

2016 Regular Session

HOUSE BILL NO. 978

BY REPRESENTATIVE DANAHAAY

TAX/TAXATION: Provides for administration, disposition, enforcement, and adjudication of state and local taxes under the jurisdiction of the Board of Tax Appeals

1 AN ACT

2 To amend and reenact R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4) as enacted by Act No.  
3 22 of the 2016 First Extraordinary Session of the Legislature, 351, 1403(C),  
4 1418(4)(b) and (7)(d), and 1432(B), and Section 2 of Act No. 198 of the 2014  
5 Regular Session of the Legislature and to enact R.S. 47:351.1, 1418(4)(c) and (7)(e),  
6 and 1435(D), relative to state and local taxes; to provide with respect to the  
7 enforcement and adjudication of certain taxes; to provide for the disposition of  
8 certain taxes, penalties, and interest; to provide with respect to disputes concerning  
9 certain taxes and other claims against the state; to provide with respect to legal  
10 challenges concerning constitutionality; to authorize refunds of certain occupational  
11 license taxes; to authorize the transfer of cases; to require interagency transfers  
12 between certain state agencies; to provide for applicability; to provide for  
13 effectiveness; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4) as enacted by Act No. 22  
16 of the 2016 First Extraordinary Session of the Legislature, 351, 1403(C), 1418(4)(b) and  
17 (7)(d), and 1432(B) are hereby amended and reenacted and R.S. 47:351.1, 1418(4)(c) and  
18 (7)(e), and 1435(D) are hereby enacted to read as follows:

1 §302. Imposition of tax

2 \* \* \*

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

4 \* \* \*

5 (7)

6 \* \* \*

7 (b) The amount specified in Item (I) of Subparagraph (a) of this Paragraph  
8 as transferred to the Department of State Civil Service, Board of Tax Appeals, shall  
9 be increased by fifty-five thousand dollars on July 1, 2015, by thirty-two thousand  
10 dollars on July 1, 2016, and by five thousand dollars on the first day of each of the  
11 two subsequent fiscal years ~~when the amount distributed pursuant to this Subsection~~  
12 ~~in the fiscal year immediately preceding that date actually exceeds the amount~~  
13 ~~distributed in Fiscal Year 2013-2014.~~ The amounts specified in Subparagraphs (a)  
14 and (b) of this Paragraph shall be transferred by the secretary within the first thirty  
15 days of each fiscal year and the Department of State Civil Service, Board of Tax  
16 Appeals, may retain all funds which are transferred as directed in Subparagraphs (a)  
17 and (b) of this Paragraph.

18 \* \* \*

19 W.(1) Nothing in ~~this Subsection~~ Subsection K of this Section shall prohibit  
20 a taxpayer from electing to separately file with the applicable parish sales and use  
21 tax collector or central collection commission a use tax return and to remit the  
22 correct and full amount of use tax due pursuant to the provisions of all applicable  
23 local ordinances, hereinafter referred to as "paid local use tax return".

24 (2) If a dealer has withheld and remitted tax for a specific purchase pursuant  
25 to the provisions of ~~this Subsection~~ Subsection K of this Section from a taxpayer  
26 who subsequently files a paid use local tax return, the taxpayer may file an annual  
27 use tax refund request with the secretary, hereinafter referred to as "refund request".

28 \* \* \*



1 §1403. Designation of officers; domicile; quorum; seal

2 \* \* \*

3 C. A majority of the members of the board shall constitute a quorum for the  
4 transaction of the business of the board, except as otherwise provided in this Chapter.

5 A vacancy in the board shall not impair the powers nor affect the duties of the board,  
6 nor of the remaining members of the board. In the event of a vacancy or in the  
7 absence of a board member, the chairman, or vice chairman during the absence of  
8 the chairman, may order a case involving a state collector to be heard in accordance  
9 with Paragraph (2) of Subsection B of this Section, and the hearing judge shall  
10 render the judgment of the board.

11 \* \* \*

12 §1418. Definitions

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

15 \* \* \*

16 (4) "Local collector" means any of the following:

17 \* \* \*

18 (b) The individual or entity responsible for collecting occupational license  
19 tax or occupancy tax, or other collector responsible for collecting local taxes where  
20 an action is appealable to the board.

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

25 \* \* \*

26 (7) "State collector" means any of the following:

27 \* \* \*

28 (d) Any other collector of state taxes or fees, or any other state agency where  
29 an agency action is appealable to the board.

1 (e) The agent or successor of any of the foregoing offices when  
2 administering a state tax or fee within the jurisdiction of the Board of Tax Appeals.

3 \* \* \*

4 §1432. Notice; hearing; decision

5 \* \* \*

6 B.(1)(a) The board has no jurisdiction to declare a statute or ordinance  
7 unconstitutional. When the taxpayer or collector has pled the unconstitutionality of  
8 a statute or ordinance, the board shall order the case transferred to the district court  
9 of proper venue upon the motion of any party if the board finds that the case cannot  
10 be resolved without reaching a declaration on the alleged unconstitutionality. Any  
11 motion for transfer filed pursuant to this Subsection involving a state statute shall be  
12 served upon the attorney general.

13 (b) Upon the motion of any party, a hearing on a request for a declaration of  
14 unconstitutionality in a case transferred pursuant to this Subsection shall be given  
15 priority and be heard by preference in the district court. After the issue concerning  
16 the declaration of unconstitutionality has been finally decided, the district court, on  
17 the motion of any party or on its own motion, may order the case remanded to the  
18 board for adjudication of the underlying tax dispute.

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

23 (2)(a) The provisions of Paragraph (1) of this Subsection shall not be used  
24 to challenge the constitutionality of any provision of this Chapter, or any other laws  
25 relating to the jurisdiction of the board.

26 (b) Any party to an action brought pursuant to the provisions of this Chapter  
27 that seeks to raise the challenges referenced in Subparagraph (a) of this Paragraph  
28 shall file a petition in the Nineteenth Judicial District Court specifically pleading the  
29 basis for their challenge prior to either the filing or the deadline for filing of any

1 pleading with the board. Any petition filed pursuant to this Subparagraph shall be  
 2 served upon the board, the attorney general, and any opposing parties in the  
 3 underlying board action, and shall be given priority of hearing by the district court.  
 4 Failure to follow the procedures set forth in this Subparagraph shall bar any appeal  
 5 on the claims required to be brought pursuant to the provisions of this Paragraph.  
 6 The provisions of this Paragraph do not extend the date for filing any pleading with  
 7 the board.

8 \* \* \*

9 §1435. Jurisdiction of courts to review decisions of the board

10 \* \* \*

11 D. Except as otherwise specifically provided for by local rule of a court of  
 12 appeal, when a judgment of the board is to be modified or reversed and one court of  
 13 appeal judge dissents, the case shall be reargued before a panel of at least five judges  
 14 prior to rendition of judgment, and a majority shall concur to render judgment.

15 Section 2. Section 2 of Act No. 198 of the 2014 Regular Session of the Legislature  
 16 is hereby amended and reenacted to read as follows:

17 Section 2. The Board of Tax Appeals and the secretary of the Department  
 18 of Revenue ~~may~~ shall enter into an agreement for a fixed annual interagency transfer  
 19 to the board as payment in lieu of filing fees owed by the secretary.

20 Section 3. The provisions of this Act amending R.S. 47:1418 and 1432 are  
 21 procedural and interpretative and shall be effective on the effective date of Act No. 640 of  
 22 the 2014 Regular Session of the Legislature, except that in any pending case, the provisions  
 23 of this Act enacting R.S. 47:1432(B)(2)(b) shall be applicable only to those pleadings filed  
 24 by, or due from, a party after the effective date of this Act.

25 Section 4. Upon the joint motion of all parties, a district court may transfer, to the  
 26 Board of Tax Appeals for adjudication, any matter pending before the court concerning  
 27 disputes of state or local taxes or fees.

28 Section 5. This Act shall become effective upon signature by the governor or, if not  
 29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 3 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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HB 978 Original

2016 Regular Session

Danahay

**Abstract:** Establishes procedures and requirements related to the enforcement and adjudication of various state and local taxes, including changes to the funding for, membership, and authority of the Board of Tax Appeals.

Board of Tax Appeals

Present law establishes the Board of Tax Appeals (board) to act as an appeal board to hear and decide questions of law and fact arising from disputes between a taxpayer or dealer and the state collector in the enforcement of any tax, excise, license, permit or any other tax law administered by the state collector, and between taxpayers or dealers and local sales and use tax collectors.

Present law authorizes the board and the secretary of the Dept. of Revenue (secretary) to enter into an agreement for a fixed annual interagency transfer to the board as payment in lieu of filing fees owed by the secretary.

Proposed law changes present law by making the agreement between the board and the secretary mandatory rather than discretionary.

Present law provides funding for operation of the board through an annual distribution of certain proceeds from the state sales and use tax collected on sales by a remote dealer on behalf of local taxing authorities. Each year the secretary of the Dept. of Revenue is required to reduce the distribution to local taxing authorities and transfer to the board \$187,000 to be expended for purposes of the Local Tax Division. Thereafter, in each of the two subsequent fiscal years, if the total collections of the tax exceed the amount of collections in FY 2013-2014, the amount shall be increased to \$194,000 per year in FY 2016-2017, and \$199,000 per year in FY 2017-2018.

Proposed law retains present law with the following changes:

- (1) Repeals the requirement that the increase would be contingent upon the total tax collections from which the dedication is derived exceeds those of FY 2013-2014 .
- (2) The increase for FY 2016-2017 is changed from \$5,000 to \$32,000.
- (3) A new allocation increase established for FY 2018-2019 in the amount of \$5,000.

Present law establishes quorum requirements for the transaction of the business of the board, and provides that a vacancy in the board shall not impair the powers nor affect the duties of the board, nor of the remaining members of the board. Present law authorizes the chairman to appoint a single board member to serve as hearing judge of the board.

Proposed law retains present law and adds provisions authorizing the designation of a member of the board to serve as hearing judge in instances where there is a vacancy on the board or the absence of a board member, but only for cases involving the state collector.

Present law excludes from the jurisdiction of the board, matters of requiring a declaration of unconstitutionality and establishes the procedure for the transfer of such a case to a district court, which shall consider de novo the issues of unconstitutionality. Further, upon the joint motion of all parties and the attorney general, the board may develop a record and make a recommendation to the district court on the issue.

Proposed law retains present law and adds a requirement that a motion to transfer any such case involving a state statute be served upon the attorney general. Proposed law requires that a hearing on a request for a declaration of unconstitutionality in a case transferred pursuant to present law be given priority and be heard by preference in the district court. Proposed law further provides that after the issue concerning the declaration of unconstitutionality has been finally decided, the district court, on the motion of any party or on its own motion, may order the case remanded to the board for adjudication of the underlying tax dispute.

Proposed law provides procedures relative to the making of any claim as to the constitutionality of any provision of present law concerning the jurisdiction of the board, which procedures include the filing of a petition in the 19<sup>th</sup> JDC. Proposed law further requires that any such petition be served upon the board, the attorney general, and any opposing parties in the underlying board action, and that the pleading be given priority of hearing by the district court. A failure to follow these procedures shall bar any appeal on the claim.

Present law provides that courts of appeal shall have jurisdiction to review decisions of the board in the same manner as provided for in civil matters.

Proposed law retains present law and adds a requirement to clarify that when a judgment of the board is modified or reversed, and one court of appeal judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority shall concur to render judgment, except as may be otherwise specifically provided for by local rule of a court of appeal.

Proposed law expands the jurisdiction of the board to include appeals concerning occupational license taxes imposed by a municipality or parish, other local taxes, and state taxes and fees collected by agencies other than the Dept. of Revenue. Proposed law further provides that upon the joint motion of all parties, a district court may transfer to the board for adjudication, any matter pending before the court concerning disputes of state or local taxes or fees.

#### Occupational License Tax

Present law relative to occupational license taxes imposed by a municipal or parish taxing authority, establishes the procedure for a tax collector to pursue the collection of delinquent taxes through a rule to show cause before a court as to why a delinquent taxpayer should not be ordered to pay taxes due.

Proposed law retains present law and adds a requirement that the judgment include the amount of the license, penalty, fees, and costs against the defendant. Further, the order shall require the business to cease the further pursuit of business until the judgment is satisfied, in the same manner as provided for in present law concerning the collection of license fees.

Proposed law adds an optional remedy of collection by way of issuance of an assessment to a taxpayer in the same manner as is provided for in the Uniform Local Sales Tax Code for the collection of sales and use taxes. The assessment may be appealed to the Local Tax



Division of the Board of Tax Appeals in the same manner and subject to the same 30 day deadline as provided for in matters concerning local sales and use taxes.

Proposed law adds authorization for appeals for and refunds of occupational license taxes erroneously paid. A taxpayer may appeal a collector's action on a claim for refund to the Local Tax Division of the Board of Tax Appeals, in the same manner and subject to the same deadlines as provided for in the Uniform Local Sales Tax Code for purposes of local sales and use taxes.

The provisions of proposed law amending R.S. 47:1418 and 1432 concerning the expansion of the board's jurisdiction to include additional state and local taxes, and the procedures concerning the definition of collectors, challenges to constitutionality of jurisdiction of the board shall be effective on the effective date of Act No. 640 of the 2014 R.S. (June 12, 2014), with certain exceptions, as the nature of such amendments is procedural and interpretative as relates to that Act.

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

(Amends R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4) as enacted by Act No. 22 of the 2016 1<sup>st</sup> ES, 351, 1403(C), 1418(4)(b) and (7)(d), and 1432(B), and §2 of Act No. 198 of the 2014 R.S.; Adds R.S. 47:351.1, 1418(4)(c) and (7)(e), and 1435(D))