



INDEPENDENT AUDIT PROTEST BUREAU CREATED BY LOUISIANA DEPARTMENT OF REVENUE

As of July 1, 2010, a new forum for audit dispute resolution within the Louisiana Department of Revenue is now available to Louisiana taxpayers. This separate, independent unit of the Department, called the Audit Protest Bureau (the “APB”), will be staffed and managed by legal and tax administration experts trained in alternative dispute resolution. The APB is [organized](#) under the Office of the Secretary of Revenue and reports directly to the Secretary. The stated mission of the APB is to resolve tax controversies that derive from an audit on a basis that is fair and impartial to both the Department and the taxpayer. The Department contends that the APB will bring a new level of independence and scope to how the Department handles audit protests.

According to the Secretary of Revenue Cynthia Bridges, the purpose of the APB is to “resolve tax-related disputes at the earliest opportunity,” and the APB should be considered “the first step in a process to find an equitable solution for both parties without resorting to costly and time-consuming litigation.”

The APB began hearing *sales tax* audit assessment protests on **July 1, 2010**.

The APB will begin hearing *income tax* audit protests on **January 5, 2011**. Until then, income tax protests will continue to be heard by the Department’s Field Audit Services Division.

According to the Department, the audit protest process works in three steps:

1. After a proposed tax assessment is issued but *before* formal assessments, the APB will have jurisdictional control of the audit protest process;
2. Taxpayers wishing to dispute an assessment *must* file a protest with the APB *within 30 days* of the date of the proposed assessment;
3. The APB will then determine the facts, identify unresolved issues, and issue a written determination.

Sources within the Department have stated that a taxpayer may lose its right to appeal to the APB if the protest petition is not properly filed with the APB within 30 days of the date of the proposed assessment. Therefore, we recommend that taxpayers interested in having the audit protest heard before the APB be certain to file the protest petition within 30 days of the date of the notice of proposed assessment.

The Department has created a specific *APB protest petition form*, which can be found [here](#).



The Department has also promulgated a new Revenue Information Bulletin ([RIB 10-013](#)), which explains that certain *ex parte* communications will be prohibited to the extent those communications appear to compromise the independence of the APB. Specifically, the Revenue Ruling prohibits:

1. *Ex parte* communications between employees of the division representing the Department and APB employees, directly or indirectly, regarding a protest unless notice and opportunity to participate is given to the taxpayer or his representative;
2. *Ex parte* communications between the taxpayer or its representative and APB employees, directly or indirectly, regarding a protest unless notice and opportunity to participate is given to the Director or his designee of the division representing the Department;
3. *Ex parte* communications between employees of the division representing the Department and the Secretary of Revenue, directly or indirectly, regarding a protest unless notice and opportunity to participate is given to the taxpayer or his representative; and
4. *Ex parte* communications between the taxpayer or its representative and the Secretary of Revenue, directly or indirectly, regarding a protest unless notice and opportunity to participate is given to the employees of the division representing the Department.

However, if one of the above-mentioned parties has waived notice and participation, ***either verbally or in writing***, the other party may communicate with the APB or the Secretary without further notice. According to the Revenue Ruling, a taxpayer's failure to adhere to these above-mentioned *ex parte* guidelines may result in a dismissal of the taxpayer's protest. Interestingly, the Revenue Ruling does not explain the consequences that would result if the Department division employees fail to adhere to these same *ex parte* guidelines.

Jones Walker Practice Commentary

While the creation of the APB seems to be a good development in the administrative dispute resolution process, the jury is still out. Independence will be a key component of the APB process and its success. Thus, it will be critical for the APB to operate independently, even though the APB is still a part of the Department, staffed with Department personnel, and organized so that the Directors of the various tax divisions and the Director of the APB all report to the Secretary.

It also remains to be seen how strictly the *ex parte* communications rules will be enforced. Unless these rules are strictly enforced both within and without the Department, the independence of the APB could be compromised. Without any stated penalties for violations of the *ex parte* communications rules by employees of the Department, one could question whether the rules have any "teeth" when applied against the Department itself.

In addition, we understand that the members of the APB have been trained in the fine arts of mediation and arbitration. Implementing this alternative dispute resolution training in real life situations will be another key component to the success of the APB process.

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Jones Walker Practice Commentary (cont'd)

Again, whether these “concerns” are problematic will only be known after the APB begins handling cases. Taxpayers should approach the APB with optimism and caution.

Taxpayers and their representatives should also be aware that there have been no statutory changes to any of the administrative procedures statutes. Thus, existing rules regarding prescription, responses to formal assessments, and payments under protest still apply. If the APB process does not lead to a resolution of a particular matter at the administrative level, existing procedural rules will “kick in,” thereby requiring taxpayers to take the necessary procedural steps (such as prescription waivers, etc.) to properly protect their interests.

If you have any questions or would like additional information about the APB, please feel free to contact [Jesse R. Adams, III](#), [William M. Backstrom, Jr.](#), [Andre B. Burvant](#), [Kimberly Lewis Robinson](#), or any other member of the Jones Walker State & Local Tax team.



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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