

CHAPTER 17. BOARD OF TAX APPEALS

PART I. GENERAL PROVISIONS

§1401. Creation of Board of Tax Appeals

In order to provide a board that will act as an appeal board to hear and decide, at a minimum of expense to the taxpayer, questions of law and fact arising from disputes or controversies between a taxpayer and the collector of revenue of the State of Louisiana in the enforcement of any tax, excise, license, permit or any other tax law administered by the collector, and to exercise jurisdiction as provided for in the Uniform Local Sales Tax Code, the Board of Tax Appeals, hereinafter referred to as the "board", is created as an independent agency in the Department of State Civil Service, and for the purposes of this Chapter. The Local Tax Division is created as an independent agency and authority within the board for the purposes of exercising jurisdiction over disputes involving local collectors.

§1402. Membership of board; qualifications; appointment; term; vacancy; salary

A. (1) The Board of Tax Appeals shall be composed of three members who shall be attorneys and who shall be qualified electors of the state. At least two of the board members shall be attorneys with tax law experience. At least one of these two board members shall be certified as a Tax Law Specialist by the Louisiana Board of Legal Specialization. Each member shall be appointed by the governor. Vacancies shall be filled in the manner of the original appointment.

(2) For the purposes of this Subsection, tax law experience shall mean an attorney admitted to the practice of law in Louisiana who possesses a Masters of Law in Taxation or Tax Law, is board certified as a Tax Law Specialist in this state, is licensed as a certified public accountant in this state, or who has served pursuant to Article V, Section 22 of the Louisiana Constitution as a judge of a district or appellate court.

B. Each appointment to the board by the governor shall be submitted to the Senate for confirmation.

C. The governor shall make the following appointments on or before September 1, 2014: one member with a term expiring February 1, 2016, and one member with a term expiring February 1, 2018. Any subsequent appointments pursuant to this Subsection shall be for either a fixed term of four years or for the remainder of an unexpired term.

D. (1) On or before August 1, 2014, the governor shall appoint one member to a term expiring February 1, 2020, from a list of qualified nominees provided by the nominating committee established pursuant to this Subsection. Any subsequent appointments pursuant to this Subsection shall be for either a fixed term of six years or for the remainder of an unexpired term.

(2) The nominating committee shall be responsible for developing a list of not less than one, nor more than three, qualified nominees for any vacancy. Any person nominated by the committee

must be an attorney with experience in Louisiana sales tax law, and at least one nominee shall be certified as a Tax Law Specialist by the Louisiana Board of Legal Specialization.

(3) The Local Tax Division Nominating Committee is hereby established to be comprised of eight members who shall be either an attorney licensed to practice law in Louisiana, a certified public accountant, or a parish tax administrator. The committee shall be comprised of the following members:

(a) A representative of the Louisiana Association of Business and Industry.

(b) A representative of the Society of Louisiana Certified Public Accountants, selected in consultation with the Business and Industry Committee of the Louisiana Association of Tax Administrators.

(c) Two representatives of the section on taxation of the Louisiana State Bar Association, with one selected in consultation with the National Bar Association Greater New Orleans Chapter Louis A. Martinet Society.

(d) A representative of the Louisiana Municipal Association.

(e) A representative of the Police Jury Association of Louisiana.

(f) A representative of the Louisiana School Boards Association.

(g) A representative of the Louisiana Sheriffs' Association.

(4) The secretary-clerk of the board shall maintain the records of the nominating committee, and shall call an organizational meeting of the nominating committee in order for the nominating committee to elect its chairman. The chairman, or a majority of committee members, may call meetings of the committee, and shall provide advance notice of all meetings to the members and to the appointing entities referenced in Paragraph (3) of this Subsection.

(5) Six members shall constitute a quorum for the transaction of committee business, and each nomination must be approved by a favorable vote of at least five committee members.

E. (1) A board member shall continue to serve until a successor has been appointed. No member may be removed during an unexpired term of office except for good cause shown, which shall be subject to judicial review.

(2) A member who has served on the board for more than two and one-half terms occurring within three consecutive terms shall be ineligible for reappointment to the board until at least two years from the last day of his last appointment. However, a member may be reappointed notwithstanding any other provision of law to the contrary, if nominated pursuant to Subsection D of this Section, and service pursuant to that Subsection is not counted for the purposes of any term or service limitation.

F. The governor shall establish the compensation to be paid to members of the board, including any additional compensation for its officers. A member's compensation shall not be reduced during his unexpired term of office.

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

A. (1) The governor shall designate a chairman from the membership of the Board of Tax Appeals.

(2) The member other than the chairman with the longest service on the board shall be its vice chairman, and shall perform duties as may be specified in the rules of the board and delegated by the chairman.

(3) The member appointed pursuant to R.S. 47:1402(D) shall be the hearing judge of the Local Tax Division of the board. For the purposes of the Local Tax Division, the judge shall exercise all jurisdiction, authority, and powers of the board and its chairman, including the hearing of cases to be adjudicated in the division and the rendering of orders and judgments in such cases. The remainder of the board may temporarily exercise these functions during any vacancy in this appointment, but may hear and render judgment in a case in the division only if this appointment remains vacant for more than ninety days.

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

B. (1) The principal office and domicile of the board shall be at Baton Rouge, Louisiana.

(2) The board may hold meetings at any place within the state, and any member, when designated by the chairman, may act as a hearing judge and conduct hearings for the purpose of receiving testimony, argument, or both and reporting his findings of fact, law, or both to the board for decision or judgment.

(3) The time and place of meetings and hearings shall be designated by the chairman, with a view of securing reasonable opportunity to taxpayers to appear before the board with as little inconvenience and expense to parties and witnesses as is practicable.

(4) With the consent of all parties or upon the request of the taxpayer in a pre-trial matter involving only a state collector, the board may allow for a hearing to be held by telephone, video conference, or similar communication equipment, including the administration of oaths in proceedings.

(5) Upon the motion of the local collector, a hearing on the merits in a matter involving only local taxing authorities from a single parish shall be held in that parish. The respective district or other local court shall make available any facilities necessary for the hearing, and any relevant

expenses may be taxed as costs, including any costs for a hearing judge in the same amount as specified in R.S. 47:1417(C)(2).

(6)(a)(i) Upon the joint motion of all parties in any matter, or pursuant to an election made by the local collector in accordance with the provisions of Subparagraph (b) of this Paragraph, a case filed with the board shall be heard in the board's Local Tax Division.

(ii) A case designated to be heard in the Local Tax Division shall be adjudicated as provided for in R.S. 47:1403(A)(3).

(iii) A case designated to be heard in the Local Tax Division may thereafter instead be heard and adjudicated by the entire board only upon the joint motion of all parties. However, any board member may exercise the powers granted in R.S. 47:1408, and the chairman may issue other non-dispositive orders concerning cases in the division upon the joint motion of all parties or, in the absence of and at the direction of the hearing judge.

(b) A local collector may elect in advance to have all cases against that local collector heard in the Local Tax Division. Such election shall be made, or repealed, in the form of an affidavit executed by the local collector. The affidavit shall be effective only for those cases filed with the board against that local collector at least ninety days after the filing of the affidavit with the board's secretary-clerk. The secretary-clerk shall publish a list on the board's website identifying the respective dates on which any such affidavits were filed.

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

C. A majority of the members of the board shall constitute a quorum for the transaction of the business of the board, except as otherwise provided in this Chapter. A vacancy in the board shall not impair the powers nor affect the duties of the board, nor of the remaining members of the board.

D. The board shall have a seal which shall be judicially noticed. Such seal may be used to authenticate the official acts of the board or any member thereof, but failure to use the seal shall not invalidate any such act.

§1404. Employees of the board

The board shall appoint as its principal assistant a secretary-clerk who shall be custodian of its files and records, and one private secretary who may also be the stenographer-reporter for the board. The board shall also appoint any other employees necessary for the performance of the functions herein delegated. The board shall fix the salaries of the secretary-clerk, stenographer-reporter and other employees.

§1405. Retention of records and property by the board

All books, papers, records, moneys and other property, heretofore used or possessed by the board as heretofore existing, shall be retained by that board as it is created and continued herein.

§1406. Expenditures

The board is authorized to make such expenditures (including expenditures for personal services and for law books, books of reference and periodicals), as may be necessary to efficiently execute the functions vested in the board. All expenditures of the board shall be allowed and paid, out of any monies appropriated for the purposes of the board. The board's self-generated revenue from local cases filed with the board pursuant to the provisions of the Uniform Local Sales Tax Code shall be expended exclusively for the purposes of its Local Tax Division, and may be retained by the board and carried forward for such purposes.

§1407. Jurisdiction of the board

The jurisdiction of the board shall extend to the following:

- (1) All matters relating to appeals for the redetermination of assessments, or for the determination of overpayments, or payment under protest petitions, as provided in R.S. 47:1431 through 1438.
- (2) All matters relating to the waiver of penalties, as provided in R.S. 47:1451.
- (3) All matters related to other jurisdiction otherwise provided by law, including rules to seek uniformity of interpretation of common sales and use tax law or local sales and use tax law, as provided in R.S. 47:337.101(A)(2).
- (4) All matters relating to claims against the state, as provided in R.S. 47:1481 through 1486.
- (5) Incidental demands authorized by law in any action pending before the board in the same manner as in a district court pursuant to Code of Civil Procedure Article 1031.

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

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

- (1) Any board member and the secretary-clerk may administer oaths and take affidavits.
- (2) Any board member may compel discovery, issue subpoenas, and require the attendance of witnesses and the production of books, papers, and documents pertaining to the matter under inquiry, at any designated place of hearing.
- (3) Any board member may examine witnesses, and may require the taking of depositions before any person competent to administer oaths, either within or without the state, in like

manner that depositions of witnesses are taken or discovery is compelled in civil actions in the district courts of the state.

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

C. If any person fails to comply with any order or subpoena issued under authority of this Chapter, or refuses to testify to any matter regarding which he may be lawfully interrogated, a judge of the district court of the parish in which such person either resides or may be personally served, or any other judge with personal jurisdiction over such person, on application of the board or any member thereof, shall immediately compel obedience by ordering the issuance of an instantter subpoena, or other appropriate process for contempt, or a rule as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

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

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

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

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

§1409. Witness fees and mileage

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 person summoning such witness or causing the deposition to be taken. These expenses may be assessed as costs by the board.

§1410. Findings of fact, decisions, and opinions

A. The board shall, in each case heard by it, or in any matter referred to it by the collector or in each case submitted to it upon stipulations of agreement and fact, issue written findings of fact and conclusions of law and make and file a written decision or judgment thereon.

B. (1) The board may, in its discretion, issue written reasons in addition to its decision or judgment.

(2) Upon the request of any party, the board shall issue written reasons in addition to its judgment in a case.

(3) Any additional written reasons issued pursuant to this Subsection shall be published on the board's website.

§1411. Documents to be served by registered mail

All papers or documents filed with the board which are required by law to be served upon opposing party or which because of a prayer contained therein, are asked to be served upon the opposing party or any counsel of record representing the taxpayer, or upon the collector or his counsel of record, may be served by registered mail, return receipt requested, and such service shall be valid for all purposes under this Chapter.

§1412. Rules of evidence

The rules of evidence which the board shall adopt as those binding upon it shall be those rules of evidence followed in the district courts of Louisiana.

§1413. Rules and regulations

A. In all other matters regarding the conduct of its hearings, the board may prescribe and promulgate rules and regulations not inconsistent with law or the provisions of this Chapter. Upon promulgation, the rules and regulations shall be binding upon parties litigant in any cause over which the jurisdiction of this board shall extend.

B. Rules related to the establishment of fees chargeable for filings and for services rendered by the board shall be subject to review, suspension, or veto pursuant to R.S. 49:968 through 970.

C. The rules and regulations of the board shall be annually reviewed, and may be revised as necessary to provide relative to a prompt adjudication of cases filed against local collectors.

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

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

§1414. Persons authorized to appear before the board

A. Any individual taxpayer or other contestant in a proceeding before the board may appear and act for himself or for a partnership of which he is a member and a taxpayer corporation may be represented by a bona fide officer of the corporation, upon presentation of adequate identification to the board, in any proceedings to which the jurisdiction of the board shall extend.

B. Attorneys at law, duly qualified and registered under the laws of the state, shall be entitled to represent any taxpayer or other contestant in any matter to which the jurisdiction of the board shall extend, provided that the board may, in its discretion, permit attorneys at law, duly qualified and registered under the laws of the several states or the District of Columbia to represent any taxpayer or other contestant in any matter to which the board's jurisdiction shall extend, in the same manner as such attorneys are permitted to practice in the courts of Louisiana.

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

D. Enrolled agents duly qualified and licensed by the U.S. Department of the Treasury to represent taxpayers before all administrative levels of the Internal Revenue Service may represent any taxpayer or other contestant in any matter to which the jurisdiction of the board shall extend.

E. A local collector may be represented by any designated employee of the local collector.

§1415. Records open to public inspection

All pleadings and evidence, documentary or otherwise, including the transcript of the stenographic report of the hearings held before the board in any matter to which its jurisdiction shall extend, shall be public records, open to the inspection of the public; except that after the

decision of the board in any proceeding has become final, the board may, upon motion of the taxpayer or other contestant or the collector, permit the withdrawal by the party entitled thereto of originals of books, documents, records, models, diagrams and other exhibits, introduced in evidence before the board; or the board may, on its own motion, make such other disposition thereof as it deems advisable.

§1416. Stenographic reports of hearings

The board shall, upon the request of any party to a matter before it or may upon its own motion, order that the hearing before it shall be reported by a stenographer, or be otherwise recorded and transcribed pursuant to regulation or rule of the board, and the expense thereof shall be paid by the board out of the appropriation for the board. The board may contract for the report of such proceedings or designate the reporter of the board to report such proceedings. The board may supply copies of the transcript of the proceedings to anyone requesting the same and may fix the fee for purchasing such copies.

§1417. Recusal; board members

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

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

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

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

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

(3) Upon entry of an order of recusal concerning the board member presiding over a case in the Local Tax Division, the case shall be reassigned to be heard in accordance with Paragraph (2) of

this Subsection, or, upon a joint motion of all parties it may either be heard pursuant to Paragraph (1) of this Subsection or be transferred to the district court of proper venue.

D. Notwithstanding any provision of law to the contrary, including Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950, as amended, if any member of the board is recused from a case pursuant to this Section, he may continue to serve as a member of the board while the remainder of the board adjudicates a taxpayer's appeal or claim, but the board member shall have no participation or involvement in any case in which he is recused.

§1418. Definitions

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

- (1) "Board" means the Board of Tax Appeals.
- (2) "Collector" means the state collector or a local collector, unless specified otherwise.
- (3) "Escrow Account" means the account with a bank or financial institution selected as fiscal agent by the Board of Tax Appeals with the approval of the Cash Management Review Board, pursuant to R.S. 47:1439.
- (4) "Local collector" means any of the following:
 - (a) The individual or entity designated as the single collector of the sales and use taxes of any parish, municipality, school board, any other unit of local government, and any special district whose boundary is not coterminous with the state, and their duly authorized assistants in relation to a tax levied by any local political subdivision within the jurisdiction of the Board of Tax Appeals.
 - (b) The agent or successor to any of the above, including any joint commission, authority, or other duly constituted single collection entity, created by an agreement, when administering or collecting the taxes of any local political subdivision within the jurisdiction of the Board of Tax Appeals.
- (5) "Petition" means a separate and distinct pleading filed against the relevant state collector or local collector with the board. A petition filed against a state collector shall not interrupt or suspend the time period within which a taxpayer must file a petition against any local collector, and a petition filed against a local collector shall not suspend or interrupt the time period within which a taxpayer must file a petition against a state collector or a different local collector.
- (6) "Registry of the Board" means the record retained by the secretary-clerk for the Escrow Account in the same manner as specified in R.S. 13:475(A).
- (7) "State collector" means any of the following:

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

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

(c) The commissioner of the office of alcohol and tobacco control, within the Department of Revenue, when used in relation to any state tax or fee administered by the office and within the jurisdiction of the Board of Tax Appeals.

(d) The agent or successor of any of the foregoing offices when administering a state tax or fee within the jurisdiction of the Board of Tax Appeals.

PART II. APPEALS FOR REDETERMINATION OF ASSESSMENT OR FOR DETERMINATION OF OVERPAYMENT

§1431. Taxpayer's petition

A. Whenever a taxpayer is aggrieved by an assessment made by the state collector, or by the state collector's action or failure to act on a claim for refund or credit of an overpayment, such taxpayer may appeal to the board for a redetermination of the assessment or a determination of the alleged overpayment, by filing a petition with the board within the respective periods set forth in R.S. 47:1565, 1566, and 1625.

B. If a taxpayer has complied with the provisions of R.S. 47:337.63 or 1576, the taxpayer may file a payment under protest petition with the board within the respective periods set forth therein.

C. If a taxpayer disputes an assessment made by a local collector, or a local collector's action or failure to act on a claim for a refund or credit of an overpayment, the taxpayer may appeal to the board for a redetermination of the assessment or a determination of the alleged overpayment, by filing a petition with the board as provided in R.S. 47:337.51, 337.53, or 337.81.

§1432. Notice; hearing; decision

A. The taxpayer and the collector shall be afforded notice and opportunity to be heard in each proceeding for the redetermination of an assessment, the consideration of a payment under protest petition, or for the determination of an overpayment. A decision or judgment in such matters shall be made as quickly as practicable.

B. (1) The board has no jurisdiction to declare a statute or ordinance unconstitutional. When the taxpayer or collector has pled the unconstitutionality of a statute or ordinance, the board shall order the case transferred to the district court of proper venue upon the motion of any party if the

board finds that the case cannot be resolved without reaching a declaration on the alleged unconstitutionality.

(2) A district court shall consider de novo the issues of unconstitutionality pled in any case transferred to it pursuant to this Subsection, but upon the joint motion of all parties and the attorney general, the board may develop a record and make a recommendation to the district court on the issue.

C. Except upon the joint motion of all parties, the board shall not consolidate a case against a local collector with a case against a state collector or with a case against one or more other local collectors; however, nothing in this Part shall prevent the board, upon the joint motion of all parties and when in the interest of justice and efficiency, from ordering a consolidated hearing for the adjudication of pending cases, provided that each party's own counsel or qualified representative and witnesses may appear and present its case, and provided that the board shall render a separate judgment for any case brought against a local collector, even when such case is considered in a joint hearing together with another case or cases.

D. If an assessment of a local collector is appealed to the board for redetermination that covers both a sales and use tax matter that is appealable to the board together with a tax matter that is not appealable to the board, the local collector may either consent to the board's adjudication of the matter or consent that the appealable assessment should be reduced by a stipulated amount, and the local collector may then immediately, and without any other delays provided for by law, issue a new assessment for the stipulated amount. The taxpayer's rights and remedies concerning the newly issued assessment shall run from the date of its issuance. The board shall retain jurisdiction to adjudicate all other issues concerning the redetermination or affirmation of the appealed assessment, but shall include the stipulated reduction in its final judgment together with its other findings.

§1433. Publication of opinions and decisions

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

§1434. Judicial review of decision of the board

A. Within thirty days of the signing of a decision or judgment of the board, the collector or the taxpayer may file a motion with the board for review of the decision or judgment by the appropriate appellate court.

B. (1) In any case where the board has found any tax to be due, except in any payment under protest petition, the taxpayer shall post a bond when filing a motion for review, with surety in a

form approved by the board for the payment of the tax as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, including applicable penalties and attorney fees. The bond shall be payable to the collector in an amount not to exceed one and one-half times the tax, interest, penalties, and attorney fees, if any, found to be due.

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

(3)(a) For any case in the Local Tax Division, an irrevocable letter of credit issued by a responsible financial institution shall not be accepted as security in lieu of a bond or a deposit into the Escrow Account of the Registry of the Board unless it is in the amount of the security otherwise required by Paragraph (1) of this Subsection and permission is granted by the local tax judge prior to the expiration of the period for filing a motion for review pursuant to this Section.

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

(4) If required, the posting of the security, bond, or payment into escrow, shall be a condition precedent to the filing of any motion for review with the board.

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

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

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

(3) On or before the return date, the secretary-clerk of the board shall send the appellate court the original transcript of the record, together with all exhibits and evidence thereto attached; which

record shall be the basis for any action on review and the decision of the appellate court shall be rendered upon that record as made up before the board. The record, and any designation thereof, shall be prepared in accordance with applicable court rules.

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

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

§1435. Jurisdiction of courts to review decisions of the board

A. The courts of appeal shall have exclusive jurisdiction to review the decisions or judgments of the board, and the judgment of any such court shall be subject to further review in accordance with the law relating to civil matters.

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

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

§1436. Determination of which appellate court has jurisdiction

A. A decision or judgment of the board in a case against a state collector may be reviewed as follows:

(1) In the case of an individual, by the court of appeal for the parish in which he is domiciled, or if not domiciled in any parish, then by the court of appeal for the parish of East Baton Rouge.

(2) In the case of a juridical person, except as provided in Paragraphs (3) and (4) of this Subsection, by the court of appeal for the parish of East Baton Rouge.

(3) In the case of a corporation which has a principal office or agency in Louisiana, then by the court of appeal for the parish where such principal office or agency is located.

(4) In the case of an agreement between the state collector and taxpayer, then by the court of appeal as stipulated in the agreement.

B. A judgment of the board in a case against a local collector may be reviewed as follows:

(1) In the court of appeal for the parish where the tax being litigated is levied, except as provided for in Paragraph (2) of this Subsection.

(2) In the case of an agreement between the local collector and taxpayer, then by the court of appeal as stipulated in the agreement.

C. A judgment of the board in cases that have been consolidated by a joint motion of all parties, including a state collector, may be reviewed as provided for in Subsection A of this Section.

D. A judgment of the board in cases that have been consolidated by a joint motion of all parties may be reviewed as provided for in Subsection B of this Section, with the parish of venue designated in the joint motion.

§1437. Effect of final judgment

A. When the decision or judgment of the board which has become final contains a finding that the taxpayer is liable for the payment of an amount of tax, interest and penalty, such amount shall be paid by the taxpayer upon notice and demand from the collector, and shall be collectible by distraint and sale, as provided in R.S. 47:1570 through 1573, or 337.57 through 337.60, or any other means provided for in Chapter 2-D of Subtitle II of this Title for a local collector.

B. When the decision or judgment of the board which has become final contains a finding that the taxpayer is entitled to receive a refund or credit of an overpayment, the collector shall promptly enter the credit or make the refund, as the case may be.

§1438. Date judgment becomes final

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

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

(2) If a motion for review of a judgment of the board by the applicable appellate court is timely filed with the board, the judgment of the board or subsequent judgment of the appellate court

shall become final in the same manner, and at the same time, as provided for in civil matters under the Code of Civil Procedure.

§1439. Escrow Account

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

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

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

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

(2) In a case against only a state collector, one-tenth of one percent per month of the amount held in escrow for a case, not to exceed the actual amount of interest earned on monies in the Escrow Account from deposits made by a taxpayer in the case, shall be payable to the treasury and, after compliance with Article VII, Section 9(B) of the Constitution of Louisiana, relative to the Bond Security and Redemption Fund, the monies remaining shall be deposited in and credited to the state general fund as self-generated revenues of the Board of Tax Appeals, and may be expended within the board's administrative program.

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

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

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

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

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

PART III. WAIVER OF PENALTIES

§1451. Waiver of penalties

Except as otherwise provided by law, whenever the state collector determines to waive or remit the whole or any part of the penalty provided for failure to file any return at the time it became due, the collector's determination shall be submitted to the board for review. If the board finds that the penalty may properly be waived or remitted pursuant to applicable law, it shall approve the action of the collector. Otherwise the board shall reject the proposal to waive or remit, and it shall then be mandatory upon the collector to assess and collect the penalty. Nothing in this Section shall be construed to expand the jurisdiction of the board to reconsider or review a waiver of penalties or any other discretionary functions of a local collector.

PART V. CLAIMS AGAINST THE STATE

§1481. Authority of board to receive and consider claims against the state

Any person who has a claim against the State of Louisiana for money erroneously paid into the State Treasury, or for any other claim, may present such claim to the Board of Tax Appeals, in such form and together with such proofs as the Board of Tax Appeals may require by its rules and regulations. The board shall duly examine into the justice, merits and correctness of each such claim presented to it, and shall officially pass thereon.

§1482. Authority of board to conduct investigations

The board is authorized to make such examination and investigation as it may deem necessary to determine the correctness of any claim presented; and for that purpose, the board is authorized to employ any expert accountant or clerical assistants that might be necessary. The board may appoint an agent to conduct any investigation, in Louisiana or elsewhere, that may be found necessary in discovering the facts in connection with any claim. The board is authorized to require the claimant to present for the board's inspection all books, papers, documents, receipts, etc., that may have a bearing upon the true facts in connection with any claim presented; and the burden of proof shall always rest with the person presenting any claim against the state for any purpose whatsoever. The board is further authorized to call upon any department or official of the state government or any institution thereof or any citizen to make available to the board any and all information, documents, receipts and papers that will aid it in discovering the correctness and justice of any demand or claim that might be presented to it against the State of Louisiana.

§1483. Payment of approved claims

If the claim is approved and it should be an amount not exceeding one thousand dollars, the chairman of the Board of Tax Appeals shall issue a warrant upon the State Treasurer, for the amount for which the same is approved, stating in said warrant the amount, purposes, and reasons for which the same is drawn. If said claim shall amount to more than one thousand dollars, and is approved by said Board of Tax Appeals, the chairman, giving all the facts and circumstances in connection therewith, shall report the same to the next session of the legislature for its consideration. Provided that where such claim accrues to more than one person, as for example, the heirs or legatees of another, and the claim is determined by the board to be properly due and owing, payment thereof to the party or parties asserting the same before the board shall not be denied because of the failure or refusal of others to join in and assert such claim, but in such event only the portion due such claimant or claimants shall be paid and then only if the amount to be paid to each such claimant does not exceed one thousand dollars.

§1484. Satisfaction of claims

A. At each regular session of the legislature, an amount shall be appropriated except as provided in Subsection B for the purpose of paying any and all claims that might be approved in accordance with the provisions of this Part, and which may be drawn against for the purpose of paying claims that might be duly approved by the Board of Tax Appeals.

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

§1485. Legislature not to consider claims not first presented to board

The legislature shall not approve or consider any claim against the state for money erroneously paid into the state treasury, unless the same shall have been first presented to and considered by the Board of Tax Appeals and its report thereon filed with said claim or demand against the state.

§1486. No appeal from action of board

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