

2018 Regular Session

SENATE BILL NO. 420

BY SENATOR JOHNS

MOVABLE PROPERTY. Provides with respect to administration, disposition, enforcement, and adjudication of state and local taxes, fees, and receipts and the Board of Tax Appeals. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 9:168, R.S. 47:337.46, 337.51(A)(2) and (3), 337.64(C)(1), (2),

3 (3), (6), (7), 337.77(H), 1401, 1402(A), 1403(C), 1434(A), 1436(A)(3) and the

4 introductory paragraph of (B), and 1621(J), relative to state and local taxes, fees, and

5 receipts and the Board of Tax Appeals; to provide with respect to the collection,

6 administration, disposition, enforcement, and adjudication of certain taxes, fees, and

7 other receipts; to provide with respect to disputes concerning certain taxes,

8 unclaimed property, and other claims against the state; to provide with respect to

9 actions to establish a claim; to provide relative to Board of Tax Appeals; and to

10 provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 9:168 is hereby amended and reenacted to read as follows:

13 §168. Action to establish claim

14 After receipt of a written decision by the administrator reflecting the

15 administrator's determination that a holder must remit an amount under any

16 provision of this Chapter, the holder may within thirty days of the date of the

17 written decision file a written protest with the administrator requesting a

1 thirty calendar days from the date of the notice to do either of the following:

2 (a) Pay the amount of the assessment.

3 (b) **Appeal to the Board of Tax Appeals for determination of the**
4 **assessment.**

5 (c) Pay under protest in accordance with R.S. 47:337.63 and then either file
6 suit or file a petition with the Board of Tax Appeals, all as provided for in that
7 Section.

8 (3) If the taxpayer has not paid under protest in accordance with the
9 provisions of R.S. 47:337.63, or pursued an alternative remedy in accordance with
10 R.S. 47:337.64, or filed an appeal with the Board of Tax Appeals within the thirty-
11 day period ~~provided for in Paragraph (1) of this Subsection~~, the assessment shall be
12 final and shall be collectible by distraint and sale as provided in this Part. If an
13 appeal for a redetermination of the assessment has been timely and properly filed,
14 the assessment shall not be collectible by distraint and sale until such time as the
15 assessment has been redetermined or affirmed by the Board of Tax Appeals or the
16 court which last reviews the matter.

17 * * *

18 §337.64. Alternative remedy for dealers

19 * * *

20 C.(1)(a) The taxpayer may file with the court a rule to set bond or other
21 security, which shall be set for hearing within thirty days of the filing of the rule to
22 set bond or other security, and shall attach to the petition evidence of the taxpayer's
23 ability to post bond or other security.

24 (b) The term "other security" as set forth in this Section shall include but not
25 be limited to a pledge, collateral assignment, lien, mortgage, factoring of accounts
26 receivable, or other encumbrance of assets.

27 (2)(a)The court may either order the posting of commercial bond or other
28 security in an amount determined by the court not to be less than the amount of
29 unpaid taxes, interest, and penalties demanded in the assessment or may order the

1 taxpayer to make a payment under protest pursuant to the provisions of state law and
2 this Chapter in the amount of such unpaid taxes, interest, and penalties. The court
3 may order that a portion of the unpaid taxes, interest, and penalties be paid under
4 protest and the balance secured by the posting of a bond or other security as provided
5 herein.

6 **(b) The Board of Tax Appeals may order the posting of commercial bond**
7 **or other security in an amount to be determined by the Board to be reasonable**
8 **security for the amount of unpaid taxes, interest, and penalties demanded in the**
9 **assessment, or may order the taxpayer to make a payment under protest**
10 **pursuant to the provisions of state law and this Chapter in an amount**
11 **determined by the board to be reasonable security considering the amount of**
12 **such unpaid taxes, interest, and penalties. The board may order that a portion**
13 **of the unpaid taxes, interest, and penalties be paid under protest and the**
14 **balance secured by the posting of a bond or other security as provided herein.**

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

19 * * *

20 **(6) The provisions of this Section shall be applicable to either dealers or**
21 **other taxpayers, and any references herein to taxpayers shall also be applicable**
22 **to dealers.**

23 **(7) In lieu of dismissal of the taxpayer's appeal in those instances where**
24 **a taxpayer assessed pursuant to R.S. 47:337.50(A) has filed a timely appeal to**
25 **the Board of Tax Appeals for redetermination of the assessment in the manner**
26 **authorized by R.S. 47:337.51(A)(1) but not authorized under the then applicable**
27 **provisions of R.S. 47:337.51(A)(2), and following a contradictory hearing on a**
28 **rule requested by any party, the Board of Tax Appeals may order the payment**
29 **of bond, other security, or full or partial payment under protest, as provided for**

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in this Section.

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§337.77. Refunds of overpayments authorized

* * *

H.(1) A refund may be claimed pursuant to the provisions of this Section, subject to the other conditions or limitations of this Chapter, on an amount paid on an otherwise final assessment.

(2) The provisions of this Subsection shall not apply if the assessment became final following an appeal of the assessment to the Board of Tax Appeals, or if an assessment became final pursuant to a judgment in a payment under protest action brought pursuant to R.S. 47:337.63.

(3) The provisions of this Section shall not apply if the collector establishes that the taxpayer received delivery of the Notice of Assessment provided for in R.S. 47:337.51 at least ten business days prior to the deadline for appealing that assessment. The presumption of delivery on the date of attempted delivery by the United States Postal Service, as provided for in R.S. 47:337.51(B)(4), shall be applicable to any taxpayer who fails to collect his letter after due notice pursuant to the provisions of that Paragraph.

* * *

§1401. Creation of Board of Tax Appeals

In order to provide a board that will act as an appeal board to hear and decide, at a minimum of expense to the taxpayer, questions of law and fact arising from disputes or controversies between a taxpayer and ~~the any~~ collector of revenue of the State of Louisiana in the enforcement of any tax, excise, license, permit or any other **tax, fee, penalty, receipt or other** law administered by ~~the a~~ collector, and to exercise ~~jurisdiction~~ **other jurisdictions, including jurisdiction** as provided for in the Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as the "board", is created as an independent agency in the Department of State Civil Service, and for the purposes of this Chapter. The Local Tax Division is created

1 as an independent agency and authority within the board for the purposes of
2 exercising jurisdiction over disputes involving local collectors.

3 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

4 A.(1) The Board of Tax Appeals shall be composed of three members who
5 shall be attorneys **with tax law experience** and who shall be qualified electors of the
6 state. ~~At least two of the board members shall be attorneys with tax law experience.~~

7 At least one of these ~~two~~ board members shall be certified as a Tax Law Specialist
8 by the Louisiana Board of Legal Specialization. Each member shall be appointed by
9 the governor. Vacancies shall be filled in the manner of the original appointment.

10 * * *

11 §1403. Designation of officers; domicile; quorum; seal

12 * * *

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

15 A vacancy in the board shall not impair the powers nor affect the duties of the board,
16 nor of the remaining members of the board. In the event of a vacancy or in the
17 absence of a board member, the chairman, or vice chairman during the absence of
18 the chairman, may order a case involving a state collector to be heard in accordance
19 with Paragraph (B)(2) of this Section, and the hearing judge shall render the
20 judgment of the board. **Except as otherwise provided for in this Chapter, and**

21 **specifically excluding any case assigned to the Local Tax Division, the entire**
22 **board may participate in the disposition of any case heard by the Board of Tax**
23 **Appeals.**

24 * * *

25 §1434. Judicial review of decision of the board

26 A. Within thirty days of the signing of a decision or judgment of the board,
27 ~~the collector or the taxpayer~~ **any party** may file a motion with the board for review
28 of the decision or judgment by the appropriate appellate court.

29 * * *

1 §1436. Determination of which appellate court has jurisdiction

2 A. A decision or judgment of the board in a case **by or** against a state
3 collector may be reviewed as follows:

4 * * *

5 (3) In the case of a corporation **or other juridical person** which has a
6 principal office or agency in Louisiana, then by the court of appeal for the parish
7 where such principal office or agency is located.

8 * * *

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

11 * * *

12 §1621. Refunds of overpayments authorized

13 * * *

14 **J.(1) A refund may be claimed pursuant to the provisions of this Section,**
15 **subject to the other conditions or limitations of this Chapter, on an amount paid**
16 **on an otherwise final assessment.**

17 **(2) The provisions of this Subsection shall not apply if the assessment**
18 **became final following an appeal of the assessment to the Board of Tax Appeals,**
19 **or if an assessment became final pursuant to a judgment in a payment under**
20 **protest action brought pursuant to R.S. 47:1565.**

21 **(3) The provisions of this Subsection shall not apply if the collector**
22 **establishes that the taxpayer received delivery of the Notice of Assessment**
23 **provided for in R.S. 47:1565 at least ten business days prior to the deadline for**
24 **appealing that assessment.**

25 **(4) A collector may elect to send to a taxpayer or dealer by regular mail**
26 **a letter addressed in the same manner as provided in R.S. 47:1565(A) of this**
27 **Section to advise that the failure to collect certified or registered mail sent by**
28 **the collector may result in the loss of appeal rights concerning the uncollected**
29 **notice of assessment. If the collector mails this letter on the same date as the**

requirements for the posting of commercial bonds or other security for the amount of unpaid, taxes, interest, and penalties. Provides procedures for payment under protest. Provides for redetermination of an assessment and for judicial review.

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

(Amends R.S. 9:168, R.S. 47:337.46, 337.51(A)(2) and (3), 337.64(C)(1), (2), (3), (6), (7), 337.77(H), 1401, 1402(A), 1403(C), 1434(A), 1436(A)(3)(intro para), (B), and 1621(J))