

A View from the Bench:

Louisiana Salt Litigation Update for the State and Local Tax Workshop, November 8, 2019

- Judge Tony Graphia, Chairman, Louisiana Board of Tax Appeals
- Cade R. Cole, Vice-Chairman, Louisiana Board of Tax Appeals and Local Tax Judge
- Francis “Jay” Lobrano, Member, Louisiana Board of Tax Appeals

Ulrich v. Robinson

2018-0534 (La. 3/26/19); 2019 WL 1395316

- **Facts:** 2015 Act 131 capped solar tax credits. Affected Taxpayers filed declaratory judgment actions.
- **While suits pending:** legislature enacted 2017 Act 413 paying eligible solar credit claims in 3 annual installments (no interest).
- **Did Act 413 rendered claims moot?**
- **LASC Holding:** Act 413 mooted claims based on unconstitutionality.
- **Harm to Taxpayers'** not remediable by declaratory judgment.
- **Dissent (Justice Hughes):** Damage to credit should trigger collateral consequences exception to mootness doctrine.
- **Taxpayers'** refund claims still pending before the BTA.

Ivan Smith v. Robinson

2018-0728 (La. 12/5/18); 265 So.3d 740

- **Facts:** 2015 Act 109 restricted credit for taxes paid to other jurisdictions that had no corresponding credit for La. taxes
- Plaintiffs, Louisiana residents, owned interests in pass-through entities doing business in Texas, Arkansas and Louisiana. They paid individual income tax in Louisiana on income generated from the pass-through entities, but also paid Texas Franchise Tax on the same income. Texas Franchise Tax does not have a reciprocal credit provision.
- **Issue:** Is Texas franchise tax is an income tax under federal commerce clause? Does Act 109 passed *Complete Auto* test?

Ivan Smith v. Robinson

2018-0728 (La. 12/5/18); 265 So.3d 740

- **Holding:** Texas Franchise Tax is an income tax. Act 109 failed fair apportionment and non-discrimination prongs.
- Taxpayers who generated income in Texas and Louisiana subjected to double taxation. But, Taxpayers who generated income solely in Louisiana only taxed once.
- On rehearing, Court upheld limiting credit to only zeroing the amount that would be paid on that same activity under Louisiana tax regime.

Louisiana Supreme Court

Writs granted/denied:

- ***Normand v. Wal-Mart.com USA, LLC Holding*, 18-211 (La. App. 5 Cir. 12/27/18); 263 So.3d 974, writ granted, 2019-0263 (La. 5/6/19); 2019 WL 2021643.**
- ***New Orleans Riverwalk Marketplace, LLC v. Louisiana Tax Commission*, 2017-0968 (La.App. 4 Cir. 4/30/18); 243 So.3d 1070, writ denied, 2018-0889 (La. 9/28/18); 252 So.3d 925.**
- ***Bannister Properties, Inc. v. State*, 2018-0030 (La. App. 1 Cir. 11/2/18); 265 So.3d 778, writ denied, 2019-0025 (La. 3/6/19); 266 So.3d 902**

***Writ Granted:
Normand v. Wal-Mart.com USA, LLC Holding***

18-211 (La. App. 5 Cir. 12/27/18); 263 So.3d 974, writ granted, 2019-0263 (La. 5/6/19); 2019 WL 2021643

- **Facts:** Wal-Mart operated online marketplace where third parties sold goods for referral fee.
- Third parties provided product info. Customers ordered goods thru Wal-Mart's checkout system. Wal-Mart collected payment and sent order info to third party. Third party had responsibility for delivery.
- Wal-Mart never took possession or title to merchandise.
- Issue was whether Wal-Mart was a dealer under La. R.S. 47:301(4)(I).

Normand v. Wal-Mart.com USA, LLC Holding

18-211 (La. App. 5 Cir. 12/27/18); 263 So.3d 974, writ granted, 2019-0263 (La. 5/6/19); 2019 WL 2021643

- **Holding:** Wal-Mart is a dealer engaged in “regular or systematic solicitation of a consumer market” in Jefferson Parish.

- **Fifth Circuit :**

The Marketplace “provides to third-party Marketplace retailers the service of enabling them to reach new customers.... a service that brings retailers and customers together, facilitating retailers ‘gaining new customers, providing various services...facilitating payment processing and taking on risks of fraudulent activity and customers, as well as advising and making sure the retailer's products are found by potential new customers.’ ”

Wal-Mart.com, 18-211, at p. 6; 263 So.3d at 979, writ granted, 2019-0263 (La. 5/6/19).

New Orleans Riverwalk Marketplace, LLC v. Louisiana Tax Commission

2017-0968 (La. App. 4 Cir. 4/30/18); 243 So.3d 1070, writ denied, 2018-0889 (La. 9/28/18); 252 So.3d 925

- **Facts:** Taxpayer claimed ad valorem property tax did not apply to publicly owned land.
- Issue on appeal was whether bringing action with Board of Review was procedurally improper.
- **Holding:** Taxpayer erred challenging legality of assessment with Board of Review. Legal challenges to ad valorem tax assessments must follow payment under protest procedure, La. R.S. 47:2134(C).

Bannister Properties, Inc. v. State

2018-0030 (La. App. 1 Cir. 11/2/18); 265 So.3d 778, writ denied, 2019-0025 (La. 3/6/19);
266 So.3d 902

- **Facts:** Bannister Properties, Inc. filed refund denial appeals for corporate franchise tax based on *UTELCOM, Inc. v. Bridges*, 2010-0654 (La. App. 1st Cir. 9/12/11), 77 So.3d 39, 48-50, writ denied, 2011-2632 (La. 3/2/12), 83 So.3d 1046.
- While cases were pending, Taxpayers and LDR settled the companion §1481 claims against the state. BTA signed Joint Recommendations for payment of settled claims.
- Taxpayers reserved their rights to pursue their refund claims if claims not paid. After the legislature did not appropriate funds to satisfy the claims, Taxpayers filed BTA motions for summary judgment on merits of refunds.
- LDR filed cross motions for summary judgment, arguing La. R.S. 47:1621(F) barred refunds because overpayments resulted from LDR's mistake of law.
- BTA granted the Taxpayers' motion for summary judgment

Bannister Properties, Inc. v. State

2018-0030 (La. App. 1 Cir. 11/2/18); 265 So.3d 778, writ denied, 2019-0025 (La. 3/6/19);
266 So.3d 902

- La. R.S. 47:1621(F), provides that a taxpayer who seeks a refund of an overpayment based on the Secretary's mistake of law must utilize either the payment under protest procedure, or "appeal to the Board of Tax Appeals in instances where such appeals lie."
- Taxpayers argued that "where such appeals lie" refers to a refund overpayment appeal. LDR interpreted this language as referring only to the claims against the state procedure.
- BTA relied on *TIN, Inc. v. Washington Parish Sheriff's Office*, 2012-2056 (La. 3/19/13), 112 So.3d 197, where Supreme Court stated that "instances where such appeals lie refers to La. R.S. 47:1625 [refund overpayment procedure]."
- First Circuit agreed with LDR (concurring judge questioned constitutionality of the statutory regime but found that issue was not raised).

Bannister Properties, Inc. v. State

2018-0030 (La. App. 1 Cir. 11/2/18); 265 So.3d 778, writ denied, 2019-0025 (La. 3/6/19);
266 So.3d 902

■ First Circuit:

Agreed with LDR that Supreme Court's statement in *TIN*, 112 So.3d at 202, is *dicta* and is not binding on either the BTA or First Circuit.

Found that statutes providing for tax refunds must be strictly construed against the taxpayer, and held that §1621(F) denies the refund.

First Circuit considered settlement agreements entered into before BTA in unrelated cases whereby a subset of *Utelcom* claimants stipulated that their refund claims were barred by La. R.S. 47:1621(F) finding it an “inconsistent interpretation and application of 47:1621(F).”

Legislative Response

2019 Act 367, Effective June 18, 2019

- La R.S. 47:1625(F) repealed in its entirety.
- **La. R.S. 47:1621(B)(10)** added as new law:
The Secretary shall make a refund of an overpayment due to an unconstitutional law, invalid or unenforceable rule or regulation, or because of a mistake of law arising from the misinterpretation by the collector of the provisions of any law or of any rule or regulation.

Willow Bend Ventures, LLC v. Collector, St. John the Baptist Parish

18-660 (La. App. 5 Cir. 8/14/19); 2019 WL 3819845

- **Facts:** Taxpayer sold processed dirt for use in construction projects.
- La. R.S. 47:301(10)(g) provides exclusion for sales of certain property when intended for future sale to the US government.
- Some invoices identified Corps projects, some did not.
- Taxpayer offered testimony from employees about what customers said they would do with the dirt. BTA excluded testimony as hearsay and found ambiguous invoices taxable.
- Taxpayer appealed to Fifth Circuit.

Willow Bend Ventures, LLC v. Collector, St. John the Baptist Parish

18-660 (La. App. 5 Cir. 8/14/19); 2019 WL 3819845

- **Holding:** Affirmed. Taxpayer bears the burden of proving facts that establish entitlement to an exclusion.
- Taxpayer did not carry burden with invoices that were silent or ambiguous on relationship to Corps projects.
- Example: invoices with “generic references to towns or places without anything more to tie an invoice to an identifiable Corps contract.”
- BTA correctly applied evidentiary rules and it was the “definition of hearsay.”

Lafayette General Medical Center, Inc. V. Robinson

2018-879 (La. App. 3 Cir. 8/14/19); 2019 WL 3812036

- **Facts:** Hospital purchased and prescribed medical devices (pacemakers, stents, etc.) to patients.
- Under La. R.S. 47:301(20), medical devices are included in the definition of prescription drugs that are exempt from sales tax under La. Const. Art. VII § 2.2(B)(3).
- 2016 1st Ext. Sess. Acts 25 and 26 suspended La. R.S. 47:301(20). Suspension for medical devices later repealed by legislature.
- Issue was whether medical devices were still “prescription drugs” despite Acts 25 and 26.

Lafayette General Medical Center, Inc. V. Robinson

2018-879 (La. App. 3 Cir. 8/14/19); 2019 WL 3812036

- **Holding:** Medical devices remained exempt as prescription drugs.
- Third Circuit held “Prescription drugs” ambiguous because term historically included medical devices. Third Circuit also reasoned that ambiguity should be interpreted against an “expansion of taxes on the general public in favor of the taxing authority.”
- Third Circuit disregarded legislature’s decision to reinstate the exemption because the Court assumed it did not want to penalize the Hospital for its efforts to reverse the suspension.
- Applied rules for statutory construction instead of prior jurisprudence on construction on constitutional provisions

FMT Shipyard & Repair, LLC v. Normand

18-292 (La. App. 5 Cir. 5/30/19); 2019 WL 2295500

- **Facts:** Shipyard performed repairs and fabricated parts for vessels. Shipyard paid parish Occupational License Tax (OLT) as a contractor rather than a shipbuilder.
- **Holding:** Shipyard should be classified as a shipbuilder for purposes of OLT.
- OLT ordinance contemplated that a taxpayer could be engaged in multiple businesses and that correct tax depended on taxpayer's primary business.
- Taxpayer's primary business was vessel repairs.

Avanti Exploration, LLC v. Robinson

2018-750 (La. App. 3 Cir. 4/17/19); 268 So.3d 1093

- **Facts:** Taxpayer sold oil to buyers who took title and delivery at the lease in the field.
- Buyers transported oil to market themselves and paid a lower price.
- Severance tax is calculated on the greater of: producer's gross receipts, or posted field price. A producer's transportation costs in getting oil & gas to market are deducted from gross receipts when calculating the tax (but limited to \$0.25 per bbl if transport is provided by taxpayer themselves).
- LDR determined that the Taxpayer's gross receipts should have included the costs of transporting the oil from the field to market.
- BTA granted the Taxpayer's motion for summary judgment. LDR appealed to the Third Circuit.

Avanti Exploration, LLC v. Robinson

2018-750 (La. App. 3 Cir. 4/17/19); 268 So.3d 1093

- **Holding:** Affirmed.
- Taxpayer's customers took ownership of the oil at the field, Taxpayer incurred no transportation costs.
- Reduction in cost was passed on to Taxpayer's customers through arms-length transactions. What Taxpayer actually received from those customers was the Taxpayer's gross receipts.
- There was no posted field price and no evidence to support the Department's calculations.

American Multi-Cinema, Inc. v. Normand

18-487 (La. App. 5 Cir. 3/27/19); 267 So.3d 197 (BTA Docket No. L00214)
18-488 (La. App. 5 Cir. 4/3/19); 268 So.3d 1167 (BTA Docket No. L00216)

- **Facts:** Theater offered rewards program for annual fee. Rewards members accrued \$10 reward per \$100 spent usable for purchasing goods and services at theaters.
- Members could use rewards in any increment, retained unspent balance for later use.
- Theater posted tax-inclusive prices for tickets and concessions.
- Members could use rewards on entire tax-inclusive purchase.
- Theater collected sales tax on reduced prices after rewards, but remitted tax on the un-reduced price.
- **Two Issues:** (1) were membership fees taxable access to a club?
(2) could theater obtain refunds of taxes remitted based on full price?

American Multi-Cinema, Inc. v. Normand

18-487 (La. App. 5 Cir. 3/27/19); 267 So.3d 197 (BTA Docket No. L00214)
18-488 (La. App. 5 Cir. 4/3/19); 268 So.3d 1167 (BTA Docket No. L00216)

- **Holding (1):** Membership fees not taxable access to a club under La. R.S. 47:301(14)(b)(i)(aa). Ambiguous and rewards program did not provide access to physical location.
- **Holding (2):** Theaters could not claim a refund as they were not the taxpayer. Rewards were not a discount; members retained unused rewards. Members could apply rewards to full purchase price, including tax.. The remitted amount was reduced from customer reward accounts, so the economic burden of paying the tax fell on customers (not dealer).

Lafayette Parish School Board v. Imagine Management, LLC

2018-531 (La. App. 3 Cir. 3/7/19); 270 So.3d 694

- **Facts:** Parish filed summary rule against Taxpayer after assessment went final. District Court allowed Taxpayer to testify and present substantive defenses at summary rule hearing without compliance with statutory procedure. Judgment in Taxpayer's favor.
- **Holding:** Taxpayer's attempt to present substantive arguments for the first time at summary rule hearing was untimely.
- In addition, ruling below was so unclear that it did not constitute an actual judgment (see colloquy on next slide).

*Lafayette Parish School Board v. Imagine Management,
LLC*

2018-531 (La. App. 3 Cir. 3/7/19); 270 So.3d 694

- Transcript from District Court proceedings:

[COURT]:

. . . . I'm going to deny your judgement.

[COUNSEL FOR PARISH]:

You're going to what?

[COURT]:

I'm denying it.

[COUNSEL FOR PARISH]:

It's a final assessment, Your Honor.

[COURT]:

Well, I'm still denying it. Y'all can take it up to the Third Circuit and let them figure it out.

Ulrich v. Robinson

2017-1119 (La. App. 1 Cir. 11/1/18); 265 So.3d 108

- **Facts:** Same as *Ulrich*, supra; Taxpayers challenged constitutionality of Act 135, but issue in this decision was whether Taxpayers could proceed via class action.
- **Holding:** Class could not be certified. Some class members did not timely appeal the denial of their credits and did not have standing to challenge Act 135. Class representatives would not possess claims typical of class members without standing.

Gross v. State

2017-0572 (La. App. 1 Cir. 2/28/19); 273 So.3d 350

- **Facts:** Similar to *Ulrich*. Taxpayer claimed solar credit for 2015. LDR denied claim but assured priority status for FY 2017-2018. Taxpayer challenged Act 135 and sought class certification.
- **Holding:** Like *Ulrich*, Taxpayer could not represent individuals whose claims were denied and did not appeal. However, Taxpayer could represent members whose claims were similarly deferred by LDR. Remanded with more limited class for consideration of other class certification criteria under La. C.C.P. art. 591.

Metals USA Plates & Shapes Southeast, Inc. v. Robinson

17-421 (La. App. 5 Cir. 12/27/18); 263 So.3d 1229

- Identical to *Metals USA Plates & Shapes Southeast, Inc. v. Louisiana Dept. of Revenue*, 2017-699 (La. App. 3 Cir. 3/21/18); 240 So.3d 1016.
- Taxpayers appealed refund denial for sales tax on welding gases
- In 2008, legislature amended R.S. 47:301(10)(x) twice in one day. Conflicted on taxability of non-residential purchases of fuel and gas.
- Louisiana State Law Institute published a hybrid of both amendments.
- BTA ruled that the later-adopted provision controlled, making sales taxable.
- **Holding:** Affirmed. Though separated by mere hours, latter expression of legislative will controlled. Law Institute exceeded its authority in trying to harmonize the amendments.

BTA DECISIONS:

Lott Oil Co. Inc. v. Secretary, Department of Revenue

BTA Docket No. 11384D (La. Bd. Tax App. 11/7/18) 2018 WL 7197506

- **Facts:** Taxpayer claimed AFTC under La. R.S. 47:6035(C) for Flex Fuel Vehicles (FFV's). LDR disallowed AFTC for FFV engines.
- La. R.S. 47:6035(C) provided a credit for the cost of qualified clean-burning motor vehicle fuel property attributable to: (1) the storage of alternative fuel; (2) the delivery of alt fuel to the engine; and (3) the exhaust of gases from the combustion of alt fuel.
- Did engine of a FFV meet one of the above criteria?

BTA DECISIONS:

Lott Oil Co. Inc. v. Secretary, Department of Revenue

BTA Docket No. 11384D (La. Bd. Tax App. 11/7/18) 2018 WL 7197506

- **Holding:** FFV engine does not qualify for the AFTC under La. R.S. 47:6035(C). Engines do not store and deliver fuel; engines *receive* and *consume* fuel. Engines are also distinct from a vehicle's exhaust system.
- *Barfield v. Bolotte* dealt with 47:6035(B) which provides a credit for vehicles that contain some qualifying property. There was no shown qualifying property in this record.

Luba Casualty Ins. Co. v. Secretary, Louisiana Department of Revenue

BTA Docket No. 9462D (La. Bd. Tax App. 12/11/18) 2018 WL 7501671

- **Facts:** Taxpayer insurance company paid municipal premium taxes and Louisiana Insurance Rating Assessments (LIRA).
- La. R.S. 47:227 provides the premium tax credit for taxes based on premiums that are paid “by virtue of any law of this state.”
- **2 Issues:** Whether payments of (1) municipal taxes and/or (2) LIRA qualified for the premium tax credit.

Luba Casualty Ins. Co. v. Secretary, Louisiana Department of Revenue

BTA Docket No. 9462D (La. Bd. Tax App. 12/11/18) 2018 WL 7501671

- **Holding (1):** Municipal taxes qualify for the premium tax credit. They are paid “by virtue of” La. R.S. 22:833(A), authorizing municipal governments to levy premium taxes.
- **Holding (2):** LIRA qualifies for the premium tax credit under *Audubon Insurance Co. v. Bernard*, 434 So.2d 1072 (La. 1983). LIRA collections raise revenue beyond what is needed to regulate insurance, they are dedicated to other purposes.
- LIRA collections benefit society generally by supporting retirement funds for firefighters, police and civil servants.

*Davis Lynch Holding Co. Inc. v. Secretary, Louisiana
Department of Revenue*

BTA Docket No. 9586D (La. Bd. Tax App. 12/11/18) 2018 WL 7501665

- **Facts:** Taxpayer included income from selling an LLC in the sales factor of its Louisiana apportionment formula.
- This income was not from Taxpayer's regular course of business.
- La. R.S. 47:287.95(F)(1)(c) defines the sales factor as the ratio of net sales made in the regular course of business and "other gross apportionable income" attributable to Louisiana over the total net sales made in the regular course of business and "other gross apportionable income."

*Davis Lynch Holding Co. Inc. v. Secretary, Louisiana
Department of Revenue*

BTA Docket No. 9586D (La. Bd. Tax App. 12/11/18) 2018 WL 7501665

- LAC 61:I.1134(D) excludes revenue from outside the Taxpayer's regular course of business from the sales factor.
- **Holding:** R.S. 47:287.95(F)(1)(c) refers to income from the regular course of business and *other gross apportionable income*. To have any effect, this language must entail income from sources other than the regular course of business.
- Taxpayer properly included this income in its sales factor.
- BTA applied the express statutory law, not the regulation.

Frank's International, LLC v. Kimberly Robinson

BTA Docket No. 10050D (La. Bd. Tax App. 12/11/18) 2018 WL 7501667

- **Facts:** Taxpayer manufactured tools in Louisiana. Some tools were manufactured for use outside the state.
- Taxpayer paid Louisiana use tax on all tools fabricated.
- Taxpayer kept robust records of which tools it stored for use outside Louisiana. Taxpayer filed refund claims for use tax paid on these tools.
- Issue was whether use tax applied to tools which were merely stored in the state for use elsewhere.

Frank's International, LLC v. Kimberly Robinson

BTA Docket No. 10050D (La. Bd. Tax App. 12/11/18) 2018 WL 7501667

- **Holding:** Louisiana does not tax the storage of property for use outside the state.
- That an item is intended for ultimate use in interstate commerce does not present a constitutional barrier to taxation. However, La. R.S. 47:302(A) imposes use tax on storage “for use or consumption in this state.” [emphasis added].
- The taxing statute on its face does not impose tax on items stored for use outside this state.
- Exceptionally good record with very detailed logs of use

James C. Burns Forced Portion Trust v. Kimberly L. Robinson, Secretary Department of Revenue

BTA Docket No. 10479B (La. Bd. Tax App. 12/11/18) 2018 WL 7501662

- **Facts:** Taxpayer filed a 2015 Louisiana fiduciary return after the April 15 deadline. LDR assessed late filing penalties.
- Taxpayer claimed that penalties were not due because it had received a federal extension to file until September 15, 2015. LDR records showed receipt of the return on September 17, 2015.
- Taxpayer could not produce a certified mailing receipt to prove when the return was mailed.
- **Holding:** Taxpayer filed late, triggering penalties.
- Taxpayer could not prove filing by the extended deadline. Consequently, even if the federal extension had operated to extend state deadlines, the Taxpayer would still have been late.

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **Facts:** Taxpayer Nevada corporation owned and operated Treasure Chest Casino and the Delta Downs via Louisiana subsidiaries.
- Subsidiaries pooled cash into a common “Concentrator” account.
- If a subsidiary needed cash, it would draw from the Concentrator account. Taxpayer recorded money “due to” and “due from” its subsidiaries based on deposits and withdrawals. However, Taxpayer could freely take money out of the Concentrator account.
- Taxpayer provided management and support services to its affiliates for an annual flat fee plus an hourly rate.

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **4 issues:**
 - **(1) Is the Concentrator account included in franchise tax base;**
 - **(2) the effect of decreases in subsidiary value on franchise tax base;**
 - **(3) classification and allocation of “equity pickup” revenue from the subsidiaries; and**
 - **(4) inclusion of support service charges in the apportionment sales factor.**

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **Holding (1):** Amounts in the Concentrator account were “borrowed capital” includable in Taxpayer’s franchise tax base under prior law.
- La. R.S. 47:603 defines borrowed capital to include capital substantially used to finance or carry on the taxpayer’s business. Taxpayer was free to use this money for its own business purposes.
- The funds were not a “deposit.” La. R.S. 47:603(B)(2) requires deposits to be segregated from other funds and not otherwise used in the conduct of Taxpayer’s business.
- Amounts in the Concentrator account were not segregated.

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **Holding (2):** Decreases in the value of a subsidiary decreased Taxpayer's franchise tax base.
- Under La. R.S. 47:605(A), surplus and undivided profits are included in the franchise tax base. Surplus and undivided profits include the value of investments in subsidiaries.
- GAAP required Taxpayer to record the value of investments under the equity method. The equity method records the subsidiary value based on its actual current value. There is no minimum "floor" on the value of an investment when using the equity method.

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **Holding (3):** An increase in value from subsidiaries (equity pickup revenue) is “other revenue” under La. R.S. 47:606(A)(1) includible in the numerator and denominator of the sales factor.
- Equity pickup revenue is encompassed by the terms “revenues from a parent or subsidiary corporation” used in La. R.S. 47:606(B).
- Under La. R.S. 47:606(A) “revenue from” a subsidiary is to be allocated according to the percentage of capital employed by the parent or subsidiary in the state.

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 12/12/18) 2018 WL 7501719 (Boyd I)

- **Holding (4):** Support service charges are presumptively includable in the sales factor.
- LAC 61:1.306(A)(1)(d)(iii) states that when “it can be shown that charges for services constitute a pure recovery,” those charges are not includable in the sales ratio. [emphasis added]. This presumptively includes all charges unless shown otherwise.
- The ‘flat fee’ was included and the ‘per hour’ was not included

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 9/12/19) (Boyd II)

- BTA issued additional written reasons to resolve 4 lingering issues:
- **1) Money in the Concentrator account was not excluded from Taxpayer's franchise tax base under La. R.S. 47:605.1(B)(2) as "trade debt that is less than 180 days old."**
- **Amounts swept up from subsidiaries on a daily basis do not meet the dictionary definition of trade debt (money owed by another business for goods and services).**
- **2) La. R.S. 47:606(B) requires support fee revenue from a subsidiary to be sourced in accordance with the percentage of capital employed in Louisiana for corporation franchise tax purposes by the subsidiary.**

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 9/12/19) (Boyd II)

- **3) Taxpayer required to calculate partnership income on a book basis.**
- **Taxpayer had not shown that the tax basis method would have made no difference in proportions of “income, expenses, gains, losses, credits and other items accruing to the taxpayer from the partnership for book purposes and tax purposes” as required under LAC 61:I.306(A)(1)(j)(iii)(c). Further, the tax basis method would suggested have been inconsistent with Taxpayer’s 2008, 2009 and 2010 returns.**

Boyd Gaming Corp. v. Louisiana Department of Revenue

BTA Docket No. 9616D (La. Bd. Tax App. 9/12/19) (Boyd II)

- 4) Losses resulting from decreases in the book value of a subsidiary were not revenue includable in the sales factor.
- These losses are functionally identical to losses derived from a partnership. LAC 61:I.306(A)(1)(j)(iii)(b) states that “Losses from a partnership are not revenues from a partnership.”

Zelia, LLC v. Kimberly Robinson, Secretary Department of Revenue

BTA Docket No. 10430D (La. Bd. Tax App. 4/10/19) 2019 WL 2487926 (Graphia), 2019 WL 2487929 (Cole), 2019 WL 2487928 (Lobrano)

- **Facts:** Taxpayer entered into an EZ Contract with LED and received a refundable tax credit. LED ultimately canceled the EZ Contract and notified LDR. LDR issued a claw-back assessment.
- BTA ruled that it had jurisdiction. Defendants sought supervisory writs and First Circuit held that the underlying contract dispute with LED was the ‘real dispute’ and could not be ruled on. On remand, LDR argued that there was nothing left to do but dismiss the case.
- Issue on remand was whether any material dispute of fact remained after the First Circuit’s ruling.

Zelia, LLC v. Kimberly Robinson, Secretary Department of Revenue

BTA Docket No. 10430D (La. Bd. Tax App. 4/10/19) 2019 WL 2487926 (Graphia),
2019 WL 2487929 (Cole), 2019 WL 2487928 (Lobrano)

- **Holding:** A divided BTA dismissed the case.
- Chairman Graphia held that LDR was required to recoup the credit upon receiving notice of cancellation.
- Vice-Chairman Cole concurred separately to state that the First Circuit's ruling bound the BTA even if he didn't agree with its logic.
- Board Member Lobrano dissented, arguing that the BTA could still examine the credit statute underpinning the EZ Contract, review LDR's exercise of its assessment authority, and that Taxpayer was unconstitutionally left without any effective remedy.

Kim I. Miller v. Kimberly Robinson, Secretary Department of Revenue

BTA Docket No. 10157B (La. Bd. Tax App. 4/11/19) 2019 WL 2487944

- **Facts:** Petitioner's appeal concerned a levy on her bank account. LDR filed no responsive pleadings except an answer on the day of the hearing. At the hearing, LDR claimed the levy was done pursuant to a final assessment.
- Issue was whether LDR could prove the assessment was final.
- **Holding:** LDR failed to establish via any evidence the finality of the assessment. There was no proof of mailing of the assessment to Petitioner in accordance with La. R.S. 47:1565(A).
- A statutorily deficient assessment is not final under *Catahoula Parish School Board v. Louisiana Machine Rentals, LLC*, 2012-2504, (La. 10/15/13); 124 So.3d 1065.

Kent Berger & Estella Youngblood v. Department of Revenue

BTA Docket No. C05763A (La. Bd. Tax App. 8/14/19)

- **Facts:** In 2016, Husband lived in Louisiana and Wife lived in Texas. Husband reported Wife's Texas wages on a Louisiana joint resident return. Wife moved back to Louisiana in 2017.
- Husband testified that Wife's Texas job was temporary. LDR demonstrated that Wife's name remained on title to Taxpayers' home in Louisiana and that Wife claimed a homestead exemption.
- **Issue:** Was Wife was a Louisiana resident for income tax purposes?
- **Holding:** Wife's 2016 domicile was Louisiana. Husband's testimony demonstrated her living situation in Texas was temporary. The short term rental there and homestead exemption here showed intent to return to Louisiana.

William and Amy Reilly v. Tim Barfield, Department of Revenue

BTA Docket No. 7923 (La. Bd. Tax App. 8/14/19)

- **Facts:** In 2012 Taxpayers purchased a truck which qualified for the AFTC. Taxpayers inadvertently claimed the credit on their 2011 return.
- In 2016, Taxpayers first claimed the AFTC on an amended 2012 return.
- 2015 Act 125 reduced the allowable AFTC from \$3,000 to \$1,500.
- Issue was whether 2015 Act 125 limited Taxpayers' allowable credit.
- **Holding:** Act 125 capped Taxpayers' claim at \$1,500. Section 7 of Act 125 provides that the cap applies to "any return filed on or after July 1, 2015." There is an exception for an original return filed before Act 125's effective date, but Taxpayers did not claim the AFTC on their original 2012 return.

The Joint on Poland, LLC v. Tim Barfield, Secretary, Department of Revenue

BTA Docket No. 10812C (La. Bd. Tax App. 8/14/19)

- **Facts:** In 2012, Taxpayer received a letter from LDR stating that it did not owe New Orleans Exhibition Hall Authority Tax (NOEHAT).
- Taxpayer's officer called LDR's customer service line for an explanation of what the NOEHAT was and what the letter meant. LDR's employee stated that Taxpayer did not owe NOEHAT based on LDR's records and to file "zero returns" until further notice.
- Taxpayer received additional letters from LDR stating that it did not owe NOEHAT from 2012 to 2016. During that time Taxpayer did not collect NOEHAT from its customers.

The Joint on Poland, LLC v. Tim Barfield, Secretary, Department of Revenue

BTA Docket No. 10812C (La. Bd. Tax App. 8/14/19)

- In 2016, LDR audited and assessed Taxpayer for unpaid NOEHAT.
- Could Taxpayer invoke estoppel under *Showboat Star Partnership v. Slaughter*, 200-1227 (La. 4/3/01); 789 So.2d 554?
- *Showboat Star* requires:
 - (1) Unequivocal advice from an unusually authoritative source;
 - (2) Reasonable reliance on that advice;
 - (3) Extreme harm as a result; and
 - (4) Gross injustice absent estoppel.
- LDR conceded prongs (1) and (2) in its pleadings.

The Joint on Poland, LLC v. Tim Barfield, Secretary, Department of Revenue

BTA Docket No. 10812C (La. Bd. Tax App. 8/14/19)

- **Holding:** Taxpayer proved extreme harm and gross injustice, triggering estoppel.
- Under *CHL Enterprises v. Department of Revenue*, 2009-487 (La. App. 3 Cir. 11/4/09); 23 So.3d 100; writ denied, 2009-2613 (La. 2/12/10); 27 So.3d 848 extreme harm and gross injustice do result from being forced to pay someone else's taxes.
- When a dealer does not collect sales tax from the customer, the dealer becomes liable for the tax by operation of law. Likewise, The Taxpayer's non-collection of NOEHAT would make Taxpayer responsible for customers' tax liability.

Kamran Khoobehi v. Secretary, Department of Revenue

BTA Docket No. 11326A (La. Bd. Tax App. 8/14/19)

- **Facts:** Taxpayer claimed the fueling-station AFTC under La. R.S. 47:6035(B)(2) for installing solar-panel-powered Electric Vehicle (EV) charging stations at his business.
- The charging stations deliver electricity to the battery of an EV.
- LDR denied the credit as to the solar panels. Taxpayer did not appeal. LDR assessed Taxpayer for the resulting deficiency, then Taxpayer appealed.
- Two issues: (1) whether the Petition prescribed when the Taxpayer failed to timely appeal the AFTC denial; (2) whether the solar-panel-powered charging stations qualified for the AFTC.

Kamran Khoobehi v. Secretary, Department of Revenue

BTA Docket No. 11326A (La. Bd. Tax App. 8/14/19)

- **Holding (1):** Taxpayer's appeal from the AFTC denial prescribed. However, the appeal from the assessment was timely. BTA would exercise its jurisdiction over assessments under La. R.S. 47:1407.
- **Holding (2):** EV charging stations do not qualify for the AFTC. La. R.S. 47:6035(B)(2) expressly applies to property that delivers alternative fuel into a vehicle's "tank." The dictionary definition of the word "tank" entails a container for liquids or gases.
- Taxpayer offered no evidence to show that an EV's battery qualified as a tank and credit statutes are construed in favor of the State.

Schwan's Consumer Brands, Inc. v. Department of Revenue

BTA Docket No. 11582D (La. Bd. Tax App. 8/14/19)

- **Facts:** LDR adjusted conglomerate member's CIFT return and assessed tax, penalties and interest.
- Taxpayer appealed, alleging that the adjustments violated Louisiana law, federal law and the Louisiana and United States constitutions.
- Taxpayer raised an "as-applied" constitutional challenge. LDR argued that Taxpayer could not bring as-applied challenge in BTA, and could only pursue a payment under protest suit in District Court.

Schwan's Consumer Brands, Inc. v. Department of Revenue

BTA Docket No. 11582D (La. Bd. Tax App. 8/14/19)

- **Holding:** BTA found that it has jurisdiction to hear an as-applied constitutional challenge. *Hannover Compressor, supra*.
- Payment under protest statute La. R.S. 47:1576 does not state that it is an exclusive remedy.
- BTA has jurisdiction over all matters relating to assessments under La. R.S. 47:1407.
- When the legislature intended to restrict the BTA's jurisdiction, as in the case of a facial constitutional challenge, it did so explicitly
- ***BUT SEE*** Const. Amendment No. 3

St. John the Baptist Parish v. Washington Parish

BTA Docket No. L00166 (La. Bd. Tax App. 10/15/18) 2018 WL 8577444

- **Facts:** Petition for uniformity between parishes.
- Barriere Construction Co., LLC (BCC) purchased liquid asphalt from a refinery in St. John the Baptist Parish (SJB).
- BCC picked up liquid asphalt from the SJB refinery and assumed risk of loss in SJB before transportation to BCC's Washington Parish facility.
- BCC converted the liquid asphalt into road asphalt in Washington Parish for use in road construction in Washington Parish.
- BCC resold 5-10% asphalt, and used rest in its construction projects.
- Issue: Who is proper taxing authority for sales of liquid asphalt?
- **Holding:** Possession and title of the asphalt transferred in SJB. Taxable moment occurred in SJB. Further processing exclusion applied to liquid asphalt purchased for resale, but not to asphalt used by contractor.

New law: 2019 Act 359, eff. June 11, 2019

Enacted La. R.S. 47:337.12.1

- (A) Notwithstanding any other law to the contrary, for purposes of the imposition of sales and use tax by any political subdivision of the state, any raw materials converted by a road contractor pursuant to a road material construction contract shall be subject to tax as provided in this Section:
- (A)(1) If the raw materials are purchased from a Louisiana dealer such that title or possession, or both, transfers to the road contractor at the dealer's place of business, sales tax is due in the taxing jurisdiction of the dealer.
- (A)(2) If the raw materials are delivered to the road contractor such that title or possession, or both, transfers at the road contractor's facility where the raw materials are converted into asphaltic concrete, the "retail sale" of the raw materials is deemed to occur in the taxing jurisdiction in which the asphaltic concrete is ultimately used by the road contractor to fulfill the road material contract.
- (A)(3) The exercise of any right or power over raw materials imported into a taxing jurisdiction for conversion into asphaltic concrete shall be deemed to be a "use" in the taxing jurisdiction in which the asphaltic concrete is ultimately used by the road contractor to fulfill the road material contract.

New law : 2019 Act 359, eff. June 11, 2019

Enacted La. R.S. 47:337.12.1 (continued)

- **(B) No sales or use taxes shall be due to the taxing jurisdiction in which the road contractor converts the raw material into asphaltic concrete unless any of the following occurs in the taxing jurisdiction:**
- **(B)(1) The road contractor purchases raw materials from a dealer such that title or possession, or both, transfers to the road contractor at the dealer's place of business in the taxing jurisdiction in which the road contractor converts the raw materials into asphaltic concrete.**
- **(B)(2) The asphaltic concrete is ultimately used by the road contractor to fulfill a road material contract in the taxing jurisdiction in which the road contractor converts the raw materials into asphaltic concrete.**
- **(B)(3) The road contractor makes a taxable sale of asphaltic concrete to a third party such that title or possession, or both, transfers to the purchaser in the taxing jurisdiction in which the road contractor converts the raw materials into asphaltic concrete.**

Offshore Rental, LTD v. Lafourche Parish School Board

BTA Docket No. L00223 (La. Bd. Tax App. 12/12/18) 2018 WL 8577443

- **Facts:** Taxpayer voluntarily paid proposed tax after an audit. Taxpayer later realized it believed some items were non-taxable and filed a refund claim.
- Two issues: (1) whether Taxpayer's failure to request arbitration procedurally barred appeal; and
- (2) whether La. R.S. 47:337.77(F) prohibited refund because proposed assessment entailed an interpretation of law by Collector.

Offshore Rental, LTD v. Lafourche Parish School Board

BTA Docket No. L00223 (La. Bd. Tax App. 12/12/18) 2018 WL 8577443

- **Holding:** Taxpayer was not required to request arbitration.
- Prior to repeal, La. R.S. 47:337.51.1 stated a Taxpayer who received an assessment or refund denial “may” initiate a mandatory arbitration proceeding.
- Ruling that every proposed assessment implicated a legal conclusion under La. R.S. 47:337.77(F) was not consistent with legal framework. By that logic, a Collector could cause an overpayment by its own error and then block a refund by memorializing the error in a proposed assessment.

Arcerlor Mittal Laplace, LLC v. St. John the Baptist Parish et al

BTA Docket No. L0018, c/w L00245, L00263, L00264, c/w 9225, 9624C, 9632C (La. Bd. Tax App. 1/8/19) 2019 WL 2487888

- **Facts:** Taxpayer made low carbon steel by melting scrap metal in an Electric Arc Furnace (EAF) with heat conducted by electrodes.
- Slag materials bonded with impurities in molten scrap metal and rose to the top of the EAF. Once removed, a third party (Barfield), extracted valuable minerals from the slag metal for the Taxpayer for a fee.
- Taxpayer also contracted for repairs to various properties at its facility, including the EAF.

Arcerlor Mittal Laplace, LLC v. St. John the Baptist Parish et al

BTA Docket No. L0018, c/w L00245, L00263, L00264, c/w 9225, 9624C, 9632C (La. Bd. Tax App. 1/8/19) 2019 WL 2487888

- **Three Issues:** (1) did electrodes qualify for the Further Processing Exclusion; (2) did slag materials qualify for the Further Processing Exclusion; (3) were repairs performed on immovables?
- **Holding (1):** Electrodes did not qualify for the Further Processing Exclusion. Taxpayer purchased electrodes for use as a heat source to melt scrap metal. Added carbon was only an incidental benefit to the end-product, like the coke used to melt scrap iron in *Vulcan Foundry, Inc. v. McNamara*, 414 So.2d 1193 (La. 1981). The purpose was as a heat source.

Arcerlor Mittal Laplace, LLC v. St. John the Baptist Parish et al

BTA Docket No. L0018, c/w L00245, L00263, L00264, c/w 9225, 9624C, 9632C (La. Bd. Tax App. 1/8/19) 2019 WL 2487888

- **Holding (2):** Slag materials were purchased for further processing of slag metal for resale to Barfield. Taxpayer exchanged slag and cash for Barfield's valuable services and cheap access to raw materials. Barter/Exchange is a form of sale/resale.
- **Holding (3):** Taxpayer's photographic evidence showed that the EAF was very large and integrated into the mill and therefore met civil code test to be an other construction (immovable).
- The evidence was unclear and self-serving with respect to other properties and insufficient for purposes of summary judgment.

Pinnacle Polymers, LLC v. St. John the Baptist Parish Sales and Use Tax Office

BTA Docket No. L00357 (La. Bd. Tax App. 1/8/19) 2019 WL 2487908

- **Facts:** Taxpayer manufactured plastics using a catalyst composed of a reactant and a polymer.
- The reactant initiated polymerization.
- The polymer provided stability during polymerization.
- Taxpayer also purchased clarified river water for a cooling tower and for washing rail cars. Taxpayer stored the water in a basin at the base of the cooling tower.
- **Two Issues:** (1) did the catalyst qualified for the Further Processing Exclusion; and (2) was the water was exempt under La. R.S. 47:305(D)(1)(c).

Pinnacle Polymers, LLC v. St. John the Baptist Parish Sales and Use Tax Office

BTA Docket No. L00357 (La. Bd. Tax App. 1/8/19) 2019 WL 2487908

- **Holding (1):** Purchases of the catalyst were taxable. Taxpayer purchased the catalyst for initiating the polymerization process and not for inclusion of trace amounts of the polymer component in the final product.
- **Holding (2):** Taxpayer's purchases of water were exempt. La. R.S. 47:305(D)(1)(c) exempts purchases of water, excluding water stored in containers. The common usage of the term container entails things like bottles or jugs. The concrete basin at the bottom of the cooling tower was not a container under the commonly understood meaning in this context.

Carter Services, LLC v. Caddo-Shreveport Sales and Use Tax Commission

BTA Docket No. L00315 (La. Bd. Tax App. 1/9/19) 2019 WL 2487980

- **Facts:** Taxpayer appealed sales tax assessment related to repairs on certain oilfield tanks. Issue: Are tanks immovables as ‘other constructions’ attached to the ground?
- Tanks were located above-ground and were attached to pipes that ran into the ground. Each tank was constructed at a specific location and spent its entire useful life at that location (often decades)
- Tanks were large and could not be relocated without being disassembled and moved with the aid of a crane and other machinery.
- **Holding:** Absence of foundation rooting the tanks to the ground did not make them movable. The tanks were immovables because they were integrated into the ground with pipes and they could not be moved without great difficulty due to their size and weight. (ex. railroad tracks)

Tortuga Charters LLC v. St. Tammany Parish Tax Collector

BTA Docket No. L00637 (La. Bd. Tax App. 4/15/19) 2019 WL 2487890

- **Facts:** Taxpayer purchased a boat in Florida from an LLC with the help of a broker. The seller's sole member/manager, a Russian national, could not be located and his occupation was unclear
- Florida evidence that seller owned dozen+ boats
- St. Tammany Parish assessed sales use tax, interest and penalties on the transaction. Taxpayer paid under protest and appealed.
- Taxpayer filed MSJ arguing that the transaction was an occasional sale under La. R.S. 47:301(10)(c)(ii)(bb).

Tortuga Charters LLC v. St. Tammany Parish Tax Collector

BTA Docket No. L00637 (La. Bd. Tax App. 4/15/19) 2019 WL 2487890

- **Holding:** The involvement of a broker did not per se render the occasional sale exclusion inapplicable.
- La. R.S. 47:301(10)(c)(ii)(bb) does not state on its face that a broker cannot be involved in an occasional sale. As an exclusion any ambiguity must be construed in the Taxpayer's favor.
- However, Taxpayer was not entitled to summary judgment without establishing with evidence that the *seller* was not in the business of selling boats.

Lerner New York Inc. v. Newell Normand

BTA Docket No. L00393 (La. Bd. Tax App. 4/16/19) 2019 WL 2487887 (interlocutory),
(La. Bd. Tax App. 1/8/19) 2019 WL 2487889 (ruling on opposing proposed
judgments)

- **Facts:** Taxpayer sold clothing online and also at brick-and-mortar locations in Jefferson Parish (JP).
- Taxpayer filed JP sales tax returns only for its physical locations.
- Taxpayer remitted tax on online sales to LDR on its Direct Marketer Returns (DMR's).
- LDR distributes a portion of DMR remittances to the parishes
- Two Issues: (1) whether Taxpayer correctly remitted tax on online sales into JP on DMR's; and (2) whether Taxpayer was entitled to a credit.

Lerner New York Inc. v. Newell Normand

BTA Docket No. L00393 (La. Bd. Tax App. 4/16/19) 2019 WL 2487887 (interlocutory),
(La. Bd. Tax App. 1/8/19) 2019 WL 2487889 (on dueling proposed judgments)

- **Holding (1):** Taxpayer incorrectly remitted JP tax to LDR.
- La. R.S. 47:302(K) provides that vendors who qualify as a dealer by any other means are prohibited from collecting the Direct Marketer Tax; it is for dealers who ‘solely’ qualify under its terms
- Taxpayer qualified as dealer by other means because it had brick-and-mortar stores and employees in the state.

Lerner New York Inc. v. Newell Normand

BTA Docket No. L00393 (La. Bd. Tax App. 4/16/19) 2019 WL 2487887 (interlocutory),
(La. Bd. Tax App. 1/8/19) 2019 WL 2487889 (on dueling proposed judgments)

- **Holding (2):** Taxpayer was not entitled to a credit under La. R.S. 47:337.86(A)(1) for taxes paid to a similar but incorrect taxing authority. Under La. R.S. 47:337.86(E)(2)(b), similar taxing authorities are defined as political subdivisions performing same governmental functions. LDR is not a political subdivision—a term defined in the Louisiana Constitution.
- Taxpayer *was* entitled to a credit under La. R.S. 47:337.86(E). For that credit, the Taxpayer must demonstrate a good faith effort to recover taxes erroneously paid to an incorrect authority. The Taxpayer made formal written requests for refunds to LDR that were denied.

Lerner New York Inc. v. Newell Normand

BTA Docket No. L00393 (La. Bd. Tax App. 4/16/19) 2019 WL 2487887 (interlocutory),
(La. Bd. Tax App. 1/8/19) 2019 WL 2487889 (on dueling proposed judgments)

- BTA ruled that the amount of the credit would be the amount of Taxpayer's DMR remittances that Taxpayer proved were actually distributed to JP (about half of total tax).
- Taxpayer could prove that JP received a certain amount of its remittances, but could not establish any date of receipt.
- BTA determined that purely as an evidentiary matter that interest on the tax should be calculated from the date the tax became due to the date of the payment under protest.
- Both parties appealed to the Fifth Circuit where the matter is pending.

Legislative changes to the Board's procedure & Jurisdiction

2019 Regular Session

- **Act 367 (SB 198), by Sen. Peacock**
 - Provides for administration, disposition, enforcement and adjudication of state and local taxes and for the Board of Tax Appeals.
- **Act 360 (HB 547), by Rep. Abramson**
 - Provides relative to collection of sales tax on remote sales.
- **Act 446 (HB 428), by Rep. Dwight**
 - (Constitutional Amendment) Extends the jurisdiction of the Board of Tax Appeals to matters concerning the constitutionality of taxes and fees.
- **Act 365 (HB 583), by Rep. Dwight**
 - Provides relative to jurisdiction of the Board of Tax Appeals and appeals.

2019 Act 367, Effective June 18, 2019

- Amends La. R.S. 47:1436(B)(3) to provide for appellate procedure in rule for uniformity cases involving multiple parishes:
 - **Prior law:** Judgments of the BTA are subject to review under R.S. 47:1434 - 1436.
 - **New law:** If a local collector wishes to appeal a judgment against *another* local collector in a Rule for Uniformity case under La. R.S. 47:337.101, the proper Court of Appeal is the Court of appeal for the parish of the appellee. If there are multiple appellees, the BTA will designate the circuit with the most connection to the matter at issue.

2019 Act 367, Effective June 18, 2019

- **Changes to Claims Against the State (“CAS”):**
 - **Form Petitions:** Enacts La. R.S. 47:1481(C) to permit the BTA and the Department to agree on a Simplified CAS process on forms prescribed by the Secretary for petitioners.
 - Petitioners will file the form directly with the Department. The filing date with the Department is treated as the filing date with the BTA.
 - Petitioners can still file CAS with the BTA as permitted under current law
 - Expedited payment processes

2019 Act 367, Effective June 18, 2019

- **Enacts paragraph La. R.S. 47:1561.1(C) to provide for Actions to Enforce Collection of Taxes Withheld or Collected:**
 - Collectors can bring an action before the BTA or any court of competent jurisdiction for taxes collected by dealers or employers but not remitted.
- **Amends La. R.S. 47:1574.1(E) for BTA to render a judgment against the taxpayer and in favor of the collector for the amount of a nonappealable assessment plus penalties, interest, attorney fees and costs.**
- **Amends La. R.S. 46:1580(B)(3) to specify that prescription for state income taxes now runs concurrently to the period for which the tax period remains open under federal income tax law.**

2019 Act 360, Effective August 1, 2019

- **Collections remedies for the Louisiana Sales and Use Tax Commission for Remote Sellers, and appeals from the Commission's actions:**
 - New provision La. R.S. 47:340 (4)(F)(2), authorizes the Commission or its agents to utilize any provision of existing law related to the general powers and duties of a revenue collector.
 - La. R.S. 47:340 (4)(F)(2) also authorizes any person aggrieved by any action taken related to the collection of tax under new law to have the same rights, including appeal or review, as provided in existing law.
 - New provision La. R.S. 47:340 (4)(F)(3) states that appeals to the BTA of the Commission's denial of a refund follow the same procedure as appeals from the Secretary's denial of a refund. All appeals treated like state cases.

2019 Act 446, Const. Amendment No. 3

Do you support an amendment to protect taxpayers by requiring a complete remedy in law for the prompt recovery of any unconstitutional tax paid and to allow the jurisdiction of the Board of Tax Appeals to extend to matters related to the constitutionality of taxes (adds Art. V, Sec. 35)?

- **October 12, 2019: Ratified by approval of the people of Louisiana**
- **Effective November ____, 2019.**

2019 Act 365,

- La. R.S. 47:1407(3) amended to extend the BTA's incidental jurisdiction to “all matters related to state or local taxes or fees.”
- Amends La. R.S. 47:337.45(A)(3) and La. R.S. 47:1561(A)(3) to provide the BTA with concurrent jurisdiction over ordinary suits for the collection of taxes.
- Extends BTA's jurisdiction to payment under protest cases where taxes are claimed to be an unlawful burden upon interstate commerce or when the collection of taxes violates any Act of Congress, the U.S. Constitution or the Constitution of Louisiana.
- Adds BTA declaratory judgment jurisdiction related to invalidity of regulations or unconstitutionality of laws