

2019 Regular Session

SENATE BILL NO. 198

BY SENATOR PEACOCK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES. Provides for administration, disposition, enforcement, and adjudication of state and local taxes and for the Board of Tax Appeals. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (E), 1439(C)

3 and (F), 1574.1(E), and 1580(B)(3), to enact R.S. 47:340(E)(4), 1436(B)(3),

4 1561.1(C), and 1623(G), and to repeal R.S. 47:1403(B)(6)(b), relative to

5 administration, disposition, enforcement, and adjudication of state and local taxes

6 and the Board of Tax Appeals; to provide relative to the funding of the local tax

7 division of the Board of Tax Appeals; to provide relative to service of Board of Tax

8 Appeals orders; to review of Board of Tax Appeals rulings; to provide relative to tax

9 related escrow accounts; to provide relative to the enforcement of taxes collected on

10 behalf of others; to provide relative to the prescription of taxes and tax refunds; and

11 to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (E), 1439(C) and

14 (F), 1574.1(E), and 1580(B)(3) are hereby amended and reenacted and R.S. 47:340(E)(4),

15 1436(B)(3), 1561.1(C), and 1623(G) are hereby enacted to read as follows:

16 §302. Imposition of tax

17 * * *

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

2 * * *

3 (7) * * *

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

14 * * *

15 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;
16 powers

17 * * *

18 E. * * *

19 (4) If use tax collections pursuant to R.S. 47:302(K) yield insufficient
20 revenue to fulfill the dedication for the adjudication of local sales and use tax
21 matters that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to
22 the Department of State Civil Service, Board of Tax Appeals, Local Tax
23 Division, and there is no means of financing available to satisfy the dedication
24 pursuant to R.S. 47:337.102(I)(3), the remaining amount necessary to satisfy the
25 dedication shall be considered an actual expense of this commission pursuant
26 to Paragraph (3) of this Subsection, and payment of the interagency transfer
27 due shall be made from local sales and use tax collections of the commission. A
28 part of the interagency transfer due pursuant to Section 2 of Act 198 of the 2014
29 Regular Session of the Legislature may be designated as an actual expense of the

1 (2) The service of papers filed with the board, or of the orders or
 2 judgments of the board, may be made in accordance with any of the provisions
 3 of the Louisiana Code of Civil Procedure or in accordance with the provisions
 4 of R.S. 47:1411.

5 (3) Upon request of either the chairman or the local tax judge, any
 6 officer or employee of the board may be issued a commission pursuant to the
 7 provisions of R.S. 40:1379.1 in order to further any of the provisions of this
 8 Section.

9 * * *

10 §1436. Determination of which appellate court has jurisdiction

11 * * *

12 B. A judgment of the board in a case by or against a local collector may be
 13 reviewed as follows:

14 * * *

15 (3) In the respective court of appeal for the parish of the appellee for any
 16 case appealed by a local collector appealing a ruling issued against another local
 17 collector pursuant to R.S. 47:337.101, and if there are appellees from different
 18 circuits then in the court of appeal designated by the board as having the most
 19 connection to the matter at issue.

20 * * *

21 §1439. Escrow Account

22 * * *

23 C. The account, and any related funds included therein, shall be subject to
 24 audit by the legislative auditor. An annual report of account transactions concerning
 25 state cases shall also be submitted to the Cash Management Review Board. An
 26 annual report of the account's transactions concerning local cases shall be submitted
 27 to the ~~local sales and use tax commission created pursuant to R.S. 47:302(K)(6)~~
 28 Louisiana Uniform Local Sales Tax Board.

29 * * *

1 F.~~(1)~~ The board may deposit into the account any funds received from a party
 2 for payment of the costs of service of process or for appeal costs, and it may pay the
 3 amounts received to the appropriate sheriff for service of process or the appropriate
 4 clerk of a court of appeals in the event of an appeal against a decision of the board
 5 pursuant to R.S. 47:1434.

6 (2) The board's Local Tax Division may deposit into the account any
 7 advance deposits for court costs and filing fees associated with its local cases,
 8 and upon issuance of an order taxing costs against those deposits it may transfer
 9 the relevant amounts to the Local Tax Division Expense Fund. The unused
 10 balance of these deposits shall be refunded to the depositor in the event that
 11 costs taxed against it are less than the amount of its advance deposit. The Local
 12 Tax Division Expense Fund shall be utilized, as directed by the local tax judge,
 13 exclusively for the Local Tax Division and its expenditures, including as
 14 provided for in Subsection G of this Section or pursuant to R.S. 47:1406.

15 * * *

16 §1561.1. Special authority to enforce collection of taxes collected or withheld;
 17 personal liability conform

18 * * *

19 C. An action may be brought before the Board of Tax Appeals or any
 20 court of competent jurisdiction in accordance with any of the provisions of R.S.
 21 47:1574, 1574.1, or 1582 to enforce the obligation of a taxpayer, dealer, or of any
 22 party subject to this Section.

23 * * *

24 §1574.1. Failure to pay tax collected from others; rule to cease business

25 * * *

26 E. The collection procedure provided for in this Section shall be in addition
 27 to any other collection procedure provided by law. When issuing an order
 28 pursuant to this Subsection, the Board of Tax Appeals or any other court of
 29 competent jurisdiction, upon proper showing, may render a money judgment

1 **federal income tax refund was granted pursuant to the Combat-Injured**
 2 **Veterans Tax Fairness Act of 2016. Alternatively, a taxpayer may claim a**
 3 **Louisiana standard refund amount proportional to that of the federal standard**
 4 **refund amount in accordance with rules promulgated by the secretary in**
 5 **accordance with the Administrative Procedure Act.**

6 Section 2. R.S. 47:1403(B)(6)(b) is hereby repealed.

7 Section 3. 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.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Leonore Heavey.

DIGEST

SB 198 Reengrossed

2019 Regular Session

Peacock

Present law provides that the transfer of funds from the local share of the catalog tax to the Department of State Civil Service, Board of Tax Appeals will be increased by \$5,000 a year on the first day of the fiscal year for each of the two fiscal years after 2016-17.

Proposed law changes the number of fiscal years the transfer of local funds will be increased after 2016-17 from two to six fiscal years.

Proposed law provides that if the proceeds from the local portion of the catalog tax are insufficient to cover the funds transfer that the remaining amount necessary to satisfy the funds dedication, it shall be considered an expense of the Louisiana Sales and Use Tax Commission for Remote Sellers and that payment shall be made via interagency transfer from the fee it charges for collection of local taxes.

Proposed law authorizes the Dept. of Revenue to use state catalog tax collections for the interagency transfer to the Board of Tax Appeals.

Present law authorizes the Board of Tax Appeals to administer oaths and issue orders and subpoenas and further provides for the enforcement of orders and subpoenas by duly commissioned persons, including the local sheriff or state police in certain circumstances.

Proposed law provides that service of papers filed with the board or orders of the board may also be made as provided by the Code of Civil Procedure or by registered mail.

Present law provides for the review of judgments of the Board of Tax Appeals.

Proposed law provides that in matters in which a local collector is appealing a ruling against another local collector that review is proper in the court of appeal for either the parish of the appellee or the parish that has the most connection to the matter.

Present law requires taxes paid under protest to be placed in escrow and be distributed by the fiscal agent only upon notice of a final, nonappealable judgment. The fiscal agent is selected by the Board of Tax Appeals with the approval of the Cash Management Review Board. The escrow account is subject to audit by the legislative auditor and an annual report is required.

Proposed law retains present law escrow provisions, but corrects the reference to the recipient of the annual report related local sales tax related transactions to the Uniform Local Sales Tax Board.

Proposed law authorizes advance deposits of local filing fees to be held in the escrow account pending an order taxing costs in a case.

Present law provides for personal liability for officers, directors, managers, and members of corporations, limited liability companies, and limited partnerships who withhold wages from employees or collect sales and use tax and who willfully fail to remit these taxes to the collector.

Proposed law retains present law and authorizes the collector to bring an action before the Board of Tax Appeals or other court of competent jurisdiction to enforce the obligation of taxpayers to remit taxes to the state they have actually collected from others, and authorizes a money judgment for any amounts that were actually collected from others and not remitted to the state.

Proposed law authorizes the Board of Tax Appeals or court to render a judgment for the payment of tax, interest, penalties, attorney fees, and costs when the collector prevails in an action against a taxpayer that collects, but fails to remit withholding and sales and use taxes.

Present law provides for the suspension of prescription for the assessment of taxes.

Proposed law provides that solely for final adjustments actually made to federal income tax, the period during which prescription is suspended for state income taxes shall run concurrent to the period for which the tax period remains open under federal income tax law.

Present law provides for the prescription of refund claims.

Proposed law provides a specific prescriptive period for income tax refunds to veterans who received a federal refund pursuant to the Combat-Injured Veterans Tax Fairness Act of 2016. It allows this refund to be claimed on an amended return or by claiming a standard amount that will be proportionate to the federal standard amounts provided. The refund may be claimed until two years from the date the taxpayer received notice from Department of Defense that he is eligible for such at the federal level.

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

(Amends R.S. 47:302(K)(7)(b), 1403(B)(6)(a)(i), 1408(D)(1) and (E), 1439(C) and (F), 1574.1(E), and 1580(B)(3); adds R.S. 47:340(E)(4), 1436(B)(3), 1561.1(C), and 1623(G); repeals R.S. 47:1403(B)(6)(b))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Makes technical changes.
2. Provides for source of funds for interagency transfer from the Dept. of Revenue to the Board of Tax Appeals.