

Regular Session, 2013

HOUSE BILL NO. 585

BY REPRESENTATIVE THIERRY

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

TAX: Establishes a Tax Court for adjudication of tax matters

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AN ACT

To amend and reenact R.S. 13:312(1)(a), R.S. 26:354(I), 492(A), R.S. 36:458(F), R.S. 39:51.1(A)(1)(b), R.S. 47:15(14), 114(F)(3), 295(C), 303(B)(5)(d), 303.1(G), 305.14(C), 305.18(C), 305.20(E), 305.53(B)(2), 1508.1(B), 1520(B), 1561, 1565(A) and (B), 1566(C), 1567, 1578(B)(2), (3) and (4)(a), 1580(A)(3), 1603(A), 1621(F), 1625 through 1627, 1688, 1689, to enact R.S. 13:312(B), 47:16.1 through 16.26 and 16.31 through 16.34, and to repeal R.S. 36:4(B)(1)(p), R.S. 47:1401 through 1416, 1431 through 1438, 1451, 1471 and 1481 through 1486, to create the Tax Court, to provide for compensation, organization, procedures, jurisdiction, operation of the court; to provide for implementation; to abolish the Board of Tax Appeals; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:312(1)(a) is hereby amended and reenacted and R.S. 13:312(B) is hereby enacted to read as follows:

§312. Courts of appeal; circuits and districts

There shall be five court of appeal circuits, which shall be subdivided into districts as follows:

~~1.(a)~~ A(1)(a) First circuit. The parishes of Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Helena, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton

1 Rouge, and West Feliciana shall compose the first circuit and the court of appeal for  
2 that circuit shall be known as "Court of Appeal, First Circuit, State of Louisiana".

3 \* \* \*

4 B. There shall be a Tax court, which shall be subdivided into districts as set  
5 forth in Subsection A.

6 Section 2. R.S. 26:354(I) and 492(A) are hereby amended and reenacted to read as  
7 follows:

8 §354. Payment and reporting of taxes; discounts; rules and regulations;  
9 enforcement; forfeitures and penalties; redemption of tax stamps

10 \* \* \*

11 I. With respect to the twenty percent penalty provided in this Section, the  
12 wholesale dealer shall have the right to send a signed application for a waiver of said  
13 penalty, which application shall be provided in affidavit form setting forth the  
14 reasons for the failure to pay the taxes within the specified time. Any such  
15 application must be provided directly to the secretary, and after review by him it  
16 shall be processed with his recommendations and provided to the ~~Board of Tax~~  
17 ~~Appeals~~ Tax Court for approval or disapproval. The ~~Board of Tax Appeals~~ Tax  
18 Court shall notify the secretary in writing of its decision with respect thereto.

19 \* \* \*

20 §492. Local gallonage tax on beverages of low alcoholic content

21 A. Any parish or municipality, through its local governing body, may impose  
22 a tax on beverages of low alcoholic content of not more than one dollar and fifty  
23 cents per standard barrel of thirty-one gallons. The tax shall be based on the amount  
24 of these beverages sold and consumed within the parish or municipality. Parishes  
25 and municipalities imposing this tax shall furnish the secretary a certified copy of the  
26 ordinance levying it. The secretary shall collect the tax in the same manner as he  
27 collects the state tax and shall make such additional rules as are necessary. He shall  
28 remit, each quarter, the amount of tax collected less the cost of collection, to the  
29 parishes and municipalities levying the tax. If the failure to pay the tax when due is

1 explained to the satisfaction of the secretary, he may, with the approval of the ~~Board~~  
2 ~~of Tax Appeals~~ Tax Court, remit or waive payment of the whole or any part of any  
3 penalty due under the provisions of this Chapter.

4 \* \* \*

5 Section 3. R.S. 36:458(F) is hereby amended and reenacted to read as follows:

6 §458. Offices; purposes and functions

7 \* \* \*

8 F. The office of legal affairs shall be responsible, in accordance with the  
9 applicable laws and under the direction of the secretary, for providing legal  
10 consultation and representation in tax litigation matters before the state and federal  
11 courts and the ~~Board of Tax Appeals~~ Tax Court, bankruptcy cases in the federal  
12 bankruptcy courts, and any matters related thereto. Whenever the secretary deems  
13 necessary, he may reassign the responsibility for the collection of a tax or other duty  
14 assigned by this Subsection to this office to another office within the department  
15 created by this Section.

16 \* \* \*

17 Section 4. R.S. 39:51.1(A)(1)(b) is hereby amended and reenacted to read as follows:

18 §51.1. General Appropriation Bill and other appropriation bills; nongovernmental  
19 entity funding request form; exemptions

20 A.(1)(a)

21 \* \* \*

22 (b) The provisions of this Section shall not apply to appropriations for the  
23 payment of money judgments against the state, including consent judgments,  
24 stipulated judgments, judgments rendered by the ~~Board of Tax Appeals~~ Tax Court,  
25 and other judgments against the state.

26 \* \* \*

27 Section 5. R.S. 47:15(14), 114(F)(3), 295(C), 303(B)(5)(d), 303.1(G), 305.14(C),  
28 305.18(C), 305.20(E), 305.53(B)(2), 1508.1(B), 1520(B), 1561, 1565(A) and (B), 1566(C),  
29 1567, 1578(B)(2), (3) and (4)(a), 1580(A)(3), 1603(A), 1621(F), 1625 through 1627, 1688

1 and1689 are hereby amended and reenacted and R.S. 47:16.1 through 16.26 and 16.31  
2 through 16.34 are hereby enacted to read as follows:

3 §15. Taxpayer's Bill of Rights

4 \* \* \*

5 (14) The right to a hearing in order to dispute an assessment of taxes,  
6 interest, and penalties by timely filing an appeal with the ~~Board of Tax Appeals~~ Tax  
7 Court in accordance with R.S. 47:1414, 1431, and 1481. A taxpayer shall not be  
8 required to pay the disputed tax, interest, and penalties in order to exercise this right.

9 \* \* \*

10 CHAPTER 3. TAX COURT

11 PART I. GENERAL PROVISIONS

12 §16.1. Purpose

13 The purpose of this Chapter is to provide for an impartial, economical, and  
14 expeditious forum where parties may resolve disputes arising under certain state tax  
15 laws as provided in this Chapter before a judge while fostering uniformity and  
16 consistency in the interpretation and application of state and local tax law.

17 §16.2. Definitions

18 As used in this Chapter, unless the context requires otherwise, the following  
19 terms shall have the following meanings:

20 (1) "Clerk" means the clerk of the Court of Appeal Circuit or Tax Court.

21 (2) "Collector" means and includes:

22 (a) The secretary of the Department of Revenue including the secretary's duly  
23 authorized assistants, when used in reference to any tax or fee administered by the  
24 department within the jurisdiction of the Tax Court.

25 (b) The assistant secretary of the office of motor vehicles of the Department  
26 of Public Safety and Corrections including the assistant secretary's duly authorized  
27 assistants, when used in reference to any tax or fee administered by the office within  
28 the jurisdiction of the Tax Court.

1                   (3) "Court" means the Tax Court established pursuant to the provisions of this  
2                   Chapter.

3                   (4) "Judge" means a judge of a district court, Court of Appeal or Tax Court.

4                   §16.3. Tax Court established

5                   The Tax Court shall be established within the Louisiana Court of Appeals.

6                   §16.4. Tax Court judges; election; term; vacancy; compensation; retirement age

7                   A.(1) The Tax Court shall consist of not less than three judges. The judges  
8                   shall be elected. The first judges shall be elected at a special election as provided by  
9                   Article V, Section 22 of the Constitution of Louisiana. Each judge shall be a citizen  
10                  of the state, have been admitted to the practice of law in the state for at least five  
11                  years prior to his appointment, and meet either of the following criteria:

12                  (a) Be possessed of substantial state or local tax law experience or expertise  
13                  within the jurisdiction of the Tax Court.

14                  (b) Be recognized as a Board Certified Tax Specialist by the Louisiana Board  
15                  of Legal Specialization of the Louisiana State Bar Association.

16                  (2) Each judge shall be a full-time unclassified employee of the court and  
17                  devote all of his time to his duties under this Chapter. No judge may engage in the  
18                  practice of law or hold any other public office or employment.

19                  (3) Each judge shall receive the same compensation and be subject to the  
20                  same mandatory retirement age as district court judges.

21                  (4) Before the election of the judges, there shall be an initial Tax Court  
22                  composed of a judge representing the First Circuit Court of Appeal, a judge  
23                  representing the Second Circuit and Third Circuit Courts of Appeal and the Fourth  
24                  Circuit and Fifth Circuit Courts of Appeal.

25                  §16.5. Chief Judge

26                  The supreme court shall designate a judge of the Tax Court as chief judge.  
27                  The chief judge shall administer the affairs of the court, coordinate and make hearing  
28                  assignments, and appoint employees. The chief judge may delegate administrative  
29                  duties to the judges and employees of the court.

1        §16.6. Domicile; sessions; seal

2            A.(1) The principal office and domicile of the Tax Court shall be in the  
3        Louisiana Court of Appeals First Circuit in East Baton Rouge Parish. The state shall  
4        provide the court with adequate offices and courtrooms at the Court of Appeals.

5            (2) The court may hold sessions at the Courts of Appeals within the parish  
6        of the taxpayer's domicile. The time and place of court sessions shall be designated  
7        by the presiding judge, with a view of securing reasonable opportunity to the parties  
8        to appear before the court with as little inconvenience and expense to the parties as  
9        is practicable.

10          (3) The governing authority of each parish, except East Baton Rouge, upon  
11        request of a judge shall provide room in the courthouse or a neutral site at the parish  
12        seat when hearings are held within that parish.

13          B. The court shall have a seal which shall be judicially noticed. The seal may  
14        be used to authenticate the official acts of the court or any judge, but failure to use  
15        the seal shall not invalidate any such act.

16        §16.7. Staff; duties; bond

17          A. The staff of the Tax Court shall consist of a clerk and other staff who shall  
18        be employed by the chief judge of the Tax Court. The duties of the clerk and staff  
19        shall be such as are fixed by law and the chief judge.

20          B. The clerk shall serve as the clerk of the Tax Court and shall be an ex  
21        officio notary public for the purposes of the court and the division. The clerk shall  
22        give bond with good and solvent surety conditioned upon the faithful performance  
23        of his duties in the sum of ten thousand dollars. The clerk shall be the custodian of  
24        the docket and records of all proceedings in the Tax Court.

25          C.(1) In the discharge of the duties imposed by this Chapter, the clerk and  
26        any duly authorized staff of the court may administer oaths and affirmations, take  
27        depositions, certify official acts, and issue subpoenas to compel the attendance of  
28        witnesses and the production of books, papers, and other documents deemed  
29        necessary as evidence in connection with any proceeding under this Chapter. Any

1 subpoena issued pursuant to this Chapter may be served by any person duly  
2 authorized by the clerk.

3 (2) No clerk or other employee of the court shall act as an attorney,  
4 counselor, or accountant in the matter of any tax or fee within the jurisdiction of the  
5 court.

6 §16.8. Docket; records

7 The Tax Court shall each keep a docket of cases and proceedings before it.  
8 A record and transcript of each proceeding shall be made and kept by the clerk of  
9 court.

10 §16.9. Jurisdiction; exceptions

11 A. The Tax Court shall have jurisdiction to hear and determine:

12 (1) A question of law or fact arising under the tax laws of the state  
13 administered by the Department of Revenue, including penalties, interest, fees  
14 imposed by the state not specifically excepted by this Chapter, and costs related  
15 thereto, claims for refund of an overpayment or credit, and claims against the state  
16 for taxes paid erroneously pursuant to R.S. 47:16.51 et seq.

17 (2) A question of law or fact arising from any state fee administered or  
18 collected by the Department of Revenue.

19 (3) A question of law or fact arising from any state tax or fee administered  
20 or collected by the Office of Charitable Gaming or pursuant to Title 27 of the  
21 Louisiana Revised Statutes of 1950.

22 (4) A question of law or fact arising from any state fee administered or  
23 collected by the Office of Alcohol and Tobacco Control.

24 (5) Any matter over which the Tax Court has jurisdiction transferred to the  
25 court by a district court or the Louisiana State and Local Sales Tax Commission.

26 (6) An action by a taxpayer or collector seeking a judgment declaring that a  
27 rule of the Department of Revenue applicable to a tax or fee within the jurisdiction  
28 of the court is contrary to or inconsistent with law.

1           (7) The underpayment of taxes on natural resources levied pursuant to R.S.

2           47:631, et seq.

3           (8) Lien Cancellations.

4           (9) Penalty Waivers.

5           B. The jurisdiction of the Tax Court, shall not extend to:

6           (1) Ad valorem taxes within the jurisdiction of the Louisiana Tax  
7           Commission or other property taxes.

8           (2) Insurance premium taxes.

9           (3) The collection or enforcement of any final nonappealable assessment or  
10          judgment.

11          (4) Any matter brought by a taxpayer where the taxpayer has not exhausted  
12          all other administrative remedies available, unless the taxpayer paid the amount in  
13          dispute under protest or has provided bond or other security pursuant to and  
14          authorized by law.

15          (5) Any criminal matter.

16          (6) Any claim for damages or other action in tort.

17          §16.10. Venue for proceedings; place of hearing

18          A. The venue for Tax Court proceedings shall be as follows:

19          (1) Proceedings brought against the state shall be the Court of Appeal Circuit  
20          where the taxpayer is domiciled or at the Tax Court in East Baton Rouge Parish, at  
21          the election of the taxpayer.

22          B. Venue for judicial review of Tax Court judgments shall be as follows:

23          (1) Proceedings brought against the state shall be subject to review by the  
24          Court of Appeal Circuit for the parish of venue.

25          (2) In determining venue under Paragraph (1) of this Subsection, the court  
26          shall consider the convenience of the parties and witnesses and the interest of justice.

27          C. Notwithstanding any provision of law to the contrary, the court may hold  
28          the hearing in a matter:



1           (1) At a location other than a parish of venue provided that all parties to the  
2           proceeding consent or, if one party requests the location but the request is objected  
3           to by any other party, the judge shall determine if the request should be granted in  
4           the best interest of the court and the parties with a view to securing reasonable  
5           opportunity to the parties and their witnesses to appear before the court with as little  
6           inconvenience and expense as is practicable. Any such request, objection thereto, and  
7           determination and reasons therefor shall be in writing and a part of the record of the  
8           proceeding.

9           (2) With the consent of the parties, by telephone, video conference, or similar  
10          communication equipment, including the administration of oaths in such  
11          proceedings.

12          D. Objection to venue for judicial review set forth in the judgment shall be  
13          in accordance with R.S. 47:16.21.

14          E. The provisions of R.S. 13:5104 with regard to venue for suits against the  
15          state and other entities shall not apply to this Chapter.

16          §16.11. Filing suit; pleading jurisdiction and venue

17          A. All matters over which the Tax Court has jurisdiction shall be filed with  
18          the Court of Appeal Circuit where the taxpayer is domiciled or at the Tax Court in  
19          East Baton Rouge Parish, and filing fees paid to, the clerk of the Court of Appeal  
20          Circuit or Tax Court, depending on where suit is instituted.

21          B. A suit shall be filed with the clerk of the Court of Appeal Circuit or Tax  
22          Court in the manner provided for civil actions in district court within the applicable  
23          time period set forth in law. The pleadings in the petition shall set forth the basis of  
24          jurisdiction and venue.

25          C. To assist taxpayers in filing suit, the Tax Court shall develop forms and  
26          information and make them available in any reasonable manner the court determines.

27          D.(1) Any paper in an action pursuant to this Chapter may, where available,  
28          be filed with the Court of Appeal Circuit or Tax Court by facsimile or electronic  
29          transmission. Filing shall be deemed complete at the time that the facsimile or

1 electronic transmission is received and a receipt of transmission has been transmitted  
2 to the sender by the clerk. The facsimile or electronic document when filed has the  
3 same force and effect as the original.

4 (2) Within five days, exclusive of legal holidays, after the clerk has received  
5 the transmission, the party filing the document shall forward the original signed  
6 document and the applicable filing fee, if any, to the clerk. If a party fails to comply  
7 with the requirements of this Paragraph, the facsimile or electronic filing shall have  
8 no force or effect. The court may provide, by rule, for other matters related to filings  
9 by facsimile or and electronic transmissions.

10 §16.12. Procedure

11 A. Except as otherwise specifically provided in this Chapter, proceedings in  
12 the Tax Court, including but not limited to discovery shall be governed first by the  
13 administrative provisions of Title 47 of the Louisiana Revised Statutes of 1950, then  
14 by the Code of Civil Procedure to the extent that such provisions do not conflict with  
15 administrative provisions of Title 47 of the Louisiana Revised Statutes of 1950, and  
16 thereafter by the administrative provisions of Title 47 of the Louisiana Revised  
17 Statutes of 1950 when in conflict with the Code of Civil Procedure.

18 B. When two or more separate proceedings are pending in the court or the  
19 division, the court or division may order consolidation of the proceedings after a  
20 contradictory hearing and upon a finding that common issues of fact and law  
21 predominate. Consolidation shall not be ordered if it would prevent a fair and  
22 impartial hearing, give one party an undue advantage, or prejudice the rights of any  
23 party.

24 C. Part XII of Chapter 32 of Title 13 of the Louisiana Revised Statutes of  
25 1950, relative to expedited procedures for actions by or on behalf of the state, or by  
26 or on behalf of any of its officers, for the determination or collection of any tax,  
27 excise, license, interest, penalty, or attorney fees, claimed to be due under any statute  
28 of this state, shall not apply to this Chapter.

1           D. The court's rules may regulate the requisites of service. All papers or  
2           documents filed with the court which are required by law to be served upon opposing  
3           party or which because of a prayer contained therein, are asked to be served upon the  
4           opposing party or any counsel of record representing the taxpayer, or upon the  
5           collector or his counsel of record, may be served by registered mail, return receipt  
6           requested, and such service shall be valid for all purposes under this Chapter.

7           §16.13. Rules of evidence

8           Except as otherwise specifically provided by law, evidence in the Tax Court  
9           shall be governed by the provisions of the Code of Evidence applicable to non-jury  
10          trials.

11          §16.14. Persons authorized to appear before the court

12           A. A party in a proceeding before the court may appear and act for himself.  
13          A legal entity may be represented by an authorized officer or member, upon  
14          presentation of adequate identification to the court, in any proceeding to which the  
15          jurisdiction of the court shall extend.

16           B. The following persons may represent any party in any matter to which the  
17          jurisdiction of the court shall extend:

18           (1) An attorney at law, duly qualified and licensed under the laws of  
19          Louisiana.

20           (2) An enrolled agent who is duly qualified and licensed by the United States  
21          Department of the Treasury to represent taxpayers before all administrative levels  
22          of the Internal Revenue Service and who gives evidence of his qualifications  
23          satisfactory to the court by means of a written or oral examination given by the court.

24           (3) A certified public accountant who is duly qualified and licensed under the  
25          laws of Louisiana and who gives evidence of his qualifications satisfactory to the  
26          court by means of a written or oral examination given by the court.

27           (4) At the discretion of the court, an attorney at law, duly qualified and  
28          licensed or registered under the laws of another state or the District of Columbia.

1           (5) At the discretion of the court, a certified public accountant who is duly  
2           qualified and licensed under the laws of another state or the District of Columbia and  
3           who gives evidence of his qualifications satisfactory to the court by means of a  
4           written or oral examination given by the court.

5           §16.15. Power to administer oaths and issue subpoenas; contempt

6           A. For purposes of enforcing or administering this Chapter, each judge of the  
7           court shall have the power to administer oaths and take affidavits, to subpoena and  
8           require the attendance of witnesses and the production of books, papers, and  
9           documents pertaining to the matter under inquiry, to examine witnesses at any  
10          designated place of hearing, and to require the taking of depositions before any  
11          person competent to administer oaths, either within or without the state, upon notice  
12          to the interested party in like manner that depositions of witnesses are taken in civil  
13          actions in the district courts of the state. Any party to a matter pending before the  
14          court may summon witnesses or require the production of documents in the same  
15          manner as witnesses are summoned or documents required to be produced in civil  
16          actions in the district courts of the state.

17          B. In case of failure of any person to comply with any subpoena issued under  
18          authority of this Chapter, or the refusal of a witness to testify to any matter regarding  
19          which he may be lawfully interrogated, the judge of the district court of the parish  
20          in which such person resides, or the parish in which such person may be personally  
21          served, on application of the Tax Court judge or upon motion by any party, shall  
22          compel obedience by ordering the issuance of an instanter subpoena, or other  
23          appropriate process for contempt, or a rule as in the case of disobedience of the  
24          requirements of a subpoena issued from the district court or a refusal to testify  
25          therein.

26          §16.16. Ex parte consultations

27          Unless required for the disposition of ex parte matters authorized by law, a  
28          presiding judge shall not communicate, directly or indirectly, in connection with any  
29          issue of fact or law, with any party or his representative, or with any officer,

1 employee, or agent engaged in the performance of investigative, prosecuting, or  
2 advocating functions, except upon notice and opportunity for all parties to  
3 participate.

4 §16.17. Disqualification and withdrawal of judge

5 A. In accordance with the rules governing district judges in the state, a judge  
6 shall voluntarily recuse himself and withdraw from any proceeding in which he  
7 cannot accord a fair and impartial hearing or consideration or when required to by  
8 applicable rules governing judges in the state.

9 B.(1) Any party may request the disqualification of a judge by filing a motion  
10 to disqualify the judge supported by an affidavit, promptly upon learning of the basis  
11 for the disqualification, stating with particularity the grounds upon which it is  
12 claimed that a fair and impartial hearing cannot be accorded.

13 (2) The issue shall be determined promptly by the chief judge or other judges  
14 of the court if the affidavit affects the chief judge.

15 (3) Upon the entry of an order of disqualification affecting a judge, the chief  
16 judge shall then conduct the hearing or assign another judge to conduct the hearing.  
17 Upon the entry of an order of disqualification affecting the chief judge, the other  
18 judges shall assign another judge. In the event of the disqualification of every judge  
19 of the court, the chief justice of the supreme court shall appoint a judge pro tempore  
20 to preside in place of the disqualified judge in that proceeding. A judge pro tempore  
21 shall possess the qualifications required of a judge of the Tax Court.

22 §16.18. Witness fees and mileage

23 Any person summoned or whose deposition is taken shall receive the same  
24 fees and mileage as would be allowed in a civil action pending in the district courts  
25 and the expense thereof shall be paid by the party summoning such witness or  
26 causing the deposition to be taken. Such expenses may be assessed as costs of court  
27 by the presiding judge or magistrate.

28 §16.19. Fees and charges; collection and disposition

1           Filing fees and other charges authorized by law and paid to the court shall be  
2           collected by the clerk. Such funds may be expended for expenses necessary in the  
3           operation of the court as appropriated.

4           §16.20. Fees

5           The filing fee of the Tax Court shall be three hundred dollars, and the filing  
6           fee for the small claims division shall be fifty dollars; however, the Tax Court may,  
7           by rule, revise such filing fees up to a maximum filing fee of five hundred dollars for  
8           the Tax Court and up to a maximum of one hundred dollars for the small claims  
9           division. The Tax Court also may, by rule, establish other fees chargeable for  
10          services rendered by the court and its small claims division, including fees for  
11          service of process.

12          §16.21. Judgments

13           A. Each judge shall, in each case heard by him, or in each case submitted to  
14           him upon stipulation of agreement and fact, sign a written judgment, make a minute  
15           entry, and issue signed written reasons for the judgment which include a concise  
16           statement of the facts found by the court and the conclusions of law reached by the  
17           court. The court shall adopt rules and regulations to address confidentiality of  
18           taxpayer information and proceedings before it.

19           B. Each judgment of the court and written reasons for the judgment shall be  
20           published in the manner which the court deems most effective and practicable.

21           C. A judgment shall be binding upon all parties. Except as provided in R.S.  
22           47:16.23 and this Section, the jurisdiction shall be final and definitive.

23          §16.22. Rehearing

24           A. A judgment shall be subject to rehearing, reopening, or reconsideration by  
25           the court, within ten days from the date of its entry, based on any ground provided  
26           for such action in the provisions of the Code of Civil Procedure applicable to nonjury  
27           proceedings.

28           B. The petition of a party for rehearing, reconsideration, or review, and the  
29           order of the court granting it, shall set forth the grounds which justify the action.

1 Nothing in this Section shall prevent rehearing, reopening, or reconsideration of a  
2 matter by the court in accordance with other statutory provisions applicable to the  
3 court, or, at any time, on the ground of fraud practiced by the prevailing party or of  
4 procurement of the order by perjured testimony or fictitious evidence. On  
5 reconsideration, reopening, or rehearing, the matter may be heard by the court. The  
6 hearing shall be confined to those grounds upon which the reconsideration,  
7 reopening, or rehearing was ordered. If an application for rehearing is timely filed,  
8 the period within which judicial review under the applicable statute must be sought  
9 shall run from the final disposition of the application.

10 C. For the convenience of the parties and the witnesses and in the interest of  
11 justice, the court upon petition for rehearing, reconsideration, or review of the venue  
12 for any review of the judgment, after contradictory hearing, may establish a different  
13 venue, if venue was determined pursuant to R.S. 47:16.9(B)(2), or (4).

14 §16.23. Judicial review of Tax Court judgment

15 A. A final judgment or order of the court shall be subject to judicial review  
16 by the Court of Appeal Circuit for the parish of venue. Interlocutory, nonfinal, and  
17 nonappealable judgments and orders shall be reviewable as provided by the Code of  
18 Civil Procedure.

19 B. Proceedings for review may be instituted by filing a petition with the  
20 Court of Appeal Circuit for the parish of venue within thirty calendar days after  
21 mailing notice of the judgment. If a rehearing is requested, the request shall be made  
22 within thirty calendar days after mailing notice of the denial of the rehearing request  
23 or the notice of the judgment.

24 C. A party seeking judicial review of the judgment of the Tax Court shall  
25 provide bond as provided by law, except as specifically exempted by law or unless  
26 the party is a taxpayer seeking a refund of taxes paid and no additional amount has  
27 been found due.

28 D. When the Court of Appeal judge has ordered a review, a copy of the order  
29 and petition shall be mailed to the clerk of the Tax Court and to each party or counsel

1 of record. The order shall command the clerk to send up, within twenty days from  
2 the date thereof, the original transcript of the record, together with all exhibits and  
3 evidence attached.

4 E. If, before the date set for hearing, application is made to the court for leave  
5 to present additional evidence, and it is shown to the satisfaction of the court that the  
6 additional evidence is material and that there were good reasons for failure to present  
7 it in the proceeding before the Tax Court, the court may order that the additional  
8 evidence be taken before the Tax Court upon conditions determined by the court.  
9 The Tax Court may modify its findings and judgment by reason of the additional  
10 evidence and shall file that evidence and any modifications, new findings, or  
11 decisions with the reviewing court.

12 F. The review shall be conducted by the reviewing court without a jury and  
13 shall be confined to the record. In cases of alleged irregularities in procedure before  
14 the Tax Court, not shown in the record, proof thereon may be taken in the court. The  
15 reviewing court, upon request, may hear oral argument and receive written briefs.

16 G. The reviewing court may affirm, amend, modify, or remand the judgment  
17 of the Tax Court or remand the matter for further proceedings. The reviewing court  
18 may reverse or modify the judgment of the Tax Court if the action of the Tax Court  
19 is clearly erroneous as determined by the reviewing court. The reviewing court shall  
20 make its own determination and conclusions of fact based upon its own evaluation  
21 of the record reviewed in its entirety. Where the Tax Court has the opportunity to  
22 judge the credibility of witnesses by first-hand observation of demeanor on the  
23 witness stand and the reviewing court does not, due regard shall be given to the Tax  
24 Court's determination of credibility of witnesses.

25 §16.24. Notification of right to file petition

26 In cases within the jurisdiction of the Tax Court, at the same time that notice  
27 of the assessment, determination, or order of the secretary, is given to the taxpayer,  
28 the secretary shall in writing also notify the taxpayer of his right to appeal to the Tax  
29 Court.



1        §16.25. Annual report

2                The chief judge of the Tax Court shall annually submit a written report to the  
3        governor, the legislature, and the supreme court. The report shall contain information  
4        and statistics for the previous fiscal year concerning the operation of the court. The  
5        report may also contain recommendations by the chief judge regarding the  
6        clarification or revision of law, rules, and regulations relating to taxation, or the  
7        practice and procedure before the court.

8        §16.26. Rules

9                In all other matters regarding the conduct of its hearings, the court may  
10        prescribe and promulgate rules not inconsistent with law or this Chapter. The rules  
11        shall be binding upon parties litigant in any cause over which the jurisdiction of the  
12        Tax Court extends. All rules of the court shall be adopted in accordance with the  
13        Administrative Procedure Act with legislative review solely by the House Committee  
14        on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

15                                PART II. CLAIMS AGAINST THE STATE16        §16.31. Authority of Tax Court to receive and consider claims against the state

17                Any person having a claim against the state for taxes under the jurisdiction  
18        of the Tax Court which were erroneously paid into the state treasury, may present  
19        such claim to the court, in such form and together with proof as the court may  
20        require by rule or regulation. The court shall consider the justice, merits, and  
21        correctness of each claim presented to it and shall officially pass judgment on the  
22        claim.

23        §16.32. Authority to conduct investigations

24                The Tax Court is authorized to examine and investigate as it may deem  
25        necessary to determine the correctness of any claim presented. For that purpose, the  
26        court is authorized to perform all of the following activities:

27                (1) Employ any expert accountant or clerical assistants that may be necessary.

28                (2) Appoint an agent to conduct any investigation deemed necessary by the  
29        court to discover facts in connection with any claim.

1           (3) To require a claimant to present for the court's inspection all books,  
 2           papers, documents, receipts, or another type of document or file that may have a  
 3           bearing upon the true facts in connection with any claim presented. The burden of  
 4           proof shall rest with the person presenting a claim against the state for any purpose  
 5           whatsoever.

6           (4) To call upon any department or official of any state agency or any other  
 7           citizen to make available to the court any and all information, documents, receipts,  
 8           and papers that will aid in discovering the correctness and justice of any demand or  
 9           claim against the state.

10           §16.33. Satisfaction of claims

11           A. Except as provided in Subsection B of this Section, claims against the  
 12           state which have been approved by the Tax Court shall be payable from monies  
 13           appropriated to the Tax Court for the satisfaction of claims.

14           B. With the consent of the parties involved, final rulings or judgments of the  
 15           court concerning the overpayment of severance taxes may be additionally satisfied  
 16           as provided in R.S. 47:1621.1.

17           §16.34. No appeal from action of Tax Court

18           An action of the Tax Court rejecting or refusing to approve any claim under  
 19           this Part may not be appealed to the courts; however, nothing contained in this Part  
 20           shall deny a claimant whose claim has been rejected by the court the right to sue on  
 21           the claim in a court of proper jurisdiction.

22           §114. Returns and payment of tax

23   \*           \*           \*

24           F. Penalty provision.

25   \*           \*           \*

26           (3) If the failure to timely submit the annual return is attributable, not to the  
 27           negligence of the taxpayer, but to other causes set forth in written form and  
 28           considered reasonable by the secretary, the secretary may remit or waive payments  
 29           of the whole or any part of the specific penalty provided for such failure. In any case

1 where the penalty exceeds five thousand dollars, it can be waived by the secretary  
2 only after approval by the ~~Board of Tax Appeals~~Tax Court.

3 \* \* \*

4 §295. Tax imposed on individuals; administration

5 \* \* \*

6 C. The secretary of the Department of Revenue shall administer and enforce  
7 this Part. He may adopt, prescribe, and from time to time alter and enforce  
8 reasonable rules, orders, and regulations for the purpose of implementing this Part.  
9 He may, with the approval of the ~~Board of Tax Appeals~~Tax Court, upon making a  
10 record of his reasons therefor, waive, reduce, or compromise any of the taxes,  
11 penalties, or interest or other amounts provided by this Part.

12 \* \* \*

13 §303. Collection

14 \* \* \*

15 B. Collection of tax on vehicles.

16 \* \* \*

17 (5)

18 \* \* \*

19 (d) the certificate of title or vehicle registration license has not been issued  
20 within six months after the date of sale.

21 A refusal by the secretary of the Department of Revenue to authorize the  
22 issuance of a certificate of title or a vehicle registration license may be appealed to  
23 the ~~Board of Tax Appeals~~ Tax Court within sixty days from the date the application  
24 for a certificate of title is denied by the secretary of the Department of Revenue.

25 §303.1. Direct Payment Numbers

26 \* \* \*

27 G. The taxpayer may appeal the secretary's denial or revocation of a DP  
28 Number to the ~~board of tax appeals~~ Tax Court.

29 \* \* \*

1 §305.14. Exclusions and exemptions; nonprofit organizations; nature of exemption;  
2 limitations; qualifications; newspapers; determination of tax exempt status

3 \* \* \*

4 C. An exemption certificate must be obtained from the collector of revenue,  
5 under such regulations as he shall prescribe, in order for nonprofit organizations to  
6 qualify for the exemption provided in this section.

7 In the event the collector of revenue denies tax exempt status under this  
8 section, the organization may appeal such ruling to the ~~Louisiana Board of Tax~~  
9 ~~Appeals~~Tax Court, which may overrule the collector of revenue and grant tax  
10 exempt status if the ~~Louisiana Board of Tax Appeals~~ Tax Court determines that the  
11 denial of tax exempt status by the collector of revenue was arbitrary, capricious or  
12 unreasonable.

13 \* \* \*

14 §305.18. Exclusions and exemptions; fairs, festivals, and expositions sponsored by  
15 nonprofit organizations; nature of exemption; limitations; qualifications

16 \* \* \*

17 C. An exemption certificate must be obtained from the collector of revenue,  
18 under such regulations as he shall prescribe, in order for nonprofit organizations to  
19 qualify for the exemption provided in this section.

20 In the event the collector of revenue denies tax exempt status under this  
21 Section, the organization may appeal such ruling to the ~~Board of Tax Appeals~~ Tax  
22 Court, which may overrule the collector of revenue and grant tax exempt status if the  
23 ~~Board of Tax Appeals~~ Tax Court determines that the denial of tax exempt status by  
24 the collector of revenue was arbitrary, capricious or unreasonable. Provided  
25 however, that any organization which endorses any candidate for political office or  
26 otherwise is involved in political activities shall not be eligible for the exemption  
27 herein provided.

28 \* \* \*

29 §305.20. Exclusions and exemptions; Louisiana commercial fishermen

1 \* \* \*

2 E. When a commercial fisherman objects to a refusal of the Department of  
3 Revenue to issue a certificate under this Section, he may appeal such ruling to the  
4 ~~Board of Tax Appeals~~Tax Court, which may overrule the secretary and grant tax  
5 exempt status if there is a determination that the denial was arbitrary, capricious, or  
6 unreasonable.

7 \* \* \*

8 §305.53. Exclusions and exemptions; sickle cell disease organizations

9 \* \* \*

10 B.

11 \* \* \*

12 (2) In the event the secretary denies tax exempt status under this Section, the  
13 organization may appeal such ruling to the ~~Louisiana Board of Tax Appeals~~Tax  
14 Court, which may overrule the secretary and grant tax exempt status to the  
15 organization.

16 \* \* \*

17 §1508.1. Unauthorized disclosure of information

18 \* \* \*

19 B. Nothing contained in this Section shall be construed to prevent such  
20 persons from disclosing a return of a taxpayer or the records of the secretary as  
21 authorized by law in any Tax Court or judicial proceeding in which the state ~~or any~~  
22 ~~political subdivision thereof~~ is a party.

23 \* \* \*

24 §1520. Electronically filed returns; signatures

25 \* \* \*

26 B. Failure to comply with the electronic filing requirements will result in the  
27 assessment of a penalty of one hundred dollars or five percent of the tax, whichever  
28 is greater. If it is determined that the failure to comply is attributable, not to the  
29 negligence of the taxpayer, but to other cause set forth in written form and

1 considered reasonable by the secretary, the secretary may remit or waive payment  
2 of the whole or any part of the penalty. However, in any case where the penalty  
3 exceeds twenty-five thousand dollars, such penalty may be waived by the secretary  
4 only after approval by the ~~Board of Tax Appeals~~ Tax Court.

5 \* \* \*

6 §1561. Alternative remedies for the collection of taxes

7 In addition to following any of the special remedies provided in the various  
8 chapters of this subtitle, the collector may, in his discretion, proceed to enforce the  
9 collection of any taxes due under this subtitle by means of any of the following  
10 alternative remedies or procedures:

- 11 (1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.
- 12 (2) Summary court proceeding, as provided in R.S. 47:1574.
- 13 (3) Ordinary suit under the provisions of the general laws regulating actions  
14 for the enforcement of obligations.

15 The collector may choose which of these procedures he will pursue in each  
16 case, and the counter-remedies and delays to which the taxpayer will be entitled will  
17 be only those which are not inconsistent with the proceeding initiated by the  
18 collector, provided that in every case the taxpayer shall be entitled to proceed under  
19 R.S. 47:1576 except (a) after he has filed a petition with the ~~board of tax appeals~~ Tax  
20 Court for a redetermination of the assessment, or (b) when an assessment for the tax  
21 in question has become final or (c) when a suit involving the same tax obligation is  
22 pending against him; and provided further, that the fact that the collector has initiated  
23 proceedings under the assessment and distraint procedure will not preclude him from  
24 thereafter proceeding by summary or ordinary court proceedings for the enforcement  
25 of the same tax obligation.

26 \* \* \*

27 §1565. Notice of assessment and right to appeal

28 A. Having assessed the amount determined to be due, the secretary shall  
29 send a notice by certified mail to the taxpayer against whom the assessment is

1 imposed at the address given in the last report filed by said taxpayer, or to any  
 2 address obtainable from any private entity which will provide such address free of  
 3 charge or from any federal, state, or local government entity, including but not  
 4 limited to the United States Postal Service or from United States Postal Service  
 5 certified software. If no report has been timely filed, the secretary shall send a notice  
 6 by certified mail to the taxpayer against whom the assessment is imposed at any  
 7 address obtainable from any private entity which will provide such address free of  
 8 charge or from any federal, state, or local government entity, including but not  
 9 limited to the United States Postal Service or from United States Postal service  
 10 certified software. This notice shall inform the taxpayer of the assessment and that  
 11 he has sixty calendar days from the date of the notice to either pay the amount of the  
 12 assessment or to appeal to the ~~Board of Tax Appeals~~ Tax Court for a redetermination  
 13 of the assessment. All such appeals shall be made in accordance with the provisions  
 14 of Chapter 17, Subtitle II of this Title.

15 B. If the taxpayer has not filed an appeal with the ~~Board of Tax Appeals~~ Tax  
 16 Court within the sixty day period, the assessment shall be final and shall be  
 17 collectible by distraint and sale as hereinafter provided. If an appeal for a  
 18 redetermination of the assessment has been filed, the assessment shall not be  
 19 collectible by distraint and sale until such time as the assessment has been  
 20 redetermined or affirmed by the ~~Board of Tax Appeals~~ Tax Court or the court which  
 21 last reviews the matter.

22 \* \* \*

23 §1566. Assessment and notice when tax is in jeopardy

24 \* \* \*

25 C. The taxpayer against whom the assessment lies can stay distraint of his  
 26 property, or sale of his property already distrained, as the case may be, only by the  
 27 immediate payment of the assessment or by posting with the collector a surety bond  
 28 for twice the amount of such assessment, or of a lower amount acceptable to the  
 29 collector, with such sureties as the collector deems necessary. The taxpayer shall

1 have sixty calendar days from the date of payment, or the date of posting bond, to  
2 appeal to the ~~board of tax appeals~~ Tax Court in the manner set out in Chapter 17,  
3 Sub-title II of this Title, for a redetermination of the assessment. During this period,  
4 the collector shall hold any payment made in an escrow account. If the taxpayer  
5 does not appeal, the collector shall immediately credit such payment to tax  
6 collections or proceed to collect from sureties, if any were given. In the event of an  
7 appeal, such payment or demand for payment from sureties given shall be held in  
8 abeyance pending the redetermination or affirmation of the assessment by the board  
9 of tax appeals or the court which last reviews the matter. Final payment, or  
10 collection from sureties, will be for the amount of the affirmed or redetermined  
11 assessment.

12 §1567. Assessment and claims in bankruptcy and receivership

13 Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy  
14 proceeding, or the appointment of a receiver for any taxpayer in a receivership  
15 proceeding, before any court of this state or of the United States, the collector may  
16 immediately make a determination from any available information or by estimate or  
17 otherwise, of the amount of tax, penalty and interest the taxpayer is liable to pay  
18 under any chapter of this title, and immediately assess said amount, and by a writing  
19 to be retained as a part of his official records indicate that such assessment has been  
20 made. Such assessment may be made whenever a tax becomes due under the  
21 provisions of this Sub-title, regardless of whether it is then payable or not. Claims  
22 for such assessments, and additional interest and attorney's fees thereon, shall be  
23 presented for adjudication in accordance with law, to the court before which the  
24 bankruptcy or receivership proceeding is pending despite the pendency of delays  
25 before assessment provided in R.S. 47:1562 through 47:1565, or the pendency of an  
26 appeal to the ~~board of tax appeals~~ Tax Court or the courts for a redetermination.  
27 Provided that no petition for the redetermination of an assessment shall be filed with  
28 the ~~board of tax appeals~~ Tax Court after an adjudication of bankruptcy or the  
29 appointment of a receiver, unless the petition is accompanied by a certified copy of



1 an order of the court before which the bankruptcy or receivership proceedings is  
2 pending, authorizing the trustee or receiver to prosecute such appeal.

3 \* \* \*

4 §1578. Cancellation of lien, privilege, and mortgage; compromises

5 \* \* \*

6 B.

7 \* \* \*

8 (2) Subject to approval by the ~~Board of Tax Appeals~~ Tax Court, the  
9 secretary may authorize the release of any real property from the effect and operation  
10 of any lien, privilege, mortgage, or other encumbrance, recorded by virtue of this  
11 Subtitle, provided, that the secretary is satisfied that the remaining real property  
12 belonging to the tax debtor and upon which said lien, privilege, and mortgage bears,  
13 is valued at not less than the amount of the remaining tax obligation, including all  
14 penalties, interest and other costs incurred, and the amount of all prior liens upon  
15 such property. In determining the value of the remaining property, due consideration  
16 shall be given to prior ranking encumbrances, if any exist on said property.

17 (3) Subject to the approval of the ~~Board of Tax Appeals~~ Tax Court, the  
18 secretary may issue a certificate of release of any part of the property subject to any  
19 lien, privilege, mortgage, or other encumbrance recorded by virtue of this Subtitle,  
20 if there is paid over to the secretary in partial satisfaction of the liability an amount  
21 determined by the secretary, which shall not be less than the value, as determined by  
22 the secretary, of the interest of the state of Louisiana in the part to be released, or the  
23 secretary determines at any time that the interest of the state of Louisiana in the part  
24 to be released has no value. In determining the value of the interest of the state of  
25 Louisiana in the part to be released, the secretary shall give consideration to the  
26 value of the part and to all prior ranking liens or other encumbrances existing on the  
27 part to be released.

28 (4)(a) Notwithstanding any other provision of this Chapter, the secretary,  
29 with the approval of two assistant secretaries and the ~~Board of Tax Appeals~~ Tax

1 Court, may compromise any judgments for taxes of five hundred thousand dollars  
2 or less exclusive of interest and penalty, including assessments for such amounts  
3 which are equivalent to judgments upon a determination that any of the following  
4 apply:

5 (i) There is serious doubt as to the collectibility of the outstanding judgment.

6 (ii) There is serious doubt as to the taxpayer's liability for the outstanding  
7 judgment.

8 (iii) The administration and collection costs involved would exceed the  
9 amount of the outstanding liability.

10 \* \* \*

11 §1580. Suspension and interruption of prescription

12 A. The prescription running against any state tax, license, excise, interest,  
13 penalty, or other charge shall be suspended by any of the following:

14 \* \* \*

15 (3) The filing of any pleading, either by the secretary or by a taxpayer, with  
16 the ~~board of tax appeals~~ Tax Court or any state or federal court.

17 \* \* \*

18 §1603. Waiver of penalty for delinquent filing or delinquent payment

19 A. If the failure to make any return at the time such return becomes due or  
20 the filing of a return without remittance of the full amount due, is attributable, not  
21 to the negligence of the taxpayer, but to other cause set forth in written form and  
22 considered reasonable by the secretary of the Department of Revenue, the secretary  
23 may remit or waive payment of the whole or any part of the specific penalty  
24 provided for such failure; but in any case when the penalty exceeds five thousand  
25 dollars, it can be waived by the secretary only after approval by the ~~board of tax~~  
26 ~~appeals~~ Tax Court.

27 \* \* \*

28 §1621. Refunds of overpayments authorized

29 \* \* \*

1 F. This Section shall not be construed to authorize any refund of tax overpaid  
2 through a mistake of law arising from the misinterpretation by the secretary of the  
3 provisions of any law or of the rules and regulations promulgated thereunder. In the  
4 event a taxpayer believes that the secretary has misinterpreted the law or  
5 promulgated rules and regulations contrary therewith, his remedy is by payment  
6 under protest and suit to recover, or by appeal to the ~~board of tax appeals~~ Tax Court  
7 in instances where such appeals lie.

8 \* \* \*

9 §1625. Appeals from the collector's disallowance of refund claim

10 If the collector fails to act on a properly filed claim for refund or credit within  
11 one year from the date received by him or if the collector denies the claim in whole  
12 or in part, the taxpayer claiming such refund or credit may appeal to the ~~board of tax~~  
13 ~~appeals~~ Tax Court for a hearing on the claim filed. No appeal may be filed before  
14 the expiration of one year from the date of filing such claim unless the collector  
15 renders a decision thereon within that time, nor after the expiration of sixty days  
16 from the date of mailing by registered mail by the collector to the taxpayer of a  
17 notice of the disallowance of the part of the claim to which such appeal relates.

18 Any consideration, reconsideration, or action by the collector with respect to  
19 such claim following the mailing of a notice by registered mail of disallowance shall  
20 not operate to extend the period within which an appeal may be taken.

21 In answering any such appeal, the collector is authorized to assert a demand  
22 for any tax and additions thereto that he may deem is due for the period involved in  
23 the claim for refund or credit, and the ~~board of tax appeals~~ Tax Court shall have  
24 jurisdiction to determine the correct amount of tax for the period in controversy and  
25 to render judgment ordering the refunding or crediting or any overpayment or the  
26 payment of any additional tax, interest and penalty found to be due.

27 §1626. ~~Board's~~ Tax Court's finding of overpayment upon appeal from assessment

28 Whenever the ~~board of tax appeals~~ Tax Court, pursuant to a hearing of an  
29 appeal from an assessment of the collector in accordance with R.S. 47:1564,

1 47:1566, or 47:1567, finds that there is no tax due and further finds that the taxpayer  
 2 has made a refundable overpayment of the tax for the period for which the collector  
 3 asserted the claim for additional tax, the board shall have jurisdiction to determine  
 4 the amount of such overpayment, and order that such amount be refunded or credited  
 5 to the taxpayer; provided, that the Board shall order no such refund or credit unless,  
 6 as part of its decision, it determines that the petition of appeal in which the refund  
 7 or credit was requested was filed within the period set out in R.S. 47:1623 or that a  
 8 claim for the refund or credit had been filed with the collector within that period.

9 §1627. Limitation on right of refund when petition is filed with ~~board of tax appeals~~  
 10 the Tax Court

11 Whenever a taxpayer has timely filed a petition with the ~~board of tax appeals~~  
 12 Tax Court pursuant to the provisions of R.S. 47:1565, 47:1566, and 47:1567 no  
 13 credit or refund, in respect of the tax for the taxable period involved in the  
 14 proceedings before the ~~board~~ Tax Court, shall be allowed or made except:

- 15 (1) As to overpayment determined by a decision of the ~~board~~ Tax Court,
- 16 which has become final; and
- 17 (2) As to any amount collected in excess of an amount computed in
- 18 accordance with the decision of the ~~board~~ Tax Court which has become final.

19 \* \* \*

20 §1688. Suspension of dealer's permit

21 Whenever the collector of revenue determines that a dealer holding a permit  
 22 under R.S. 47:1683 has violated any of the provisions of this Part, he shall suspend  
 23 the permit of such dealer for a period of not less than six months nor more than one  
 24 year; provided that any dealer aggrieved by such action on the part of the collector  
 25 may appeal suspensively to the ~~board of tax appeals~~ Tax Court.

26 §1689. Forfeiture of refunds

27 Any person who uses gasoline colored in accordance with R.S. 47:1684 in  
 28 any vehicle or engine other than any commercial fishing boat, any vehicle used by  
 29 a licensed commercial fisherman in the administration of business associated with

1 commercial fishing, any boat used to transport children to or from public or  
 2 parochial schools, any farm tractor or any farm machinery used in the actual tilling  
 3 of the soil and production of crops, or any stationary motor used for agricultural  
 4 purposes, or has in his possession refund gasoline which has not been colored, shall  
 5 be subject to the following civil penalty: Any claims for refund of gasoline taxes by  
 6 such person pending with the secretary of the Department of Revenue at the time  
 7 such violation is discovered shall not be paid; and any claims for refund of such  
 8 taxes with respect to gasoline consumed during a period of twelve months following  
 9 discovery of the violation shall not be paid. Whenever the secretary determines that  
 10 this penalty is applicable, any person aggrieved by such finding shall have a right to  
 11 appeal to the ~~board of tax appeals~~ Tax Court.

12 \* \* \*

13 Section 6. R.S. 49:967(A) is hereby amended and reenacted to read as follows:

14 §967. Exemptions from provisions of Chapter

15 A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not  
 16 be applicable to the ~~Board of Tax Appeals~~ Tax Court, the Department of Revenue,  
 17 with the exception of the Louisiana Tax Commission that shall continue to be  
 18 governed by this Chapter in its entirety, unless otherwise specifically provided by  
 19 law, and the administrator of the Louisiana Employment Security Law; however, the  
 20 provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969,  
 21 and 970 shall be applicable to such board, department, and administrator.

22 \* \* \*

23 Section 7. R.S. 36:4(B)(1)(p), R.S. 47:1401 through 1416, 1431 through 1438, 1451,  
 24 1471, 1481 through 1486 are hereby repealed in their entirety.

25 Section 8. The provisions of this Act are nonseverable. It is intended that if any  
 26 provision of this Act, or the application thereof to any person or circumstance is held invalid  
 27 under the Constitution of Louisiana or of the United States by a final and nonappealable  
 28 judgment, then such provision's ineffectiveness or invalidity will invalidate this Act.

1 Section 9. All proceedings pending before the Board of Tax Appeals on January 1,  
2 2014, within the jurisdiction of the Tax Court shall be transferred to the Tax Court.

3 Section 10. The Tax Court created by this Act shall exist on and after July 1, 2013,  
4 after which date each judge may take any action that is necessary to enable him to properly  
5 exercise, after January 1, 2014, the duties, functions, and powers of the Tax Court.

6 Section 11. The creation of the Tax Court shall not affect any proceeding,  
7 prosecution, action, suit, or appeal commenced before January 1, 2014, in any court of  
8 record. However, any proceeding pending before a district court on December 31, 2013, that  
9 is within the jurisdiction of the Tax Court may be transferred to the Tax Court.

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

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Thierry

HB No. 585

**Abstract:** Creates the Tax Court and abolishes the Board of Tax Appeal.

Proposed law establishes the Tax Court within the La. Court of Appeals and abolishes the Board of Tax Appeals.

Proposed law provides with respect to the minimum number of Tax Court judges, their method of selection, criteria, term, vacancy, compensation and retirement age.

Proposed law provides with respect to the chief judge and the duties.

Proposed law provides that the Tax Court office shall be domiciled in the La. Court of Appeals office in EBR Parish.

Proposed law provides that the court may hold sessions at the Courts of Appeals within the parish of the taxpayer's domicile and that the parish governing authority (except EBR) upon the judge's request shall provide room in the courthouse or a neutral site at the parish seat when hearings are held within that parish.

Proposed law provides that there shall be a seal judicially noticed. The seal may be used to authenticate the official acts of the court or any judge, but failure to use the seal shall not invalidate any such act.

Proposed law provides that there will be staff consisting of a clerk, who shall serve as clerk of the Tax Court and shall be an ex officio notary public for the purposes of the court and the division, and shall give bond with good and solvent surety conditioned upon the faithful performance of his duties in the sum of \$10,000. The clerk shall be the custodian of the docket and records of all proceedings in the Tax Court.

Proposed law provides for the duties of the clerk and staff: administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, and other documents deemed necessary as evidence carrying out their duties.

Proposed law provides that no clerk or other employee of the court shall act as an attorney, counselor, or accountant in the matter of any tax or fee within the jurisdiction of the court.

Proposed law provides that the Tax Court shall have jurisdiction to hear and determine:

(1) A question of law or fact arising under the tax laws of the state administered by the LDR, including penalties, interest, fees imposed by the state not specifically excepted by proposed law, and costs related thereto, claims for refund of an overpayment or credit, and claims against the state for taxes paid erroneously pursuant to present law (R.S. 47:16.51 et seq.)

(2) A question of law or fact arising from any state fee administered or collected by the LDR.

(3) A question of law or fact arising from any state tax or fee administered or collected by the Office of Charitable Gaming or pursuant to Title 27 of the La. Revised Statutes of 1950.

(4) A question of law or fact arising from any state fee administered or collected by the Office of Alcohol and Tobacco Control.

(5) Any matter over which the Tax Court has jurisdiction transferred to the court by a district court or the La. State and Local Sales Tax Commission.

(6) An action by a taxpayer or collector seeking a judgment declaring that a rule of the LDR applicable to a tax or fee within the jurisdiction of the court is contrary to or inconsistent with law.

(7) The underpayment of taxes on natural resources levied pursuant to present law (R.S. 47:631, et seq.)

(8) Lien Cancellations.

(9) Penalty Waivers.

Proposed law provides that jurisdiction of the Tax Court, shall not extend to:

(1) Ad valorem taxes within the jurisdiction of the La. Tax Commission or other property taxes.

(2) Insurance premium taxes.

(3) The collection or enforcement of any final nonappealable assessment or judgment.

(4) Any matter brought by a taxpayer where the taxpayer has not exhausted all other administrative remedies available, unless the taxpayer paid the amount in dispute under protest or has provided bond or other security pursuant to and authorized by law.

(5) Any criminal matter.

(6) Any claim for damages or other action in tort.

Proposed law provides that the venue and place of hearing for proceedings brought against the state shall be the Court of Appeal Circuit where the taxpayer is domiciled or at the Tax Court in EBR, at the election of the taxpayer and proceedings brought against the state shall be subject to review by the Court of Appeal Circuit for the parish of venue. Hearings may be held at other locations provided that all parties consent. If there is not mutual consent ,

the judge shall determine the best location with as little inconvenience and expense as is practicable.

Proposed law provides that all matters over which the Tax Court has jurisdiction shall be filed with the Court of Appeal Circuit where the taxpayer is domiciled or at the Tax Court in East Baton Rouge Parish, and filing fees paid to, the clerk of the Court of Appeal Circuit or Tax Court, depending on where suit is instituted.

Proposed law provides that a suit shall be filed with the clerk of the Court of Appeal Circuit or Tax Court in the manner provided for civil actions in district court within the applicable time period set forth in law. The pleadings in the petition shall set forth the basis of jurisdiction and venue.

Proposed law provides that the Tax Court shall develop forms and information and make them available in any reasonable manner the court determines as well as convenience regarding filing, filing fees and follow-up.

Proposed law provides that the proceedings shall be governed first by the administrative provisions of Title 47 of the La. Revised Statutes of 1950, then by the Code of Civil Procedure to the extent that such provisions do not conflict with administrative provisions of Title 47 of the La. Revised Statutes of 1950, and thereafter by the administrative provisions of Title 47 of the La. Revised Statutes of 1950 when in conflict with the Code of Civil Procedure.

Proposed law provides that the court may order consolidated or expedited proceedings.

Proposed law provides that the court rules regulate service of process.

Proposed law provides that evidence in the Tax Court shall be governed by the provisions of the Code of Evidence applicable to non-jury trials.

Proposed law provides that persons authorized to appear before the court may be a party who represents himself, a La. licensed attorney at law, an enrolled agent, a CPA, at the discretion of the court, a licensed attorney at law, under the laws of another state or DC or a CPA licensed under the laws of another state or DC and who gives evidence of his qualifications satisfactory to the court.

Proposed law provides that each judge of the court shall have the power to administer oaths and take affidavits, subpoena and require the attendance of witnesses and the production of printed material pertaining to the matter under inquiry, to examine witnesses, and to require the taking of depositions before any person competent to administer oaths, either within or without the state, upon notice to the interested party in like manner that depositions of witnesses are taken in civil actions in the district courts of the state. Parties may summon witnesses or require production of documents.

Proposed law provides that failure to comply with a subpoena or the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the district judge where the person resides, or the parish in which such person may be personally served, on application of the Tax Court judge or upon motion by any party, shall compel obedience by ordering the issuance of an instanter subpoena, or other appropriate process for contempt, or a rule as in the case of disobedience of the requirements of a subpoena issued from the district court or a refusal to testify therein.

Proposed law provides that unless required for the disposition of ex parte matters authorized by law, a presiding judge shall not communicate in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.



Proposed law provides that in accordance with the rules governing district judges in the state, a judge shall voluntarily recuse himself and withdraw from any proceeding in which he cannot accord a fair and impartial hearing or consideration or when required governing rules.

Proposed law provides that any party may request the disqualification of a judge by filing a motion to disqualify the judge supported by an affidavit, promptly upon learning of the basis for the disqualification, stating the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded and the issue shall be determined promptly by the chief judge or other judges of the court if the affidavit affects the chief judge, with hearings conducted accordingly.

Proposed law provides that any person summoned or whose deposition is taken shall receive the same fees and mileage as would be allowed in a civil action pending in the district courts and the expense thereof shall be paid by the party summoning such witness or causing the deposition to be taken and such expenses may be assessed as costs of court by the presiding judge or magistrate.

Proposed law provides that filing fees and other charges authorized by law and paid to the court shall be collected by the clerk and expended for expenses necessary in the operation of the court as appropriated.

Proposed law provides for a filing fee of \$300, and the filing fee for the small claims division shall be \$50; however, the Tax Court may, by rule, revise such filing fees up to a maximum filing fee of \$500 for the Tax Court and up to a maximum of \$100 for the small claims division. The Tax Court also may, by rule, establish other fees chargeable for services rendered by the court and its small claims division, including fees for service of process.

Proposed law provides that each judge shall make a minute entry and issue signed written reasons for the judgment which include a concise statement of the facts found by the court and the conclusions of law reached by the court. The court shall adopt rules and regulations to address confidentiality of taxpayer information and proceedings before it.

Proposed law provides that each judgment of the court and written reasons for the judgment shall be published in the manner which the court deems most effective and practicable.

Proposed law provides that a judgment shall be binding upon all parties and with certain exceptions, shall be final and definitive.

Proposed law provides that a judgment shall be subject to rehearing, reopening, or reconsideration by the court, within 10 days from the date of its entry, based on any ground provided for such action in the provisions of the Code of Civil Procedure applicable to nonjury proceedings.

Proposed law provides that the petition of a party for rehearing, reconsideration, or review, and the order of the court granting it, shall set forth the grounds which justify the action. Nothing in proposed law shall prevent rehearing, reopening, or reconsideration of a matter because of fraud, perjury or fictitious evidence. The matter may be heard again but the evidence confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing is timely filed, the period within which judicial review under the applicable statute must be sought shall run from the final disposition of the application.

Proposed law provides that for the convenience of the parties and witnesses and in the interest of justice, the court upon petition for rehearing, reconsideration, or review of the venue for any review of the judgment, after contradictory hearing, may establish a different venue, if venue was determined pursuant to present law (R.S. 47:16.9(B)(2), or (4).

Proposed law provides that a final judgment or order of the court shall be subject to judicial review by the Court of Appeal Circuit for the parish of venue. Interlocutory, nonfinal, and nonappealable judgments and orders shall be reviewable as provided by the Code of Civil Procedure.

Proposed law provides that proceedings for review may be instituted by filing a petition with the Court of Appeal Circuit for the parish of venue within 30 calendar days after mailing notice of the judgment. If a rehearing is requested, the request shall be made within 30 calendar days after mailing notice of the denial of the rehearing request or the notice of the judgment.

Proposed law provides that a party seeking judicial review of the judgment of the Tax Court shall provide bond as provided by law, except as specifically exempted by law or unless the party is a taxpayer seeking a refund of taxes paid and no additional amount has been found due.

Proposed law provides that when the Court of Appeal judge has ordered a review, a copy of the order and petition shall be mailed to the clerk of the Tax Court and to each party or counsel of record. The order shall command the clerk to send up, within 20 days from the date thereof, the original transcript of the record, together with all exhibits and evidence attached.

Proposed law provides that if, before the date set for hearing, application is made to the court for additional evidence, that additional evidence is shown to be material and that there were good reasons for failure to present it in the proceeding before the Tax Court, the court may order that the additional evidence be taken before the Tax Court upon conditions determined by the court. The Tax Court may modify its findings and judgment by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Proposed law provides that a review shall be conducted by the reviewing court without a jury and shall be confined to the record and in cases of alleged procedural irregularities in procedure before the Tax Court, not shown in the record, proof thereon may be taken in the court. The reviewing court, upon request, may hear oral argument and receive written briefs

Proposed law provides that the reviewing court may affirm, amend, modify, or remand the judgment of the Tax Court or remand the matter for further proceedings, may reverse or modify the judgment if the Tax Court is clearly erroneous as determined by the reviewing court. The reviewing court shall make its own determination and conclusions of fact based upon its own evaluation of the record reviewed in its entirety. Where the Tax Court has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the Tax Court's determination of credibility of witnesses.

Proposed law provides that the secretary shall in writing also notify the taxpayer of his right to appeal to the Tax Court.

Proposed law provides that the chief judge of the Tax Court shall submit a written annual report to the governor, the legislature, and the supreme court.

Proposed law provides that the court may prescribe and promulgate rules in accordance with the APA with legislative review solely by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law provides that any person having a claim against the state for taxes under the jurisdiction of the Tax Court which were erroneously paid into the state treasury, may present such claim to the court, in such form and together with proof as the court may

require by rule or regulation and shall consider, examine and investigate evidence, and pass judgment on the claim.

Proposed law provides that, with certain exceptions, claims against the state which have been approved by the Tax Court shall be payable from monies appropriated to the Tax Court for the satisfaction of claims.

Proposed law provides that an action of the Tax Court rejecting or refusing to approve any claim may not be appealed to the courts; however, nothing contained in this Part shall deny a claimant whose claim has been rejected by the court the right to sue in a court of jurisdiction.

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

(Amends R.S. 13:312(1)(a), R.S. 26:354(I), 492(A), 458(F), R.S. 39:51.1(A)(1)(b), R.S. 47:15(14), 114(F)(3), 295(C), 303(B)(5)(d), 303.1(G), 305.14(C), 305.18(C), 305.20(E), 305.53(B)(2), 1508.1(B), 1520(B), 1561, 1565(A) and (B), 1566(C), 1567, 1578(B)(2), (3) and (4)(a), 1580(A)(3), 1603(A), 1621(F), 1625 through 1627, 1688, 1689; Adds R.S. 13:312(B), 47:16.1 through 26 and 16.31 through 34; Repeals R.S. 36:4(B)(1)(p), R.S. 47:1401 through 1416, 1431 through 1438, 1451, 1471 and 1481 through 1486)