

ACT No. 210

2015 Regular Session

HOUSE BILL NO. 338

BY REPRESENTATIVE DANAHAHAY

1 AN ACT

2 To amend and reenact R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27,
3 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B),
4 337.81(A)(2) and (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438,
5 1522, 1561(B)(3), 1576(B), 1603(A)(3), and 1625, and Sections 5 and 7 of Act No.
6 640 of the 2014 Regular Session of the Legislature and to enact R.S.
7 47:337.45(A)(4), 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and
8 (B)(6)(c), 1407(5), 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439,
9 1561(A)(4) and (B)(4), 1580(B)(5), 1621(D)(4), and 1623(F), relative to the
10 enforcement and adjudication of state and local taxes and the Board of Tax Appeals;
11 to provide with respect to disputes concerning taxes; to provide for administration
12 of the board; to provide with respect to certain revenues dedicated to the board; to
13 establish an escrow account; to provide for the deposit, investment, and use of
14 monies in the account; to establish a fund within the escrow account and provide for
15 its sources of revenue and use; to provide for certain procedures and requirements
16 relative to adjudication and appeals of certain cases involving state and local taxes;
17 to provide with respect to compensation and benefits of officers of the board; to
18 authorize certain agreements regarding the compensation and expenses of ad hoc
19 judges; to provide for effectiveness; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

21 Section 1. R.S. 47:302(K)(7)(b), 337.13.1(A)(2), (B)(1), and (C), 337.27,
22 337.28.1(B), 337.33(A)(5), 337.45(B), 337.63(A)(3) and (B), 337.64(B), 337.81(A)(2) and
23 (B), 337.86(E)(2)(a), 1401, 1403(B)(5), 1418(4), 1434, 1438, 1522, 1561(B)(3), 1576(B),
24 1603(A)(3), and 1625 are hereby amended and reenacted and R.S. 47:337.45(A)(4),

1 337.51(B)(4), 337.63(E), 337.79(C), 337.81(A)(3), 1403(A)(4) and (B)(6)(c), 1407(5),
2 1408(D) and (E), 1413(D) and (E), 1418(6) and (7), 1439, 1561(A)(4) and (B)(4),
3 1580(B)(5), 1621(D)(4), and 1623(F) are hereby enacted to read as follows:

4 §302. Imposition of tax

5 * * *

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

7 * * *

8 (7)

9 * * *

10 (b) The amount specified in Subparagraph (a) of this Paragraph as
11 transferred to the Department of State Civil Service, Board of Tax Appeals, shall be
12 increased by ~~five~~ fifty-five thousand dollars on July 1, 2015, and by five thousand
13 dollars on the first day of each of the ~~four~~ two subsequent fiscal years when the
14 amount distributed pursuant to this Subsection in the fiscal year immediately
15 preceding that date actually exceeds the amount distributed in Fiscal Year 2013-
16 2014. The amounts specified in Subparagraphs (a) and (b) of this Paragraph shall
17 be transferred by the secretary within the first thirty days of each fiscal year and the
18 Department of State Civil Service, Board of Tax Appeals, may retain all funds which
19 are transferred as directed in Subparagraphs (a) and (b) of this Paragraph.

20 * * *

21 §337.13.1. Power to employ counsel; attorney fees

22 A.

23 * * *

24 (2) If any taxes, penalties, or interest due and final under this Subtitle are
25 referred to an attorney at law for a collection action, an additional charge for attorney
26 fees, in the amount of ten percent of the taxes, penalties, and interest due, except
27 with respect to amounts timely paid under protest with a return that is not delinquent,
28 or paid under protest to a vendor in accordance with law, shall be paid by the
29 taxpayer to the local collector; provided, however, that the amount paid for attorney

1 fees shall be subject to the discretion of the court or Board of Tax Appeals as to
2 reasonableness.

3 * * *

4 B.(1) Except as otherwise provided for in Paragraph (A)(3) of ~~Subsection A~~
5 of this Section, the prevailing party in a dispute, contest, or other controversy
6 involving the determination of sales and use tax due shall be entitled to
7 reimbursement of attorney fees and costs, not to exceed ten percent of the taxes,
8 penalties, and interest at issue, unless the position of the non-prevailing party is
9 substantially justified. The prevailing party is defined as the party which has
10 substantially prevailed with respect to the amount in controversy or substantially
11 prevailed with respect to the most significant issue or set of issues presented. A
12 position is substantially justified if it has a reasonable basis in law and fact. The
13 reimbursement amount for attorney fees and costs shall be subject to the discretion
14 of the court or Board of Tax Appeals as to reasonableness.

15 * * *

16 C. A local collector may waive the attorney fee award as provided for in this
17 Section. A waiver of attorney fees by a local collector shall be considered timely if
18 the notice of the waiver is mailed to a taxpayer by certified mail, return receipt
19 requested, within thirty days of the service of process, or if it is waived in the
20 collector's initial answer to a petition filed with the Board of Tax Appeals. If a local
21 collector timely waives its attorney fee award, a taxpayer may not recover attorney
22 fees as provided for in Subsection B of this Section.

23 * * *

24 §337.27. Venue

25 An action to enforce the collection of a sales or use tax, including any
26 applicable interest, penalties, or other charges, levied by a taxing authority may be
27 brought in the parish in which the taxing authority is situated, or in the Board of Tax
28 Appeals as provided by law.

29 * * *

1 §337.28.1. Arbitrary assessments prohibited

2 * * *

3 B. If the assessment by the collector is determined by a court of competent
4 jurisdiction or the Board of Tax Appeals to be an arbitrary assessment, the
5 assessment shall neither interrupt nor suspend prescription, and the dealer shall be
6 reimbursed by the collector for reasonable costs of litigation. The amount of costs
7 recoverable under this Section shall not exceed ten percent of the taxes, interest, and
8 penalty that were arbitrarily assessed, which amount shall be subject to the discretion
9 of the court, or the Board of Tax Appeals, as to reasonableness.

10 * * *

11 §337.33. Failure to pay tax; rule to cease business

12 * * *

13 (5) The collection procedure provided for in this Subsection shall be in
14 addition to any other collection procedure provided by law. When issuing an order
15 pursuant to this Subsection, the Board of Tax Appeals or any court of competent
16 jurisdiction, upon proper showing, may also render a money judgment against the
17 taxpayer and in favor of the collector in the amount of any final and non-appealable
18 assessment, together with all penalties, interest, attorney fees and costs due.

19 * * *

20 §337.45. Alternative remedies for the collection of taxes

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

25 * * *

26 (4) Demand in reconvention, or third-party demand, in any court of
27 competent jurisdiction or before the Board of Tax Appeals concerning collection of
28 local taxes due, including any related interest, penalties, costs, and attorney fees due
29 under applicable law.

1 payment under protest concerning the same tax obligation, and if the collector has
2 deposited the monies into an interest-bearing account in accordance with this
3 Section, the interest to be paid on the tax obligation to the party or parties adjudged
4 to be entitled to the interest shall be that interest actually earned and received by the
5 collector on the payment.

6 §337.64. Alternative remedy for dealers

7 * * *

8 B. (1) If the taxpayer files suit in any state court of competent jurisdiction,
9 or a petition with the Board of Tax Appeals, contesting the assessment within the
10 time provided by law and satisfies the alternative remedies provided for in
11 Subsection C of this Section, no collection action shall be taken in connection with
12 the assessment of taxes, interest, and penalties, which are the subject of the
13 taxpayer's suit; however, the collector shall be permitted to file a reconventional
14 demand against the taxpayer in such suit.

15 (2) If a valid petition contesting an assessment is timely filed with the Board
16 of Tax Appeals pursuant to Paragraph (1) of this Subsection, the Board of Tax
17 Appeals shall exercise the authority provided for in Subsection C of this Section in
18 the same manner as a district court.

19 * * *

20 §337.79. Prescription of refunds or credits

21 * * *

22 C.(1) In any case where the collector pursues any remedy for collection of
23 tax pursuant to R.S. 47:337.45, including the issuance of an assessment, the period
24 of prescription for a refund or credit for the same tax periods and types of tax shall
25 be suspended. However, the suspension of prescription provided for in this
26 Subsection applies only in the following circumstances:

27 (a) When an assessment has been issued and the taxpayer has submitted a
28 refund claim that is received by the collector prior to the assessment becoming final.

29 (b) When a summary proceeding has been filed and the taxpayer has timely
30 pleaded the claim for refund as an offset or credit in the summary proceeding.

1 (c) When an ordinary suit has been filed and the taxpayer has filed a timely
2 reconventional demand for the refund or credit in the suit.

3 (2) If the refund claim would have been prescribed but for this Subsection,
4 the amount of the claim found to be due shall be credited or offset against the
5 underpaid tax found to be due.

6 (3) Prescription shall not be suspended by the provisions of Paragraph (1)
7 of this Subsection if any of the following occur:

8 (a) An assessment has become final and nonappealable.

9 (b) A judgment of the Board of Tax Appeals concerning the collection
10 remedy referenced in Paragraph (1) of this Subsection has become final.

11 (c) A final judgment has been rendered by a district court in a related
12 summary or ordinary proceeding.

13 * * *

14 §337.81. Appeals from the collector's disallowance of refund claim

15 A.

16 * * *

17 (2) The taxpayer may appeal a denial of a claim for refund to the Board of
18 Tax Appeals, as provided by law. No appeal may be filed before the expiration of
19 one year from the date of filing such claim unless the collector renders a decision
20 thereon within that time, nor after the expiration of ninety days from the date of
21 mailing by certified or registered mail by the collector to the taxpayer of a notice of
22 the disallowance of the part of the claim to which the appeal relates, nor after the
23 expiration of one hundred eighty days from the end of the expiration of the one year
24 in which the collector failed to act.

25 (3) A taxpayer's proper appeal to the Board of Tax Appeals filed within
26 ninety days from the date on any notice of disallowance issued shall also establish
27 that the appeal was filed within ninety days from the date of the certified or
28 registered mailing of the notice.

29 B. ~~Any~~ (1) A notice of disallowance, if issued, shall inform the taxpayer that
30 he has ninety days from the date of the certified or registered mailing of that notice

1 to appeal to the Board of Tax Appeals and that any consideration, reconsideration,
 2 or action by the collector with respect to ~~such~~ the claim following the mailing of a
 3 notice by certified or registered mail of disallowance shall not operate to extend the
 4 period within which an appeal may be taken.

5 (2) The failure to transmit this notice does not extend the separate and
 6 distinct prescriptive period that runs following one year of inaction by the collector.

7 * * *

8 §337.86. Credit for taxes paid

9 * * *

10 E.

11 * * *

12 (2)(a) The collector shall not impose penalties or interest on taxes
 13 erroneously paid or remitted to another taxing authority unless the erroneous
 14 payment or remittance was the result of gross negligence or due to intentional
 15 conduct of bad faith ~~or gross negligence~~ on the part of the ~~persons collecting and~~
 16 ~~remitting dealer that collected and remitted the~~ taxes or on the part of the taxpayer
 17 that paid the taxes. In instances where a legitimate disagreement exists as to which
 18 taxing authority is owed, the involved taxing authorities shall resolve the dispute
 19 among themselves through any legal means provided by law, including the filing of
 20 a rule or petition against the other taxing authority in the manner provided for in R.S.
 21 47:337.101.

22 * * *

23 §1401. Creation of Board of Tax Appeals

24 In order to provide a board that will act as an appeal board to hear and decide,
 25 at a minimum of expense to the taxpayer, questions of law and fact arising from
 26 disputes or controversies between a taxpayer and the collector of revenue of the State
 27 of Louisiana in the enforcement of any tax, excise, license, permit or any other tax
 28 law administered by the collector, and to exercise jurisdiction as provided for in the
 29 Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as
 30 the "board", is created as an independent agency in the Department of State Civil

1 Service, and for the purposes of this Chapter. The Local Tax Division is created as
2 an independent agency and authority within the board for the purposes of exercising
3 jurisdiction over disputes involving local collectors.

4 * * *

5 §1403. Designation of officers; domicile; quorum; seal

6 A.

7 * * *

8 (4) The local tax judge provided for in Paragraph (3) of this Subsection is
9 recognized as having been created as a distinct position in the unclassified service
10 for the purposes of Article X of the Constitution of Louisiana and shall serve as
11 agency head for the Local Tax Division.

12 B.

13 * * *

14 (5) Upon the motion of the local collector, a hearing on the merits in a matter
15 involving only local taxing authorities from a single parish shall be held in that
16 parish. The respective district or other local court shall make available any facilities
17 necessary for the hearing, and any relevant expenses may be taxed as costs, including
18 any costs for a hearing judge in the same amount as specified in R.S. 47:1417(C)(2).

19 (6)

20 * * *

21 (c) For any case assigned to be heard in the Local Tax Division, all
22 references to the "Board of Tax Appeals" in this Chapter or in Chapter 2-D of this
23 Subtitle shall mean the board's Local Tax Division, with the board's authority
24 exercised by its judge pursuant to R.S. 47:1403(A)(3).

25 * * *

26 §1407. Jurisdiction of the board

27 The jurisdiction of the board shall extend to the following:

28 * * *

1 (5) Incidental demands authorized by law in any action pending before the
 2 board in the same manner as in a district court pursuant to Code of Civil Procedure
 3 Article 1031.

4 §1408. Power to administer oaths and issue rules, orders, or subpoenas

5 * * *

6 D.(1) The provisions of R.S. 47:337.33(A), 337.43, and 1547 shall apply to
 7 the Board of Tax Appeals and its Local Tax Division in the same manner as for a
 8 district court. In addition to the remedies otherwise provided for in this Section, any
 9 interested party may file a motion or rule in any court of competent jurisdiction
 10 alleging a violation of any order issued by the board or its local tax judge pursuant
 11 to R.S. 47:337.33, 337.43, and 1547, and the district court shall consider any
 12 violation shown to be a contempt of the court and shall immediately punish the
 13 violator in accordance with R.S. 13:4611(1) and all other applicable laws for
 14 contempt of court.

15 (2)(a) In addition to all other remedies provided for in this Section, the
 16 failure to obey any order or subpoena issued under the authority of this Chapter shall
 17 constitute contempt of court, and may be punished by the board or its local tax judge
 18 in accordance with the provisions of R.S. 13:4611(1) and all other applicable laws
 19 for contempt of court. Any action finding anyone in contempt pursuant to this
 20 Paragraph shall be subject to an appeal by trial *de novo* in the Nineteenth Judicial
 21 District Court.

22 (b) The board, through any member or its counsel, may appear in any
 23 proceeding to oppose an appeal pursuant to this Paragraph and may otherwise appear
 24 in defense of its jurisdiction.

25 E. The provisions of this Section may be enforced by any duly
 26 commissioned person, shall be enforced by the sheriff wherever such person may be
 27 found, and shall be enforced by the Department of Public Safety and Corrections,
 28 office of state police, when a direct contempt occurs in a state building.

29 * * *

1 §1413. Rules and regulations

2 * * *

3 D. By rule promulgated pursuant to this Section, the board may require that
4 in any notice regarding a right to an appeal to the board, the collector shall include
5 any certified or registered mail tracking number for the notice as well as the board's
6 contact information, in a form specified by the board. The failure to include this
7 information shall not extend the time within which any party may file an appeal with
8 the board.

9 E. Notwithstanding any other provision of law to the contrary, the board may
10 issue orders in the same manner as a district court in the exercise of its jurisdiction
11 or to effectuate its jurisdiction under this Chapter. Any standing orders generally
12 applicable to all cases, including those related to the timeliness and methods of
13 filing, shall be published on the board's website.

14 * * *

15 §1418. Definitions

16 For purposes of this Chapter, except when the context requires otherwise, the
17 words and expressions defined in this Section shall have the following meanings:

18 * * *

19 (4) "Petition" means a separate and distinct pleading filed against the
20 relevant state collector or local collector with the board. A petition filed against a
21 state collector shall not interrupt or suspend the time period within which a taxpayer
22 must file a petition against any local collector, and a petition filed against a local
23 collector shall not suspend or interrupt the time period within which a taxpayer must
24 file a petition against a state collector or a different local collector.

25 * * *

26 (6) "Escrow Account" means the account with a bank or financial institution
27 selected as fiscal agent by the Board of Tax Appeals with the approval of the Cash
28 Management Review Board, pursuant to R.S. 47:1439.

1 (7) "Registry of the Board" means the record retained by the secretary-clerk
2 for the Escrow Account in the same manner as specified in R.S. 13:475(A).

3 * * *

4 §1434. Judicial review of decision of the board

5 A.~~(†)~~ Within thirty days of the signing of a decision or judgment of the
6 board, the collector or the taxpayer may file a petition motion with the appellate
7 court board for review of the decision or judgment. ~~The party intending to file the~~
8 ~~petition shall, prior to its filing, notify the board of this intention either at open~~
9 ~~hearing or by motion~~ by the appropriate appellate court.

10 B.(1) In any case where the board has found any tax to be due, except in any
11 payment under protest petition, the taxpayer shall post a bond ~~when giving the notice~~
12 ~~of intention to file a petition~~ when filing a motion for review, with surety in a form
13 approved by the board for the payment of the tax as finally determined, together with
14 any interest, additional amounts or additions to the tax provided for by law, including
15 applicable penalties and attorney fees. The bond shall be payable to the collector in
16 an amount not to exceed one and one-half times the tax, interest, penalties, and
17 attorney fees, if any, found to be due.

18 (2) In lieu of posting the bond required by Paragraph (1) of this Subsection,
19 a taxpayer may fulfill that requirement by paying into the Escrow Account for the
20 Registry of the Board an amount not to exceed one and one-half times the tax,
21 interest, penalties, and attorney fees, if any, found to be due as security pursuant to
22 Paragraph (1) of this Subsection, together with any fees and costs due to the board.
23 The payment of security pursuant to this Paragraph shall not suspend the running of
24 interest otherwise provided for in Subtitle II of Title 47 of the Louisiana Revised
25 Statutes of 1950, as amended, or in the applicable local ordinances.

26 (3)(a) For any case in the Local Tax Division, an irrevocable letter of credit
27 issued by a responsible financial institution shall not be accepted as security in lieu
28 of a bond or a deposit into the Escrow Account of the Registry of the Board unless
29 it is in the amount of the security otherwise required by Paragraph (1) of this

1 Subsection and permission is granted by the local tax judge prior to the expiration
 2 of the period for filing a motion for review pursuant to this Section.

3 (b) Any such request for approval pursuant to this Paragraph shall be made
 4 either by joint motion or by contradictory motion, and any contradictory motion shall
 5 be set for an expedited hearing. If any such contradictory motion is filed within ten
 6 days of the signing of judgment, it shall be set for hearing so that a decision will be
 7 rendered at least seven days prior to the expiration of the period for filing a motion
 8 for review pursuant to this Section. During any absence, the local tax judge may
 9 delegate this review to any member of the board, and the chairman may act when the
 10 local tax judge is not available.

11 ~~The~~ (4) If required, the posting of such the security, bond, or payment into
 12 escrow, shall be a condition precedent to the filing of any petition motion for review
 13 in any appellate court with the board.

14 ~~(2)~~(5) Except as to the amount, and to the extent not otherwise inconsistent
 15 with the provisions of this ~~Section~~ Subsection, the nature of the bond or security and
 16 the procedures for posting bond or providing other security shall be consistent with
 17 the provisions for providing security in connection with a suspensive appeal under
 18 the Code of Civil Procedure.

19 ~~(3) The other deadlines and rules governing the briefing and answering of~~
 20 ~~an appeal filed pursuant to this Section shall be as provided for in civil matters under~~
 21 ~~the Code of Civil Procedure and all applicable court rules.~~

22 ~~B. When a petition for review is lodged with an appellate court, the court or~~
 23 ~~its clerk shall mail a copy of the petition to both the secretary-clerk of the board and~~
 24 ~~the opposing party or his counsel.~~

25 C.(1) Within ten days from the lodging of the petition, the appellate court
 26 shall command filing of the motion for review with the board, the board shall act
 27 upon the motion for review and, if granted, order a return date for the record to be
 28 submitted to the appellate court.

1 (2) If the movant owes unpaid or taxed fees or costs to the board, the return
2 date shall be set as thirty days from the payment of these costs. If such costs are not
3 owed, the return date shall be thirty days from the filing of the motion for review.

4 (3) On or before the return date, the secretary-clerk of the board ~~to~~ shall send
5 the appellate court, ~~within thirty days from the date thereof,~~ the original transcript
6 of the record, together with all exhibits and evidence thereto attached; which record
7 shall be the basis for any action on review and the decision of the appellate court
8 shall be rendered upon that record as made up before the board. The record, and any
9 designation thereof, shall be prepared in accordance with applicable court rules.

10 (4) The other deadlines and rules governing the briefing and answering of
11 an appeal filed pursuant to this Section shall be as provided for in civil matters under
12 the Code of Civil Procedure and all applicable court rules.

13 D. The filing of a motion for a new trial, a motion for reconsideration, or the
14 denial of any such motion does not extend the period within which a party must file
15 a motion for review for a judgment pursuant to this Section. However, the board
16 shall retain jurisdiction to make corrections to or revise a judgment until the
17 appellate record is lodged with the appellate court. If any amended or revised
18 judgment, or judgment following a new trial, is rendered pursuant to the provisions
19 of Chapter 4 of Title VI of Book II of the Louisiana Code of Civil Procedure, the
20 delay to file an appeal concerning the amended, revised, or new judgment shall run
21 from the date of its signing.

22 * * *

23 §1438. Date judgment becomes final

24 For the purposes of this Title, the date on which a decision or judgment of the
25 board becomes final shall be determined as provided in this Section. The decision
26 or judgment of the board shall become final in either of the following circumstances:

27 (1) Upon the expiration of the time allowed for filing a ~~petition~~ motion for
28 review, if no such ~~petition~~ motion has been duly filed within such time.

29 (2) If a ~~petition~~ motion for review of a judgment of the board by the
30 applicable appellate court is timely filed with the ~~applicable appellate court~~ board,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 the judgment of the board or subsequent judgment of the appellate court shall
 2 become final in the same manner, and at the same time, as provided for in civil
 3 matters under the Code of Civil Procedure.

4 §1439. Escrow Account

5 A. The Board of Tax Appeals, with approval of the Cash Management
 6 Review Board, shall select a bank or financial institution to serve as fiscal agent of
 7 its Escrow Account, hereinafter referred to as "account". This fiscal agent shall
 8 distribute funds from the account only on the seventh business day following receipt
 9 of a certified copy of an order signed by the chairman of the Board of Tax Appeals,
 10 or its local tax judge, or a duly appointed ad hoc judge, as applicable, and attested
 11 to by its secretary-clerk who shall affix the board's seal, or upon receipt of a certified
 12 final non-appealable order of the relevant appellate or higher court. No such order
 13 shall be issued until there is a final and non-appealable judgment in the underlying
 14 case. No such order shall be issued except upon a joint motion of all parties, or
 15 following a contradictory hearing after service on all parties. The order shall specify
 16 the amount payable to the collector, or taxpayer, or the amounts for each.

17 B. The fiscal agent may be held harmless for any distribution made that
 18 complies with the provisions of both this Section and any applicable policies
 19 specified for the account by the board or the Cash Management Review Board.

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

25 D.(1) Except as provided for in Paragraphs (2) and (3) of this Subsection, the
 26 actual amount of interest earned on a taxpayer's deposits held in the Escrow Account
 27 shall be added to the principal sum held on deposit in the Escrow Account for that
 28 taxpayer and case, and shall be disbursed pursuant to Subsection A of this Section.

29 (2) In a case against only a state collector, one-tenth of one percent per
 30 month of the amount held in escrow for a case, not to exceed the actual amount of

1 interest earned on monies in the Escrow Account from deposits made by a taxpayer
 2 in the case, shall be payable to the treasury and, after compliance with Article VII,
 3 Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and
 4 Redemption Fund, the monies remaining shall be deposited in and credited to the
 5 state general fund as self-generated revenues of the Board of Tax Appeals, and may
 6 be expended within the board's administrative program.

7 (3) In a case against a local collector, one-tenth of one percent per month of
 8 the amount held in escrow for a case, not to exceed the actual amount of interest
 9 earned on monies in the Escrow Account from deposits made by a taxpayer in the
 10 case, shall be deposited in and credited to the Local Tax Division Expense Fund,
 11 which is hereby created within the account.

12 E. The board, or its Local Tax Division, may assess a fee related to the
 13 optional methods of posting security provided for in R.S. 47:1434(B). This amount
 14 shall be determined pursuant to rules and regulations promulgated in accordance
 15 with R.S. 47:1413.

16 F. The board may deposit into the account any funds received from a party
 17 for payment of the costs of service of process or for appeal costs, and it may pay the
 18 amounts received to the appropriate sheriff for service of process or the appropriate
 19 clerk of a court of appeals in the event of an appeal against a decision of the board
 20 pursuant to R.S. 47:1434.

21 G.(1) The local tax judge may also order the payment of monies from the
 22 Local Tax Division Expense Fund into the state treasury, and any amount so ordered
 23 that remains after compliance with Article VII, Section 9(B) of the Constitution of
 24 Louisiana, relative to the Bond Security and Redemption Fund, shall be deposited
 25 in and credited to the state general fund as self-generated revenues of the Local Tax
 26 Division of the Department of Civil Service, Board of Tax Appeals.

27 (2) Self-generated revenues of the Local Tax Division made available
 28 pursuant to the provisions of Paragraph (1) of this Subsection may be expended for
 29 any of the purposes specified in R.S. 47:1406, pursuant to the provisions of that
 30 Section restricting their exclusive use to the purposes of the Local Tax Division and

1 the provisions of that Section providing for their retention and carry forward for such
2 purposes.

3 * * *

4 §1522. Alternative dispute resolution

5 The secretary of the Department of Revenue may enter into contracts with the
6 approval of the attorney general, with individuals and organizations to conduct
7 alternative dispute resolution to arbitrate or to mediate any issue in order to assist in
8 the collection of any taxes, penalties, or interest due under Subtitle II of this Title in
9 an aggregate amount not to exceed five million dollars when such procedures are
10 deemed to be in the best interest of the state. The secretary of the Department of
11 Revenue shall have the authority to contract for the allocation of any costs of
12 alternative dispute resolution procedures. The secretary shall retain the authority to
13 contract for the nonbinding mediation of any dispute under Subtitle II of this Title
14 by any mediator qualified pursuant to R.S. 9:4106, or by any member of the Board
15 of Tax Appeals.

16 * * *

17 §1561. Alternative remedies for the collection of taxes

18 A. In addition to following any of the special remedies provided in the
19 various chapters of this Subtitle, the collector may, in his discretion, proceed to
20 enforce the collection of any taxes due under this Subtitle by means of any of the
21 following alternative remedies or procedures:

22 * * *

23 (4) Demand in reconvention, or third party demand, in any court of
24 competent jurisdiction or before the Board of Tax Appeals concerning collection of
25 state taxes due, including any related interest, penalties, costs, and attorney fees due
26 under applicable law.

27 B.

28 * * *

1 (3) ~~When a~~ After the deadline to file an answer or defenses, after he has
2 appeared in, or after he has filed any responsive pleading or defenses in any
3 proceeding or suit involving the same tax obligation is pending against him.

4 (4) When a third party demand for the same tax obligation is pending against
5 him in a suit by the collector concerning collection of the same tax obligation.

6 * * *

7 §1576. Remittance of tax under protest; suits to recover

8 * * *

9 B. For income and corporation franchise tax purposes, in instances where the
10 payment of tax under protest is required to be made before the amount of tax due is
11 determinable, the taxpayer shall have thirty days from the due date of the tax return,
12 or the extended due date of such return if applicable, to file suit or a petition with the
13 Board of Tax Appeals for the recovery of such tax. If suit or a petition is filed within
14 the thirty-day period and the taxpayer prevails, the secretary shall refund the amount
15 to the claimant, with interest at the rate established pursuant to R.S. 13:4202
16 computed pursuant to R.S. 47:287.657 or R.S. 47:617 in the case of corporation taxes
17 or R.S. 47:115 in the case of individual income tax.

18 * * *

19 §1580. Suspension and interruption of prescription

20 * * *

21 B. The running of such prescription shall also be suspended prior to the lapse
22 of the prescriptive period set out in the Constitution of Louisiana as hereinafter
23 provided:

24 * * *

25 (5)(a) By the filing of a claim for refund for the period for which a refund
26 is requested, which shall suspend prescription for the same period in order for the
27 secretary to determine whether the taxpayer owes any other liability under the
28 provisions of R.S. 47:1622.

29 (b) The collector may not assert a collection remedy against a taxpayer for
30 a tax that would have been prescribed but for this Paragraph except through a

1 defense, answer, or reconventional demand in offset of an action concerning the
2 claim for refund.

3 (c) The provisions of Subparagraph (a) of this Paragraph governing the
4 suspension of prescription shall not apply in the following circumstances:

5 (i) The claim for refund referenced in this Paragraph has been granted.

6 (ii) The claim for refund referenced in this Paragraph is denied and the
7 refund denial is final and nonappealable.

8 (iii) A judgment of the Board of Tax Appeals concerning the refund
9 referenced in this Paragraph has become final.

10 * * *

11 §1603. Waiver of penalty for delinquent filing or delinquent payment

12 A.

13 * * *

14 (3) In any case when the penalty exceeds twenty-five thousand dollars, it can
15 be waived by the secretary only after approval by the Board of Tax Appeals.
16 However, the secretary's waiver of a penalty as part of a voluntary disclosure
17 program shall not require the approval of the board.

18 * * *

19 §1621. Refunds of overpayments authorized

20 * * *

21 D.

22 * * *

23 (4) The first payment owed pursuant to the provisions of Paragraph (2) of
24 this Subsection shall be made within the time specified in Paragraph (3) of this
25 Subsection, and any subsequent payments shall be made no later than the same date
26 of the respective subsequent calendar years.

27 * * *

28 §1623. Prescription of refunds or credits

29 * * *

1 F.(1) Provided that in any case in which the secretary pursues any remedy
 2 for the collection of tax pursuant to R.S. 47:1561, including the issuance of an
 3 assessment, the period of prescription for a refund or credit for the same types of tax
 4 and tax periods shall be suspended. However, the suspension of prescription
 5 authorized in this Subsection applies only in any of the following circumstances:

6 (a) When an assessment has been issued and the taxpayer has submitted a
 7 refund claim that is received by the collector prior to the assessment becoming final.

8 (b) When a summary proceeding has been filed and the taxpayer has timely
 9 appealed such claim for refund as an offset or credit in the summary proceeding.

10 (c) When an ordinary suit has been filed and the taxpayer has filed a timely
 11 reconventional demand for such refund or credit in such suit.

12 (2) If the refund claim would have been prescribed, but for this Subsection,
 13 the amount of the claim found due shall be credited or offset against the underpaid
 14 tax found due.

15 (3) Prescription shall not be suspended pursuant to the provisions of
 16 Paragraph (1) of this Subsection in any of the following circumstances:

17 (a) An assessment has become final and non-appealable.

18 (b) A judgment of the Board of Tax Appeals concerning the collection
 19 remedy referenced in Paragraph (1) of this Subsection has become final.

20 (c) A final judgment has been rendered by a district court in a related
 21 summary or ordinary proceeding.

22 * * *

23 §1625. Appeals from the collector's disallowance of refund claim

24 A.(1) If the collector fails to act on a properly filed claim for refund or credit
 25 within one year from the date received by him or if the collector denies the claim in
 26 whole or in part, the taxpayer claiming such refund or credit may appeal to the Board
 27 of Tax Appeals for a hearing on the claim filed. No appeal may be filed before the
 28 expiration of one year from the date of filing such claim unless the collector renders
 29 a decision thereon within that time, nor after the expiration of sixty days from the

1 date of mailing by registered mail by the collector to the taxpayer of a notice of the
 2 disallowance of the part of the claim to which such appeal relates.

3 (2) A taxpayer's proper appeal to the Board of Tax Appeals within sixty days
 4 from the date on any notice of disallowance issued shall also establish that the appeal
 5 was filed within sixty days from the date of certified or registered mailing of the
 6 notice.

7 Any B. A notice of disallowance, if issued, shall inform the taxpayer that
 8 he has sixty days from the date of the certified or registered mailing of that notice to
 9 appeal to the Board of Tax Appeals, and that any consideration, reconsideration, or
 10 action by the collector with respect to such claim following the mailing of a notice
 11 by registered mail of disallowance shall not operate to extend the period within
 12 which an appeal may be taken.

13 C. In answering any such appeal, the collector is authorized to assert a
 14 demand for any tax and additions thereto that he may deem is due for the period
 15 involved in the claim for refund or credit, and the Board of Tax Appeals shall have
 16 jurisdiction to determine the correct amount of tax for the period in controversy and
 17 to render judgment ordering the refunding or crediting or any overpayment or the
 18 payment of any additional tax, interest and penalty found to be due.

19 Section 2. Section 5 of Act No. 640 of the 2014 Regular Session of the Legislature,
 20 is hereby amended to read as follows:

21 Section 5. ~~The members of the Board of Tax Appeals on the effective date~~
 22 ~~of this Act shall continue to serve in such capacity at the pleasure of the governor~~
 23 ~~until the appointments to fixed terms are made in accordance with the provisions of~~
 24 ~~this Act.~~ Notwithstanding any provision of law to the contrary, a member of the
 25 board, including the local tax judge, shall be eligible for any assignment or
 26 appointment made pursuant to Article V, Section 5 or Section 22 of the Constitution
 27 of Louisiana, and ad hoc service pursuant to ~~that Section~~ those Sections shall not
 28 render a retired judge ineligible for an ad hoc appointment pursuant to R.S.
 29 47:1417(C)(2).

1 If any member of the board serving on ~~the effective date of this Act~~ June 12,
 2 2014, is appointed to a fixed term pursuant to the provisions of ~~this Act~~ R.S.
 3 47:1402, as amended by Act 640 of the 2014 Regular Session of the Legislature, his
 4 appointment shall not require additional confirmation by the Senate if he was
 5 confirmed or reconfirmed prior to ~~the effective date of this Act~~ June 12, 2014. The
 6 additional compensation of the hearing judge of the Local Tax Division shall ~~initially~~
 7 be equivalent to the compensation provided by the state for a part-time city court
 8 judge, together with three-fifths of the salary provided for city judges in the city of
 9 the board's official domicile, with any vacation leave accrued and paid in the same
 10 manner as for such judges. Notwithstanding any other provision of law to the
 11 contrary, the local tax judge may participate in and contribute to group insurance and
 12 benefit plans in the same manner as any parish judge paid in part by the state and
 13 shall be entitled to reimbursement for expenses incurred in the discharge of his duties
 14 away from his parish of residence in the same amount as provided for under
 15 applicable law and Supreme Court rules for such judges. The Local Tax Division
 16 shall adopt formal written policies related to the implementation of this Section.

17 Section 3. Section 7 of Act No. 640 of the 2014 Regular Session of the Legislature,
 18 is hereby amended to read as follows:

19 Section 7. Upon the joint motion of all parties, a district court may transfer
 20 to the Board of Tax Appeals for adjudication, any matter pending before it on ~~the~~
 21 ~~effective date of this Act~~ June 12, 2014, if the matter falls within the jurisdiction of
 22 the board ~~following the effective date of this Act. For a period of one year following~~
 23 ~~the effective date of this Act, a~~ on or after June 12, 2014. A district court may
 24 transfer to the board any matter improperly filed in the district court which should
 25 have been filed with the board, and the matter shall be deemed to have been filed
 26 with the board on the date of its filing in the district court.

27 Section 4. The provisions of this Act amending R.S. 47:337.13.1, 337.28.1,
 28 337.81(A)(2), 337.86, 1401, and 1403 are procedural and interpretive and shall be effective
 29 on the effective date of Act No. 640 of the 2014 Regular Session of the Legislature.

1 Section 5.(A) The Board of Tax Appeals and its Local Tax Division are authorized
2 to enter into an agreement with the Office of the Judicial Administrator of the Supreme
3 Court for the formation of a panel of potential ad hoc hearing judges, this agreement may
4 provide for any matter related to a process for randomly selecting a panel member to fulfill
5 the requirements of R.S. 47:1417(C)(2) in the event of a recusal requiring an appointment
6 pursuant to that Paragraph. The board and Office of the Judicial Administrator are also
7 authorized to enter into an agreement concerning any matter related to administering the
8 payment of the expenses or compensation, and related withholding, for any hearing judge
9 as provided for in R.S. 47:1403 or 1417. This agreement may provide that any payments
10 shall be subject to and comply with the limits and applicable Supreme Court policies for the
11 assignment of retired judges to district courts. The relevant hearing judge in a case involving
12 one or more local collectors may order that the related amounts taxed as fees or costs
13 pursuant to those Sections be payable to the escrow account of the registry of the board for
14 deposit in the Local Tax Division expense fund. In the event an agreement is entered into
15 pursuant to the provisions of this Section, the fiscal agent shall pay from that fund all
16 amounts necessary to satisfy any obligations under such agreement.

17 (B) If any payments for fees or costs provided for in Subsection A of this Section
18 are not received from the relevant parties within sixty days, or are otherwise insufficient to
19 pay the full amount owed, then the amount required to make the payments owed pursuant
20 to this Section shall be paid from the fees and self-generated revenues of the Board of Tax
21 Appeals or its Local Tax Division pursuant to an order of the chairman or local tax judge,
22 as applicable to the case. In no event shall the amounts referenced in this Section ever
23 become the liability of the Office of the Judicial Administrator of the Supreme Court or the
24 judiciary. If payment is made from fees and self-generated revenues of the Board of Tax
25 Appeals or its Local Tax Division as provided in this Section, any amount later recovered
26 from the parties pursuant to R.S. 47:1403 or 1417 shall be deposited into the state treasury
27 and, after compliance with Article VII, Section 9(B) of the Constitution of Louisiana,
28 relative to the Bond Security and Redemption Fund, all remaining monies shall be deposited
29 in and credited to the state general fund as self-generated revenues of the Board of Tax
30 Appeals or its Local Tax Division, as applicable.

1 (C) Notwithstanding any provision of law to the contrary, in order to satisfy any
 2 anticipated obligations reasonably expected pursuant to the provisions of R.S. 47:1403,
 3 1417, or this Act, the local tax judge, following consultation with the Judicial Budgetary
 4 Control Council, the Judicial Administrator, or their designee, may order that the requisite
 5 amount from the Local Tax Division's surplus local fees and self-generated or surplus local
 6 interagency revenues be paid into the Local Tax Division expense fund. This provision shall
 7 not authorize the transfer of any funds encumbered for Local Tax Division expenditures at
 8 the end of a fiscal year, shall not authorize the transfer of any surplus funds carried forward
 9 and actually appropriated for the Local Tax Division's use in the subsequent fiscal year, and
 10 shall not be applicable to any of the board's state funds in the administrative program.

11 Section 6. The operations of the Board of Tax Appeals are essential to the collection
 12 of state and local tax revenue. For the purposes of expenditure classification, all budget
 13 activities of the Local Tax Division shall be classified in the same manner as the board's
 14 essential activities that are directly required for collection of state general fund revenues
 15 recognized by the Revenue Estimating Conference. The delegated purchasing authority of
 16 the Local Tax Division in relation to the expenditure of local funds dedicated to the Local
 17 Tax Division pursuant to R.S. 47:302(K) shall not be reduced below the amount specified
 18 for small purchases pursuant to R.S. 39:1596.

19 Section 7. This Act shall become effective upon signature by the governor or, if not
 20 signed by the governor, upon expiration of the time for bills to become law without signature
 21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 23 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____