

2016 Regular Session

HOUSE BILL NO. 978

BY REPRESENTATIVE DANAHAHAY

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), 1431(A), 1432(B), and 1484(A), and Section 2 of Act No. 198
5 of the 2014 Regular Session of the Legislature and to enact R.S. 47:351.1, 1418(4)(c)
6 and (7)(e), 1435(D), 1437(C), and 1484(C), relative to state and local taxes; to
7 provide with respect to the enforcement and adjudication of certain taxes; to provide
8 for the disposition of certain taxes, penalties, and interest; to provide with respect to
9 disputes concerning certain taxes and other claims against the state; to provide with
10 respect to legal challenges concerning constitutionality; to authorize refunds of
11 certain occupational license taxes; to authorize the transfer of cases; to require
12 interagency transfers between certain state agencies; to authorize an offset against
13 certain tax liabilities to satisfy certain claims against the state; to provide for
14 applicability; to provide for effectiveness; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 47:302(K)(7)(b) and (W)(1), (2), and (4) as enacted by Act No. 22
17 of the 2016 First Extraordinary Session of the Legislature, 351, 1403(C), 1418(4)(b) and
18 (7)(d), 1431(A), 1432(B), and 1484(A) are hereby amended and reenacted and R.S.
19 47:351.1, 1418(4)(c) and (7)(e), 1435(D), 1437(C), and 1484(C) are hereby enacted to read
20 as follows:

21 §302. Imposition of tax

22 * * *

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

2 * * *

3 (7)

4 * * *

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

16 * * *

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

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

26 * * *

27 (4) The secretary shall pay any refund due pursuant to this ~~Subparagraph~~
28 Subsection from current collections of any tax levied pursuant to Subsection K of
29 this Section.

30 * * *

1 §351. Failure to pay tax; judgment prohibiting further pursuit of business

2 A. Failure to pay the tax levied by this Chapter shall ipso facto, without
3 demand or putting in default, cause the tax, interest, penalties, and costs to become
4 immediately delinquent, and the collector is hereby vested with authority, on motion
5 in the Board of Tax Appeals or a court of competent jurisdiction, to take a rule on the
6 delinquent taxpayer to show cause in not less than two or more than ten days,
7 exclusive of holidays, why the delinquent taxpayer should not be ordered to pay the
8 total amount due and owing under this Chapter. This rule may be tried out of term
9 and in chambers and shall always be tried by preference. If the rule is made
10 absolute, the order therein rendered shall be considered a judgment in favor of the
11 municipality or parish for the amount of the license, penalty, fees, and costs against
12 the defendant, who shall also be ordered to cease the further pursuit of business until
13 the judgment is satisfied.

14 B. As an additional optional remedy of collection, the collector may issue
15 an assessment to a taxpayer in the same manner as is provided for in the Uniform
16 Local Sales Tax Code pursuant to Chapter 2-D of this Subtitle. The assessment may
17 be appealed to the Local Tax Division of the Board of Tax Appeals in the same
18 manner and subject to the same thirty day deadline as provided for in that Chapter.

19 §351.1. Occupational license tax refunds

20 Any taxpayer may apply to the collector for a refund of occupational license
21 tax paid that was not due. A taxpayer may appeal the collector's action on a claim
22 for refund to the Local Tax Division of the Board of Tax Appeals, in the same
23 manner and subject to the same deadlines as provided for in the Uniform Local Sales
24 Tax Code under Chapter 2-D of this Subtitle, including the prescriptive periods
25 referenced in R.S. 47:337.81(A)(2).

26 * * *

27 §1403. Designation of officers; domicile; quorum; seal

28 * * *

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

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

7 * * *

8 §1418. Definitions

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

11 * * *

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

13 * * *

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

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

21 * * *

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

23 * * *

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

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

28 * * *

1 §1431. Taxpayer's petition

2 A. Whenever a taxpayer is aggrieved by an assessment made by ~~the~~ a state
 3 collector, or by ~~the~~ a state collector's action or failure to act on a claim for refund or
 4 credit of an overpayment, such taxpayer may appeal to the board for a
 5 redetermination of the assessment or a determination of the alleged overpayment, by
 6 filing a petition with the board within the respective periods set forth in R.S.
 7 47:1565, 1566, ~~and~~ 1625, or other applicable law.

8 * * *

9 §1432. Notice; hearing; decision

10 * * *

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

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

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

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

1 (b) Any party to an action brought pursuant to the provisions of this Chapter
 2 that seeks to raise the challenges referenced in Subparagraph (a) of this Paragraph
 3 shall file a petition in the Nineteenth Judicial District Court specifically pleading the
 4 basis for their challenge prior to either the filing or the deadline for filing of any
 5 pleading with the board. Any petition filed pursuant to this Subparagraph shall be
 6 served upon the board, the attorney general, and any opposing parties in the
 7 underlying board action, and shall be given priority of hearing by the district court.
 8 Failure to follow the procedures set forth in this Subparagraph shall bar any appeal
 9 on the claims required to be brought pursuant to the provisions of this Paragraph.
 10 The provisions of this Paragraph do not extend the date for filing any pleading with
 11 the board.

12 * * *

13 §1435. Jurisdiction of courts to review decisions of the board

14 * * *

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

19 §1437. Effect of final judgment

20 * * *

21 C. In addition to the remedies provided for in this Section, or in any other
 22 applicable law, a final decision or judgment of the board may also be enforced in any
 23 manner provided by law for a final judgment of a district court. A writ of mandamus
 24 may also be issued to enforce provisions of Subsection B of this Section relating to
 25 final judgments.

26 * * *

27 §1484. Satisfaction of claims

28 A. At each regular session of the legislature, an amount shall be
 29 appropriated, ~~except as provided in Subsection B~~ Subsections B and C of this
 30 Section, for the purpose of paying any and all claims that might be approved in

1 accordance with the provisions of this Part, and which may be drawn against for the
2 purpose of paying claims that might be duly approved by the Board of Tax Appeals.

3 * * *

4 C.(1) When the Board of Tax Appeals has approved a claim against the state
5 for erroneous payments of corporate franchise tax, and the claim is not paid pursuant
6 to Subsection A of this Section within one year of the date the board's approval of
7 the claim becomes final, the secretary of the Department of Revenue and the
8 claimant may agree that the payment of the claim may be taken as an offset against
9 state corporate income or franchise tax liability of the claimant.

10 (2) Up to twenty-five percent of the total claim approved by the board shall
11 be allowed as an offset in each of the four taxable years immediately following the
12 agreement of the parties to the offset. For each taxable year in which an offset
13 authorized by this Subsection is taken, the amount of the offset shall not exceed the
14 amount of the state corporate income or franchise tax liability against which the
15 offset is taken after application of all income or corporation franchise tax credits.
16 The secretary shall authorize an extension of time not to exceed two years within
17 which an offset may be taken if payment of the amount of the total claim approved
18 is not satisfied after four years.

19 (3) A party for which the secretary has authorized an offset pursuant to this
20 Subsection may transfer the offset to a member of the party's affiliated group
21 included in the federal consolidated return filed under the Internal Revenue Code.
22 Any offset transferred to a member of the federal consolidated group shall be
23 allowed only as an offset against the same taxes and shall be subject to the same
24 limitations provided in Paragraph (2) of this Subsection. The transfer shall be in
25 accordance with the procedures set forth by rule or on forms or instructions provided
26 by the secretary.

27 (4) No offset authorized pursuant to this Subsection may be taken prior to
28 July 1, 2017.

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

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

4 Section 3. The provisions of this Act amending R.S. 47:1418, 1431, 1432, 1435, and
5 1437 are procedural and interpretative and shall be effective on the effective date of Act No.
6 640 of the 2014 Regular Session of the Legislature, except that in any pending case, the
7 provisions of this Act enacting R.S. 47:1432(B)(2)(b) shall be applicable only to those
8 pleadings filed by, or due from, a party after the effective date of this Act.

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____