

SENATE BILL NO. 5

BY SENATOR ALLAIN

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

To amend and reenact R.S. 47:1431(E), 1857(B)(1) and (2), 1998(A)(2) and (B)(3), 2134(B)(1) and (4), (C)(4), (D)(3), and (E) and to enact R.S. 47:1989(G), and 2134(F), relative to ad valorem taxes; to provide for the filing of a petition with the Board of Tax Appeals; to provide for the security required for challenging the correctness or legality of ad valorem tax assessments; to provide for the timing of payments under protest or posting other security; 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; to provide for interest and penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:1431(E), 1857(B)(1) and (2), 1998(A)(2) and (B)(3), 2134(B)(1) and (4), (C)(4), (D)(3), and (E) are hereby amended and reenacted and R.S. 47:1989(G) and 2134(F) are hereby enacted to read as follows:

§1431. Filing of petition

* * *

E.(1) Any collector, taxpayer, or other aggrieved party may file a petition or pleading with the board concerning any matter provided for pursuant to R.S. 47:1407(3) or other applicable law, **including a rule for bond or other security as provided by law.**

(2) The Louisiana Uniform Local Sales Tax Board may file an action for uniformity pursuant to R.S. 47:337.101 in the same manner as a local collector.

(3) **The provisions of Subtitle III of this Title concerning district courts shall apply to the Board and its Local Tax Division in the same manner as for**

1 **a district court.**

2 * * *

3 §1857. Corrections and changes

4 * * *

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

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

23 * * *

24 §1989. Review of appeals by tax commission

25 * * *

26 **G. Notwithstanding any other law to the contrary, a taxpayer**
27 **challenging the correctness of an assessment pursuant to Article VII, Section**
28 **18(E) of the Constitution of Louisiana or other applicable law is not required**
29 **to make a payment under protest or post security while the correctness**
30 **challenge is pending before the commission or during the pendency of an appeal**

1 of the commission's determination brought by any party other than the
 2 taxpayer. When a taxpayer appeals the commission's determination, the amount
 3 of the payment under protest or alternate security shall be based upon the
 4 commission's determination.

5 * * *

6 §1998. Judicial review; generally

7 A.(1) * * *

8 (2) Any taxpayer who has filed suit under this provision and whose taxes
 9 have become due shall pay such taxes under protest **or timely file a rule to set bond**
 10 **or other security pursuant to R.S. 47:2134** and shall cause to issue notice to the
 11 officer designated by law for the collection of such tax under the provisions of R.S.
 12 47:2134(B), and shall cause service of process to be made on the Louisiana Tax
 13 Commission as the officer designated by law to assess the property as provided for
 14 in R.S. 47:2134(B). However, the portion of taxes that is not in dispute shall be paid
 15 without being made subject to the protest.

16 B.(1) * * *

17 (3) Any taxpayer in the state who has filed suit under these provisions and
 18 whose taxes have become due shall pay said taxes under protest **or timely file a rule**
 19 **to set bond or other security pursuant to R.S. 47:2134** and shall cause to issue a
 20 notice to the officer designated by law for the collection of such tax under the
 21 provisions of R.S. 47:2134(B), and shall cause service of process to be made on the
 22 Louisiana Tax Commission as provided for in R.S. 47:2134(B). However, the portion
 23 of taxes that is not in dispute shall be paid without being made subject to the protest.

24 * * *

25 §2134. Suits to recover taxes paid under protest

26 * * *

27 B.(1)**(a)** A taxpayer challenging the correctness of an assessment under R.S.
 28 47:1856, 1857, or 1998 shall timely pay the disputed amount of tax due under protest
 29 to the officer or officers designated by law for the collection of this tax **or timely file**
 30 **a rule to set bond or other security pursuant to Subsection F of this Section.** The

1 portion of the taxes that is paid by the taxpayer to the collecting officer or officers
 2 that is neither in dispute nor the subject of a suit contesting the correctness of the
 3 assessment shall not be made subject to the protest. The taxpayer shall submit
 4 separate payments for the disputed amount of tax due and the amount that is not in
 5 dispute and not subject to the protest.

6 **(b) Paying under protest or filing a rule to set bond or other security**
 7 **shall be considered timely if the payment is made or the rule is filed within the**
 8 **deadline to appeal to the Board of Tax Appeals or district court pursuant to**
 9 **R.S. 47:1856, 1857, or 1998.**

10 * * *

11 (4) If the taxpayer prevails, the collecting officer or officers shall refund the
 12 amount to the taxpayer with interest at the actual rate earned on the money paid
 13 under protest in the escrow account during the period from the date such funds were
 14 received by the collecting officer or officers to the date of the refund. If the taxpayer
 15 does not prevail, the taxpayer shall be liable for the additional taxes together with
 16 interest at the rate set forth above during the period from the date the ~~notice of~~
 17 ~~intention to file suit for recovery of taxes was given to the officer until the date the~~
 18 ~~taxes are paid:~~ **taxes were due under R.S. 47:2127 until the date the taxes are**
 19 **paid, or in the case of taxes paid under protest, until the date of the payment**
 20 **under protest.**

21 C.(1) * * *

22 (4) If the taxpayer prevails, the collecting officer or officers shall refund such
 23 amount to the taxpayer with interest at the actual rate earned on the money paid
 24 under protest in the escrow account during the period from the date such funds were
 25 received by the collecting officer or officers to the date of the refund. If the taxpayer
 26 does not prevail, the taxpayer shall be liable for the additional taxes together with
 27 interest at the rate set forth above during the period from the date the ~~notice of~~
 28 ~~intention to file suit for recovery of taxes was given to the officer until the date the~~
 29 ~~taxes are paid:~~ **taxes were due under R.S. 47:2127 until the date the taxes are**
 30 **paid, or in the case of taxes paid under protest, until the date of the payment**

1 under protest.

2 D. * * *

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

9 * * *

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

22 (2) If the taxpayer prevails, the officer or officers shall refund such amount
 23 to the taxpayer with interest at the actual rate earned on the money paid under protest
 24 in the escrow account during the period from the date such funds were received by
 25 the officer or officers to the date of the refund. If the taxpayer does not prevail, the
 26 taxpayer shall be liable for the additional taxes together with interest at the rate set
 27 forth above during the period from the date the ~~notice of intention to file suit for~~
 28 ~~recovery of taxes was given to the officer until the date the taxes are paid.~~ **taxes**
 29 **were due under R.S. 47:2127 until the date the taxes are paid, or in the case of**
 30 **taxes paid under protest, until the date of the payment under protest.**

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

6 **(2)(a)(i) On or before the date on which the taxes are due, the taxpayer**
7 **challenging the legality of any assessment may file with the court or the Board**
8 **of Tax Appeals a rule to set bond or other security, which shall be set for**
9 **hearing within thirty days of the filing of the rule to set bond or other security,**
10 **and shall attach to the petition evidence of the taxpayer's ability to post bond**
11 **or other security.**

12 **(ii) Within the deadline to appeal to the Board of Tax Appeals or district**
13 **court pursuant to R.S. 47:1856, 1857, or 1998, the taxpayer challenging the**
14 **correctness of any assessment may file with the court or the Board of Tax**
15 **Appeals a rule to set bond or other security, which shall be set for hearing**
16 **within thirty days of the filing of the rule to set bond or other security, and shall**
17 **attach to the petition evidence of the taxpayer's ability to post bond or other**
18 **security.**

19 **(b) The term "other security" as used in this Subsection shall include but**
20 **not be limited to a pledge, collateral assignment, lien, mortgage, factoring of**
21 **accounts receivable, or other encumbrance of assets.**

22 **(3) The court or the Board of Tax Appeals may order either the posting**
23 **of commercial bond or other security in an amount determined by the court or**
24 **the board to be reasonable security for the amount of unpaid taxes and interest**
25 **demanded in the assessment or may order the taxpayer to make a payment**
26 **under protest in an amount determined in its discretion to be reasonable**
27 **security considering the amount of unpaid taxes and interest. The court or**
28 **board may order that a portion of the unpaid taxes and interest be paid under**
29 **protest and the balance secured by the posting of a bond or other security as**
30 **provided in this Subsection.**

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

5 (5) If the taxpayer timely files the suit or any petition or rule referred to
 6 in this Subsection, no collection action shall be taken in connection with the
 7 assessment of taxes and interest that are the subject of the taxpayer's cause of
 8 action, unless the taxpayer fails to post bond or other security or make the
 9 payment under protest required by the court or board. The collector shall be
 10 permitted to file a reconventional demand against the taxpayer in the cause of
 11 action. A collector may procure an appraisal or conduct discovery concerning
 12 the value and validity of other security, as that term is described in
 13 Subparagraph (F)(2)(b) of this Subsection, offered prior to the date for filing
 14 the collector's response or opposition to a rule set for hearing under this
 15 Subsection.

16 (6) To the extent not inconsistent with this Subsection, the nature and
 17 amount of the bond or security and the procedures for posting bond or
 18 providing other security shall be consistent with the provisions for providing
 19 security in connection with a suspensive appeal under the Code of Civil
 20 Procedure.

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

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____