

SENATE BILL NO. 241

BY SENATOR ALLAIN

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AN ACT

To amend and reenact R.S. 47:1857(B), 2134(B)(1), (D)(3), and (E)(1) and to enact R.S. 47:1857(C), 1989(G), 2132(A)(3), and 2134(F), relative to security required for challenging the correctness or legality of ad valorem tax assessments; to provide for the timing of payments under protest or posting alternative security; to provide for the time period for determinations on claims for ad valorem taxes erroneously paid relative to public service properties; to provide that a payment under protest is not required to appeal the correctness of an assessment to the Louisiana Tax Commission; to provide for the posting of a bond or other security in lieu of a payment under protest for challenges to the legality of an assessment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1857(B), 2134(B)(1), (D)(3), and (E)(1) are hereby amended and reenacted and R.S. 47:1857(C), 1989(G), 2132(A)(3), and 2134(F) are hereby enacted to read as follows:

§1857. Corrections and changes

\* \* \*

**B. Notwithstanding any other provision of law to the contrary, a company may present a claim to the Louisiana Tax Commission on the basis that the taxpayer made an error in its annual reporting pursuant to the provisions of R.S. 47:1852 within three years of the date of a payment. The Louisiana Tax Commission shall duly examine the merits and correctness of each claim presented to it pursuant to this Subsection and shall make a determination thereon within sixty days of the receipt of the claim. The Louisiana Tax Commission shall correct or change the assessment upon a**

1           showing of a clerical error or a showing by clear and convincing evidence of any  
2           other error. An overpayment determined as a result of a change or correction  
3           pursuant to this Section shall be issued as a refund pursuant to the provisions  
4           of R.S. 47:2132, applied by the company as a credit against future ad valorem  
5           tax liability of that company in that jurisdiction at the discretion of the  
6           collector, or satisfied in any other manner agreed by the company and the  
7           collector.

8           (C)(1) Any company may institute suit in the Board of Tax Appeals or any  
9           court having jurisdiction of the cause of action for the purpose of contesting the  
10          correctness or legality of any **determination related to** corrections and changes of  
11          its assessed valuation for taxation by the Louisiana Tax Commission under this  
12          Section, which suit must be instituted within thirty days after receipt of the notice  
13          ordering the change. However, to state a cause of action, the petition instituting the  
14          suit shall name the Louisiana Tax Commission as defendant and shall set forth not  
15          only the correction or change of its assessed valuation for taxation made by the  
16          Louisiana Tax Commission, but also the assessed valuation for taxation that the  
17          company deems to be correct and legal and the reasons therefor.

18          (2) Any company that has filed suit under these provisions and whose taxes  
19          have become due shall pay such taxes under protest **as provided in R.S. 47:2134(B)**  
20          to the officer or officers designated by law for the collection of such taxes and shall  
21          cause notice or notices to issue in such suit to the officer or officers as provided in  
22          R.S. 47:2134(B). Upon receipt of such notice or notices, the amount paid under  
23          protest shall be segregated and invested by such officer or officers either in an  
24          interest-bearing account or in a certificate of deposit pending a final, nonappealable  
25          judgment in the suit.

26          (3) The provisions of R.S. 47:1856(D)(2), (3), and (4) shall be applicable to  
27          all actions instituted pursuant to this Section. All references to the reviewing court  
28          shall be deemed to mean either a district court of proper venue or the Board of Tax  
29          Appeals.

30   \*           \*           \*

1 §1989. Review of appeals by tax commission

2 \* \* \*

3 G. Notwithstanding any other law to the contrary, a taxpayer  
4 challenging the correctness of an assessment pursuant to Article VII, Section  
5 18(E) of the Constitution of Louisiana or other applicable law is not required  
6 to make a payment under protest or post security while the correctness  
7 challenge is pending before the commission or during the pendency of an appeal  
8 of the commission's determination brought by any party other than the  
9 taxpayer. When a taxpayer appeals the commission's determination, the amount  
10 of the payment under protest or alternate security shall be based upon the  
11 commission's determination.

12 \* \* \*

13 §2132. Refund of taxes erroneously paid

14 A. \* \* \*

15 (3) For public service properties, the tax commission shall duly examine  
16 the merits and correctness of each claim presented to it and shall make a  
17 determination thereon within sixty days of the receipt of the claim.

18 \* \* \*

19 §2134. Suits to recover taxes paid under protest

20 \* \* \*

21 B.(1)(a) A taxpayer challenging the correctness of an assessment under R.S.  
22 47:1856, 1857, or 1998 shall timely pay the disputed amount of tax due under protest  
23 to the officer or officers designated by law for the collection of this tax or timely file  
24 a rule to set bond or other security pursuant to Subsection F of this Section. The  
25 portion of the taxes that is paid by the taxpayer to the collecting officer or officers  
26 that is neither in dispute nor the subject of a suit contesting the correctness of the  
27 assessment shall not be made subject to the protest. The taxpayer shall submit  
28 separate payments for the disputed amount of tax due and the amount that is not in  
29 dispute and not subject to the protest.

30 (b) Paying under protest or filing a rule to set bond or other security

1 shall be considered timely if the payment is made or the rule is filed within the  
 2 deadline to appeal to the Board of Tax Appeals or district court pursuant to  
 3 R.S. 47:1856, 1857, or 1998.

4 \* \* \*

5 D. \* \* \*

6 (3) The right to sue for recovery of a tax paid under protest as provided in this  
 7 Section shall afford a legal remedy and right of action at law in the **Board of Tax**  
 8 **Appeals or** state or federal courts where any tax or the collection thereof is claimed  
 9 to be an unlawful burden upon interstate commerce, or in violation of any act of the  
 10 Congress of the United States, the Constitution of the United States, or the  
 11 Constitution of Louisiana.

12 \* \* \*

13 E.(1) Upon request of a taxpayer and upon proper showing by the taxpayer  
 14 that the principle of law involved in an additional assessment is already pending  
 15 before the Board of Tax Appeals or the courts for judicial determination, the  
 16 taxpayer, upon agreement to abide by the pending decision of the Board of Tax  
 17 Appeals or the courts, may pay the additional assessment under protest **pursuant to**  
 18 **Subsection B or C of this Section or file a rule to set bond or other security**  
 19 **pursuant to Subsection F of this Section** but need not file an additional suit. In  
 20 such cases, the tax paid under protest shall be segregated and held by the collecting  
 21 officer or officers until the question of law involved has been determined by the  
 22 courts, the Board of Tax Appeals, or finally decided by the courts on appeal, and  
 23 shall then be disposed of as provided in the final decision of the Board of Tax  
 24 Appeals or courts, as applicable.

25 \* \* \*

26 **F.(1) Notwithstanding any provision of law to the contrary, any taxpayer**  
 27 **challenging the correctness or legality of any assessment whose remedy requires**  
 28 **making a payment under protest pursuant to Subsection B or C of this Section**  
 29 **may in the alternative comply with the provisions of this Subsection rather than**  
 30 **making a payment under protest.**

1           **(2)(a) On or before the date on which the taxes are due, the taxpayer may**  
2           **file with the court or the Board of Tax Appeals a rule to set bond or other**  
3           **security, which shall be set for hearing within thirty days of the filing of the rule**  
4           **to set bond or other security, and shall attach to the petition evidence of the**  
5           **taxpayer's ability to post bond or other security.**

6           **(b) The term "other security" as set forth in this Subsection shall include**  
7           **but not be limited to a pledge, collateral assignment, lien, mortgage, factoring**  
8           **of accounts receivable, or other encumbrance of assets.**

9           **(3) The court or the Board of Tax Appeals may either order the posting**  
10           **of commercial bond or other security in an amount determined by the court or**  
11           **the board to be reasonable security for the amount of unpaid taxes, interest, and**  
12           **penalties demanded in the assessment or may order the taxpayer to make a**  
13           **payment under protest in an amount determined in its discretion to be**  
14           **reasonable security considering the amount of unpaid taxes, interest, and**  
15           **penalties. The court or board may order that a portion of the unpaid taxes,**  
16           **interest, and penalties be paid under protest and the balance secured by the**  
17           **posting of a bond or other security as provided in this Subsection.**

18           **(4) The posting of a bond or other security or the payment under protest**  
19           **shall be made no later than thirty days after the mailing of the notice of the**  
20           **decision of the court or the Board of Tax Appeals authorizing the posting of**  
21           **bond or other security or requiring that a payment under protest be made.**

22           **(5) If the taxpayer timely files the suit or any petition or rule referred to**  
23           **in this Subsection, no collection action shall be taken in connection with the**  
24           **assessment of taxes, interest, and penalties that are the subject of the taxpayer's**  
25           **cause of action, unless the taxpayer fails to post bond or other security or make**  
26           **the payment under protest required by the court or board. The collector shall**  
27           **be permitted to file a reconventional demand against the taxpayer in the cause**  
28           **of action. A collector may procure an appraisal or conduct discovery concerning**  
29           **the value and validity of security offered prior to the date for filing the**  
30           **collector's response or opposition to a rule set for hearing under this Subsection.**

1                   **(6) To the extent not inconsistent with this Subsection, the nature and**  
 2                   **amount of the bond or security and the procedures for posting bond or**  
 3                   **providing other security shall be consistent with the provisions for providing**  
 4                   **security in connection with a suspensive appeal under the Code of Civil**  
 5                   **Procedure.**

6                   **(7) This Subsection shall not apply to amounts of tax that are not in**  
 7                   **dispute and are not the subject of a correctness or legality challenge.**

8                   Section 2. The provisions of this Act shall apply to any appeal of an action of the  
 9                   Louisiana Tax Commission in connection with public service property that is pending before  
 10                  the Board of Tax Appeals on the effective date of this Act.

11                  Section 3. This Act shall become effective upon signature by the governor or, if not  
 12                  signed by the governor, upon expiration of the time for bills to become law without signature  
 13                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 14                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 15                  effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_