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2 93rd General Assembly
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4

As Engrossed: H3/3/21 H3/17/21

A Bill

HOUSE BILL 1468

5 By: Representative Jett
6 By: Senator B. Johnson
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS PERTAINING TO THE
10 ADMINISTRATION OF STATE TAXES; TO AMEND THE
11 ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO
12 AMEND THE PROCEDURES FOR TAXPAYER JUDICIAL RELIEF; TO
13 CREATE THE INDEPENDENT TAX APPEALS COMMISSION ACT;
14 AND FOR OTHER PURPOSES.

Subtitle

15
16
17
18 TO CREATE THE INDEPENDENT TAX APPEALS
19 COMMISSION ACT.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 26, Chapter 18, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 11 – Independent Tax Appeals Commission Act

27
28 26-18-1101. Title.

29 This subchapter shall be known and may be cited as the “Independent Tax
30 Appeals Commission Act”.

31
32 26-18-1102. Legislative purpose.

33 (a) The state shall create, within the Department of Inspector
34 General, an independent agency with tax expertise to resolve disputes between
35 the Department of Finance and Administration and taxpayers before requiring
36 the payments of the amount in issue.



1 (b) By establishing the Tax Appeals Commission as an independent tax
2 tribunal within the executive branch of government, this subchapter provides
3 taxpayers with a means of resolving controversies with the Department of
4 Finance and Administration before a neutral body.

5
6 26-18-1103. Legislative intent – Construction.

7 This subchapter shall be interpreted and construed to further the
8 intent of the General Assembly to provide the people of Arkansas with an
9 independent tax appeals commission to hear and resolve tax disputes between
10 taxpayers and the Department of Finance and Administration.

11
12 26-18-1104. Definition.

13 As used in this subchapter, "taxpayer" means an individual or entity
14 that:

15 (1) Is challenging the state's taxing jurisdiction over
16 the taxpayer; or

17 (2) Has standing to challenge a decision by the Department
18 of Finance and Administration:

19 (A) Imposing liability for a tax, penalty, or
20 interest;

21 (B) Denying a credit or deduction;

22 (C) Denying a refund, credit, or incentive claim or
23 application;

24 (D) Canceling, refusing, or revoking a license or
25 permit under § 26-18-601, § 26-52-803, § 26-55-219, § 26-55-224, § 26-55-231,
26 § 26-56-204, § 26-56-311, § 26-57-413, § 26-57-419, or § 26-62-204;

27 (E) Closing a noncompliant taxpayer's business;

28 (F) Relating to a jeopardy assessment;

29 (G) Seizing a vending device or a coin-operated
30 amusement device; or

31 (H) Taking any other action that provides a taxpayer
32 the right to a hearing with the Tax Appeals Commission under state law.

33
34 26-18-1105. Tax Appeals Commission – Creation.

35 (a)(1) The Tax Appeals Commission is created within the Department of
36 Inspector General and shall be under the direction, control, and supervision

1 of the Secretary of the Department of Inspector General.

2 (2) Notwithstanding subdivision (a)(1) of this section, the
3 commission shall independently decide matters before the commission.

4 (b) The commission shall:

5 (1) Be separate from and independent of the authority, control,
6 and supervision of the Department of Finance and Administration; and

7 (2) Have a seal.

8
9 26-18-1106. Appointment of commissioners.

10 (a)(1) The Tax Appeals Commission shall consist of three (3)
11 commissioners who are subject to the requirements of § 26-18-1107.

12 (2) Commissioners shall be selected from a pool of candidates
13 recommended as follows:

14 (A) The Arkansas Bar Association shall nominate three (3)
15 individuals who are licensed to practice law in this state;

16 (B) The majority of the Arkansas Supreme Court shall
17 nominate three (3) individuals who are:

18 (i) Licensed to practice law in this state; and

19 (ii) Certified as a certified public accountant in
20 this state; and

21 (C) The Arkansas Society of Certified Public Accountants
22 shall nominate three (3) individuals who are certified as a certified public
23 accountant in this state.

24 (3) The Governor shall appoint one (1) commissioner from each
25 pool of candidates nominated under this subsection.

26 (b) The Chief Commissioner of the Tax Appeals Commission shall:

27 (1) Be appointed from the pool of candidates nominated by the
28 Arkansas Supreme Court;

29 (2) Meet the requirements stated in § 26-18-1107 for the
30 position of chief commissioner;

31 (3) Act as the executive officer of the commission;

32 (4) Be subject to the same provisions of law as commissioners;

33 (5) Be charged with the administration of the commission;

34 (6) Apportion among the commission all causes, matters, and
35 hearings coming before the commission;

36 (7) Take any action necessary to enable the commission to

1 properly exercise the duties, functions, and powers of the commission under
2 this subchapter; and

3 (8) Submit an annual report to the Speaker of the House of
4 Representatives, the President Pro Tempore of the Senate, the Chair of the
5 House Committee on Judiciary, the Chair of the Senate Committee on Judiciary,
6 the cochairs of the Legislative Council, the Governor, and the Secretary of
7 the Department of Inspector General that contains the following information
8 for the year that is the subject of the report:

9 (A) The case load of the commission;

10 (B) The number of petitions filed;

11 (C) The number of claims settled;

12 (D) The number of decisions the commission rendered;

13 (E) The number of decisions rendered:

14 (i) In favor of the Department of Finance and
15 Administration;

16 (ii) In favor of the taxpayer; and

17 (iii) Partially in favor of the department and
18 partially in favor of the taxpayer;

19 (F) The number of matters heard:

20 (i) In person;

21 (ii) By teleconference or videoconference;

22 (iii) Using a combination of in-person and either
23 teleconference or videoconference means; and

24 (iv) Solely on the documents filed with the
25 commission; and

26 (G) The average time for a claim to be processed from the
27 petition being filed to a decision being rendered, calculated for each type
28 of hearing conducted by the commission.

29 (c) Each commissioner:

30 (1) Is appointed to a term of nine (9) years; and

31 (2) Shall not serve more than two (2) terms.

32 (d) Each commissioner shall receive an annual salary and benefits
33 comparable to the salary and benefits provided to state district court
34 judges.

35 (e) Once appointed, each commissioner shall:

36 (1) Continue his or her term until the:

1 (A) Commissioner is removed from his or her position under
2 subsection (g) of this section;

3 (B) Commissioner is not appointed to a second term;

4 (C) Commissioner's final term expires;

5 (D) Commissioner retires his or her position;

6 (E) Commissioner relinquishes his or her position; or

7 (F) Commissioner is unable to perform his or her duties on
8 a long-term basis; and

9 (2)(A) Take an oath or make an affirmation that he or she will
10 faithfully discharge his or her duties under this subchapter.

11 (B) The oath or affirmation required under subdivision
12 (e)(2)(A) of this section shall be filed with the Secretary of State's
13 office.

14 (f)(1) If a vacancy occurs on the commission, the Governor shall
15 appoint a commissioner to fill the vacancy.

16 (2) If the vacant position is one (1) that was filled by a
17 candidate nominated by:

18 (A) The Arkansas Bar Association, the Arkansas Bar
19 Association shall nominate three (3) individuals who are licensed to practice
20 law in this state;

21 (B) The majority of the Arkansas Supreme Court, the
22 majority of the Arkansas Supreme Court shall nominate three (3) individuals
23 who are:

24 (i) Licensed to practice law in this state; and

25 (ii) Certified as a certified public accountant in
26 this state; and

27 (C) The Arkansas Society of Certified Public Accountants,
28 the Arkansas Society of Certified Public Accountants shall nominate three (3)
29 individuals who are certified as a certified public accountant in this state.

30 (g)(1) The Governor may remove a commissioner for:

31 (A) Neglect of duty;

32 (B) Inability to perform duties; or

33 (C) Malfeasance in office.

34 (2) The Governor shall provide notice and an opportunity to be
35 heard before removing a commissioner.

36 (h) A commissioner shall conduct himself or herself in an impartial

1 manner and may withdraw from a hearing under this subchapter at any time if
2 the commissioner deems himself or herself disqualified from performing his or
3 her duties in an impartial manner.

4 (i)(1) Except as provided in subdivision (i)(2) of this section, a
5 commissioner shall not:

6 (A) Engage in a business or be employed outside of his or
7 her position as commissioner; or

8 (B) Hold office or a position of profit in this state or a
9 political subdivision of this state, another state, or the United States of
10 America.

11 (2) A commissioner may own an interest in a business entity and
12 earn income from incidental teaching and scholarly activities, unless owning
13 the interest or earning income from the incidental teaching and scholarly
14 activities conflicts with his or her duties as an impartial commissioner
15 under this subchapter.

16 (3) A commissioner shall withdraw from hearing a matter if he or
17 she is related to the taxpayer or owns an interest in the business of the
18 taxpayer.

19 (j) If all of the commissioners have withdrawn from hearing a matter
20 under this section, the Governor shall appoint a special master to act as a
21 commissioner in the matter.

22
23 26-18-1107. Qualifications of commissioners.

24 (a) Each commissioner of the Tax Appeals Commission shall:

25 (1) Be a qualified elector of the State of Arkansas;

26 (2) Be either licensed to practice law in the state or certified
27 as a certified public accountant in the state; and

28 (3) Possess substantial knowledge of Arkansas tax law.

29 (b) In addition to meeting the requirements of subsection (a) of this
30 section, the Chief Commissioner of the Tax Appeals Commission shall:

31 (1) Be licensed to practice law in the state;

32 (2) Have been engaged in the private practice of law or employed
33 in the private sector, or both, for at least five (5) of the immediately
34 preceding ten (10) years before the chief commissioner's first appointment to
35 the commission; and

36 (3) Be licensed as a certified public accountant in the state.

1
2 26-18-1108. Location of the Tax Appeals Commission – On-site
3 observation.

4 (a) The principal office of the Tax Appeals Commission shall be
5 located in:

6 (1) Little Rock, Arkansas; and

7 (2) A building that is separate from any building in which a
8 division of the Department of Finance and Administration is located.

9 (b) To provide taxpayers a reasonable opportunity to appear before the
10 commission, the commission may conduct its hearings at:

11 (1) Its principal office; and

12 (2) Buildings or facilities, or both, leased or owned by state
13 or local public agencies or entities within the state.

14 (c)(1) The commission may contract only with state and local public
15 agencies or entities in the State of Arkansas to arrange for hearing rooms,
16 chambers, offices, or other appropriate facilities for the commission’s
17 principal office in Little Rock and for hearings not held at the commission’s
18 principal office.

19 (2) The limitation stated in subdivision (c)(1) of this section
20 does not apply to teleconferencing, videoconferencing, or similar electronic
21 means that may allow for remote participation in commission proceedings.

22 (d) With the consent of the taxpayer and with all parties invited to
23 observe, the commission may conduct on-site observation of tangible personal
24 property, real property, and activities that are relevant to a controversy.

25
26 26-18-1109. Employees.

27 (a) The Tax Appeals Commission:

28 (1) May employ a clerk, an assistant, and other employees as
29 necessary to carry out the duties of the commission; and

30 (2) Shall employ:

31 (A)(i) A staff attorney.

32 (ii) The duties of the staff attorney shall include
33 without limitation assisting the commissioners with drafting decisions; and

34 (B) An accountant who has experience in tax issues related
35 to manufacturing and business.

36 (b) An employee of the commission shall not act as an attorney, a

1 representative, or an accountant for a taxpayer in a matter involving a tax
2 imposed or levied under state law by the Department of Finance and
3 Administration or by any other state or local public agency.

4
5 26-18-1110. Jurisdiction.

6 (a) The Tax Appeals Commission has administrative jurisdiction to:

7 (1) Except as otherwise provided in this section, hear disputes
8 involving all state taxes administered by the Secretary of the Department of
9 Finance and Administration;

10 (2) Hear a matter properly before the commission regardless of
11 whether the taxpayer has paid to the Department of Finance and Administration
12 some or all of the disputed tax or other amounts before or during the
13 pendency of proceedings before the commission;

14 (3) Consistent with a decision issued by the commission, compel
15 the secretary to:

16 (A) Issue a final assessment;

17 (B) Issue a refund;

18 (C) Reduce, set aside, alter, change, or remedy an action
19 by the department that is subject to appeal, if appropriate under state law;
20 or

21 (D) Take other appropriate action; and

22 (4)(A) Except as provided in subdivision (a)(4)(B) of this
23 section, extend a deadline provided under this subchapter.

24 (B) The commission shall not extend the deadline for:

25 (i) A taxpayer to file a petition under § 26-18-
26 1113; or

27 (ii) The commission to issue a decision, except as
28 otherwise provided under § 26-18-1116(b).

29 (b) The commission does not have jurisdiction to:

30 (1) Hear disputes involving taxes that are excepted from the
31 Arkansas Tax Procedure Act under § 26-18-102;

32 (2) Decide questions regarding the constitutionality of the
33 application of statutes to a taxpayer or the constitutionality of rules
34 promulgated by the department;

35 (3) Hear a claim for protection against enforcement of an
36 illegal exaction under Arkansas Constitution, Article 16, § 13;

1 (4) Hear or decide claims for which the Office of Hearings and
2 Appeals has issued an administrative decision; or

3 (5) Hear or decide a claim that is the subject of pending
4 litigation.

5 (c) Upon the creation of the commission:

6 (1) The Office of Hearings and Appeals shall hear a proceeding
7 resulting from an action or decision by the secretary, including without
8 limitation the issuance of a proposed assessment, a refund claim denial, or
9 any other matter brought by a taxpayer, that was issued before January 1,
10 2023;

11 (2) The commission shall hear a proceeding resulting from an
12 action or decision by the secretary, including without limitation the
13 issuance of a proposed assessment, a refund claim denial, or any other matter
14 brought by a taxpayer, that was issued on or after January 1, 2023; and

15 (3) A taxpayer that has a matter pending before the Office of
16 Hearings and Appeals for which a hearing or prehearing has not been held may
17 elect to have the taxpayer's matter transferred to the commission.

18
19 26-18-1111. Settlement of tax disputes.

20 (a) A taxpayer and the Department of Finance and Administration may
21 settle or compromise controversies at any time under § 26-18-705.

22 (b) If a matter is settled after a petition has been filed with the
23 Tax Appeals Commission under this subchapter, the parties shall notify the
24 commission so that the matter is withdrawn from consideration by the
25 commission.

26
27 26-18-1112. Service of process.

28 (a) Mailing by first class mail to any of the following constitutes
29 service on the other party under this subchapter:

30 (1) The address of the taxpayer given on the taxpayer's
31 petition, if the taxpayer does not have a representative of record;

32 (2) The address of the taxpayer's representative of record; or

33 (3) The address designated by the Department of Finance and
34 Administration as the proper place of service on the department.

35 (b) The Tax Appeals Commission may:

36 (1)(A) Prescribe other methods of service of process.

1 (B) Any additional methods of service of process
2 prescribed under subdivision (b)(1)(A) of this section shall be prescribed by
3 rule;

4 (2) Establish methods of electronic filing and service of
5 process; and

6 (3) Order that notice be given to additional persons.

7
8 26-18-1113. Pleadings.

9 (a)(1) A taxpayer may commence an action under this subchapter by
10 filing a petition with the Tax Appeals Commission protesting an action or
11 decision by the Secretary of the Department of Finance and Administration,
12 including without limitation the issuance of a proposed assessment under §
13 26-18-403 or a refund claim denial under §§ 26-18-507 and 26-36-315.

14 (2) The commission shall not impose a filing fee for petitions
15 filed with the commission.

16 (b)(1) A petition under subsection (a) of this section shall:

17 (A) Be filed with the commission no later than ninety (90)
18 days from the date the Department of Finance and Administration issues a
19 proposed assessment or refund claim denial or takes other action or proposed
20 action that the taxpayer is protesting; and

21 (B) Contain:

22 (i) Facts sufficiently clear to identify the
23 taxpayer and the taxpayer's reasons for opposing the proposed assessment,
24 denial of a claim for refund, or other action of the secretary; and

25 (ii) The specific items at issue.

26 (2) The commission shall notify and serve a copy of the petition
27 on the department within fifteen (15) days of receipt of the petition by the
28 commission.

29 (c)(1) The department shall file an answer to a petition filed under
30 this section within sixty (60) days of receipt of the notice from the
31 commission under subdivision (b)(2) of this section.

32 (2)(A) The department shall serve a copy of the answer on the
33 taxpayer's representative, or, if the taxpayer is not represented, on the
34 taxpayer directly.

35 (B) An attorney's certification that the attorney sent the
36 pleading by a means of service authorized under § 26-18-1112 is sufficient

1 proof of service under subdivision (c)(2)(A) of this section.

2 (d)(1) A taxpayer may:

3 (A) File a reply to an answer filed under subsection (c)
4 of this section within thirty (30) days of the date the answer was served on
5 the taxpayer or the authorized representative of the taxpayer; or

6 (B) Move for default judgment if no answer was filed.

7 (2) The taxpayer shall:

8 (A) Serve a copy of a reply filed under subdivision (d)(1)
9 of this section on the authorized representative of the department; and

10 (B)(i) File proof of service of the reply filed under
11 subdivision (d)(1) of this section with the reply.

12 (ii) A certification by the taxpayer or the
13 authorized representative of the taxpayer stating that he or she sent the
14 pleading by a means of service authorized under § 26-18-1112 is sufficient
15 proof of service under subdivision (d)(2)(B)(i) of this section.

16 (e)(1) Within thirty (30) days after a reply has been filed or the
17 deadline to file a reply has passed, the commission shall schedule a hearing
18 to be held within ninety (90) days of the date the reply was filed or the
19 deadline to file a reply passed.

20 (2)(A) Before scheduling a hearing under this section, the Chief
21 Commissioner of the Tax Appeals Commission shall assign the proceeding to one
22 (1) commissioner or to all available commissioners sitting en banc, depending
23 on the nature and significance of the proceeding.

24 (B) There is a presumption that proceedings:

25 (i) For which the net amount of the tax deficiencies
26 and claimed refunds in controversy does not exceed twenty-five thousand
27 dollars (\$25,000), exclusive of interest and penalties, should be assigned to
28 one (1) commissioner;

29 (ii) Identified in subsection (g) of this section
30 should be assigned to one (1) commissioner; and

31 (iii) For which the net amount of the tax
32 deficiencies and claimed refunds in controversy exceeds two hundred fifty
33 thousand dollars (\$250,000), exclusive of interest and penalties, should be
34 assigned to all commissioners sitting en banc.

35 (3) Before a hearing is held, the chief commissioner may
36 reassign the proceeding to one (1) commissioner or to all commissioners

1 sitting en banc.

2 (f)(1) Either party may amend a pleading one (1) time without leave at
3 any time before the period for responding to the pleading expires.

4 (2) After the period for responding to a pleading expires, a
5 pleading may be amended only with the written consent of the adverse party or
6 with the permission of the commission.

7 (3) The commission shall allow a party to file an answer or
8 reply, or both, to an amended pleading, and the commission shall specify a
9 deadline for filing the answer or reply, or both.

10 (4) A taxpayer shall not amend the taxpayer's petition after the
11 expiration of the time for filing a petition if the amended petition would
12 have the effect of conferring jurisdiction over a matter that would otherwise
13 not come within the jurisdiction of the commission because of the statute of
14 limitations or otherwise.

15 (5) The commission shall provide notice of an amended pleading
16 to the adverse party.

17 (g) Except as provided in subdivision (e)(2)(B)(ii) of this section,
18 this section does not apply to the following administrative hearings before
19 the commission for which an expedited process is available:

20 (1) A jeopardy assessment by the secretary under § 26-18-402;

21 (2) A cancellation or refusal to issue, extend, or reinstate a
22 license, permit, or registration under § 26-18-601;

23 (3) A decision by the secretary to close a noncompliant
24 taxpayer's business under §§ 26-18-1001 and 26-18-1002;

25 (4) A joint refund offset under § 26-18-507 or § 26-36-315;

26 (5) A demand for an additional bond under § 26-55-224, § 26-56-
27 204, or § 26-62-204;

28 (6) The revocation or cancellation of a license under § 26-55-
29 231, § 26-56-311, § 26-57-413, or § 26-57-419;

30 (7) The confiscation of equipment under § 26-55-247; or

31 (8) The seizure or forfeiture of a vending device under § 26-57-
32 1212.

33
34 26-18-1114. Stipulation.

35 The parties to a proceeding shall make every reasonable effort to
36 stipulate all relevant and nonprivileged facts to the fullest extent to which

1 a complete or qualified agreement can or fairly should be reached.

2
3 26-18-1115. Hearings.

4 (a) A hearing under this subchapter:

5 (1) Shall be tried before one (1) or more of the appointed
6 commissioners of the Tax Appeals Commission, as determined by the Chief
7 Commissioner of the Tax Appeals Commission; and

8 (2) Is not subject to the Arkansas Administrative Procedure Act,
9 § 25-15-201 et seq.

10 (b) Except as otherwise stated in this subchapter, the commission
11 shall:

12 (1) Receive evidence;

13 (2) Conduct hearings; and

14 (3) Render decisions.

15 (c)(1) Hearings of the commission under this subchapter shall be:

16 (A) Conducted in accordance with the rules of practice and
17 procedure promulgated by the commission under the Arkansas Administrative
18 Procedure Act, § 25-15-201 et seq.; and

19 (B) Confidential and closed to the public.

20 (2) The following are exempt from disclosure under the Freedom
21 of Information Act of 1967, § 25-19-101 et seq.:

22 (A) Tax returns, audit reports, information pertaining to
23 any tax return or audit report, and other taxpayer information provided to
24 the commission in relation to a dispute involving state taxes administered by
25 the Secretary of the Department of Finance and Administration;

26 (B) Hearings held by the commission under this section;

27 and

28 (C) Files and records of the commission pertaining to an
29 action filed by a taxpayer or the secretary under:

30 (i) This subchapter; or

31 (ii) The Arkansas Tax Procedure Act, § 26-18-101 et
32 seq.

33 (d)(1) The rules of evidence applicable to civil cases in state courts
34 do not apply to hearings before the commission under this subchapter.

35 (2) A commissioner of the commission shall:

36 (A) Admit relevant evidence, including hearsay, if it is

1 probative of a material fact in controversy; and

2 (B) Exclude irrelevant and repetitious evidence.

3 (e) The rules of privilege recognized by state law apply to testimony
4 provided in hearings before the commission under this subchapter.

5 (f)(1) Testimony in a hearing under this subchapter shall be given on
6 oath or affirmation.

7 (2) A commissioner may designate one (1) or more of the
8 employees of the commission to administer oaths.

9 (g) Either party may elect to hire a court reporter to be present and
10 record a hearing before the commission.

11 (h) The burden of proof stated in § 26-18-313 shall apply to all
12 matters before the commission.

13 (i)(1) For a proceeding assigned to one (1) commissioner, that
14 commissioner shall be the presiding commissioner at the hearing.

15 (2) For a proceeding assigned to the commission en banc, the
16 chief commissioner or the commissioner designated by the chief commissioner
17 shall be the presiding commissioner at a hearing.

18 (j) Except in a case involving the denial of a claim for refund, the
19 taxpayer shall have the right to have the taxpayer's case heard before paying
20 any of the amounts asserted as due by the Department of Finance and
21 Administration.

22 (k)(1) Except as provided in subdivision (k)(2) of this section, the
23 commission shall schedule and hold a hearing as provided in § 26-18-1113.

24 (2) The commission shall schedule and hold a hearing:

25 (A) Under § 26-18-402, within five (5) business days after
26 a taxpayer has filed a petition with the commission;

27 (B) Under § 26-18-601(b), within three (3) business days
28 after a taxpayer has filed a petition with the commission;

29 (C) Under § 26-18-601(c), within twenty (20) calendar days
30 after a taxpayer has filed a petition with the commission;

31 (D) Under § 26-18-1002, within fourteen (14) calendar days
32 after a taxpayer has filed a petition with the commission;

33 (E) Under § 26-18-507(e)(1)(B)(ii) or § 26-36-315(c),
34 within twenty (20) calendar days after a taxpayer has filed a petition with
35 the commission;

36 (F) Under § 26-55-224, § 26-56-204, or § 26-62-204, within

1 twenty (20) calendar days after a taxpayer has filed a petition with the
2 commission;

3 (G) Under § 26-55-231, § 26-56-311, § 26-57-413, or § 26-
4 57-419, within twenty (20) calendar days after a taxpayer has filed a
5 petition with the commission;

6 (H) Under § 26-55-247, within five (5) business days after
7 a taxpayer has filed a petition with the commission; and

8 (I) Under § 26-57-1212, within five (5) business days
9 after a taxpayer has filed a petition with the commission.

10 (3) The commission shall provide notice of an expedited hearing
11 under subdivision (k)(2) of this section to the department at least two (2)
12 business days before the hearing.

13 (1)(1) A taxpayer may elect to have the taxpayer's petition heard:

14 (A) In person;

15 (B) By teleconference;

16 (C) By videoconference;

17 (D) By any combination of in-person, teleconferencing, or
18 videoconferencing means; or

19 (E) Solely upon the documents filed with the commission.

20 (2) The taxpayer shall make an election under subdivision (1)(1)
21 of this section in the taxpayer's initial petition.

22 (3) If the taxpayer fails to make an election under subdivision
23 (1)(1) of this section in the taxpayer's initial petition, the petition shall
24 be set for an in-person hearing in Little Rock.

25 (4) The taxpayer may amend an election under this subsection:

26 (A) Up to the date the taxpayer's reply is filed or due to
27 be filed; or

28 (B) With the consent of the commission after notice to the
29 department and an opportunity to be heard.

30 (5) The department may elect to appear by teleconference or
31 videoconference for a hearing.

32 (6) The commission may require a hearing by a means other than
33 the means elected by the taxpayer for good cause or when it is in the
34 interest of justice.

35
36 26-18-1116. Decisions.

1 (a)(1)(A) The Tax Appeals Commission shall render its decisions under
2 this subchapter in writing.

3 (B) A decision of the commission under this section shall:

4 (i) Include without limitation concise findings of
5 fact and conclusions of law; and

6 (ii) Grant relief, invoke remedies, and issue orders
7 as the commission deems appropriate to carry out the commission's decision.

8 (2) For a proceeding assigned to one (1) commissioner, that
9 commissioner shall prepare the written decision.

10 (3) For a proceeding assigned to the commission en banc, the
11 Chief Commissioner of the Tax Appeals Commission or other commissioner
12 designated by the chief commissioner shall prepare a written decision that
13 reflects the view of the majority of the commissioners participating in the
14 case.

15 (4) A decision issued under this section shall be published
16 under § 26-18-1119 and shall be served upon the parties by the commission.

17 (b)(1)(A) Except as provided in subdivision (b)(1)(B) of this section,
18 a decision of the commission under this section shall be issued no later than
19 ninety (90) days after the submission of the last pleading or brief filed or
20 the completion of the hearing, whichever is later.

21 (B) The commission shall issue a decision:

22 (i) Within five (5) business days after a hearing is
23 concluded under § 26-18-402;

24 (ii) Within three (3) business days after a hearing
25 is concluded under § 26-18-601(b);

26 (iii) Within five (5) business days after a hearing
27 is concluded under § 26-18-1002;

28 (iv) Within twenty (20) calendar days after a
29 hearing is concluded under § 26-18-507(e)(1)(B)(ii), § 26-18-601(c), or § 26-
30 36-315(c);

31 (v) Within twenty (20) calendar days after a hearing
32 is concluded under § 26-55-224, § 26-56-204, or § 26-62-204;

33 (vi) Within twenty (20) calendar days after a
34 hearing is concluded under § 26-55-231, § 26-56-311, § 26-57-413, or § 26-57-
35 419;

36 (vii) Within five (5) business days after a hearing

1 is concluded under § 26-55-247; and

2 (viii) Within five (5) business days after a hearing
3 is concluded under § 26-57-1212.

4 (2)(A) Except as provided in subdivision (b)(2)(B) of this
5 section, the commission may extend the period to render a decision under this
6 section for a reasonable additional amount of time for good cause, which
7 shall be documented in a letter mailed to the parties.

8 (B) The commission shall not extend the period to render a
9 decision under subdivision (b)(1)(B) of this section with regard to a hearing
10 held under § 26-18-1115(k)(2).

11 (c)(1) A decision of the commission has the same effect and shall be
12 enforced in the same manner as a decision of a circuit court of the state,
13 unless judicial review of the decision is pending.

14 (2) Unless the Secretary of the Department of Finance and
15 Administration files with the commission a notice of intent to seek judicial
16 review, the secretary shall comply with and implement a decision of the
17 commission within thirty (30) days of service of the decision on the
18 Department of Finance and Administration.

19 (d)(1) The interpretation of a taxing statute adopted by the
20 commission in a proceeding en banc shall be followed by the commission in
21 subsequent cases involving the same statute.

22 (2) The commission's application of a statute to the facts of a
23 case in a proceeding en banc shall be followed by the commission in
24 subsequent cases involving similar facts.

25 (3) The commission is not required to follow a prior
26 interpretation or application of law by the commission if:

27 (A) The interpretation or application conflicts with an
28 interpretation or application of Arkansas law by a federal court or Arkansas
29 state court; or

30 (B) The prior decision of the commission was overturned on
31 appeal.

32
33 26-18-1117. Judicial relief.

34 (a) A taxpayer may seek judicial relief from a decision of the Tax
35 Appeals Commission by following the procedures stated in the Arkansas Tax
36 Procedure Act, § 26-18-101 et seq.

1 (b)(1) The Department of Finance and Administration may seek judicial
2 relief from a decision of the commission by filing suit against the taxpayer
3 in Pulaski County Circuit Court or in the circuit court of the county in
4 which the taxpayer resides or has its principal place of business in the
5 state.

6 (2) A taxpayer may remove a suit filed by the department to the
7 circuit court of the county in which the taxpayer resides or has its
8 principal place of business in the state.

9 (3) A matter subject to judicial relief under this section shall
10 be tried de novo.

11 (c) An appeal will lie from the circuit court to the Supreme Court, as
12 in other cases provided by law.

13 (d) The Arkansas Rules of Civil Procedure and § 16-56-126 concerning
14 nonsuit and commencement of new actions apply to appeals under this section.

15
16 26-18-1118. Representation.

17 (a)(1) A taxpayer may be represented at a hearing pro se or by an
18 authorized representative who has provided a completed power of attorney form
19 to the Tax Appeals Commission in the manner prescribed by the commission.

20 (2) A completed power of attorney form shall:

21 (A) Be attached to the taxpayer's petition; or

22 (B) Accompany the authorized representative's entry of
23 appearance if the taxpayer's authorized representative files an entry of
24 appearance after the petition has been filed.

25 (3) If the taxpayer fails to attach a power of attorney to the
26 petition, the commission shall allow the taxpayer thirty (30) calendar days
27 to file the required power of attorney.

28 (4) Absent information indicating that the taxpayer has an
29 authorized representative, the Department of Finance and Administration may
30 communicate directly with the taxpayer.

31 (b) The department shall be represented by an authorized
32 representative at a hearing.

33
34 26-18-1119. Publication of decisions.

35 (a) The Tax Appeals Commission shall index and publish a decision
36 under this subchapter in the print or electronic form that the commission

1 deems best adapted for public convenience.

2 (b) All personally identifying taxpayer information shall be redacted
3 before the publication of a decision under this subchapter.

4 (c) The publication of a decision under this subchapter shall be made
5 permanently available and shall be an official report of the commission.

6
7 26-18-1120. Rules.

8 The Tax Appeals Commission shall promulgate rules and forms to:

9 (1) Carry out the intent and purpose of this subchapter; and

10 (2) Implement the duties assigned to the commission, including
11 without limitation rules:

12 (A) Governing pleadings and service of process
13 requirements to commence a hearing under this subchapter and the practice and
14 procedure rules of the commission;

15 (B) To provide for expedited proceedings;

16 (C) To establish guidelines for the redaction of
17 personally identifying taxpayer information in published decisions; and

18 (D) To establish a procedure for petitions and hearings
19 under:

20 (i) Section 26-18-402;

21 (ii) Section 26-18-601(b) and (c);

22 (iii) Section 26-18-1002;

23 (iv) Section 26-36-315;

24 (v) Section 26-55-219;

25 (vi) Section 26-55-224;

26 (vii) Section 26-55-231;

27 (viii) Section 26-55-247;

28 (ix) Section 26-56-204;

29 (x) Section 26-56-311;

30 (xi) Section 26-57-413;

31 (xii) Section 26-57-419;

32 (xiii) Section 26-57-1212; and

33 (xiv) Section 26-62-204.

34
35 SECTION 2. DO NOT CODIFY. Creation of Tax Appeals Commission -
36 Abolition of Department of Finance and Administration Office of Hearings and

1 Appeals.

2 (a)(1) The Tax Appeals Commission shall be created by July 1, 2022.

3 (2) The initial commissioners shall be appointed by July 1,
4 2022.

5 (3) The Chief Commissioner of the Tax Appeals Commission shall
6 be designated by July 1, 2022.

7 (4) The commission shall be ready to begin accepting and trying
8 tax disputes by January 1, 2023.

9 (5) This act does not affect a hearing, prosecution, action,
10 suit, or appeal, commenced in the judicial branch of government before the
11 creation of the commission.

12 (b) Notwithstanding § 26-18-1106:

13 (1)(A) The initial commissioners appointed to the commission
14 shall be selected from a pool of candidates with three (3) candidates
15 recommended by each of the following:

16 (i) The Arkansas Bar Association;

17 (ii) The majority of the Arkansas Supreme Court; and

18 (iii) The Arkansas Society of Certified Public

19 Accountants.

20 (B) Each entity recommending candidates for commissioner
21 under subdivision (b)(1)(A) of this section shall recommend at least one (1)
22 candidate who is:

23 (i) Licensed to practice law in this state; and

24 (ii) Certified as a certified public accountant in
25 this state; and

26 (2) The commissioners who are appointed during the creation of
27 the commission shall be given initial terms of differing lengths as follows:

28 (A) One (1) of the commissioners who is initially
29 appointed shall serve an initial term of three (3) years and shall be
30 eligible for appointment to two (2) subsequent terms of nine (9) years after
31 the initial term;

32 (B) One (1) of the commissioners who is initially
33 appointed shall serve an initial term of six (6) years and may be appointed
34 to one (1) subsequent term of nine (9) years after the initial term; and

35 (C) One (1) of the commissioners who is initially
36 appointed shall serve an initial term of nine (9) years and shall be eligible

1 for appointment to one (1) subsequent term of nine (9) years after the
2 initial term.

3 (c)(1) The Office of Hearings and Appeals shall conclude its decisions
4 on tax disputes initiated before January 1, 2023, by May 31, 2023, and shall
5 be fully closed by June 30, 2023.

6 (2) The Department of Finance and Administration shall retain
7 the files of the Office of Hearings and Appeals, consistent with its current
8 recordkeeping practices.

9

10 SECTION 3. Arkansas Code § 25-43-1003, concerning the Secretary of the
11 Department of Inspector General, is amended to add an additional subsection
12 to read as follows:

13 (g) The secretary shall appear at the request of the General Assembly
14 or the Legislative Council to provide information concerning the Tax Appeals
15 Commission or the Independent Tax Appeals Commission Act, § 26-18-1101 et
16 seq.

17

18 SECTION 4. DO NOT CODIFY. Rules.

19 (a) When adopting the initial rules required under this act, the Tax
20 Appeals Commission shall file the final rules with the Secretary of State for
21 adoption under § 25-15-204(f):

22 (1) On or before December 1, 2022; or

23 (2) If approval under § 10-3-309 has not occurred by December 1,
24 2022, as soon as practicable after approval under § 10-3-309.

25 (b) The commission shall file the proposed rules with the Legislative
26 Council under § 10-3-309(c) sufficiently in advance of December 1, 2022, so
27 that the Legislative Council may consider the rules for approval before
28 December 1, 2022.

29

30 SECTION 5. DO NOT CODIFY. Legislative intent – Contingent
31 effectiveness.

32 (a) The General Assembly intends for this act to be effective only if
33 the Arkansas Code is amended to make changes to current statutes concerning
34 tax procedure and the hearing of tax appeals to enable to effective
35 implementation of this act.

36 (b)(1) This act shall not become effective unless HB1705 of 2021 is

1 enacted during the Ninety-Third Regular Session of the General Assembly.

2 (2) If HB1705 of 2021 is not enacted during the Ninety-Third
3 Regular Session of the General Assembly, this act expires retroactively upon
4 the sine die adjournment of the Ninety-Third Regular Session of the General
5 Assembly.

6
7 /s/Jett

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10 **APPROVED: 4/6/21**
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