

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

October 4-5, 2019

**Friday, October 4, 2019**

### **Persons Present:**

Bergstedt, Thomas M.  
Braud, Francis  
Breard, L. Kent  
Caraway, Jay  
Cromwell, L. David  
Davidson, James J., III  
Davrados, Nick  
Dawkins, Robert G.  
Dimos, Jimmy N.  
Doguet, Andre'  
Domingue, Billy J.  
Forrester, William R., Jr.  
Garrett, J. David  
Gregorie, Isaac M. "Mack"  
Griffin, Piper D.  
Hamilton, Leo C.  
Haymon, Cordell H.  
Hebert, Christopher B.  
Holdridge, Guy  
Janke, Benjamin West  
Knighten, Arlene D.

Kunkel, Nick  
Kostelka, Robert "Bob" W.  
Lagasse, Kristina  
LaVergne, Luke A.  
Lawrence, Quintillis Kenyatta  
Manning, C. Wendell  
Mengis, Joseph W.  
Miller, Gregory A.  
Morel, Stephen  
Norman, Rick J.  
North, Donald W.  
Price, Donald W.  
Saloom, Douglas J.  
Talley, Susan G.  
Tate, George J.  
Thibeaux, Robert P.  
Title, Peter S.  
Tucker, Zelda W.  
Waller, Mallory  
Weems, Charles S., III  
Ziober, John David

President Susan G. Talley called the October 2019 Council meeting to order at 10:00 a.m. on Friday, October 4, 2019, at the Louisiana Supreme Court in New Orleans. After asking the Council members to briefly introduce themselves and announcing that tomorrow's meeting would begin at 8:30 a.m. instead of 9:00 a.m., the President called on Mr. Stephen G. Sklamba, Reporter of the Tax Sales Committee, to begin his presentation of materials.

### **Tax Sales Committee**

Mr. Sklamba began by previewing the day's presentation, first noting that he would be diving back into the Committee's draft revisions to Title 47 and then asking the Council to turn its attention to the definitions section. Noting that the Council had already approved the bulk of this statute, he reminded Council members that the definition of "governmental lien" had been recommitted. Mr. Sklamba explained that, in reviewing the term and its definition, the Committee realized that it only appeared once throughout the draft; accordingly, the Committee opted to simply delete the defined term. A motion was made and seconded to approve the deletion. The motion carried, and the following was approved:

### **§2122. Definitions**

\* \* \*

~~"Governmental lien" means all liens imposed by law upon immovable property in favor of any political subdivision and filed in the mortgage records, including without limitation, those imposed under R.S. 13:2575, R.S. 33:1236, 4752, 4753, 4754, 4766, 5062, and 5062.1, other than statutory impositions.~~

\* \* \*

The Reporter then moved to R.S. 47:2127 on page 10 of the materials. He explained that the provision dealt with the time for payment of taxes. After reading Subsection A aloud, he pointed out that the language "except as ..." was added in contemplation of the fact that under Title 33 certain statutory impositions may come due at other points in time. Mr. Sklamba then proceeded to Subsection B, noting that the Committee felt that the date on which the penalty would be added should be moved prior to the tax sale so as to both avoid notice and due process concerns and incentivize payment thereof. The Reporter next noted that the Committee had added Subsection C. Highlighting the fact that current law allowed for statutory impositions to be added to the tax bill and for tax collectors to require payment of both, he explained that this addition did not represent an actual change in the law. Moving to Subsection D, Mr. Sklamba stated that the Committee had made no real changes aside from a few additions to the safe-harbor notice form. He noted that the most significant of these additions required an indication of whether the property had previously been sold at auction; otherwise, the form simply followed the requirements set out above.

After a motion was made and seconded to approve R.S. 47:2127, a Council member asked whether the Committee's proposals would move back the date on which the five percent penalty was due. The Reporter answered in the affirmative, noting that a New York case had identified constitutional issues with requiring payment of the penalty prior to notice. Another Council member inquired as to whether the state's sheriffs were on board. Again, Mr. Sklamba answered in the affirmative, this time noting that one of the Committee's members represented the Louisiana Sheriffs' Association. A Council member then suggested that, in Subsection C, "ad valorem taxes" should be changed to "statutory impositions," and that "on a non-compounding basis" should be added after "one percent per month" on the safe-harbor form to match language of prior Subsections. The Reporter accepted both of these suggestions as friendly amendments. Another Council member, pointing to the "tax commission" language on line 2 of page 11, wondered whether the provision should say "Louisiana Tax Commission." Mr. Sklamba agreed that it should, and further agreed that the recommended change should be made throughout the entirety of the document. He resolved to achieve consistency in that regard in advance of his next Council presentation.

Next, pointing to lines 24 and 25 of page 11, a Council member inquired as to the purpose of indicating on the notice whether a prior tax sale related to the property had been held. The Reporter explained that the purpose was to notify the debtor, adding that such notice was typically given anyway. The Council member clarified that he took issue not with the indication itself but rather with making the indication mandatory. He hypothesized that this requirement could pose a problem if, for example, a prior tax sale had been held long in the past – say thirty years prior – and had long since been redeemed. The Reporter responded that this was a good point and proposed that the issue be solved by adding "unredeemed" prior to "tax sale" in this context. The Council agreed.

Another Council member voiced concern with seemingly inconsistent language, which at once stated that "each tax notice party" *must* be notified, while later stating that "[t]he tax collector *may* also notify any other tax sale party." Mr. Sklamba pointed out that one of these instances referred to the tax *notice* party, whereas the other referred to the tax *sale* party; accordingly, there was no issue. The Council member was satisfied on this point but nevertheless wondered whether, on line 15, the provision ought to say tax *notice* party. The Council member pointed out that this raised the further question of whether there in fact was an address for such party. Another Council member responded that, based on the definitions section, there should be an address. The Reporter noted these as fair points and asked whether the Council members had a proposed solution in mind. After some discussion as to how to best achieve the Council's stated goal – during which Council members considered adding a new Section or Subsection that would clarify where notice should be sent – the Council and the Reporter decided upon the following language: "...statutory impositions due. The written notice shall be sent to each tax debtor at his address listed on the tax roll and to each other tax notice party at the address given in the request for notice." The Reporter also agreed to change each instance of "ad valorem taxes" in Subsection C to "statutory impositions".

A Council member then inquired as to why, on the notice, the language "sale or auction" was used in one instance, while another simply used "auction". Mr. Sklamba explained that the notice was discussing both current and prior law where the language "sale or auction" was used, but only current law in the latter instance. After brief discussion, a friendly amendment was accepted to add "tax" at line 27, so as to achieve consistency with the previous page of the draft. Another Council member inquired as to the reason for using the language "1% per month" as opposed to "12% per annum." Mr. Sklamba explained that this was deliberate, as it followed the accounting conventions used by the collectors. The Council member noted his understanding but wondered whether the proposed deletion of "or any part thereof" was accordingly ill-advised. The Council member suggested restoring this phrase so as to avoid the appearance of making an affirmative change to the process, and the Reporter agreed. The Council then returned to the motion on the table, to approve R.S. 47:2127 as amended. The motion carried, and the provision was approved as follows:

**§2127. Time for payment; interest and penalty; notification**

A. Time for Payment. ~~Taxes assessed shall be due in that calendar year~~ Statutory impositions may be paid as soon as the tax roll is delivered to the tax collector, and, except as provided by law, they shall be paid ~~on or before~~ no later than December thirty-first in each respective year and if not paid by that date are considered delinquent on the following day.

B. Interest and penalty. ~~The interest on all ad valorem taxes~~ All statutory impositions, whether levied on movable or immovable property, ~~which are delinquent shall begin on the first calendar day following the deadline for payment of taxes, and shall bear interest from that the delinquency date until paid, at the rate of one percent per month or any part thereof on a non-compounding basis. If statutory impositions remain unpaid after ninety days from the delinquency date, a five percent penalty calculated on the statutory impositions shall be imposed. Interest shall not accrue on the penalty.~~ In the event of an erroneous assessment and adjustment by the tax commission, the tax debtor shall have fifteen days after the date of receipt of notice of the revised assessment in which to pay the adjusted amount without interest or penalty. If the address provided by the tax assessor on the tax roll proves to be incorrect and the tax debtor does not receive a timely notice, the tax collector may extend to the tax debtor a fifteen-day notice in which to pay without interest or penalty.

C. All statutory impositions appearing on the tax bill shall be paid. Failure to pay both the ad valorem taxes and other statutory impositions shall cause the delinquent obligation and the lien and privilege securing it to be offered for sale at a tax auction.

D. Notification. As soon as practical following the sending of the tax roll to the tax collector as required by Subsection A of this Section, the tax collector shall ~~use reasonable efforts to~~ send each tax notice party written notice by United States mail of ~~taxes~~ statutory impositions due, ~~at the address listed for each tax debtor on each tax roll~~ The written notice shall be sent to each tax debtor at his address listed on the tax roll and to each other tax notice party at the address given in the request for notice. The written notice shall disclose the total amount of ~~taxes~~ statutory impositions due by the tax debtor for the current year, the ward in which the property is located, and the number of the assessment. The written notice shall request the tax debtor to return the written notice to the tax collector with remittance. The notice and shall remind inform the tax debtor of the date that ~~taxes become delinquent following issuance of the notice~~ statutory impositions must be paid, and that interest will accrue on the taxes statutory impositions at the rate of one percent per month on a non-compounding basis from and after the delinquency date the taxes become delinquent, and that a five percent penalty will be added to the statutory impositions if the statutory impositions remain unpaid after ninety days from the delinquency

date. If there was a previous unredeemed tax sale or tax auction in connection with immovable property, the notice shall so indicate. Interest shall accrue at the rate prescribed by law, which rate, or a brief description of the manner in which the rate is calculated, shall be stated in the written notice. The tax collector may also notify any other tax sale party but shall not be obligated to do so. The written notice shall be deemed sufficient if it is in the following form:

[Name of Political Subdivision]  
[YEAR] Property Tax Notice  
[List All Tax Notice Parties and their addresses]  
Description of Charges                      Amount  
Estimated Tax Amount Due

[Name of Tax District]

Total Taxes Statutory Impositions for Current Year  
THIS AMOUNT IS THE TOTAL OF  
AD VALOREM TAXES AND OTHER  
STATUTORY IMPOSITIONS INCLUDED ON YOUR  
TAX BILL FOR CURRENT YEAR THAT MUST BE PAID

PLEASE REMIT BY [DATE]

DEADLINE DATE

FOR

PAYMENT \_\_\_\_\_

DELINQUENCY DATE \_\_\_\_\_ (THE OBLIGATION  
TO PAY STATUTORY IMPOSITIONS SHALL BE DELINQUENT  
ON THIS DATE)

NOTE: INTEREST AT THE RATE  
OF ONE PERCENT PER MONTH ON A NON-COMPOUNDING BASIS  
WILL BE ADDED FROM THE  
DELINQUENCY DATE AND A FIVE  
PERCENT PENALTY WILL BE ADDED  
IF THE STATUTORY IMPOSITIONS REMAIN UNPAID  
AFTER NINETY DAYS FROM THE  
DELINQUENCY DATE.

Property Address	<u>Ward</u>
Legal Description	<u>Assessment No.</u>

PLEASE REMIT BY [DATE]

\*\*\* ACCESS YOUR ~~PROPERTY TAX~~ BILL AND PAY ONLINE @ [Internet address] \_\_\_\_\_ \*\*\*

Failure to pay the total statutory impositions, interest, costs, and any penalties before the expiration of ninety days from the delinquency date shall cause the delinquent obligation and the lien and privilege securing it to be offered for sale at tax auction.

[ ] INDICATE IF APPLICABLE: According to our records, the property for which these statutory impositions are due has previously been sold at a tax sale or tax auction, or tax sale title or an auction certificate has previously been issued. You should immediately take steps to remedy this

threat to your ownership. You may have a right of redemption if timely exercised.

-----  
Please fold and tear along perforated line.

[YEAR] PROPERTY TAX NOTICE

[Name & Address of Tax Collector]

Amount Due:

Ward

Assessment No.

[Name & Address of Tax Debtor]

Due Date:

Make check payable to: \_\_\_\_\_

- \* Retain the top portion of this form for your records.
- \* Write account number on your check. The canceled check will serve as your receipt.
- \* For [name of political subdivision] tax information only call [number] or fax [number].
- \* Access your property tax and pay online at [Internet address].
- \* Change of address requests and questions regarding the assessed value of the property should be directed to:

[Name & Address of Tax Collector]

(Tax records cannot be changed without instructions from the respective parish tax assessor)

Please sign below and return this portion of notice with check made payable to: [\_\_\_\_\_]

These taxes paid by: \_\_\_\_\_

Noting that the Committee was recommending the deletion of current R.S. 47:2128, Mr. Sklamba moved next to proposed R.S. 47:2128. He explained that, with the exception of the final sentence, this provision reproduced existing R.S. 47:2129. He explained that the final sentence was added because attorneys were regularly being put out by clients who through them attempted to unintentionally pay less than the full amount, leaving the attorney subject to try to collect the remainder of the tax on their own. A motion was made and seconded to approve the provision, and commentary opened with a question as to why, as a general matter, collectors were not required to accept partial payment. The Reporter noted that this issue had been discussed by the Committee, which ultimately felt that adding such a requirement would be politically impossible. He emphasized the fact that, under current law, payment cannot even be made under protest, noting at least that this issue had been remedied in the Committee's proposal.

One Council member asked whether the Committee wished to direct the sheriff specifically how to apply a partial payment – that is, to what combination of the principal and interest – and Mr. Sklamba responded that he would ask Committee member Conrad Comeaux what should be done in that regard. Another Council member then noted that although he understood entirely the reason for the Committee's proposed change, he nevertheless worried that it may be overly broad. He explained his concern that the Committee was creating a loophole whereby clients could deliberately make partial payments whenever they wanted simply by directing their attorneys to do so. Another Council member agreed, noting that the policy at issue had been around for a long time



and emphasizing that although he understood the concerns, he shared the same worries related to forcing collectors to accept partial payments. He added that such change – although intended by the Committee to be a compromise – would itself be politically impossible for the reasons noted previously. Another Council member reiterated the same point of view and added that, even if it were a good idea, it likely fell outside of the scope of the Committee's project, which was ultimately to address constitutional issues. Mr. Sklamba and the Council agreed on this point, and the final sentence was ultimately deleted. The Council then returned to the motion on the floor. The motion carried and R.S. 47:2128 was approved as follows:

**~~§2128. Statutory impositions~~**

~~All statutory impositions including ad valorem taxes shall be paid along with the taxes. Failure to pay the statutory impositions in addition to the ad valorem taxes shall cause the immovable property to be subject to the same provisions of law that govern tax sales of immovable property.~~

**~~§2129~~ §2128. Payment; receipt**

All statutory impositions shown on the notice sent to the tax debtor shall be paid in cash, or at the discretion of the tax collector, by other forms of payment. The tax collector may charge a processing fee to recover the additional cost of accepting other forms of payment. The tax collector shall keep a written record of each payment identifying the amount paid and the assessment number and shall provide a written notice of payment to each tax debtor if the tax debtor so requests. The tax collector may refuse to accept payment of less than all the outstanding statutory impositions, and the processing fee, other than as provided in R.S. 47:2130.

The Reporter turned next to R.S. 47:2129, noting that the only proposed changes were to terminology and designation. A motion was made and seconded to approve the provision. A Council member inquired as to the use of the term "*certified* tax roll". The Reporter noted that he was unsure of the intent behind using "certified" in some but not all contexts but explained that this language was not being added by the Committee. The motion ultimately carried, and the provision was approved as follows:

**§2129-1. Quarterly payments; Rapides Parish**

A. Each tax collector in Rapides Parish shall have the discretion to accept the advance payment by a tax debtor of estimated ~~taxes and any related~~ statutory impositions on a quarterly basis. This grant of authority shall be contingent upon the prior authorization of the governing authority of the taxing authority which imposes the tax statutory impositions. The authorization shall be evidenced by resolution adopted by the governing authority. A tax collector may begin accepting quarterly payments in January of the year following the year in which the resolution was adopted.

B. Payments authorized herein shall be made in the year in which the ~~taxes~~ statutory impositions are due. The estimated amount of ~~taxes or~~ statutory impositions shall be based upon the tax debtor's tax notice of the preceding year. Upon receipt of the certified tax roll, the tax collector shall reconcile credit any advance payments made pursuant to this Section with the amount of ~~taxes~~ statutory impositions due according to the certified tax roll. ~~Advance payments shall be shown on a tax debtor's tax bill as a credit against taxes due.~~

C. The tax collector shall deposit all advance payments collected pursuant to this Section in the same account as ~~the avails of all ad valorem tax and that he deposits~~ statutory imposition collections. For purposes of settlement of tax proceeds, these monies advance payments shall be treated in the same manner as payments made upon receipt of that year's tax notice.

The Reporter next asked the Council to turn its attention to R.S. 47:2130, to which he noted there were no substantial changes aside from the deletion of the term "tax debtor" because it was already defined in the definitions section. A Council member asked why the same treatment had not been applied to the definition of "political subdivision." Mr. Sklamba answered that the Council member was correct – the definition was unnecessary – and agreed that it should be deleted and the remaining provisions redesignated. Another Council member pointed out that there was in fact a small difference between R.S. 47:2130's definition of "political subdivision" and that contained in the definitions section. The Council member noted his preference for the definition found in R.S. 47:2130 and suggested replacing Subparagraph (c) on line 4 of page 8 with R.S. 47:2130(A)(3). The Reporter accepted this suggestion as a friendly amendment. A motion was then made and seconded to approve R.S. 47:2130 as amended. The motion carried, and the provision was approved as follows:

**§2130. Public calamity; postponement of ad-valorem-tax payments of statutory impositions**

~~A. Definitions. As used in this Section:~~

~~(1) "Political subdivision" means any of the following to the extent it has the power to levy ad valorem taxes statutory impositions and conduct tax sales auctions for failure to pay ad valorem taxes statutory impositions:~~

~~(a1) The state.~~

~~(b2) Any political subdivision as defined in Article VI, Section 44 of the Constitution of Louisiana.~~

~~(c3) Any other agency, board, or instrumentality of the state or of a political subdivision as defined in Article VI, Section 44 of the Constitution of Louisiana.~~

~~(2) "Tax debtor" means a person obligated to pay the ad valorem taxes.~~

**B. A. Declaration of emergency; calamity.** When an emergency has been declared by the governor or a parish president pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act and only in cases of disaster caused by overflow, general conflagration, general crop destruction, or other public calamity, a tax debtor or owner may request the postponement of the payment of ~~ad valorem taxes~~ statutory impositions on his property located in the geographical area designated in the declaration of emergency if the ~~taxes became~~ statutory impositions are included on a tax bill due after the declaration of emergency.

**~~G.B.~~** Right to a postponement of onerous taxes. The collection of ~~taxes~~ statutory impositions shall be postponed by the tax collector when all of the following occur:

(1) An emergency has been declared.

(2) The tax debtor's or owner's assessed property located in the geographical area designated in the declaration of emergency has been damaged or destroyed by the calamity.

(3) The collection of ~~taxes~~ statutory impositions would be onerous because the tax debtor or owner is unable to pay the ~~taxes~~ statutory impositions without suffering substantial hardship.

D. C. Application for postponement. (1) The tax debtor or owner seeking the postponement of the payment of ~~taxes~~ statutory impositions shall file a sworn application, executed before a person authorized to administer oaths, accompanied by a supporting financial statement. The application shall:

(a) Certify that the property was damaged or destroyed by the event that necessitated the emergency declaration.

(b) Describe the damaged or destroyed property as assessed.

(c) Certify that the collection of the ~~taxes that became~~ statutory impositions appearing on the tax bill due after the declaration of the emergency would be onerous because the tax debtor or owner applying for postponement is unable to pay the ~~taxes~~ statutory impositions without suffering substantial hardship.

(2) The completed sworn financial statement submitted in support of an application for the postponement of the payment of ~~taxes~~ statutory impositions shall not be subject to the laws relative to public records, R.S. 44:1 et seq., and shall be confidential, except that the financial statement shall be admissible in evidence in a proceeding to contest an application for postponement of the payment of ~~taxes~~ statutory impositions. The tax collector shall retain the financial statement until the period for contesting the postponement has expired without an objection being filed or until there has been a definitive decision in a contest proceeding. Thereafter, the tax collector may destroy the financial statement.

(3) The tax collector shall, and the assessor may, keep appropriate application forms and blank financial statement forms available for use by tax debtors or owners. The tax collector, or his authorized deputy collector, shall be competent to administer the oath required for this application. The following forms may be used to apply for the postponement:

STATE OF LOUISIANA \_\_\_\_\_  
PARISH OF \_\_\_\_\_

**APPLICATION FOR POSTPONEMENT OF ~~AD-VALOREM TAXES~~  
STATUTORY IMPOSITIONS**

BEFORE ME, the undersigned authority personally appeared \_\_\_\_\_, a tax debtor/owner, who requests postponement of payment of ~~ad-valorem taxes~~ statutory impositions pursuant to the provisions of R.S. 47:2106 for the following property:

\_\_\_\_\_  
*(Give the description of damaged or destroyed property as assessed)*

Appearer certifies that the property was damaged or destroyed on \_\_\_\_\_ *(insert date)* by the event that necessitated the emergency declaration declared on or about \_\_\_\_\_ *(insert date)* by \_\_\_\_\_ *(insert name and title of person declaring the emergency)* and it is in the geographical area designated in the declaration.

Appearer certifies that the collection of the ~~taxes that became~~ statutory impositions appearing on the tax bill due after the declaration of emergency would be onerous because Appearer is unable to pay the ~~taxes~~ statutory impositions without suffering substantial hardship. Appearer submits his financial statement in support of this application and certifies that it is true and correct as of this date.



SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_ day of  
\_\_\_\_, \_\_\_\_ at \_\_\_\_\_ Louisiana.

\_\_\_\_\_  
Full Name of Affiant

\_\_\_\_\_  
*Notary Public or authorized tax collector*  
Notary #

FINANCIAL STATEMENT  
STATE OF LOUISIANA  
PARISH OF \_\_\_\_\_

I certify that the following is a listing of my debts and property located within the state of Louisiana and that the following was my adjusted gross income for the previous year.

Immovable Property: Estimated Value  
(land/buildings)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subtotal \_\_\_\_\_  
Debts affecting the Estimated Value  
immovable property: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subtotal \_\_\_\_\_  
Movable Property: Estimated Value  
(vehicles, personal  
property, bank  
accounts) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subtotal \_\_\_\_\_  
Debts affecting the Estimated Value  
movable property: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subtotal \_\_\_\_\_  
Other Debts: Estimated Value  
(credit cards, etc.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Subtotal \_\_\_\_\_  
NET WORTH \_\_\_\_\_  
(Value of Property less amount of debts)  
Adjusted gross income for  
Previous year:

\_\_\_\_\_

\_\_\_\_\_

*Applicant*

Sworn to and signed before the undersigned Notary Public at \_\_\_\_\_, Louisiana, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public or authorized tax collector*

Notary #

~~E.~~ D. Reapplication. A tax debtor or owner may reapply for postponement of ~~taxes~~ statutory impositions as provided for in this Section for each consecutive year after the year in which the original postponement was granted when the conditions which initially authorized the postponement remain in effect.

~~F.~~ E. Time for filing application. The initial application and any reapplication for postponement shall be filed with the tax collector no later than December thirty-first of the year in which the damage or destruction occurred, or no later than thirty calendar days after the tax bill has been mailed, whichever is later.

~~G.~~ F. Notification of filing. The tax collector shall send to each political subdivision for which the postponed ~~taxes~~ statutory impositions are ~~assessed and~~ collected a copy of each application by reliable electronic means, certified mail, or hand delivery with a receipt.

~~H.~~ G. Political subdivision contest of postponement. A political subdivision may contest the postponement of the ~~taxes~~ statutory impositions in a written objection filed with the tax collector within thirty calendar days after receiving the copy of the application for postponement. It shall state the factual and legal reasons for contesting postponement. Concurrently, the political subdivision shall send a copy of the objection to the tax debtor or owner at the address on the application by reliable electronic means, certified mail, or hand delivery with a receipt. Finally, the tax collector shall send verified copies of the application, supporting financial statement, and the written objection to the parish governing authority within ten calendar days after the date the objection was filed.

~~I.~~ H. Contest; review of decision. The merits of the objection shall be decided by the parish governing authority, which decision shall be subject to review by the Louisiana Tax Commission, or its successor, on request of either the tax debtor or owner or the objecting political subdivision. That decision shall be subject to appeal to the district court. The review and appeal shall be in accordance with the procedures established by law, the Louisiana Tax Commission rules, or ordinance of the parish governing authority for the review and appeal of the correctness of an assessment made by the assessor.

~~J.~~ I. Effective date of postponement. (1) If no objection is filed, the payment of ~~taxes~~ statutory impositions shall be postponed. If an objection is filed, payment of ~~taxes~~ statutory impositions shall be postponed until all objections are finally decided by the parish governing authority or the Louisiana Tax Commission.

(2) If no objection is filed, or if the tax debtor or owner has prevailed in a definitive decision on review, the tax collector shall file the application, or a certified copy, with the recorder of mortgages in each parish in which the property is located. The application filed shall not include the supporting financial statement.

K. J. Advice of right to postponement. A written notice of the right of a tax debtor or owner to have the payment of his ~~taxes~~ statutory impositions postponed shall be included with the tax bill sent to a tax debtor or owner.

L. K. Installment payment of postponed ~~taxes~~ statutory impositions; accelerated payments; interests.

(1) The postponed ~~taxes~~ statutory impositions shall be divided into ten equal installments, and one installment shall be charged each year by the tax collector for ten subsequent years, or until the entirety of the postponed ~~taxes~~ statutory impositions is paid.

(2) All the postponed ~~taxes~~ statutory impositions, or any annual installment thereof, may be paid in advance. The unpaid balance of the postponed ~~taxes~~ statutory impositions shall bear interest from the date on which the original tax bill was due until paid at the rate of six percent per annum payable annually on the due date of each installment. No timely paid installment shall bear penalties when collected.

(3) If an annual installment is not timely paid, all of the unpaid postponed ~~taxes~~ statutory impositions shall ~~become due immediately be delinquent, and the property shall be sold at a tax~~ the delinquent obligation shall be offered for sale at the next tax auction for the balance of all ~~taxes, interest, and penalties~~ delinquent obligations due on the date of the auction.

(4) When all postponed ~~taxes~~ statutory impositions and interest have been paid, the tax debtor or owner may cancel the lien at the tax debtor's or owner's expense.

M. L. Assessments after postponement. The tax collector shall prepare a separate written list of all persons whose payment of ~~taxes~~ statutory impositions were postponed. It shall show the amount of the ~~taxes~~ statutory impositions and the property upon which the ~~taxes~~ statutory impositions were postponed. The list shall be prepared in duplicate, sworn to, and one copy shall be delivered to the parish assessor and one copy to the legislative auditor. In each subsequent tax year the tax collector shall collect a one-tenth installment of the postponed ~~taxes~~ statutory impositions until all ~~taxes~~ statutory impositions are paid.

N. M. Remission of postponed ~~taxes~~ statutory impositions. The postponed portion of the ~~taxes~~ statutory impositions shall be collected in the same manner as ~~ordinary taxes~~ those statutory impositions that are otherwise due and payable, separately accounted for, and remitted by the tax collector to the political subdivisions that levied them.

Mr. Sklamba next took up R.S. 47:2131, to which he explained there had been no real change aside from an update in terminology. A motion was made and seconded to approve the provision. The motion carried, and the statute was approved as follows:

#### **§2131. Time period in which to conduct tax ~~sales~~ auctions**

Once three years after December thirty-first of the year in which ~~ad valorem taxes~~ statutory impositions are due have passed, except for ~~adjudicated property, certificates of no bid,~~ no tax sale auction shall be conducted with regard to such ~~taxes~~ statutory impositions, provided that the time period shall be suspended by the pendency of any ~~suit~~ proceeding which prevents the collection of the ~~taxes~~ statutory impositions, and the time of the suspension shall be excluded from the computation of the three years.

Moving next to R.S. 47:2132, the Reporter again explained that the only changes were to terminology and that no substantive law had been altered. The Council nevertheless identified several issues with the provision: one, inconsistent and potentially improper use of the term "tax recipient [SIC] bodies;" two, use of "tax commission" as opposed to "Louisiana Tax Commission;" and three, repeated use of the phrase "ad valorem taxes" in lieu of "statutory impositions." Mr. Sklamba noted his belief with respect to the third of these issues that these were instances where the things being referred to actually were, specifically, ad valorem taxes, but resolved to nevertheless take a closer look at that and the other issues with the Committee. In light of these issues, and the Council's sense that attempting to deal with them "on the fly" would be an inefficient use of its time, a motion was made and seconded to recommit R.S. 47:2132, and that motion carried.

The Reporter then moved to R.S. 47:2133, noting to the Council the changes made in terminology both in the heading and in the body of the section. A motion was made and seconded to approve the provision, and the floor was opened to commentary. One Council member, pointing to line 8, asked whether the Committee had given any thought to whether bankruptcy law would preclude an auction, given that the thing being sold was not actually the property. Another Council member opined that holding such an auction would indeed violate a stay. The first Council member explained that his real concern pertained to R.S. 47:2131, where prescription was extended due to a potential stay. The Council member stated that, if such situation would not definitively result in a stay, these provisions would need to be redrafted. The Reporter responded that he believed R.S. 47:2131 and 2133 to be okay as currently proposed. The Council member noted that, if other states had a lien system similar to the one being proposed, this question would have already been answered. He therefore suggested that the Committee look into the issue and, if necessary, come back with changes to R.S. 47:2131 and 2133. Mr. Sklamba agreed to report back to the Council with his findings. The Council then returned to the motion on the floor, and, subject to the Reporter's research of the attendant issue, R.S. 47:2133 was approved as follows:

**§2133. Prior payment of taxes statutory impositions**

If before or within the redemptive period, the tax collector determines that the statutory impositions on a certain property subject to a tax sale auction were paid prior to the tax sale auction or that the tax sale auction was conducted in violation of a stay under federal bankruptcy law, the tax collector shall cancel the affected tax sale auction and shall reimburse the tax sale auction purchaser the bid price. The tax collector ~~may credit~~ shall apply the reimbursement pro rata against future disbursements to the tax recipients. The tax collector shall record the cancellation with the recorder of conveyances mortgages in the parish in which the property is located. ~~Such cancellation reinstates the interests of the tax debtor and his successors and all interests in the property that have been otherwise terminated pursuant to this Chapter, to the extent the interest has not otherwise terminated pursuant to its terms or by operation of law.~~

Mr. Sklamba then turned his attention to R.S. 47:2134. Noting that the provision dealt with payment of taxes under protest, he explained that the Committee wanted to allow amounts due for liens to be paid under protest. A motion was made and seconded to approve R.S. 47:2134 and, at the suggestion of a Council member, the Reporter agreed to replace the language "other impositions" with "statutory impositions." Council members next raised another issue of consistency, pointing to the use of terms "suit," "action," and "proceeding" and asking that the Reporter review the provision and make any revisions necessary to achieve uniformity. Mr. Sklamba agreed to do so. Another Council member suggested that the term "taxpayer" as used throughout R.S. 47:2134 should be replaced with "tax debtor." Mr. Sklamba responded by clarifying that anyone – not just the tax debtor – could make payments, thus rendering the language correct as drafted. The Council was satisfied by this explanation.

Next, a Council member suggested that the language "or part thereof" should be added after "per month" so as to follow the convention used earlier in the draft. Another Council member disagreed, highlighting the fact that the other instance of such language being used was present law. The Council member opined that adding "or part thereof" here would signal an intent to change present law and thus complicate matters needlessly. Another Council member noted that the language "set forth above" had been deleted from the present provision and suggested the possibility of instead retaining such language. The Council agreed with this suggestion, but for the sake of clarity, it was ultimately decided that "above" should be replaced with a direct cross-reference to the Section at issue. The Reporter accepted this as another friendly amendment.

Halting its discussion of R.S. 47:2134 temporarily, the Council then adjourned for lunch.

After lunch, the Council returned its attention to R.S. 47:2134, and Mr. Sklamba noted that he had discovered an issue that he wanted to correct – namely, deleting the word "additional" on line 24. The Council agreed to this change. Returning next to an issue discussed prior to lunch, a Council member noted that he had taken time during the break to look into the issue of word choice as between "action," "proceeding," and "suit." The Council member explained that the proper choice was "action" except where referencing bankruptcy proceedings. The Reporter noted this and resolved to make the relevant revisions throughout the draft in advance of his next presentation.

Next, a Council member inquired as to the intent behind the clarificatory language "of competent jurisdiction" after "court." After Mr. Sklamba responded that he had no specific intention when he included the phrase, a motion was made and seconded to strike this language. The motion ultimately failed, and the language was retained. A Council member then pointed out that Subparagraph (B)(2)(c) was awkwardly worded. After a brief discussion and several unsuccessful attempts at wordsmithing, a motion was made and seconded to recommit that particular provision, and the motion carried. The Council then returned to its prior motion to approve the remainder of R.S. 47:2134. The motion passed, and the provisions were approved as follows:

**§2134. Suits to recover ~~taxes~~ statutory impositions paid under protest**

A. No court of this state shall issue any process to restrain, or render any decision that has the effect of impeding, the collection of ~~an ad valorem tax imposed by~~ statutory impositions of any political subdivision, under authority granted to it by the legislature or by the constitution.

B.(1) A taxpayer challenging the correctness of an assessment under R.S. 47:1856, 1857, or 1998, or of other statutory impositions shall timely pay the disputed amount ~~of tax due~~ under protest to the officer or officers designated by law for the collection of this tax. The portion of the ~~taxes~~ statutory impositions that is paid by the taxpayer to the collecting officer or officers that is neither in dispute nor the subject of a suit contesting the correctness of the assessment shall not be made subject to the protest. The taxpayer shall submit separate payments for the disputed amount of tax due and the amount that is not in dispute and not subject to the protest.

(2)(a) If at the time of the payment of the disputed ~~taxes~~ statutory impositions under protest the taxpayer has previously filed a correctness challenge suit under the provisions of R.S. 47:1856, 1857, or 1998, or brought suit disputing other impositions, such taxpayer shall give notice of the suit to the collecting officer or officers in the parish or parishes in which the property is located. This notice shall be sufficient to cause the collecting officer or officers to further hold the amount paid under protest segregated pending the outcome of the suit.



(b) If at the time of the payment of the protested tax statutory impositions, a correctness challenge suit is not already pending under the provisions of R.S. 47:1856, 1857, or 1998, or other suit challenging the validity or correctness of other statutory impositions, then a suit seeking recovery of the protested payment need not be filed until thirty days from the date a final decision is rendered by the Louisiana Tax Commission under either R.S. 47:1856, 1857, or 1998. The taxpayer making the payment under protest under these circumstances must advise the collecting officer or officers in the parish or parishes in which the property is located at the time of the protest payment that the protest payment is in connection with a correctness challenge and must promptly notify the collecting officer or officers when a final decision is rendered by the Louisiana Tax Commission under either R.S. 47:1856, 1857, or 1998, or by judgment of a court of competent jurisdiction rendered in a suit challenging the validity or correctness of other impositions. The collecting officer or officers shall continue to segregate and hold the protested amount in escrow until a timely correctness challenge suit is filed.

\* \* \*

(3) In a correctness challenge suit under either R.S. 47:1856, 1857, or 1998 the officer or officers designated for the collection of taxes in the parish or parishes in which the property is located, the assessor or assessors for the parish or district, or parishes or districts, in which the property is located, and the Louisiana Tax Commission shall be the sole necessary and proper party defendants in any such suit.

(4) If the taxpayer prevails, the collecting officer or officers shall refund the amount to the taxpayer with interest at the actual rate earned on the money paid under protest in the escrow account during the period from the date such funds were received by the collecting officer or officers to the date of the refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes statutory impositions together with interest at the rate set forth above of one percent per month on a non-compounding basis during the period from the date the notice of intention to file suit for recovery of taxes statutory impositions was given to the officer until the date the taxes statutory impositions are paid.

C.(1) A person resisting the payment of an amount of ~~ad-valorem tax~~ statutory impositions due or the enforcement of a provision of the ~~ad-valorem tax law governing assessment and collection of statutory impositions~~ and thereby intending to maintain a legality challenge shall timely pay the disputed amount due under protest to the officer or officers designated by law for the collection of ~~the tax~~ statutory impositions and shall give such officer or officers, notice at the time of payment of his intention to file suit for the recovery of the protested ~~tax amount~~. The portion of the taxes statutory impositions that is paid by the taxpayer to the collecting officer or officers that is neither in dispute nor the subject of a suit contesting the legality of the assessment shall not be made subject to the protest. The taxpayer shall submit separate payments for the disputed amount ~~of tax~~ due and the amount that is not in dispute and not subject to the protest. Upon receipt of a notice, the protested amount shall be segregated and held by the collecting officer for a period of thirty days.

(2) A legality challenge suit must be filed within thirty days from the date of the protested payment. If a suit is timely filed contesting the legality of the tax statutory impositions or the enforcement of a provision of the tax law and seeking recovery of the tax statutory impositions, then that portion of the taxes statutory impositions paid that are in dispute shall be further deemed as paid under protest, and that amount shall be segregated and shall be further held pending the outcome of the suit. The portion of the taxes statutory impositions that is paid by the taxpayer to the collecting

officer or officers that is neither in dispute nor the subject of a suit contesting the legality of the ~~tax~~ statutory impositions shall not be made subject to the protest.

(3) In any such legality challenge suit, service of process upon the officer or officers responsible for collecting the ~~tax~~ statutory impositions, the assessor or assessors for the parish or district, or parishes or districts in which the property is located, and the Louisiana Tax Commission shall be sufficient service, and these parties shall be the sole necessary and proper party defendants in any such suit.

(4) If the taxpayer prevails, the collecting officer or officers shall refund such amount to the taxpayer with interest at the actual rate earned on the money paid under protest in the escrow account during the period from the date such funds were received by the collecting officer or officers to the date of the refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes together with interest at the rate ~~set forth above~~ of one percent per month on a non-compounding basis during the period from the date the notice of intention to file suit for recovery of taxes was given to the officer until the date the taxes are paid.

D. The right to sue for recovery of a ~~tax~~ statutory impositions paid under protest as provided in this Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter for a full and complete adjudication of all questions arising in connection with a correctness challenge or the enforcement of the rights respecting the legality of any ~~tax~~ statutory impositions accrued or accruing or the method of enforcement thereof. The right to sue for recovery of a ~~tax~~ statutory impositions paid under protest as provided in this Section shall afford a legal remedy and right of action at law in the state or federal courts where any tax or the collection thereof is claimed to be an unlawful burden upon interstate commerce, or in violation of any act of the Congress of the United States, the Constitution of the United States, or the constitution of the state. The portion of the ~~taxes~~ statutory impositions which is paid by the taxpayer to the collecting officer or officers that is neither in dispute nor the subject of such suit shall not be made subject to the protest.

E.(1) Upon request of a taxpayer and upon proper showing by the taxpayer that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the pending decision of the courts, may pay the additional assessment under protest but need not file an additional suit. In such cases, the ~~tax~~ amount so paid under protest shall be segregated and held by the collecting officer or officers until the question of law involved has been determined by the courts and shall then be disposed of as provided in the decision of the court.

(2) If the taxpayer prevails, the officer or officers shall refund such amount to the taxpayer with interest at the actual rate earned on the money paid under protest in the escrow account during the period from the date such funds were received by the officer or officers to the date of the refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes together with interest at the rate ~~set forth above~~ of one percent per month on a non-compounding basis during the period from the date the notice of intention to file suit for recovery of taxes was given to the officer until the date the ~~taxes~~ statutory impositions are paid.

Moving next to R.S. 47:2135, Mr. Sklamba noted that, prior to the day's meeting, a Council member had alerted him to potential issues with the provision as it related to tax-exempt organizations. Promising that he would look into the issue, he explained to the Council that he would be skipping it today. The Reporter then moved to R.S. 47:2151,

noting that only non-substantive changes were being proposed. After one minor change was made – the addition of “tax” on line 1 of page 25 – a motion was made and seconded to approve the provision. The motion carried, and the provision was approved as follows:

**§2151. Transfer after tax roll delivered**

A sale, pledge, mortgage, or other alienation or encumbrance of property made after the tax roll has been delivered to the tax collector shall not affect the ~~taxes assessed~~ statutory impositions on the property or the ~~sale of the property~~ tax auction to enforce collection of delinquent ~~taxes~~ statutory impositions.

The Reporter next turned his attention to R.S. 47:2152, noting that the only change being proposed was the addition of “ad valorem”. He explained that this terminology was appropriate in light of the fact that this particular statute applied only to ad valorem taxes and not to other statutory impositions. A motion was made and seconded to approve the provision. Prior to a vote, a Council member noted, with respect to line 12, that the thing from which the property would be free was not actually *the taxes themselves* but rather the lien and privilege therefor. Mr. Sklamba agreed with the point and the language was amended accordingly. After this change, the motion on the floor carried, and the statute was approved as follows:

**§2152. Immovable property; lots assessed together**

If two or more lots or parcels of ground have been assessed in any year or years to the same tax debtor at a certain valuation for the whole together, without distinguishing the valuation of each lot or parcel separately, the tax collector is authorized, but shall not be obligated, to receive the proportion of ad valorem taxes under assessment fairly due upon any one or more of the lots or parcels separately. The proportions shall be ascertained and fixed by a certificate authenticated by the assessor and approved by the tax collector. The lots or parcels upon which their proportions are paid shall be free from the ~~proportion of~~ lien and privilege for ad valorem taxes pertaining to the other lots or parcels of the assessment.

Mr. Sklamba moved then to R.S. 47:2153. Starting with Subsection A, he explained that the provision dealt with the required tax auction notice, setting out requirements and providing a “safe-harbor” form. A motion was made and seconded to approve R.S. 47:2153(A). With the floor open for discussion, a Council member pointed out that, at each notice provision, the requirement that the collector use reasonable efforts had been removed and wondered why this was the case. Mr. Sklamba explained that the intent was to try to relieve some burden from the collector but emphasized that the entire tax sale system had been restructured so as to adequately protect the due process rights at issue. He highlighted in particular the fact that, at the current point in the tax sale process, the tax debtor would be at no risk of losing any interest in the property. The Reporter pointed also to Subsection B, noting that on the whole the Committee was not doing away with duties required of the tax collector but rather trying to avoid codifying a reasonableness requirement.

One Council member, pointing to the language “auction certificate *to the property*” on page 26, suggested that it might be better to delete the prepositional phrase “to the property.” Mr. Sklamba accepted this suggested revision as a friendly amendment. Another Council member then inquired as to the reason for using the language “parish and municipal,” noting that it was the first time such phrase had been used. The Reporter explained that the sheriffs wanted to be very clear that the tax debtor was required to pay both. Next, the Council raised the issue of dates. In particular, the Council noted that the provision spoke in absolute terms regarding a date despite the fact that Orleans Parish followed a different timeline on such issues. Mr. Sklamba promised that the Committee would review the relevant dates pertaining to Orleans Parish and report back to the Council any necessary changes. With this caveat, the Council then returned to the motion

on the floor to approve Subsection A of R.S. 47:2153. The motion carried and the provision was approved as follows:

**§2153. Notice of delinquency and tax sale auction**

A.~~(1)~~(a) No later than the first Monday of February of each year, or as soon thereafter as possible, the tax collector shall send a written notice by certified mail, return receipt requested, to each tax notice party when the tax debtor has not paid all the statutory impositions which have been assessed on immovable property~~7~~. The notice shall inform notifying the person tax notice party that if the statutory impositions on the immovable property shall be are not paid within twenty days after the sending of the notice, or as soon thereafter before the tax sale auction is scheduled, or that tax sale title to the property will be sold according to law the tax collector shall advertise for sale by public auction the delinquent obligation and the lien and privilege securing it, and that he shall issue in favor of the highest bidder and record in the mortgage records an auction certificate. After the property goes to tax sale and within ninety days of the expiration of the redemptive period, the tax collector shall provide written notice by first class mail to each tax notice party that tax sale title to the property has been sold at tax sale and that after the expiration of the redemptive period, the property cannot be redeemed. The notice shall be sufficient if it is in the following form:

"Year            Ward            Sect.            Ass. #            Property #    Notice #

\*\*\*\*\*PLEASE NOTE\*\*\*\*\*            [NAME OF POLITICAL  
SUBDIVISION]

\*By law your taxes are delinquent after December thirty-first. The law requires interest be charged as follows: A flat rate of one percent (1%) per month on a non-compounding basis on delinquent ad valorem taxes. A five percent (5%) penalty is added to the amount due if the taxes remain unpaid after 90 days from the date payment became delinquent, (DEADLINE DATE).

\*If monies for payment of taxes are in escrow, please forward tax notice to your mortgage company.

\*If a receipt is requested, enclose a self-addressed stamped envelope along with your payment.

\*Please notify the sheriff's office or the assessor's office with all address changes.

\*For questions about assessed value or millages contact:

Assessor's Office:  
Property Tax Dept:

\*Payment may be made online at

\*[DATE OF NOTICE]. If taxes statutory impositions are not paid in full within twenty days after this date, the political subdivision will proceed to sell auction the delinquent obligation for payment of taxes and other



impositions and the lien and privilege securing the obligation and will issue in favor of the tax auction purchaser an ~~tax~~ auction certificate sale title to the property at [list location of the tax sale auction] beginning on [list first day of sale auction]. The auction certificate shall be prima facie evidence of the validity of the delinquent obligation, the lien and privilege and the assignment to the tax auction purchaser. You will have the right to pay the amounts due until the day before the actual sale auction. If ~~tax sale title to the property the delinquent obligation is sold auctioned,~~ you will have ~~three years [or other applicable redemptive period]~~ from the date of the filing of the ~~tax sale certificate in which to may~~ redeem the property according to law, but in order to redeem, you will be required to pay all delinquent parish and municipal statutory impositions, a five percent (5%) penalty and interest at the rate of one percent (1%) per month on a non-compounding basis computed on the amounts past due statutory impositions together with other costs amounts in accordance with law.

Total Assessed Value Tax Distributions	Millages	Homestead Exemption	Taxes and other Statutory Impositions Due	Assessment Information
[add taxing districts]			[add amount of tax due each district]	Total Assessed Value
				Property Description
Total Statutory Impositions Due				
Interest				
Costs				
Total				
[Name of Tax Collector and Address]				
Total Statutory Impositions Due				
Interest				
Cost				
Total				
[Tax Collector Name]				
YEAR	WARD	SECT	ASS.#	PROPERTY NOTICE #
Name of Tax Debtor				
[address]				

Make checks payable to: [Tax Collector Name]

Mail this portion of tax bill and payment to:



[address]"

~~(b) Nothing in this Section shall be construed to prohibit the tax collector from sending more than one notice of sale.~~

~~(c)(i) If the written notice by certified mail is returned for any reason, the tax collector shall demonstrate a reasonable and diligent effort to provide notice of the tax sale to the tax debtor. To demonstrate a reasonable and diligent effort, the tax collector shall attempt to deliver notice of the delinquent taxes and tax sale by first class mail to the last known address of the debtor and take any three of the following additional steps to notify the tax debtor:~~

~~(aa) Perform a computer search of digitized records and databases of the clerk of court or sheriff's office for addresses of other properties that may be owned by the debtor.~~

~~(bb) Contact the tax assessor of the parish in which the property is located for the addresses of other properties that may be owned by the debtor.~~

~~(cc) Examine the mortgage or conveyance records of the parish where the property is located to determine whether there are any other transactions pertaining to the property.~~

~~(dd) Attempt personal or domiciliary service of the notice.~~

~~(ee) Post the notice of tax sale at the property.~~

~~(ii) The notice of the tax sale shall be sent by certified mail or commercial courier to all addresses discovered through the steps set forth in this Subparagraph. The tax collector may recover all reasonable and customary costs actually incurred in complying with these steps.~~

~~(iii) Failure of the debtor to receive actual notice of the tax sale shall not affect the validity of the tax sale when the tax collector demonstrates a reasonable and diligent effort to provide notice of the tax sale as set forth in this Subsection. If the debtor is deceased, the notice of tax sale and the reasonable and diligent effort to provide notice of the tax sale shall be sufficient if to the succession representative, if applicable, or to a curator as provided by law.~~

~~(2)(a) No later than the first Monday of March of each year, or as soon thereafter as possible, the tax collector shall search the mortgage and conveyance records of tax sale eligible property to identify its tax sale parties.~~

~~(b) Prior to the tax sale, the tax collector shall send a written notice by certified mail, return receipt requested, to each tax sale party identified pursuant to Subparagraph (a) of this Paragraph. The notice shall advise the person that it is required that the statutory impositions on the immovable property be paid within twenty days after the sending of the notice or the tax sale title to the property will be sold according to law. This notice shall be sufficient if it is in the following form:~~

~~TAX SALE PARTY NOTICE OF TAX SALE~~

~~{Date}~~

~~{Name}~~

~~{Address}~~

~~{City}, {ST} {Zip}~~

~~RE: Tax Bill Number:~~

~~Property: {Property Address}~~

~~[Description of Property Abbr]  
YOU HAVE A PUBLICLY RECORDED INTEREST IN THE ABOVE  
REFERENCED PROPERTY. PLEASE READ THIS NOTICE  
CAREFULLY.~~

~~The property taxes for the above referenced property were not paid. In  
accordance with the notice requirement contained in Article VII, Section 25  
of the Louisiana Constitution, you are hereby notified that if the delinquent  
property taxes are not paid within twenty days of the date of this notice, the  
property will be sold at tax sale in accordance with law.~~

~~AFTER THE EXPIRATION OF THE REDEPTIVE PERIOD, THE  
PROPERTY CANNOT BE REDEEMED. CONTINUED POSSESSION OF  
THE PROPERTY DOES NOT EXTEND THE REDEPTIVE PERIOD.~~

~~Please contact [name of tax collector] if you believe that you received this  
notice in error, have sold or transferred this property, or for further  
information or assistance.~~

~~Thank you,~~

~~Tax Collector of [name of political subdivision]~~

~~[Tax collector phone number]~~

~~THIS NOTICE CONCERNS ONLY THE PROPERTY DESCRIBED IN THE  
"REGARDING" PORTION OF THIS LETTER; the address of that property  
may or may not be the same as the mailing address of this notice.~~

~~If your recorded interest in this property is no longer valid or enforceable,  
you may remove it by visiting the office of the recorder of mortgages and  
conveyances located at [mortgage and conveyance office address]."~~

The Reporter moved next to Subsection B, explaining the provision and noting that the Committee was proposing to delete the phrase "or commercial courier" but would also be adding a new standalone Section stating that commercial couriers could in fact be used. A motion was made and seconded to approve Subsection B, and the floor was opened to discussion. A Council member urged that it should be made crystal clear that this Subsection applied only to the tax debtor, and that for other interested parties the onus remained on those parties themselves. The Council member added that, with respect to Subparagraph (B)(1)(c), he would prefer to see steps directed more at the *person* than the property. After more discussions, revisions to address these and other language-related issues were agreed upon by the Reporter and the Council.

Another Council member then voiced concern over the imposition of a requirement to send notice to "*all* addresses" discovered throughout the process described in Subsection B, pointing out that this might require time and money to be spent with respect to obviously outdated addresses. The Council member argued that this was too large a burden. Another Council member, though clarifying that he did not disagree, noted that legislation was passed in 2019 imposing a similar burden of sending notice to "*all*" addresses. With the Council tending to agree that the burden was too high, several suggestions for alleviating this burden were voiced, included changing "*all*" to "*the*" and eliminating the first class and commercial courier requirements. Ultimately, the Council decided upon including a standard of reasonableness with respect to the likelihood that the address was correct, approving the following language: "The tax collector shall send the notice ... to all addresses that the tax collector ... *reasonably believes may be valid addresses for the tax debtor.*"

With the parameters of the requirement finally set, a Council member next inquired as to the consequences for failure to meet the requirements. The Council member urged that the statute should be explicit that a failure here would not invalidate an entire tax auction. One Tax Sales Committee member commented that such a statement should be found in R.S. 47:2266. Ultimately, no changes were made relative to this issue. The next question discussed by the Council was what type of mail ought to be required for the notice. After discussion, the Council narrowed the options to either first class mail or commercial courier, ultimately voting to require first class mail. With this final issue decided, the Council voted on the motion to approve Subsection B. The motion carried, and the provision was approved as follows:

B.(1) If the certified mail sent to the tax debtor is returned for any reason, the tax collector shall resend the notice by first class mail and to "occupant" at the address listed and shall take additional steps to notify the tax debtor of the delinquent taxes and pending auction, which shall include any two of the following:

(a) Review the local telephone directory or internet for the tax notice parties debtor.

(b) Contact the assessor for potential updated addresses or other properties assessed in the tax debtor's name.

(c) Examine the mortgage and conveyance records of the parish where the property is located to determine whether there are any other transactions pertaining to the property tax debtor.

(d) Attempt personal or domiciliary service of the tax bill.

(e) Post a notice of tax auction at the property.

(2) The tax collector shall send the notice by first class mail to all addresses that the tax collector discovers through the procedures set forth in Paragraph (1) of this Subsection and reasonably believes may be valid addresses for the tax debtor.

(3) The tax collector may recover all reasonable and customary costs actually incurred in complying with Paragraphs (1) and (2) of this Subsection.

After the Reporter identified R.S. 47:2153(C) as a provision that might take considerable deliberation, a motion was made to adjourn for the day. The Friday session of the October 2019 Council meeting was then adjourned.

# LOUISIANA STATE LAW INSTITUTE

## MEETING OF THE COUNCIL

October 4-5, 2019

**Saturday, October 5, 2019**

### **Persons Present:**

Bergstedt, Thomas M.  
Cromwell, L. David  
Dawkins, Robert G.  
Dimos, Jimmy N.  
Doguet, Andre'  
Domingue, Billy J.  
Forrester, William R., Jr.  
Garrett, J. David  
Gregorie, Isaac M. "Mack"  
Griffin, Piper D.  
Hebert, Christopher B.  
Hogan, Lila T.  
Holdridge, Guy  
Janke, Benjamin West

Kostelka, Robert "Bob" W.  
Kutcher, Robert A.  
LaVergne, Luke A.  
Lawrence, Quintillis Kenyatta  
Lee, Amy Allums  
Mengis, Joseph W.  
Miller, Gregory A.  
Norman, Rick J.  
Saloom, Douglas J.  
Talley, Susan G.  
Tate, George J.  
Tucker, Zelda W.  
Waller, Mallory  
Ziober, John David

President Susan G. Talley called the Saturday session of the October 2019 Council meeting to order at 8:30 a.m. on Saturday, October 5, 2019 at the Louisiana Supreme Court in New Orleans. She then called on Judge Guy Holdridge, Reporter of the Recusal Subcommittee and member of the Code of Civil Procedure Committee, to begin his presentation of several policy questions for the Council's consideration.

### **Code of Civil Procedure Committee**

Judge Holdridge suggested that the Council first consider the materials pertaining to consolidation, explaining that current law presently provides that when common issues of fact and law predominate, actions can be consolidated for trial. He explained that, under present law, when three actions are consolidated for trial, there will still be three judgments and three appeals after the trial is concluded. Judge Holdridge also reminded the Council that it had previously adopted revisions to Code of Civil Procedure Article 1561(A) to allow consolidation to occur with respect to both trial and pre-trial proceedings, but a question was later raised as to whether this language would allow the court to consolidate for both purposes or would limit the consolidation to one or the other. The question for the Council's consideration, then, was whether this provision should be expanded to allow consolidation for all purposes, including trial, pre-trial proceedings, and discovery.

One Council member noted that from a litigation perspective, this makes perfect sense but questioned how judges would respond, and several judicial members of the Council expressed their approval of such an expansion. The Council then discussed the fact that some courts are attempting to extend the provisions of Article 1561, whereas others are remanding for improper consolidation. The Council also discussed whether there was a possibility that negative effects could result with respect to pending cases. After Judge Holdridge reminded the Council that there are other provisions that prevent consolidation from occurring if doing so would prejudice the parties, the Council unanimously voted to expand the scope of Article 1561(A) to allow consolidation for all purposes.

Next, the Council turned to the materials on partial final judgments. Judge Holdridge explained that under Article 1915(B), a partial judgment can be considered final if the trial judge designates it as such and certifies that there is no just reason for delay. If the judgment does not contain this designation, however, the judgment will not be considered appealable and, rather than being remanded, must be dismissed by the court



of appeal for lack of jurisdiction. Judge Holdridge explained that several suggestions had been made with respect to amending or even deleting Article 1915(B), and four options were being proposed for the Council's consideration. The first would make no change but would potentially allow the court of appeal to review and remand the partial judgment for the addition of a proper designation, and the second would make partial final judgments that contain the designation appealable without review as to whether the designation was proper. Another option would be to delete this provision entirely such that there would be no right appeal partial judgments, which would instead be subject to supervisory writ procedure, and the final option would soften this third option by allowing the court of appeal to set the case for briefing and oral argument. The Council discussed the fact that unlike for an appeal, in which the court has access to the entire record, when a writ is filed, the court only looks at what is attached to the writ and must deny the writ on the showing made if there is not enough information.

The Reporter of the Code of Civil Procedure Committee, Mr. Bill Forrester, asked for clarification with respect to Option B, citing constitutional concerns, and Judge Holdridge noted that this option would provide courts of appeal with jurisdiction over partial judgments in all cases in which a designation is made, thereby preventing these courts from dismissing the appeal due to lack of jurisdiction. Members of the Council discussed the fact that this has been a huge issue for several years and noted examples of what would and would not constitute just reasons for delay. The Council then discussed adding a requirement that written reasons be provided as to why there is no just reason for delay, with some members expressing concern that such a requirement would be burdensome on trial judges. One Council member suggested that if the trial judge provides written reasons, that determination should be given deference and should not be overturned absent manifest error. After some Council members expressed concern with respect to writ procedure, Judge Holdridge provided an overview, noting that the court of appeal reviews whether all rules were followed, whether the writ was timely filed, whether and why a ruling would terminate litigation under a *Herlitz* analysis, and whether enough information was provided for the court to make a ruling, all before considering the merits of the case.

At this time, a Council member suggested changing Option D to *require* the court of appeal to set the case for briefing and oral argument if there is no just reason for delay, replacing "should" with "shall" on line 21 of page 1 of the materials. The Council then discussed that the procedure would essentially be the same as under Article 1915(B) but without the jurisdictional issues. One Council member questioned the res judicata effect of a writ denial as opposed to an appeal, and another Council member suggested that these mechanisms be further vetted by trial and appellate court judges, noting that, as a practical matter, if a partial final judgment providing that there is no just reason for delay is prepared by both parties, the trial judge is going to sign it. Later the court of appeal reviews the judgment, finds that no reasons have been given, and dismisses the appeal because the designation is improper and therefore it does not have jurisdiction. The Council member also questioned whether the *Herlitz* analysis requires the termination of the litigation as a whole or in part, providing the example of a situation in which a two-week trial is reduced to one day.

The Council continued its discussion with respect to partial final judgments, with one Council member suggesting that perhaps language should be drafted requiring the court of appeal to retain jurisdiction over any partial final judgment containing written reasons by the trial judge as to why there is no just reason for delay. Judge Holdridge again noted that the criticism of this approach is that it creates more work for trial judges, but the Council discussed that, practically speaking, the parties would draft and provide written reasons to the judge when the designation was requested. Members then discussed the inconsistencies that would arise in the event that the judge signed the judgment submitted by one party and the written reasons submitted by the other party, as well as the need to provide structure and guidance in this area of the law.

The Council also considered a related problem with respect to the appealability of preliminary injunctions and the potential for these cases to end without a permanent injunction hearing ever being held. Mr. Forrester explained that when preliminary injunctions are appealed, the injury is often resolved before the appeal is decided



because the process is designed for more thorough briefing, not quick determinations. As a result, the Committee is considering amending Code of Civil Procedure Article 3612 to remove the right to appeal a preliminary injunction, instead requiring these determinations to be made via writ procedure.

After a brief discussion with respect to this issue, the October 2019 Council meeting was adjourned.



**Nick Kunkel**



**Mallory Waller**