

Office of the Governor
State of Louisiana

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June 29, 2021

VIA HAND DELIVERY

Honorable Clay J. Schexnayder
Speaker of the House
Louisiana House of Representatives
Post Office Box 94062
Baton Rouge, Louisiana 70804-9062

RE: Veto of House Bill 562 of the 2021 Regular Session

Dear Speaker Schexnayder:

Please be advised that I have vetoed House Bill 562 of the 2021 Regular Session.

The Board of Tax Appeals is an independent agency within the Department of State Civil Service created to hear and decide disputes between taxpayers and the state or local collectors. House Bill 562 purports to be an omnibus bill addressing multiple administrative facets related to the Board of Tax Appeals. There are a few provisions of the omnibus bill that give cause for concern.

First, there is the 140% increase in the amount of the interagency transfer to the Board of Tax Appeals, Local Tax Division from the current collections of the tax under R.S. 47:302(K). House Bill 562 increases the interagency transfer from \$5,000 per fiscal year to \$12,000 per fiscal year. This in addition to the \$244,000 currently included in the annual transfer from the collections under R.S. 47:302(K), the flat 8.45% state and local use tax for purchases from catalogues and online retailers. With the creation of the Louisiana Sales and Use Tax Commission for Remote Sellers, the use tax collections have shifted from R.S. 47:302(K) and will continue to do so. The interagency transfer is now considered an actual expense of the Remote Sellers Commission so that any shortfall in the R.S. 47:302(K) collections will be covered by local sales and use tax collections of the Commission. Whether there is in fact a need for this level of increase in the amount of funding to the Board of Tax Appeals should be a part of the discussion during the development of the Executive Budget. The Division of Administration had no knowledge of this proposed 140% increase in funding for the Board of Tax Appeals, Local Tax Division.

The next area of concern with the provisions of House Bill 562 is the mandatory payment provisions related to the interagency transfers. The payments due to the Board of Tax Appeals from current collections of local sales and use tax or state sales and use tax of the Remote Sellers

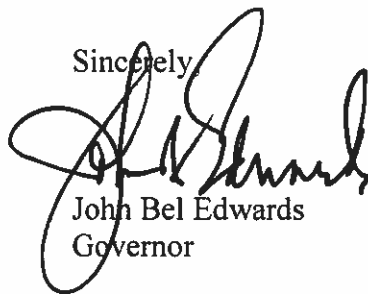
Honorable Clay J. Schexnayder
June 29, 2021
Page Two

Commission “shall be made within the first thirty days of the fiscal year”. The nature of sales tax collection is monthly receipt while funding essential public services over the course of the fiscal year recognizing the limitations of monthly collections. This mandatory provision to remit the full amount of funding for the fiscal year within the first thirty days is an affront to the realities that every other agency and political subdivision face. Further, the payments are to offset what would be the filing fees paid to the Board of Tax Appeals by state and local governments over the course of the year. In essence, there is an upfront payment requirement before the year begins and no refund mechanism if the cost of services provided during the year is less than remitted.

Finally, the language in House Bill 562 appears to be an attempt at mandating the items to be included in the annual executive budget submission to the legislature. The Board of Tax Appeals is given authorization to fix the salaries of employees by administrative rule and if the rule requires the equivalent of a classified market rate adjustment, the salaries shall be included in any budget requests or recommendations. There is almost identical language in the bill related to any item funded pursuant to a written agreement and the requirement for inclusion in “any budget request or recommendation to the full extent of the funding”. The determination of the expenditures to recommend for appropriation in the budget submission is a power delegated to the Governor in the Constitution. While the Board of Tax Appeals is constitutionally vested with jurisdiction over matters related to state and local taxes and fees, it is still an agency within the Department of Civil Service and a part of the Executive Budget. Statutory provisions of this nature are an infringement on the executive budget process.

For these reasons, House Bill 562 is vetoed and returned to the House of Representatives. I look forward to considering the funding provisions as a part of the budget submission process for the Board of Tax Appeals later this year.

Sincerely,



John Bel Edwards
Governor

cc: Honorable Patrick Page Cortez
Louisiana Senate President

2021 Regular Session

HOUSE BILL NO. 562

BY REPRESENTATIVE BOURRIAQUE

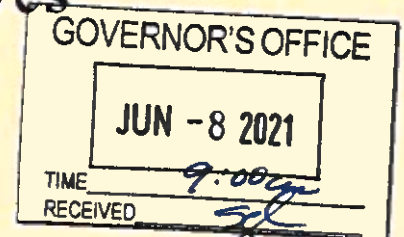
AN ACT

To amend and reenact R.S. 47:302(K)(7)(b), 337.102(B)(3) and (5), (I)(1) and (3), and (K), and 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, 1418(7)(d), and 1483(C), to enact R.S. 47:337.102(C)(10), 338.223, 1408(D)(3), and 1483(A)(2) and (3), and to repeal R.S. 47:340(I), relative to the administration and adjudication of state and local sales and use taxes; to provide relative to tax administration; to provide for the dedication of local funds to the Board of Tax Appeals; to provide for protective orders and confidentiality of taxpayer information; to provide relative to the membership of the Louisiana Uniform Local Sales Tax Board; to provide for the selection of officers of the Louisiana Uniform Local Sales Tax Board; to provide for the funding of the Louisiana Uniform Local Sales Tax Board; to provide for a strategic plan for the Louisiana Uniform Local Sales Tax Board; to provide for dedications related to the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for agreements relative to funding for the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for membership and qualifications of the Board of Tax Appeals; to provide for employees of the Board of Tax Appeals; to provide for certain Board of Tax Appeals employee salaries; to provide for expenditures for the Board of Tax Appeals; to provide for definitions; to provide for the collection of occupancy taxes; to provide for the payment of Board of Tax Appeals judgments; to provide for certain requirements and limitations; and to provide for related matters.

ORIGINATED

IN THE

House of Representatives



Michelle D. Linker

Clerk of the House of Representatives

2021 Regular Session

HOUSE BILL NO. 562

BY REPRESENTATIVE BOURRIAQUE

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AN ACT

To amend and reenact R.S. 47:302(K)(7)(b), 337.102(B)(3) and (5), (I)(1) and (3), and (K), and 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, 1418(7)(d), and 1483(C), to enact R.S. 47:337.102(C)(10), 338.223, 1408(D)(3), and 1483(A)(2) and (3), and to repeal R.S. 47:340(I), relative to the administration and adjudication of state and local sales and use taxes; to provide relative to tax administration; to provide for the dedication of local funds to the Board of Tax Appeals; to provide for protective orders and confidentiality of taxpayer information; to provide relative to the membership of the Louisiana Uniform Local Sales Tax Board; to provide for the selection of officers of the Louisiana Uniform Local Sales Tax Board; to provide for the funding of the Louisiana Uniform Local Sales Tax Board; to provide for a strategic plan for the Louisiana Uniform Local Sales Tax Board; to provide for dedications related to the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for agreements relative to funding for the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for membership and qualifications of the Board of Tax Appeals; to provide for employees of the Board of Tax Appeals; to provide for certain Board of Tax Appeals employee salaries; to provide for expenditures for the Board of Tax Appeals; to provide for definitions; to provide for the collection of occupancy taxes; to provide for the payment of Board of Tax Appeals judgments; to provide for certain requirements and limitations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:302(K)(7)(b), 337.102(B)(3) and (5), (I)(1) and (3), and (K), 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, 1418(7)(d), and 1483(C) are hereby

1 amended and reenacted and R.S. 47:337.102(C)(10), 338.223, 1408(D)(3), and 1483(A)(2)
2 and (3) are hereby enacted to read as follows:

3 §302. Imposition of tax

4 * * *

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

6 * * *

7 (7)

8 * * *

9 (b) The amount specified in Item (a)(i) of this Paragraph as transferred to the
10 Department of State Civil Service, Board of Tax Appeals, shall be increased by fifty-
11 five thousand dollars on July 1, 2015, by thirty-two thousand dollars on July 1, 2016,
12 and by ~~five~~ twelve thousand dollars on the first day of each of the subsequent fiscal
13 years. The amounts specified in this Subparagraph and Subparagraph (a) of this
14 Paragraph shall be transferred by the secretary within the first thirty days of each
15 fiscal year and the Department of State Civil Service, Board of Tax Appeals, may
16 retain all funds that are transferred as directed in this Subparagraph and
17 Subparagraph (b) of this Paragraph.

18 * * *

19 §337.102. Louisiana Uniform Local Sales Tax Board; creation; membership;
20 powers and duties

21 * * *

22 B. Board membership and organization.

23 * * *

24 ~~(3) The board member appointments provided for in Subparagraphs (B)(1)(e)~~
25 ~~through (h) of this Section shall be made no later than August 31, 2017.~~ Employees,
26 legal counsel, and vendors of a single parish collector's office shall not be eligible
27 for appointment to the board. Members appointed to the board pursuant to
28 Subparagraphs (B)(1)(e) through (h) of this Section shall serve at the pleasure of the
29 respective appointing authority. The appointing authorities shall coordinate their
30 appointments to the board in order that the board's membership is representative of

1 the diverse regions of the state and to ensure that no two members represent a single
2 parish.

3 * * *

4 (5) The board ~~shall hold its organizational meeting no later than October 15,~~
5 ~~2017, at which time it shall elect a chairman, vice chairman, and such other officers~~
6 as determined necessary at the first meeting by the board.

7 * * *

8 C.

9 * * *

10 (10) Hold an executive session pursuant to R.S. 47:16 for any of the reasons
11 contained in R.S. 47:17 and for the discussion of policy advice, private letter rulings,
12 or other matters potentially involving confidential taxpayer information. The records
13 and files of the board held for the purpose of enforcement of the tax laws shall be
14 deemed to be the files and records of a political subdivision of the state subject to the
15 provisions of R.S. 47:1508 in the same manner as any other political subdivision
16 enforcing tax laws related to sales and use taxes.

17 * * *

18 I. Funding. (1) The board shall be funded through a dedication of a
19 percentage of the total statewide collections of local sales and use tax on motor
20 vehicles, as provided for in an agreement with local collectors and in accordance
21 with the limitations provided in this Paragraph and the budgetary policy as provided
22 in Paragraph (2) of this Subsection. Monies shall be payable monthly from the
23 current collections of the tax. The dedication shall be considered a cost of collection
24 and shall be deducted by the state and disbursed to the board prior to distribution of
25 tax collections to local taxing authorities. The dedication shall be in addition to any
26 fee imposed by the office of motor vehicles for the collection of the local sales and
27 use tax on motor vehicles. The amount to be disbursed to the board in any fiscal year
28 after Fiscal Year 2018-2019 shall not, under any circumstances and notwithstanding
29 any budget adopted by the board, exceed ~~the following:~~

1 E.(1) Notwithstanding any provision of law to the contrary, a board member
 2 shall continue to serve until a successor has been appointed. No member may be
 3 removed except by (a) induction into office of a successor, duly appointed and
 4 qualified pursuant to this Section, upon expiration of a term of office or (b) for good
 5 cause shown, which shall be subject to judicial review.

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

13 * * *

14 §1404. Employees of the board

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

19 B.(1) The board shall fix the salaries of the ~~secretary-clerk, clerk and any~~
 20 ~~stenographer-reporter and.~~

21 (2) The board shall fix the salaries of other employees pursuant to
 22 administrative rules. If a rule requires the equivalent of classified market rate
 23 adjustments, they shall be included in any budget requests or recommendations in
 24 the same manner as applicable for other state classified employees.

25 * * *

26 §1406. Expenditures

27 A. The board is authorized to make ~~such~~ expenditures (including
 28 expenditures for personal services ~~and for,~~ law books, books of reference, and
 29 periodicals), as may be necessary to efficiently execute the functions vested in the
 30 board. ~~All~~ Subject to the provisions of this Subtitle related to the Local Tax

1 Division, the expenditures of the board shall be allowed and paid; out of any monies
 2 appropriated for the purposes of the board. Any item funded pursuant to a written
 3 agreement for a particular service shall be included in any budget request or
 4 recommendation to the full extent of the funding provided for under the agreement.

5 B. The board's self-generated revenue from local cases filed with the board
 6 pursuant to the provisions of the Uniform Local Sales Tax Code shall be expended
 7 exclusively for the purposes of its Local Tax Division, and may be retained by the
 8 board and carried forward for such purposes. No provision of law, including R.S.
 9 47:1998(D), shall be construed to relieve a party of filing fees or case deposits for
 10 causes of actions under this Chapter. Notwithstanding any provision of law to the
 11 contrary, any surplus local revenue provided for under R.S. 47:302(K)(7), R.S.
 12 47:340(E)(5)(i), or other applicable law may be retained as provided for in this
 13 Subsection or held in the local tax division expense fund exclusively for the purposes
 14 of the Local Tax Division.

* * *

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

* * *

D.

* * *

20 (3) The authority pursuant to Article 1426 of the Louisiana Code of
 21 Civil Procedure shall apply to the board and its Local Tax Division in the
 22 same manner as for a district court, and the board may issue an order in
 23 accordance with the provisions of that Article concerning any subpoena or
 24 other discovery pursuant to this Title.

* * *

§1418. Definitions

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

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(7) "State collector" means any of the following:

* * *

(d) Any other collector of state taxes or fees, or any other state agency where an agency action is appealable to the board or is related to state taxes or fees, including related contracts.

* * *

§1483. Payment of approved claims

A.

* * *

(2) If the board approves a claim for an amount less than the amount claimed by the claimant, the board shall submit the new amount to the claimant.

(a) If the claimant accepts the new amount, the claim shall be approved as a judgment pursuant to the provisions of Paragraph (1) of this Subsection.

(b) If the claimant does not accept the new amount, the claim shall be denied.

(c) Any denied claim shall be subject to the provisions provided for in R.S. 47:1486. No other cause of action shall be maintained before the board or any court for a claim that has been approved and has been paid pursuant to the provisions of this Part.

(3)(a) Any amount agreed upon by both parties in a stipulated or consent judgment shall be submitted to the board pursuant to Paragraph (1) of this Subsection. The board may at its sole discretion issue an amended judgment pursuant to this Section when required to correct an error or upon joint application of both parties.

(b) Any stipulated or consent judgment submitted jointly by the claimant or counsel of the claimant and counsel appointed to represent the state of Louisiana not exceeding one hundred thousand dollars shall be paid in the same manner as provided for in Paragraph (B)(1) of this Section during the forty-five day period after the last day of the fiscal year, to the extent funds are available after payment of all

1 other approved judgments for the fiscal year pursuant to Paragraph (B)(1) of this
2 Section.

3 * * *

4 C. When the board approves a claim against the state and the amount of the
5 claim exceeds ~~twenty thousand dollars~~ the amounts required to be paid pursuant to
6 Subsection A of this Section but does not exceed two hundred fifty thousand dollars,
7 the claim shall be submitted to the litigation subcommittee of the Joint Legislative
8 Committee on the Budget for review prior to the next regular session of the
9 legislature. If the claim is approved by the litigation subcommittee, the approved
10 claim shall be paid out of current collections without interest following submission
11 of the authorization to the secretary.

12 * * *

13 Section 2. R.S. 47:340(I) is hereby repealed in its entirety.


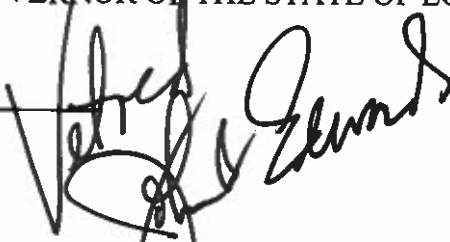
14 Section 3. The Louisiana State Law Institute is authorized and directed to revise
15 Chapter 17 of Title 47 of the Louisiana Revised Statutes of 1950, as amended, by changing
16 all references to the "secretary-clerk" to "clerk".

17 Section 4. This Act shall become effective upon signature by the governor or, if not
18 signed by the governor, upon expiration of the time for bills to become law without signature
19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
20 vetoed by the governor and subsequently approved by the legislature, this Act shall become
21 effective on the day following such approval.


SPEAKER OF THE HOUSE OF REPRESENTATIVES


PRESIDENT OF THE SENATE


GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: 

06/29/2021