

Regular Session, 2014

HOUSE BILL NO. 798

BY REPRESENTATIVE STOKES

TAX/STATE: Provides relative to the enforcement and adjudication of state taxes

1 AN ACT

2 To amend and reenact R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 1407(1),  
3 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561,  
4 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(introductory paragraph),  
5 1603(A), and 1688, and R.S. 49:967(A) and 968(B)(9), and to enact R.S. 47:1417  
6 and 1574(5), relative to the enforcement and adjudication of state taxes; to provide  
7 with respect to disputes concerning taxes, fees, and claims against the state; to  
8 provide with respect to the authority of the secretary of the Department of Revenue  
9 regarding the collection and enforcement of taxes and fees; to provide for the  
10 jurisdiction, authority, and procedures of the Board of Tax Appeals; to provide for  
11 appellate jurisdiction for decisions of the Board of Tax Appeals; to provide for  
12 legislative oversight of Board of Tax Appeals rulemaking; to direct the Louisiana  
13 State Law Institute to change certain references to the Board of Tax Appeals in  
14 certain provisions of current law; to provide for effectiveness; and to provide for  
15 related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 47:15(14), 114(F)(3), 287.614(C), and (D)(3), 295(C), 1407(1),  
18 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1576(A)(1)  
19 and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(introductory paragraph), 1603(A), and 1688  
20 are hereby amended and reenacted, and R.S. 47:1417 and 1574(5) are hereby enacted, to  
21 read as follows:

1 §15. Taxpayer's Bill of Rights

2 There is hereby established a Taxpayer's Bill of Rights to guarantee that the  
3 rights, privacy, and property of Louisiana taxpayers are safeguarded and protected  
4 during tax assessment, collection, and enforcement processes administered under the  
5 tax laws of this state. This Taxpayer's Bill of Rights consists of a statement, in  
6 nontechnical terms, of the rights and obligations of the Department of Revenue and  
7 taxpayers. The rights afforded taxpayers to assure that their privacy and property are  
8 safeguarded and protected during tax assessment and collection are available only  
9 insofar as they are implemented in accordance with the Constitution of Louisiana and  
10 Louisiana Revised Statutes of 1950 or the administrative rules of the Department of  
11 Revenue. The rights assured Louisiana taxpayers are:

12 \* \* \*

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

18 \* \* \*

19 §114. Returns and payment of tax

20 \* \* \*

21 F. Penalty provision.

22 \* \* \*

23 (3) If the failure to timely submit the annual return is attributable, not to the  
24 negligence of the taxpayer, but to other causes set forth in written form and  
25 considered reasonable by the secretary, the secretary may remit or waive payments  
26 of the whole or any part of the specific penalty provided for such failure. In any case  
27 where the penalty exceeds twenty-five thousand dollars, it can be waived by the  
28 secretary only after approval by the Board of Tax Appeals.

29 \* \* \*

1 §287.614. Time and place for filing returns; information concerning federal return;  
2 extension of time to file

3 \* \* \*

4 C. Any corporation whose federal income tax return is adjusted by the  
5 Internal Revenue Service must ~~furnish a statement to the secretary disclosing the~~  
6 ~~nature and amount of such adjustments~~ file an amended return within ~~sixty one~~  
7 hundred eighty days of the ~~taxpayer's receipt~~ final determination of such adjustments  
8 from the Internal Revenue Service.

9 D.

10 \* \* \*

11 (3) The secretary may accept an extension of time to file a federal income  
12 tax return for the same taxable period as an extension of time to file a Louisiana  
13 income tax return. The secretary may otherwise provide for the automatic extension  
14 of time to file a corporation return not to exceed seven months, or the extended due  
15 date of the federal income tax return, whichever is later.

16 \* \* \*

17 §295. Tax imposed on individuals; administration

18 \* \* \*

19 C. The secretary of the Department of Revenue shall administer and enforce  
20 this Part. He may adopt, prescribe, and from time to time alter and enforce  
21 reasonable rules, orders, and regulations for the purpose of implementing this Part.  
22 He may, ~~with the approval of the Board of Tax Appeals,~~ upon making a record of his  
23 reasons therefor, waive, reduce, or compromise any of the taxes, penalties, or interest  
24 or other amounts provided by this Part. In any case when the penalty exceeds  
25 twenty-five thousand dollars, it can be waived by the secretary only after approval  
26 by the Board of Tax Appeals.

27 \* \* \*

28 §1407. Jurisdiction of the board

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

1 (1) All matters relating to appeals for the redetermination of assessments, or  
2 for the determination of overpayments, or payment under protest claims, as provided  
3 in R.S. 47:1431 through 47:1438.

4 \* \* \*

5 §1408. Power to administer oaths and issue subpoenas

6 A. For purposes of enforcing or administering this Chapter, any member of  
7 the board, ~~or and the secretary-clerk for the board,~~ shall have the ~~power to~~ following  
8 powers:

9 (1) Any board member and the secretary-clerk may administer oaths and take  
10 affidavits, ~~and any member of the board shall have the power to.~~

11 (2) Any board member may compel discovery, subpoena and require the  
12 attendance of witnesses and the production of books, papers and documents  
13 pertaining to the matter under inquiry, at any designated place of hearing, ~~and to .~~

14 (3) Any board member may examine such witnesses, and may require the  
15 taking of ~~deposition~~ depositions before any person competent to administer oaths,  
16 either within or without the state, ~~upon notice to the interested party~~ in like manner  
17 that depositions of witnesses are taken or discovery is compelled in civil actions in  
18 the district courts of the state.

19 B. Any party to a matter pending before the board may summon witnesses  
20 or require the production of papers, other documents, answers to requests for  
21 admissions, or answers to interrogatories in the same manner as witnesses are  
22 summoned, discovery completed, or papers required to be produced in civil actions  
23 in the district courts of the state.

24 C. ~~In case of failure of~~ If any person fails to comply with any order or  
25 subpoena issued under authority of this Chapter, or ~~the refusal of a witness~~ refuses  
26 to testify to any matter regarding which he may be lawfully interrogated, ~~the~~ a judge  
27 of the district court of the parish in which such person either resides, ~~or the parish in~~  
28 ~~which such person~~ or may be personally served, or any other judge with personal  
29 jurisdiction over such person, on application of the board or any member thereof,

1 shall immediately compel obedience by ordering the issuance of an instanter  
2 subpoena, or other appropriate process for contempt, or a rule as in the case of  
3 disobedience of the requirements of a subpoena issued from such court or a refusal  
4 to testify therein.

5 §1409. Witness fees and mileage

6 Any person summoned or whose deposition is taken shall receive the same  
7 fees and mileage as would be allowed in a civil action pending in the district courts  
8 and the expense thereof shall be paid by the person summoning such witness or  
9 causing the deposition to be taken. These expenses may be assessed as costs by the  
10 board.

11 \* \* \*

12 §1414. Persons authorized to appear before the board

13 \* \* \*

14 C. Certified public accountants duly qualified and licensed under the laws  
15 of the state ~~or public accountants~~ shall be entitled to represent any taxpayer or other  
16 contestant in any matter to which the jurisdiction of the board shall extend, provided  
17 that the board may, in its discretion, permit certified public accountants, duly  
18 qualified and licensed under the laws of the several states or the District of Columbia  
19 ~~and public accountants~~ to represent any taxpayer or other contestant in any matter  
20 to which the board's jurisdiction shall extend, in the same manner as such certified  
21 public accountants ~~and public accountants~~ are permitted to practice in Louisiana.

22 \* \* \*

23 §1416. Stenographic reports of hearings

24 The board shall, upon the request of any party to a matter before it or may  
25 upon its own motion, order that the hearing before it shall be reported by a  
26 stenographer, or be otherwise recorded and transcribed pursuant to regulation or rule  
27 of the board, and the expense thereof shall be paid by the board out of the  
28 appropriation for the board. The board may contract for the report of such  
29 proceedings or designate the reporter of the board to report such proceedings. The

1 board may supply copies of the transcript of the proceedings to ~~any one~~ anyone  
2 requesting the same and may fix the fee for purchasing such copies.

3 §1417. Recusal; board members

4 A. In accordance with the provisions of the Louisiana Code of Civil  
5 Procedure, a board member may voluntarily recuse himself and withdraw from any  
6 proceeding in which he cannot accord a fair and impartial hearing or consideration.

7 B.(1) Any party may also request the recusal of a board member by filing a  
8 motion for recusal promptly upon learning of the basis for the disqualification,  
9 stating with particularity the grounds upon which it is claimed that a fair and  
10 impartial hearing cannot be accorded.

11 (2) The issue shall be determined promptly by the remaining board members  
12 in accordance with the rules of the Louisiana Code of Civil Procedure concerning the  
13 recusal of district judges.

14 C.(1) Upon the entry of an order of recusal concerning a board member or  
15 members, the remaining board members may hear and decide the case, or the  
16 chairman may assign the case to be heard in accordance with R.S. 47:1403(B)(2),  
17 and the board member acting as hearing judge shall render the judgment of the  
18 board.

19 (2) If all board members are recused, the chairman shall promptly notify the  
20 chief justice of the Louisiana Supreme Court, who shall appoint a retired judge to  
21 adjudicate the case as a hearing judge ad hoc for the board and to render the  
22 judgment of the board in the matter. For purposes of this Subsection, any person  
23 who has held office as a judge pursuant to Article V, Section 22 of the Constitution  
24 of Louisiana may be appointed. The retired judge shall be compensated pursuant to  
25 R.S. 11:1384 from funds available to the board, and these expenses may be assessed  
26 as costs.

27 D. Notwithstanding any provision of law to the contrary, including Chapter  
28 15 of Title 42 of the Revised Statutes of 1950, as amended, if any member of the  
29 board is recused from a case pursuant to this Section, he may continue to serve as a

1 member of the board while the remainder of the board adjudicates a taxpayer's  
2 appeal or claim, but the board member shall have no participation or involvement in  
3 any case in which he is recused.

4 \* \* \*

5 §1433. Publication of opinions and decisions

6 The board shall provide for the publication of such of its reports, opinions  
7 and decisions or judgments as are of public interest, in such form as it may deem best  
8 adapted for public convenience and use, and such authorized publication shall be  
9 competent evidence of the reports of the board ~~therein contained in~~ for purposes of  
10 all courts of the state, without any further proof or authentication thereof. The  
11 board's internal deliberations concerning a pending matter shall be considered  
12 judicial proceedings for the purposes of R.S. 42:17(B).

13 §1434. Judicial review of decision of the board

14 ~~After A.(1) Within thirty days of the signing of~~ a decision or judgment of  
15 the board, the collector or the taxpayer may, ~~within thirty calendar days after such~~  
16 ~~decision or judgment has been rendered and signed,~~ file a petition with the district  
17 appellate court in accordance with the provisions hereinafter set out, for review of  
18 the ~~said~~ decision or judgment ~~of the board.~~ The party ~~filing such~~ intending to file  
19 the petition shall, prior to its filing, notify the board of this intention ~~before the filing~~  
20 ~~of same,~~ either at open hearing or by motion, ~~notify the board of his intention to file~~  
21 ~~such petition for review. Provided that when~~ In any case where the board has found  
22 any tax to be due, except in any payment under protest claim, a the taxpayer must,  
23 shall post a bond when giving the notice of intention to file a petition for review,  
24 ~~post bond,~~ with surety in a form approved by the board ~~conditioned upon~~ for the  
25 payment of the tax as finally determined, together with any interest, additional  
26 amounts or additions to the tax provided for by law, including applicable penalties  
27 and attorney fees. The bond must be payable to the collector, in an amount not to  
28 exceed one and one-half times the ~~said~~ tax, interest, ~~and penalty~~ penalties, and  
29 attorney fees, if any, found to be due in said decision or judgment of the board, and

1       ~~the.~~ The posting of such bond shall be a condition precedent to the filing of any  
2       petition for review in any ~~district~~ appellate court.

3               (2) Except as to the amount, and to the extent not otherwise inconsistent with  
4       the provisions of this Section, the nature of the bond or security and the procedures  
5       for posting bond or providing other security shall be consistent with the provisions  
6       for providing security in connection with a suspensive appeal under the Code of  
7       Civil Procedure.

8               ~~Thereafter, and within the thirty calendar days from the date of the rendering~~  
9       ~~and signing of such decision or judgment of the board, the taxpayer may file his~~  
10       ~~petition for review with the proper district appellate court, setting forth specifically~~  
11       ~~any errors which may have been committed by the board in reaching its decision or~~  
12       ~~judgment.~~

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

16               B. ~~When the district judge has ordered the review, a copy of the order and~~  
17       ~~petition shall be mailed~~ a petition for review is lodged with an appellate court, the  
18       court or its clerk shall mail a copy of the petition to both the secretary-clerk of the  
19       board; and the opposing party or his counsel ~~representing him, and the order.~~ Within  
20       ten days from the lodging of the petition, the appellate court shall command the  
21       secretary-clerk of the board to send ~~up~~ the appellate court, within ~~twenty~~ thirty days  
22       from the date thereof, the original transcript of the record, together with all exhibits  
23       and evidence thereto attached; which record shall be the basis for any action on  
24       review and the decision of the ~~district~~ appellate court shall be rendered upon ~~the said~~  
25       that record as made up before the board.

26       §1435. Jurisdiction of ~~district~~ courts to review decisions of the board

27               A. The ~~district~~ courts of appeal shall have exclusive jurisdiction to review  
28       the decisions or judgments of the board, and the judgment of any such court shall be  
29       subject to further ~~appeal, suspensive only,~~ review in accordance with the law relating



1 ~~to civil matters. If a suspensive appeal is taken from a judgment of the district court~~  
2 ~~no further bond need be posted and the bond originally posted remains in full force~~  
3 ~~and effect to guarantee the payment of any tax, interest, and penalty until final~~  
4 ~~decision of the court.~~

5 B. The court of appeal where a case would be appealable pursuant to R.S.  
6 47:1436 may exercise supervisory jurisdiction over the case pending before the  
7 board in the same manner as provided for in a civil matter pending in a district court  
8 within its circuit. The Supreme Court may exercise supervisory jurisdiction over the  
9 board in all of its cases, in the same manner as provided for in civil matters.

10 C. Upon such review, such the courts shall have the power to affirm or, if the  
11 decision or judgment of the board is not in accordance with law or is manifestly  
12 erroneous on the facts considering the record as a whole, to modify, or to reverse the  
13 decision or judgment of the board, with or without remanding the case for further  
14 proceedings as justice may require. An appellate court may also remand a case with  
15 an order that it be immediately transferred to the district court pursuant to R.S.  
16 47:1432(B).

17 \* \* \*

18 §1438. Date judgment becomes final

19 For the purposes of this Title, the date on which a decision or judgment of the  
20 board becomes final shall be determined as provided herein. The decision or  
21 judgment of the board shall become final in either of the following circumstances:

22 (1) Upon the expiration of the time allowed for filing a petition for review,  
23 if no such petition has been duly filed within such time; or

24 (2) ~~Upon the expiration of the time allowed for filing a petition for appeal,~~  
25 ~~if the decision or judgment of the board has been affirmed or the petition for review~~  
26 ~~dismissed by the district court, and no appeal has been taken; or~~

27 (3) ~~Upon dismissal of the appeal, if the decision or judgment of the board has~~  
28 ~~been affirmed or the petition for review dismissed by the district court; or~~

1           ~~(4) Upon the expiration of thirty days from the date of issuance of the~~  
2           ~~mandate of the supreme court, if such court directs that the decision or judgment of~~  
3           ~~the board be affirmed or the petition for review dismissed.~~

4           ~~If the Supreme Court directs that the decision or judgment of the board be~~  
5           ~~modified or reversed, the decision or judgment of the board rendered in accordance~~  
6           ~~with the mandate of the supreme court shall become final upon the expiration of~~  
7           ~~thirty days from the time it was rendered, unless within such thirty days either the~~  
8           ~~collector or the taxpayer has instituted proceedings to have such decision or~~  
9           ~~judgment corrected to accord with the mandate, in which event the decision or~~  
10          ~~judgment of the board shall become final when so corrected.~~

11          ~~If the decision or judgment of the board is modified or reversed by the district~~  
12          ~~court, and if the time allowed for taking an appeal has expired and no such appeal~~  
13          ~~has been taken; or if the appeal has been dismissed; or if the decision of the court has~~  
14          ~~been affirmed by the supreme court, then the decision or judgment of the board~~  
15          ~~rendered in accordance with the mandate of the district court shall become final on~~  
16          ~~the expiration of thirty days from the time such decision or judgment of the board~~  
17          ~~was rendered, unless within such thirty days either the collector or the taxpayer has~~  
18          ~~instituted proceedings to have such decision corrected so that it will accord with the~~  
19          ~~mandate, in which event the decision or judgment of the board shall become final~~  
20          ~~when so corrected.~~

21          ~~If the Supreme Court orders a rehearing, or if the case is remanded by the~~  
22          ~~district court to the board for rehearing, and if the time allowed for taking an appeal~~  
23          ~~has expired, and no such petition has been duly filed; or if the appeal has been~~  
24          ~~dismissed; or if the decision of the court has been affirmed by the supreme court,~~  
25          ~~then the decision or judgment of the board rendered upon such rehearing shall~~  
26          ~~become final in the same manner as though no prior decision or judgment of the~~  
27          ~~board has been rendered.~~

28          ~~As used in this section, the term "district court" means any district court of~~  
29          ~~the State of Louisiana having jurisdiction to review the decision or judgment of the~~

1 board; and the term "mandate" in case a mandate has been recalled prior to the  
2 expiration of thirty days from date of issuance thereof, means the final mandate.

3 If a petition for review of a judgment of the board is timely filed with the applicable  
4 appellate court, the judgment of the appellate court shall become final in the same  
5 manner, and at the same time, as provided for in civil matters under the Code of Civil  
6 Procedure.

7 \* \* \*

8 §1486. No appeal from action of board

9 An action of the board rejecting or refusing to approve any claim under this  
10 Part may not be appealed to the courts. However, nothing contained in this Part shall  
11 deny a claimant whose claim has been rejected by the board the right to ~~petition the~~  
12 ~~legislature for permission to~~ sue on the claim in a court of proper jurisdiction when  
13 such cause of action is otherwise allowed by law.

14 \* \* \*

15 §1508.1. Unauthorized disclosure of information

16 \* \* \*

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

21 \* \* \*

22 §1561. Alternative remedies for the collection of taxes

23 A. In addition to following any of the special remedies provided in the  
24 various chapters of this ~~sub~~title Subtitle, the collector may, in his discretion, proceed  
25 to enforce the collection of any taxes due under this ~~sub~~title Subtitle by means of any  
26 of the following alternative remedies or procedures:

- 27 (1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.
- 28 (2) Summary court proceeding, as provided in R.S. 47:1574.

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

3           B. The collector may choose which of these procedures he ~~will~~ shall pursue  
4 in each case, and the counter-remedies and delays to which the taxpayer ~~will~~ shall  
5 be entitled ~~will~~ shall ~~be~~ only be those which are not inconsistent with the proceeding  
6 initiated by the collector, provided that in every case the taxpayer shall be entitled  
7 to proceed under R.S. 47:1576 except (a) after he has filed a petition with the board  
8 of tax appeals for a redetermination of the assessment, or (b) when an assessment for  
9 the tax in question has become final or (c) when a suit involving the same tax  
10 obligation is pending against him; and provided further, that the fact that the  
11 collector has initiated proceedings under the assessment and distraint procedure ~~will~~  
12 shall not preclude him from thereafter proceeding by summary or ordinary court  
13 proceedings for the enforcement of the same tax obligation.

14                           \*           \*           \*

15           §1574. Collection by summary court proceeding authorized

16           In addition to any other procedure provided in this ~~Sub-title~~ Subtitle or  
17 elsewhere in the laws of this state; and for the purpose of facilitating and expediting  
18 the determination and trial of all claims for taxes, penalties, interest, attorney fees,  
19 or other costs and charges arising under this ~~Sub-title~~ Subtitle, there is hereby  
20 provided a summary proceeding for the hearing and determination of all claims by  
21 or on behalf of the state, or by or on behalf of the collector, for taxes, excises, and  
22 licenses and for the penalties, interest, attorney fees, costs or other charges due  
23 thereon, by preference in all courts, all as follows:

24                           \*           \*           \*

25           (5) The provisions of this Section shall only apply in the following instances:

26           (a) The proceeding is for collection of a tax assessment that has become  
27 final, or to which the provisions of RS. 47:1567 or 1568 apply.

28           (b) A jeopardy assessment has been or could be issued against the defendant  
29 pursuant to R.S. 47:1566 for the same tax.

1           (c) A rule to cease business has been or is concurrently brought against the  
2           defendant pursuant to R.S. 47:314, 1574.1, or 1582.

3           (d) The matter also involves the special authority to enforce collection of  
4           taxes collected or withheld from others pursuant to R.S. 47:1561.1.

5   \*       \*       \*

6           §1576. Remittance of tax under protest; suits to recover

7           A.(1)(a) Except as otherwise provided in Subsection B of this Section, any  
8           taxpayer protesting the payment of any amount found due by the secretary of the  
9           Department of Revenue, or the enforcement of any provision of the tax laws in  
10          relation thereto, shall remit to the Department of Revenue the amount due and at that  
11          time shall give notice of intention to either file suit ~~for the~~ or file a claim with the  
12          Board of Tax Appeals for purposes of recovery of such tax.

13          (b) In the case of sales or use taxes that are required to be collected and  
14          remitted by a selling dealer as provided for in R.S. 47:304, the purchaser, in order  
15          to avail himself of the alternative remedy provided by this Section, shall remit  
16          protested sales or use tax to the selling dealer, and shall retain copies of  
17          documentation evidencing the amount of the sales or use tax paid to the dealer on the  
18          transactions. On or before the twentieth day of the month following the month of the  
19          transactions on which the selling dealer charged the tax, the purchaser shall inform  
20          the department by certified mail or other reasonable means of the dates and amounts  
21          of the protested taxes that were charged by the selling dealer, and shall give notice  
22          of the purchaser's intention to either file suit ~~for~~ or file a claim with the Board of Tax  
23          Appeals for purposes of recovery of the tax.

24          (2) Upon receipt of this notice, the amount remitted to the Department of  
25          Revenue or the amount of protested taxes that have been paid to the selling dealer  
26          shall be placed in an escrow account and held by the secretary or his duly authorized  
27          representative for a period of thirty days. If suit is filed for recovery of the tax  
28          within the thirty-day period, or if a claim is filed with the Board of Tax Appeals for  
29          recovery of the tax paid within the thirty-day period, the funds in the escrow account

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

1 shall be further held pending the outcome of the suit, the claim, or an appeal  
2 therefrom.

3 \* \* \*

4 C. This Section shall afford a legal remedy and right of action in the Board  
5 of Tax Appeals as provided by law, or in any state court having jurisdiction of the  
6 parties and subject matter, for a full and complete adjudication of any and all  
7 questions arising in the enforcement of this Subtitle as to the legality of any tax  
8 accrued or accruing or the method of enforcement thereof. In such action, service  
9 of process upon the secretary shall be sufficient service, and he shall be the sole  
10 necessary and proper party defendant in any such suit.

11 \* \* \*

12 E. Upon request of a taxpayer and upon proper showing by such taxpayer  
13 that the principle of law involved in an additional assessment is already pending  
14 before the courts for judicial determination or pending before the Board of Tax  
15 Appeals, the taxpayer, upon agreement to abide by the decision of the courts, the  
16 Board of Tax Appeals, or by a final judgment of a court upon a timely appeal of a  
17 decision of the Board of Tax Appeals, may remit the additional assessment under  
18 protest, but need not file an additional suit or claim. In such cases, the tax so paid  
19 under protest shall be placed in an escrow account and held by the secretary until the  
20 question of law involved has been determined by the courts, the Board of Tax  
21 Appeals, or by a final judgment of a court upon a timely appeal of a decision of the  
22 Board of Tax Appeals, and shall then be disposed of as therein provided.

23 \* \* \*

24 §1578. Cancellation of lien, privilege, and mortgage; compromises

25 \* \* \*

26 B. In other cases, the secretary may authorize the cancellation or release of  
27 a lien, privilege, or mortgage subject to the following terms and conditions:

28 \* \* \*

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

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

21                   (4)(a) Notwithstanding any other provision of this Chapter, the secretary,  
 22 with the approval of two assistant secretaries ~~and the Board of Tax Appeals,~~ may  
 23 compromise any judgments for taxes of five hundred thousand dollars or less  
 24 exclusive of interest and penalty, including assessments for such amounts which are  
 25 equivalent to judgments upon a determination that any of the following apply:

26   \*         \*         \*

27                   §1603. Waiver of penalty for delinquent filing or delinquent payment

28                   A. (1) If the failure to make any return at the time such return becomes due  
 29 or the filing of a return without remittance of the full amount due, is attributable, not

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

1 to the negligence of the taxpayer, but to other cause set forth in written form and  
2 considered reasonable by the secretary of the Department of Revenue, the secretary  
3 may remit or waive payment of the whole or any part of the specific penalty  
4 provided for such failure; ~~but in,~~

5 (2)(a) In order to promote the effective administration of the tax laws of this  
6 state, the secretary may also promulgate rules and regulations pursuant to the  
7 Administrative Procedure Act concerning the waiver of penalties, including but not  
8 limited to the establishment of a voluntary disclosure program.

9 (b) The secretary may, pursuant to the rules and regulations referenced in  
10 Subparagraph (a) of this Paragraph, remit or waive the payment of the whole or any  
11 part of the penalties provided for in this Subtitle.

12 (3) In any case when the penalty exceeds twenty-five thousand dollars, it can  
13 be waived by the secretary only after approval by the ~~board of tax appeals~~ Board of  
14 Tax Appeals.

15 \* \* \*

16 §1688. Suspension of dealer's permit

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

23 Section 2. R.S. 49:967(A) and 968(B)(9) are hereby amended and reenacted to read  
24 as follows:

25 §967. Exemptions from provisions of Chapter

26 A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not  
27 be applicable to the Board of Tax Appeals, the Department of Revenue, with the  
28 exception of the Louisiana Tax Commission that shall continue to be governed by  
29 this Chapter in its entirety, unless otherwise specifically provided by law, and the



1 administrator of the Louisiana Employment Security Law; however, the provisions  
2 of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall  
3 be applicable to such ~~board~~, department, and administrator.

4 \* \* \*

5 §968. Review of agency rules; fees

6 \* \* \*

7 B. Prior to the adoption, amendment, or repeal of any rule or the adoption,  
8 increasing, or decreasing of any fee, the agency shall submit a report relative to such  
9 proposed rule change or fee adoption, increase, or decrease to the appropriate  
10 standing committees of the legislature and the presiding officers of the respective  
11 houses as provided in this Section. The report shall be so submitted on the same day  
12 the notice of the intended action is submitted to the Louisiana Register for  
13 publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to  
14 each standing committee electronically if electronic means are available. If no  
15 electronic means are available, the report shall be submitted at the committee's office  
16 in the state capitol by certified mail with return receipt requested or by messenger  
17 who shall provide a receipt for signature. The electronic receipt by the committee,  
18 return receipt or the messenger's receipt shall be proof of receipt of the report by the  
19 committee.

20 \* \* \*

21 (9) The Department of Civil Service and all of the agencies made a part of  
22 it shall submit the report to the House Committee on House and Governmental  
23 Affairs and the Senate Committee on Senate and Governmental Affairs; however,  
24 the Board of Tax Appeals shall submit the report to the House Committee on Ways  
25 and Means and the Senate Committee on Revenue and Fiscal Affairs.

26 \* \* \*

27 Section 3. The Board of Tax Appeals and the secretary of the Department of  
28 Revenue may enter into an agreement for a fixed annual interagency transfer to the board  
29 as payment in lieu of filing fees owed by the secretary.

1 Section 4. The Louisiana State Law Institute is authorized and directed to revise the  
2 Louisiana Revised Statutes of 1950, as amended, by changing all references to the "board  
3 of tax appeals" to "Board of Tax Appeals".

4 Section 5. This Act shall become effective on July 1, 2014; if vetoed by the governor  
5 and subsequently approved by the legislature, this Act shall become effective on July 1,  
6 2014, or on the day following such approval by the legislature, whichever is later.

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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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Stokes

HB No. 798

**Abstract:** Provides generally with respect to enforcement and adjudication of taxes, fees, and penalties collectable by the Dept. of Revenue, including the administration, jurisdiction, and procedures of the Board of Tax Appeals.

#### General Tax Administration

Present law provides authority for the secretary of the Dept. of Revenue ("secretary") and ("department") to waive various taxes, fees, and penalties under certain amounts, and to waive liens, privileges, and mortgages in certain specific circumstances, all of which at some point require approval by the Board of Tax Appeals ("board").

Proposed law changes thresholds for approval by the board as follows:

- (1) Penalty for failure to file an annual tax return by a person who withholds wages for purposes of individual income tax, from \$5,000 to \$25,000.
- (2) Penalties generally with regard to income tax, from all waivers to waivers in excess of \$25,000.
- (3) Penalties generally with regard to delinquent filing or delinquent payment of any tax subject to collection by the department under certain circumstances, from \$5,000 to \$25,000.
- (4) Cancellation of a lien, privilege, or mortgage under certain circumstances, from board approval for all to no board approval.

Present law provides requirements for the filing of La. corporation income tax returns when there are I.R.S. adjustments to or an extension of time for the filing of a federal corporation income tax return. If a federal return is adjusted by the I.R.S., the taxpayer must within 60 days of the date of the adjustment, furnish a statement to the secretary disclosing the nature and amount of the adjustment. Further, the secretary is authorized to provide for an automatic extension of time for the filing of a state return of up to seven months when there has been an extension of time for the filing of the federal tax return.

Proposed law changes present law by requiring that the taxpayer file an amended tax return rather than a statement, and by increasing the time from the date of the federal adjustment for the filing of the amended state tax return from 60 days to 180 days. Proposed law retains

present law regarding the secretary's authority to grant an extension of time, and adds authority for the granting of an extension of time equal to that allowed for the federal return.

Present law authorizes the secretary to file suit by ordinary process for the collection of taxes. Present law further authorizes collection by expedited summary court proceeding for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, and other costs relating to taxes collected and administered by the department.

Proposed law retains present law but restricts the use of expedited summary court proceedings to the following instances:

- (1) The proceeding is for collection of a tax assessment that has become final or is for an assessment of a tax that is shown on the face of a tax return, or an assessment and claim in a bankruptcy or receivership proceeding.
- (2) A jeopardy assessment that has been or could be issued against a defendant.
- (3) A rule to cease business has been or is concurrently brought against the defendant.
- (4) The matter involves the special authority to enforce collection of taxes where a corporation, limited liability company, or limited partnership fails to file a return or remit income taxes withheld from the wages of its employees.

Present law provides procedures for the payment of tax under protest, which includes the taxpayer notifying the department of an intention to file suit to recover their payment.

Proposed law retains present law and adds the filing of a claim with the board as an option for a taxpayer who pays under protest and seeks to recover their payment.

Proposed law adds to present law authority for the secretary to promulgate rules and regulations in accordance with the Administrative Procedure Act concerning the waiver of penalties, including the establishment of a voluntary disclosure program.

### **Board of Tax Appeals - General provisions**

Present law allows the board to issue subpoenas and order depositions.

Proposed law retains present law and adds authorization for the board to compel written discovery.

Proposed law authorizes the voluntary recusal of a board member from any proceeding in which he cannot accord a fair and impartial hearing in the same manner as provided for judges by the La. Code of Civil Procedure. Proposed law provides for procedures governing the instance where a party other than a board member requests the recusal of a board member. Proposed law further provides that the remainder of the board may adjudicate a case if a board member is recused, and provides that if all board members are recused then a retired judge may be appointed to adjudicate a case as an ad hoc judge for the board.

Present law allows the board to assign a single board member to serve as a hearing officer for a case and report back to the entire board.

Proposed law retains present law and adds authority for the single member to report back on the law.

Present law requires the board's decisions, orders, and judgments be published.

Proposed law retains present law and provides that the board's internal deliberative communications on its cases are to be considered judicial proceedings for purposes of present law governing public records.

Present law provides an exemption for the board from the Administrative Procedure Act, and provides certain exceptions to the exemption.

Proposed law deletes present law providing for the exceptions.

Proposed law provides that legislative oversight of rules promulgated by the board shall be performed by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Proposed law authorizes the board and the secretary to enter into an agreement for a fixed annual interagency transfer to the board as payment in lieu of filing fees owed by the secretary.

### **Board of Tax Appeals - Appeals of decisions of the board**

Present law establishes procedures for appeal of a decision of the board to a district court as follows: the department or taxpayer may appeal within 30 days of the date of the decision; before filing an appeal, the party intending to appeal must notify the board of their intention; a taxpayer appealing a decision where the board has found tax to be due must post a bond equal to one and one-half times the amount of the tax, interest, and other unspecified additional amounts required by present law.

Proposed law retains present law regarding an appeal of a decision of the board with respect to the notice for and timing of the filing of an appeal.

Proposed law changes present law by adding a limitation on the requirement for the posting of a bond to exclude from such requirement, any taxpayer who has paid under protest. Further, provisions are added specifying that the nature of the bond and procedures for posting bond shall be consistent with those required for a suspensive appeal in a civil matter under the Code of Civil Procedure.

Proposed law further provides that deadlines other than for the time and notice for the initial filing of the appeal, and rules governing the briefing and answering of the appeal shall be the same as provided for in civil matters under the Code of Civil Procedure and all applicable court rules.

Proposed law changes the venue for appellate review of board decisions from a district court to a court of appeal. Proposed law adds provisions for the respective court of appeal to exercise supervisory jurisdiction over a case pending before the board in the same manner as provided for in a civil matter pending in a district court within its circuit.

Present law authorizes the appellate court to modify, reverse, or remand a decision of the board.

Proposed law retains present law and adds authorization for the appellate court to order that a case be immediately transferred to a district court to consider issues of constitutionality.

Present law provides for a myriad of time lines for a decision of the board to become final, some of which are obsolete as some steps and terms do not exist under contemporary allocation of appellate court authority.

Proposed law deletes present law and provides that a decision of the board becomes final under the following two circumstances: if the decision is not appealed within 30 days, or,

if it is timely appealed, then the decision of the appellate court is final under the same rules and timing as is provided for in civil matters under the Code of Civil Procedure.

Present law contains provisions requiring that a party petition the legislature for permission to appeal a decision of the board in a claim against the state proceeding.

Proposed law removes provisions of present law requiring a petition to the legislature, and instead authorizes a suit on a claim against the state is allowed if that cause of action is otherwise allowed by law.

Authorizes the Board of Tax Appeals and the secretary of the Department of Revenue to enter into an agreement for a fixed annual interagency transfer as payment in lieu of filing fees owed by the secretary.

Authorizes the La. State Law Institute to revise the La. Revised Statutes of 1950, as amended to change certain references.

Effective July 1, 2014.

(Amends R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(intro. para.), 1603(A), and 1688, and R.S. 49:967(A) and 968(B)(9); Adds R.S. 47:1417 and 1574(5))