

SENATE BILL NO. 567

BY SENATOR MORRISH AND REPRESENTATIVES HENRY AND HINES

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AN ACT

To amend and reenact R.S. 47:305.20(G), 337.45(A), 337.51(A) and (B), 337.63(A) and (D), and 337.81(A), to enact R.S. 47:337.10(N), 337.51.1, and 337.67(C)(3), relative to the sales and use tax of political subdivisions of the state; to provide for a procedure for mandatory arbitration of issues related to the collection or refund of such tax; to authorize local taxing authorities to grant an exemption and refunds for commercial fishermen; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:305.20(G) is hereby amended and reenacted and R.S. 47:337.10(N) is hereby enacted, to read as follows:

§305.20. Exclusions and exemptions; Louisiana commercial fishermen

* * *

G.(1) Except as provided for in Paragraph (2) of this Subsection, this

This exemption applies only to sales and use tax imposed by the state of Louisiana and does not apply to such taxes authorized and levied by any school board, municipality, or other local taxing authority notwithstanding any other provision of law to the contrary, specifically but not exclusively R.S. 33:2716.† R.S. 47:337.8(B).

(2) However, the governing authority of any parish, school board, municipality, or other local taxing authority may by ordinance or resolution grant the exemption provided for in this Section. In addition, such taxing authority may authorize refunds of any tax paid prior to the effective date of

1 such ordinance or resolution on transactions exempted by this Section.

2 * * *

3 §337.10. Optional exclusions and exemptions

4 * * *

5 N. As provided for in R.S. 47:305.20(G)(2), the governing authority of
6 any parish, school board, municipality, or other local taxing authority may, by
7 ordinance or resolution grant the exemption provided for in R.S. 47:305.20. In
8 addition, such taxing authority may authorize refunds of any tax paid prior to
9 the effective date of such ordinance or resolution on transactions exempted by
10 that Section.

11 * * *

12 Section 2. R.S. 47:337.45(A), 337.51(A) and (B), 337.63(A) and (D), and 337.81(A)
13 are hereby amended and reenacted and R.S. 47:337.51.1 and 337.67(C)(3) are hereby
14 enacted to read as follows:

15 §337.45. Alternative remedies for the collection of taxes

16 A. In addition to following any of the special remedies provided in this
17 Chapter, the collector may, in his discretion, proceed to enforce the collection of any
18 taxes due under the local ordinance by means of any of the following alternative
19 remedies or procedures:

20 (1) Assessment and distraint, as provided in R.S. 47:337.48 through 337.60;
21 provided that a taxpayer may utilize the mandatory arbitration procedure
22 provided for in R.S. 47:337.51.1.

23 (2) Summary court proceeding, as provided in R.S. 47:337.61.

24 (3) Ordinary suit under the provisions of the general laws regulating actions
25 for the enforcement of obligations.

26 * * *

27 §337.51. Notice of assessment and right to appeal or arbitration

28 A. Having assessed the amount determined to be due, the collector shall send
29 a notice by certified mail to the taxpayer against whom the assessment is imposed
30 at the address given in the last report filed by said taxpayer, or to any address

1 obtainable from any private entity which will provide such address free of charge or
 2 from any federal, state, or local government entity, including but not limited to the
 3 United States Postal Service or from the United States Postal Service certified
 4 software. If no report has been timely filed, the collector shall send a notice by
 5 certified mail to the taxpayer against whom the assessment is imposed at any address
 6 obtainable from any private entity which will provide such address free of charge or
 7 from any federal, state, or local government entity, including but not limited to the
 8 United States Postal Service or from the United States Postal Service certified
 9 software. This notice shall inform the taxpayer of the assessment and that he has
 10 ~~sixty~~ **thirty** calendar days from the date of the notice to (a) pay the amount of the
 11 assessment; (b) ~~request a hearing with the collector~~ **request mandatory arbitration**
 12 **pursuant to R.S. 47:337.51.1** or; (c) pay under protest in accordance with R.S.
 13 47:337.63 **and file suit as provided for in that Section or request mandatory**
 14 **arbitration pursuant to R.S. 47:337.51.1.**

15 B. If any dealer shall be aggrieved by any findings or assessment of the
 16 collector, he may, within thirty days of the receipt of notice of the assessment or
 17 finding, **do any of the following:**

18 ~~(1)(a) File a protest with the collector in writing, signed by himself or his~~
 19 ~~duly authorized agent, which shall be under oath and shall set forth the reason~~
 20 ~~therefor, and may request a hearing. Thereafter, the collector shall grant a hearing~~
 21 ~~to said dealer, if a hearing has been requested, and may make any order confirming,~~
 22 ~~modifying or vacating any such finding or assessment. The filing of any such protest~~
 23 ~~shall not abate any penalty for nonpayment, nor shall it stay the right of the taxing~~
 24 ~~authority to collect the tax in any manner herein provided. Appeals **an appeal** from~~
 25 ~~the decision of the collector shall be directed to any state, city, or federal court of~~
 26 ~~competent jurisdiction.~~

27 **(b) Pay under protest in accordance with R.S. 47:337.63, and either file**
 28 **suit as provided for in that Section, or make a written request for mandatory**
 29 **arbitration pursuant to R.S. 47:337.51.1.**

30 **(c) Mail a written request for mandatory arbitration pursuant to R.S.**

47:337.51.1 without payment under protest.

(2) This Section shall afford a legal remedy and right of action in any state, city, or federal court having jurisdiction of the parties and subject matter for a full and complete adjudication of any and all questions arising in the enforcement of the local ordinance and this Chapter as to the legality of any tax accrued or accruing or the method of enforcement thereof.

* * *

§337.51.1. Mandatory arbitration procedure

A.(1) Any taxpayer who receives an assessment in accordance with R.S. 47:337.48(B) resulting from an audit or whose request for a refund of such tax, penalty, and/or interest has been denied by a collector, may, in lieu of other remedies provided to him in this Chapter, timely initiate a mandatory arbitration proceeding in accordance with the provisions of this Section by mailing to the collector who is attempting to collect the tax, penalty, and/or interest a written request for mandatory arbitration.

(2) A proper, timely mailed request for mandatory arbitration shall suspend any collection action by the collector, and shall suspend the running of any prescription or other time limit or requirement to act in any provision of law or ordinance until the arbitration panel provided for in this Section has issued a final written decision, including but not limited to the time to respond to an ordinary suit; any remedy provided for in R.S. 47:337.45; a rule to cease business in R.S. 47:337.33; a payment under protest in R.S. 47:337.63; or auditing, examining or subpoena authority in R.S. 47:337.41, 337.42, and 337.43.

B.(1)(a) Upon receipt of the notification of the request for arbitration, the collector shall provide written notification to the secretary of the Department of Revenue and the Executive Director of the Louisiana Association of Tax Administrators of the pending arbitration proceeding.

(b)(i) The taxpayer and the collector shall each select one arbitrator from the registry of arbitrators provided for in Subparagraph (d) of this Paragraph

1 within ten days of receipt of the notification of the request for arbitration. The
2 two arbitrators selected shall then jointly agree on a third arbitrator to
3 complete a panel of three. The arbitrators shall then select one of the three as
4 a chief arbitrator.

5 (ii) If the two arbitrators selected are unable to jointly agree on a third
6 arbitrator to complete the panel, they shall select one of themselves to be the
7 chief arbitrator and may proceed with the arbitration, except that the decision
8 of the panel must be agreed to by both arbitrators.

9 (iii) An arbitrator selected by either party may not have had any
10 business relationship with either party within the last five years or at the time
11 of selection be engaged in negotiations or other contacts with either party
12 relative to entering into such a business relationship.

13 (c) In the event a taxpayer or a collector fails or refuses to comply with
14 the arbitration procedure within the time periods provided for in this
15 Subsection, plus any additional time as may be granted upon request by such
16 party, the other party may appoint an arbitrator on behalf of such failing or
17 refusing party.

18 (d)(i) Arbitrators for the panel shall be selected from the registry of
19 arbitrators compiled in accordance with this Subsection.

20 (ii) The Board of Directors of the Louisiana Association of Tax
21 Administrators shall annually appoint not less than ten arbitrators to the
22 registry, each of whom shall be board certified tax administrators. In the event
23 there are fewer than ten certified tax administrators available for such
24 appointment, the board of directors may select any local sales tax administrator
25 with at least five years experience in sales and use tax, provided such local sales
26 tax administrator is not a party to the arbitration proceeding.

27 (iii) The Business and Industry Committee of the Louisiana Association
28 of Tax Administrators, the Louisiana Association of Business and Industry, and
29 the Society of Louisiana CPAs jointly shall appoint not less than ten arbitrators
30 to the registry, each of whom shall possess at least five years of experience in the

1 area of sales and use tax.

2 (2)(a) After his selection, the chief arbitrator shall provide a written
3 request to the taxpayer and the collector for the submission of a detailed
4 statement of fact or law in support of their positions and such other documents
5 as the parties deem necessary, which are to be provided to each member of the
6 panel and to the other party within thirty days of the date of the request.

7 (b) The chief arbitrator shall then designate a time and place for a
8 hearing, unless a hearing is specifically waived in writing by both parties.

9 (c) All records, documentation, testimony, and other submissions related
10 to the arbitration proceeding shall be subject to the provisions of R.S. 47:1508
11 et seq.

12 (3)(a)(i) After due consideration of the statements and documents
13 provided to the panel, and any additional submissions required by the panel,
14 and argument and evidence submitted at the hearing, the panel shall issue a
15 written decision.

16 (ii)(aa) Decisions of the panel relating to common sales tax law as defined
17 in R.S. 47:337.2(C)(1)(b) shall require consultation with the Department of
18 Revenue prior to the rendering or issuance of the decision.

19 (bb)(I) Unless the panel is composed of two members as provided for in
20 Item (1)(b)(ii) of this Subsection and therefore requires both members to agree
21 on a decision, the decision shall be the opinion of at least a majority of the
22 panel; provided that any dissenting panel member may submit reasons for
23 dissent from the majority. The decision shall be rendered within sixty days of
24 the conclusion of the hearing, or within sixty days of timely receipt of the
25 statements and documents in the absence of a hearing.

26 (II) A written statement to the taxpayer and the collector by a panel
27 composed of two members as provided for in Item (1)(b)(ii) of this Subsection
28 of its inability to agree on a decision shall be treated as a decision of the panel
29 for purposes of this Section.

30 (4) The parties to the arbitration proceeding provided for in this Section

1 shall share equally in the cost of such proceeding, provided that each party shall
2 bear its own respective costs of providing the necessary documentation,
3 witnesses, travel, or other costs and expenses of the arbitration proceeding.

4 (5)(a) The decision of the panel shall be in writing and shall state the
5 legal and factual reasons upon which the decision is based.

6 (b) A copy of the decision shall be sent to the taxpayer, the collector, the
7 Executive Director of the Louisiana Association of Tax Administrators, and the
8 secretary of the Department of Revenue.

9 C.(1)(a) The decision of the panel may be appealed by the collector or the
10 taxpayer within thirty calendar days after the decision has been rendered and
11 signed by filing a petition with the district court of the parish in which the
12 political subdivision is located with a copy of the arbitration panel's decision
13 attached and setting forth specifically any errors which may have been
14 committed by the arbitration panel in reaching its decision.

15 (b) If the decision of the arbitration panel has found any tax, interest, or
16 penalty to be due, and the taxpayer has not paid under protest as provided for
17 in R.S. 47:337.63, the taxpayer shall post bond, with surety approved by the
18 district court conditioned upon the payment of the tax as finally determined,
19 together with any interest, additional amounts or additions to the tax provided
20 for by law, payable to the collector, in an amount not to exceed one and one-half
21 times the amount of the tax, interest, and penalty found to be due in the decision
22 of the arbitration panel, and the posting of such bond shall be a condition
23 precedent to any appeal for review in any district court.

24 (2) The appeal of the decision of the arbitration panel shall be a trial de
25 novo; however, a court may consider the decision of the arbitration panel in
26 rendering its decision on the appeal. The judgment of any such court shall be
27 subject to further appeal, suspensive only, in accordance with law. If a
28 suspensive appeal is taken from a judgment of the district court no further bond
29 need be posted and the bond originally posted remains in full force and effect
30 to guarantee the payment of any tax, interest, and penalty until final decision

1 of the court.

2 (3)(a) If a decision of the arbitration panel is not appealed as provided
 3 for in this Section within thirty calendar days after the decision has been
 4 rendered and signed by the panel, it shall be binding on the parties. If it
 5 contains a finding that the taxpayer is liable for the payment of an amount of
 6 tax, interest, and penalty, such amount, if not in escrow pursuant to R.S.
 7 47:337.63, shall be paid by the taxpayer upon notice and demand from the
 8 collector, and shall be collectible by distraint and sale, as provided in R.S.
 9 47:337.57 through 337.60 or any other means provided for in Chapter 2-D of
 10 Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950.

11 (b) When the decision of the arbitration panel which is not appealed
 12 contains a finding that the taxpayer is entitled to receive a refund or credit of
 13 an overpayment, the collector shall promptly enter the credit or make the
 14 refund, as the case may be.

15 D. Upon request of a taxpayer and upon proper showing by such
 16 taxpayer that the principle of law involved in an additional assessment is
 17 already pending before an arbitration panel pursuant to this Section, the
 18 taxpayer, upon agreement to abide by the decision of the arbitration panel or
 19 by a final judgment of a court upon a timely appeal of such decision, may make
 20 a written request to the collector that the additional assessment be included in
 21 the pending arbitration matter. If the collector agrees that the principle of law
 22 involved in the additional assessment is already pending before the arbitration
 23 panel, then the validity of such assessment shall be determined by the decision
 24 of the panel or by a final judgment of a court upon a timely appeal of such
 25 decision.

26 * * *

27 §337.63. Remittance of tax under protest; suits to recover

28 A.(1)(a) Any taxpayer protesting the payment of any amount found due by
 29 the collector or the enforcement of any provision of law in relation thereto shall
 30 remit to the collector the amount due and at that time shall give notice of intention

1 to file suit for the recovery of such tax or shall remit to the collector the amount
 2 due and make a written request for mandatory arbitration pursuant to R.S.
 3 47:337.51.1.

4 (b) In the case of sales or use taxes that are required to be collected and
 5 remitted by a selling dealer as provided for in R.S. 47:337.17, the purchaser, in order
 6 to avail himself of the alternative remedy provided by this Section, shall remit
 7 protested sales or use tax to the selling dealer, and shall retain copies of
 8 documentation evidencing the amount of the sales or use tax paid to the dealer on the
 9 transactions. On or before the twentieth day of the month following the month of the
 10 transactions on which the selling dealer charged the tax, the purchaser shall inform
 11 the collector by certified mail or other reasonable means of the dates and amounts
 12 of the protested taxes that were charged by the selling dealer, and shall give notice
 13 of the purchaser's intention to file suit for recovery of the tax or to make a written
 14 request for mandatory arbitration pursuant to R.S. 47:337.51.1.

15 (2) Upon receipt of this notice, the amount remitted to the collector or the
 16 amount of protested taxes that have been paid to the selling dealer shall be placed in
 17 an escrow account and held by the collector or his duly authorized representative for
 18 a period of thirty days. If suit is filed for recovery of the tax or a written request for
 19 mandatory arbitration is mailed as provided for in R.S. 47:337.51.1 within the
 20 thirty-day period, the funds in the escrow account shall be further held pending the
 21 outcome of the suit or the arbitration proceeding or appeal therefrom.

22 (3) If the taxpayer prevails, the collector shall refund the amount to the
 23 claimant, with interest at the rate established pursuant to R.S. 47:337.80.

24 * * *

25 D. Upon request of a taxpayer and upon proper showing by such taxpayer
 26 that the principle of law involved in an additional assessment is already pending
 27 before the courts for judicial determination or before an arbitration panel as
 28 provided for in R.S. 47:337.51.1, the taxpayer, upon agreement to abide by the
 29 decision of the courts, an arbitration panel, or by a final judgment of a court
 30 upon a timely appeal of a decision of an arbitration panel, may remit the

1 additional assessment under protest, but need not file an additional suit or make
 2 another mandatory arbitration request. In such cases, the tax so paid under
 3 protest shall be placed in an escrow account and held by the collector until the
 4 question of law involved has been determined by the courts, an arbitration panel,
 5 or by a final judgment of a court upon a timely appeal of a decision of an
 6 arbitration panel, and shall then be disposed of as therein provided.

7 * * *

8 §337.67. Suspension and interruption of prescription

9 * * *

10 C. The running of such prescriptive period may also be suspended as follows:

11 * * *

12 (3) By use of the mandatory arbitration procedure provided for in R.S.
 13 47:337.51.1.

14 * * *

15 §337.81. Appeals from the collector's disallowance of refund claim

16 A.(1) If the collector fails to act on a properly filed claim for refund or credit
 17 within one year from the date received by him or if the collector denies the claim in
 18 whole or in part, the taxpayer claiming such refund or credit may within thirty days
 19 of the notice of disallowance of the claim request a hearing with the collector for
 20 redetermination. The collector shall render a decision within thirty days of the
 21 request by the taxpayer.

22 (2) The taxpayer may appeal a denial of a claim for refund to a court of
 23 competent jurisdiction or mail a written request for mandatory arbitration
 24 pursuant to R.S. 47:337.51.1. No appeal may be filed or request for arbitration
 25 made before the expiration of one year from the date of filing such claim unless the
 26 collector renders a decision thereon within that time, nor after the expiration of
 27 ninety days from the date of mailing by certified or registered mail by the collector
 28 to the taxpayer of a notice of the disallowance of the part of the claim to which such
 29 appeal relates.

30 * * *

1 Section 3. The provisions of Section 1 of this Act shall become effective upon
2 signature by the governor or, if not signed by the governor, upon expiration of the time for
3 bills to become law without signature by the governor, as provided by Article III, Section
4 18 of the Constitution of Louisiana.

5 Section 4. The provisions of Section 2 of this Act shall become effective on January
6 1, 2011.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____