions for "prevailing party".
4. Added requirement that attorney fees and legal expenses incurred by a local collector for the employment of private counsel be reimbursed to the local collector by the local taxing authorities and recoverable as a deduction from current collections, unless such attorney fees and legal expenses are recoverable as a reimbursement from the taxpayer.

House Floor Amendments to the engrossed bill.

1. Changed the time in which a notice of waiver shall be considered timely from if the notice of the waiver is mailed to a taxpayer within 15 days of the filing of a suit to if the notice of the waiver is mailed to a taxpayer within 30 days of the service of process.