



New Legislation Expands Jurisdiction of Louisiana Board of Tax Appeals

On June 12, 2014, Governor Jindal signed into law [HB 863](#), which expands the jurisdiction of the Louisiana Board of Tax Appeals (the "BTA") and changes a number of state and local tax procedures; most importantly, those regarding appeals of assessments and refund claim denials. The legislation, which was enacted in connection with [HB 798](#) (signed by Governor Jindal on May 22, 2014) was [supported by the Council on State Taxation](#) ("COST") and is expected to raise Louisiana's ranking as a favorable place to do business. The following is a list of the more significant changes resulting from HB 863 and HB 798:

Local-Level Changes (HB 863)

- Provides that local-level sales/use tax assessments and refund claim denials may now be appealed directly to the BTA. This right to appeal a local tax assessment to the BTA generally does not require that the taxpayer "pay under protest" (thus no "pay to play"). Should a taxpayer wish to do so, however, the option to pay a local sales/use tax assessment under protest and file suit is still available.
- Includes a local-level "scofflaw" provision, which provides that a taxpayer who has **failed to file a timely** local sales/use tax return must pay under protest in order to appeal a local sales/use tax final assessment to the BTA. This broad "scofflaw" provision, however, does not apply to those taxpayers who or which have erroneously paid sales/use tax to another taxing authority and complied with the applicable procedural provisions of La. R.S. 47:337.86 regarding credits for taxes paid to incorrect taxing authorities.
- Repeals the generally unsuccessful mandatory arbitration procedure option. **Importantly, within thirty (30) days of the June 12 effective date of HB 863, any pending arbitration matter or pending request for arbitration under La. R.S. 47:337.51.1 must be transferred out of arbitration.** To transfer a matter out of arbitration, the taxpayer must either (1) file a petition for review of the underlying local sales/use tax assessment to the BTA, or (2) pay the disputed assessment under protest and either file suit in court or file a petition with the BTA pursuant to La. R.S. 47:337.63 and 337.64. **ACTION ITEM:** During this 30 day period, taxpayers with a pending local arbitration should consider their procedural rights and responsibilities.
- Provides that a local sales/use tax collector may unilaterally elect to have a local sales/use tax appeal to the BTA heard and ruled on by the "Local Tax Division" BTA board member rather than the full three-member panel of the BTA.

- Permits a local sales/use tax collector to unilaterally request that a BTA hearing of a local sales/use tax matter be held in the local collector's parish.
- Provides that all appeals of denials of local sales/use tax refund claims must go to the BTA.
- Includes within the **local** sales/use tax refund claim procedure a new "deemed denial" provision. If a local collector fails to act on a local sales/use tax refund claim within one year, the refund claim is "deemed denied," and the taxpayer must appeal the collector's "deemed denial" within 180 days of the end of the one-year period in which the collector failed to act. The taxpayer still only has 90 days to appeal a local collector's affirmative denial of a local sales/use tax refund claim.
- Provides that, with regard to all currently pending local sales/use tax refund claims where the local collector has failed to act for one year or more, those pending refund claims must be appealed to the BTA before January 1, 2015. This provision therefore provides a six month grace period for taxpayers to transition all older "deemed denied" refund claims to the BTA following the introduction of the new "deemed denial" provision in HB 863. ***ACTION ITEM:*** During this period, taxpayers with pending local sales/use tax refund claims should consider their procedural rights and responsibilities.
- Provides that a taxpayer's local sales/use tax refund claim now suspends prescription for the local collector to determine whether there is any underpayment of sales/use tax by the taxpayer for the same tax period.
- Provides that a local sales/use tax refund claim in a properly addressed envelope with sufficient postage is deemed filed when postmarked by the United States Postal Service.

State-Level Changes (HB 798)

- Permits the Secretary of the Louisiana Department of Revenue to waive up to \$25,000 in penalties without review by the BTA, an increase from the \$5,000 limitation under prior law.
- Provides that the taxpayer must file an amended Louisiana income tax return within 180 days of receiving a Revenue Agent's Report ("RAR") from the Internal Revenue Service that affects the taxpayer's Louisiana income tax liability.

Additional General BTA Provisions (HB 863)

- Requires that all decisions of the BTA be appealed directly to a Louisiana court of appeal, rather than district court (thereby removing the previously required additional level of appeal to the district court).
- Modifies the specific qualification requirements for the three board members of the BTA. Now, two of the board members must have "tax law experience," which is defined to mean having an LL.M. in Taxation, being a CPA, being a certified Louisiana "tax law specialist," or simply having been a judge. In addition, one of those two members must be a certified tax law specialist.
- Provides that the board members of the BTA are now nominated and appointed through a selection process involving input of both tax collector organizations and taxpayer organizations.

- Permits the BTA to compel all methods of discovery, including requests for admission, interrogatories, requests for production of documents, and depositions.
- Provides that the BTA has no jurisdiction to declare a statute or ordinance unconstitutional, but allows the BTA to conduct hearings to develop a record for appeal if all parties and the Louisiana Attorney General agree.
- Allows for consolidation of pending local tax cases and state tax cases at the BTA upon agreement of all parties.

Jones Walker Commentary

Generally, the changes made by the legislature in HB 863 and HB 798 appear to be a step in the right direction. Unfortunately, some of the procedural changes needlessly perpetuate a lack of uniformity in the state and local tax procedures. In addition, taxpayers should be aware of the potential procedural traps lurking in the language of HB 863. For example, taxpayers should remain aware of the following:

- the 30 day deadline to transition all matters out of arbitration;
- the January 1, 2015, deadline to appeal to the BTA all older refund claims that may now be considered to be "deemed denied" under the new law; and
- the lack of uniformity found in the new provision providing a 180 day deadline for a taxpayer to appeal a collector's "deemed denial" of a local sales/use tax refund claim, while only providing a 90 day deadline for a taxpayer to appeal a collector's affirmative denial of a refund claim.

The Jones Walker SALT Team will continue to monitor any potential issues that may arise as a result of this new legislation. Taxpayers should be sure to carefully consider all of their procedural rights and responsibilities following these new procedural changes.

— [Jesse R. "Jay" Adams, III](#), [Andre B. Burvant](#), [Matthew A. Mantle](#) and [Justin B. Stone](#)

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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