

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

### Basic Change :

**Sponsor: Senators B. Johnson and J. Hendren**

Currently, if the Director makes a tax assessment, denies a claim for refund, revokes or suspends certain licenses, or makes other decisions adverse to a taxpayer, the taxpayer can seek administrative relief by filing a written protest with the Director and asking for an administrative hearing. These protests are assigned to hearing officers appointed by the Director who have the authority to hold hearings and make written findings as to whether the decision of the Director should be upheld. SB560 does away with the existing protest process and creates the Tax Appeals Commission. The Tax Appeals Commission would hear protests (called "petitions" in the bill) that are filed by taxpayers. The Commission will be independent from the Department but will be created within the executive branch by August 1, 2020. The commission will begin hearing protests filed on or after January 1, 2021. Hearings are called "actions" within the bill.

The Commission will consist of 5 commissioners (one of which shall consist of a Chief Commissioner) to be appointed by the Governor subject to confirmation of the Senate. If the General Assembly is not in session, then the appointment will take place unless the appointment is rejected by the Senate under § 10-2-113. The Chief Commissioner must be an attorney licensed to practice law in Arkansas. Two commissioners must be non-attorneys. One commissioner can be either an attorney or a non-attorney. Commissioners are appointed to 5-year terms and cannot not serve more than two terms. Two of the commissioners appointed at creation of the commission will only serve an initial 2-year term while the Chief Commissioner and two other commissioners will serve the standard 5-year term. Commissioners will receive an annual salary comparable to the salary provided to district court judges, which is \$147,084 as of May 2018. To assist with creation of the commission, 1 of the 2 initial attorney commissioners (which would include the Chief Commissioner) must be a hearing officer currently appointed by the Director under § 26-18-405.

Commissioners cannot engage in a business or be employed outside of his or her position as commissioner, nor can they hold office or a position of profit in this state or a political subdivision of the state, another state, or the federal government. They can, however, own passive interests in business entities and earn income from incidental teaching and scholarly activities. The bill does not define scholarly activities. Employees of the commission cannot act as an attorney, a representative, or an accountant for a taxpayer in a matter involving a tax imposed or levied.

To be appointed as a commissioner, the individual must be a qualified elector of this state, must hold at least a bachelor's degree from an accredited college or university, and must possess substantial knowledge of Arkansas tax and revenue law.

Commissioners will serve their terms until they are removed, not appointed to a 2nd term, retire, relinquish their position, or are unable to perform their duties. A commissioner can be removed for neglect of duty, inability to perform duties, malfeasance in office, or other good cause. Actions to remove a commissioner will require notice and opportunity to be heard.

# Department of Finance and Administration

## Legislative Impact Statement

### **Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

The location of the commission will be in Little Rock. However, the commission will have authority to contract with state and local government entities to arrange for hearing space throughout the state. Currently, the department has six locations throughout the state at which hearings are held.

The commission will have jurisdiction over imposition of a tax (including jeopardy assessments), denial of refund claims, the cancellation of, refusal to issue, or revocation of licenses or permits under §§ 26-18-601, 26-55-219, 26-55-231, and 26-56-311, business-closures, seizures of vending devices or coin operated amusement devices, and any other action that provides a taxpayer the right to a hearing under state law. The commission will not have jurisdiction to hear protests concerning ad valorem taxes or taxes not administered by the Director. The commission will have the ability to alter a decision of the Director that was made in bad faith or for any other reason under state law. Bad faith is not defined in the bill. As written, the commission would not have equitable jurisdiction.

The commission is permitted to charge fees not to exceed those charged by Arkansas court clerks for costs associated with transcription, preparation, comparing, certification, and copying of a record or other documents.

### **Revenue Impact :**

Currently, administrative hearings are overseen by two hearing officers and one legal support specialist with total annual salaries of less than \$200,500.

Under SB560, 5 commissioners would be paid annual salaries of \$147,084, or total annual salaries of \$735,420. This does not include the insurance, retirement matching costs, other associated employment costs. In addition, the commission: (1) could hire court reporters and other employees to facilitate the duties of the commission; (2) could outsource hearing transcription services; (3) could create an unfunded small claims division; and (4) would need funding to support operating expenses necessary to provide hearings throughout the state as well as pay required witness fees. The bill does not contain an appropriation for creation or maintenance of the commission, nor does it identify a specific state agency whose budget would be responsible for absorbing the costs incurred by the commission.

For purposes of comparison, the Arkansas Worker's Compensation Commission has an appeals division similar to the commission being created in this bill. For fiscal year 2019, \$11,256,520 has been appropriated to fund the Arkansas Worker's Compensation Commission. The appropriation includes the salary of 1 chief judge position (GS15) and 13 administrative law judge positions (GS14). It also includes 3 court reporter positions (GS7). Conservatively, approximately \$1,567,579 is dedicated to the salaries of employees responsible for administrative hearings. The appropriation also includes \$1,305,495 for operating expenses and \$243,800 for computer software and hardware, which provides a starting point of comparison for the required costs to establish and maintain the Commission.

Currently, expedited hearings required under the code are generally scheduled for Little Rock or by telephone (an example would be business closure hearings). As written, the bill will authorize hearings

# Department of Finance and Administration

## Legislative Impact Statement

### **Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

throughout the state for all hearing types. The department would require additional staff and resources to ensure representation and witness attendance throughout the state each month at expedited hearings. Even for non-expedited hearings, the bill would require the attendance of department staff at more locations throughout the state than are currently required, would increase the amount of time staff are away from their offices, would impact the ability to perform daily duties, and would increase the costs associated with traveling.

### **Taxpayer Impact :**

Currently, taxpayers have 60 days to file a protest, there is a 180-day window to render a decision in response to a taxpayer's protest of an assessment, taxpayer protests are confidential, and there is adequate time for settlement negotiations to take place before an administrative hearing is scheduled. HB560 sets specific requirements for scheduling a hearing and contains open forum language.

Currently, administrative hearings and the evidence produced at those hearings are confidential and not open to public scrutiny. This is because the records and files of the department are confidential and exempt from disclosure under the Arkansas Freedom of Information Act (FOIA). SB560 contemplates public hearings.

Further, it provides that the record for judicial relief shall include the decision of the commission, the transcript of the hearing, the pleadings, and all documents introduced into evidence. The bill does authorize a hearing to be closed and published decisions to be redacted.

Currently, taxpayers may represent themselves in administrative hearings. The Rules of Evidence do not apply (including those pertaining to privileges), subpoenas are rarely issued to compel production of testimony or evidence, and other forms of discovery are not authorized. SB560 authorizes the parties to request the issuance of subpoenas, permits either party to ask for exclusion of irrelevant or repetitious evidence, and permits either party to assert privileges recognized by state law.

### **Resources Required :**

By extending the deadline in which to seek administrative relief from certain decisions of the Director, the department's computer system will need to be reconfigured to ensure that final notices and collection activity are not issued or initiated prior to the deadline to seek administrative relief. The restrictions upon the issuance of subpoenas will necessitate the hiring of additional staff and computer hardware necessary to scan or copy all documents reviewed during the audit of a taxpayer's books and records.

Under current law, the department only infrequently uses its power to summons and compel the production of records found in § 26-18-305. To defend an action before the commission, the department will require additional staff to regularly issue summons for records and pursue actions in circuit court to compel the production of records.

Under current law, the department holds scheduled hearings in 6 locations outside the Little Rock metropolitan area. This bill will require department attorneys, tax section staff, and audit staff to travel

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

to hearings throughout the state each month. This will require additional staffing to ensure hearing attendance while also ensuring normal day-to-day duties can continue to be accomplished by attorneys, tax section, and audit staff. Alternatively, it may result in a requirement that the department's legal counsel establish satellite offices throughout the state.

**Time Required :**

Adequate time is provided for implementation.

**Procedural Changes :**

The bill will eliminate the Office of Hearings and Appeals within the Department of Finance and Administration.

**Other Comments :**

None.

**Legal Analysis :**

SB560 creates a new state agency to hear and oversee protests of state taxes.

The following parts of the bill attempt to define or identify decisions of DFA which are subject to the jurisdiction of the new Tax commission:

- § 26-18-1104, page 2 lines 21-31;
- § 26-18-1110, page 6 lines 34-36 and page 7 lines 1-8; and
- § 26-18-1113, page 8 lines 25-35.

To streamline the bill, prevent redundancy, and promote consistency, it is recommended that § 26-18-104 be amended to define an action as a protest to the commission concerning:

- assessments of tax and refund claim denials issued by the department;
- a decision to cancel, revoke, or refuse to issue a permit or license issued under tax laws administered by the department;
- the closure of a non-compliant taxpayer's business;
- the confiscation of property (§ 26-55-247); and
- any other decision of the Director for which state law provides a taxpayer with the opportunity for a hearing (this would include hearings authorized under § 26-52-803 (concerning revocation of licenses to sell manufactured homes), §§ 26-55-224 and 26-56-204 (concerning decisions that bonds are insufficient), and § 26-62-204 (concerning IFTA license revocations).

It is also recommended that § 26-18-102 concerning the purpose of the Tax Procedure Act be

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

amended to clarify that the commission does not have jurisdiction to hear protests concerning the matters specifically excluded from the Tax Procedure Act under § 26-18-104

The term "Tax Appeals Commission" and "commission" are used inconsistently throughout the bill. It is recommended that § 26-18-104 be amended to define commission as the Tax Appeals Commission and clarify the remainder of the bill accordingly.

§ 26-18-1111 (pages 7 and 8 of the bill) authorizes taxpayers and the department to settle any controversy related to a state tax. However, this is already authorized by § 26-18-705 and may unnecessary. Section 18 of the bill also amends § 26-18-705 concerning settlement or compromise of tax controversies to provide that a taxpayer cannot commence an action with the commission to recover liabilities compromised between the department and the taxpayer. As written, the provisions of §§ 26-18-705 and 26-18-1111, as well as the pleading filing deadlines contained elsewhere in the bill and the public forum nature of the proceeding, may require any settlement to conclude within 90 days of any appealable decision of the Director.

Page 8, line 4, "commence a hearing" is inconsistent with line 22 "commence an action"

In § 26-18-1113 (pages 8-10), a taxpayer commences an action by filing a petition with the commission within 90 days of the date of a decision by the department against the taxpayer. The commission will notify the department of the petition by serving a copy upon the department. The bill does not, but should, specify how service upon the department will be perfected. The department has 60 days to file an answer to the petition. An answer must be served upon the taxpayer or the taxpayer's appointed representative. Any material facts alleged in the petition which are not expressly admitted or denied in the answer are deemed admitted. Similarly, all material facts contained in the petition are deemed admitted if an answer is not timely filed. A taxpayer may file a reply to the answer within 30 days of the taxpayer's receipt of the answer.

By using receipt rather than service, it will be difficult to accurately determine whether a taxpayer timely filed a reply. The taxpayer, rather than the commission, is required to serve the reply upon the department. The department is punished if the taxpayer fails to file a reply to an answer. Specifically, if the taxpayer fails to file a reply, all material facts in the Department's answer will be denied. See page 9, lines 26-28.

Either party can amend a pleading without leave of the commission as long as the amended pleading is filed before the expiration of the period for responding to the pleading. After the deadline to respond has passed, a party can only amend a pleading upon consent of the adverse party or permission of the commission. The commission may allow a party to file an answer to an amended pleading. The filing of an amended answer is due within 60 days of the date of the filing of an amended petition. The filing of an amended reply is due within 30 days of the date of the filing of an amended answer.

It is unclear why more time is allotted to the filing of an amended pleading than to the filing of the original pleading. The department is punished if the taxpayer fails to file an amended reply to an amended answer. Specifically, if the taxpayer fails to file an amended reply, all material facts in the Department's amended answer will be denied. See page 10, lines 10-12.

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

The time limitations for filing petitions, answers, and replies do not apply to hearings authorized under § 26-18-601 (related to the refusal to issue or a decision to cancel or revoke a license or permit), §§ 26-18-1001 and 26-18-1002 (business closures), § 26-55-231 (revocation of a license under the motor fuel tax law), § 26-56-311 (revocation of a license under the special motor fuels tax law), and §§ 26-57-413 and 26-57-419 (revocation of licenses to operate or sell coin-operated amusement devices). In reviewing the bill, the department has discovered that license revocation provisions in §§ 26-55-219, 26-55-231, 26-56-311, 26-57-413, and 26-57-419 were enacted prior to adoption of the Tax Procedure Act and that the hearing provisions contained in each of these code sections was repealed by implication and replaced by § 26-18-601. Thus, it is recommended that the bill be amended to provide that the provisions of § 26-18-601 apply.

There is a typo on page 10, line 6. This portion of the bill relates only to the filing of amended pleadings and line 6 should be amended to change "The filing of an answer or an amended answer shall be made" to "The filing of an amended answer shall be made."

The commission must schedule a hearing no later than 30 days after a reply has been filed or, if no reply has been filed within 30 days, then no later than 7 days after the deadline for filing the answer. See page 9, lines 29-34.

- As written, the requirements of the bill cannot be accomplished. The deadline to file a reply is 15 days (not 30 days) after the taxpayer's receipt of the department's answer. Thus, a hearing cannot be scheduled no later than 7 days after the deadline for filing the answer when a taxpayer has 15 days to reply. It is presumed that the intent may be that the commission should schedule a hearing no later than 7 days after the deadline for filing a reply.

In § 26-18-1115 (page 11) subpoenas are authorized and must be issued upon the request of a party for attendance of a witness and the production of evidence. Witness fees will be paid by the commission.

§ 26-18-1116 (pages 11-13) provides that hearings before the commission are open to the public (absent a motion by a party to close the hearing) and tried de novo without a jury. De novo means to start anew.

- As any hearing before the commission would be the first hearing in relation to a decision by the department, a first hearing before the commission could not be a de novo hearing. The provisions of § 26-18-1117 authorize re-hearings but it is not clear that the re-hearings are eligible for de novo review.

The provisions of § 26-18-1116 provide that the commission is not bound by the Rules of Evidence, but also provides that privilege rules contained within the Rules of Evidence do apply and authorizes the exclusion of irrelevant and repetitious evidence. Therefore, it is recommended that lines 15-17 of page 12 be amended to reflect that some of the Rules of Evidence apply to commission hearings.

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

§ 26-18-1116(g) (page 12, lines 24-31) provides that pleadings can conform to the evidence at a hearing unless unfair prejudice would result or would confer jurisdiction upon the commission over a matter that would otherwise not come within the commission's jurisdiction. It is recommended that these provisions be moved to § 26-18-1113 which governs pleadings.

§ 26-18-1117 (pages 13-15) requires the commission to issue decisions. These decisions have the same force and effect as a circuit court judgment. §§ 26-18-1117 and 26-18-1121 (page 16) require publication of the decisions with confidential information redacted.

Per § 26-18-1117, and with certain exceptions related to expedited hearings, decisions must be issued no later than 3 months after the later of the submission of the last brief filed or completion of the hearing, but this deadline can be extended for an additional 45 days upon a showing of good cause. Good cause is not defined by the bill. If the commission fails to timely render a decision, either party may "institute a hearing" in circuit court to compel issuance of the decision. The bill does not establish the mechanisms for seeking relief from the circuit court.

- This provision undermines and obviates the purpose and effect of Business Closure Orders and hearings. As written, the standard deadline for issuance of decisions in § 26-18-1117 will apply to a business closure hearing, which circumvents the purpose of the business closure law.

§ 26-18-1117 (page 14, lines 17-33) also authorizes re-hearings and the bill does not explain how an application for re-hearing or the granting of a re-hearing will impact the time in which to issue a decision.

For clarity, it is recommended that provisions concerning re-hearings be moved to § 26-18-1116 concerning hearings before the commission. The bill does not require the commission to notify the parties when a decision on an application for re-hearing is made. The bill provides that an application for re-hearing will suspend the time for filing authorized appeals to circuit court; however, the bill then provides that the time for filing authorized appeals to circuit court will begin anew when a decision on the application for re-hearing is made. As written, the limitations period to file an appeal to circuit court will be running while a re-hearing is taking place. Rather than identifying specific provisions of the code that authorize appeals to circuit court (page 14, lines 27-29 and 35-36), it is recommended that the bill be amended to end after "under this subchapter" on lines 27 and 35.

§ 26-18-1118 delegates to the commission the authority to establish a small claims division by rule. This potentially raises questions of whether the permissive establishment without specific standards is a lawful delegation of authority.

§ 26-18-1119 (pages 15-16) authorize a taxpayer to "seek judicial relief for an interlocutory decision of the commission under the same conditions and in the same manner as an interlocutory decision of the district court or circuit court."

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

- Interlocutory relief is invoked during the ongoing process of a trial or proceeding. Interlocutory relief is only authorized under state law in limited circumstances and generally not in situations involving tax matters. As written, it is unclear if the bill is authorizing a taxpayer to seek relief while a hearing is pending before the commission or if the bill is authorizing a taxpayer to seek judicial relief from a final decision of the commission.

§ 26-18-1121 (page 16, line 16) requires the publication of decisions in a form the commission deems best for public convenience or as required by the APA. The bill does not provide that hearings before the commission are subject to the APA and the APA does not currently require publication of decisions of administrative adjudications.

§ 26-18-1122 (page 16, lines 28-32) authorizes, but does not require, the promulgation of rules governing pleadings and service of process requirements to commence a hearing under the subchapter, the practice and procedure rules of the commission, and the small claims division. This conflicts with lines 23-24 of page 15 which requires the commission to promulgate rules for the small claims division.

Section 2 of the bill contains "do not codify" language stating the "act does not affect any hearing, prosecution, action, suit, or appeal, commenced in the 'judicial branch' before the creation of the commission."

- It is unclear if this means that the act would not apply to any pending circuit court appeals of tax decisions by the Director or if the act would not apply to any administrative hearings pending hearing at the Office of Hearings and Appeals at the time the commission is created.

Section 3 of the bill creates the Tax Appeals Commission Fund which is to consist of fees and moneys assessed by the commission, to be administered by the commission, and to be used by the commission for administration, maintenance, and operation.

The bill does not contain an appropriation for the commission and the fees assessed by the commission may not be sufficient to support the commission.

Section 5 of the bill amends § 26-18-303 to provide that disclosure of tax records to the commission is exempt from the restriction of the release of confidential tax information.

As stated previously, once the tax information is released to the commission, it will no longer be protected from release.

Section 7 of the bill amends § 26-18-401 concerning the assessment and collection of taxes. For consistency in the bill, lines 25-26 of page 18 should be amended to provide that a final assessment shall not be issued before the expiration of the time for a taxpayer to "commence an action" with the Tax Appeals Commission.

Section 7 also amends § 26-18-401 to provide that a final assessment must be issued according to the

# Department of Finance and Administration

## Legislative Impact Statement

### **Bill: SB560**

### **Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

decision of the commission. The bill's provisions concerning re-hearing complicate a determination as to when a final assessment should be issued.

Section 8 of the bill amends § 26-18-402 concerning jeopardy assessments to identify the commission as the entity from whom relief should be sought. SB560, however, undermines the purpose of a jeopardy assessment by striking the requirement of an expedited hearing process to complete a final assessment and the filing of a lien before a taxpayer can dispose of property or leave the state.

Section 10 of the bill amends § 26-18-403 concerning proposed assessments to identify the commission as the entity from whom relief should be sought. It is recommended that page 21, line 13 (concerning authority to abate penalty and interest) be amended to include the cite to settlement authority under § 26-18-1111 as well as the cite to settlement authority under § 26-18-705.

Sections 11 and 12 of the bill repeal existing law authorizing taxpayer relief and administrative hearings found in §§ 26-18-404 and 26-18-405.

Section 13 of the bill amends § 26-18-406 concerning judicial relief. Page 24, lines 35-36 incorrectly provide that judicial relief from a tax assessment can be obtained after issuance of a decision of the commission, a final assessment of tax, or a final decision of the Director not protested by the taxpayer. As SB560 takes away the Director's authority to issue a final decision in relation to a tax protest, the bill should be amended to provide that judicial relief can be obtained after issuance of a final decision of the commission or a final assessment of the tax not protested by the taxpayer. This error also occurs on page 25, lines 3, 5, 13, and 20.

Section 15 of the bill (pages 28-30) amends § 26-18-601 to identify the commission as the entity from which relief should be sought. Lines 17-18 of page 28 change "Director" to "Director of the Arkansas Department of Finance and Administration." This change is not necessary as "Director" is defined in § 26-18-104(4) and the change is inconsistent with other provisions of the bill that do not make this change (i.e. page 18, line 18).

For consistency and clarity, the bill should amend § 26-18-601(e) to provide that the provisions of § 26-18-1113(b)-(e) do not apply to hearings before the commission.

Section 17 of the bill amends § 26-18-701(a) concerning issuance of certificates of indebtedness. Subsection (a) currently provides that a certificate of indebtedness (COI) can be filed if a taxpayer fails to pursue his or her remedies seeking relief from a decision of the Director and a final assessment is made. SB560 changes subsection (a) to provide that a COI can be filed if a taxpayer fails to pursue his remedies seeking relief from a decision of the Director or a decision of the commission. To avoid confusion, it is recommended subsection (a) be amended to provide that a COI can be filed if: (1) a taxpayer fails to seek relief from a proposed assessment of a tax deficiency and a final assessment is made; or (2) the commission issues a decision sustaining the assessment of tax.

Section 18 of the bill amends § 26-18-1002 concerning business closure hearings and the bill currently permits re-hearings for business closure orders. Business closure proceedings are expedited proceedings designed in part to prevent taxpayers from incurring additional liabilities, and to ensure

# Department of Finance and Administration

## Legislative Impact Statement

### Bill: SB560

### Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.

---

that all taxpayers required to collect sales and withholding taxes have a level playing field (i.e. it is not fair for a business owner collecting and paying sales and withholding taxes to try to compete with a business owner who is not collecting and paying sales and withholding taxes). To avoid delays during which a taxpayer can incur additional liability and further gain an advantage over competitors, department hearing officers issue business closure decisions not more than 24 hours after the scheduled hearing. Further, there is no opportunity for rehearing. As written, SB560 will permit the commission to wait as long as 30 days (and longer for good cause) to issue a business closure decision and will further the delay the proceedings by authorizing re-hearings. As existing law only contemplates one hearing to be held within 14 calendar days of a business closure order, there is no guidance as to the time needed to accomplish and complete a business closure re-hearing, and further delays will result in completing a business closure proceeding.

Section 21 of the bill (pages 34-36) amends § 26-36-315 concerning joint refund offsets to extend the deadline to seek administrative relief from a joint refund offset from 30 days to 90 days. Line 6 of page 36 contains a typo and "§ 26-18-1119" should be changed to "§ 26-18-1117." In addition, as the bill authorizes re-hearings it is recommended that line 6 of page 36 should be amended to change "decision" of the commission" to "final decision of the commission."

Section 22 of the bill (pages 36-37) amends § 26-55-219 concerning refusal to issue a distributor's license, removes the expedited hearing requirements, but fails to adopt the provisions of § 26-18-601 which applies to cancellation and refusal to issue licenses and permits. As § 26-18-219 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601.

Section 23 of the bill (pages 37-38) amends § 26-55-231 concerning the revocation or cancellation of licenses under the motor fuel tax law, removes the expedited hearing requirements, but fails to adopt the provisions of § 26-18-601 which applies to cancellation and refusal to issue licenses and permits. As § 26-18-231 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601.

Section 24 of the bill (pages 38-39) amends § 26-56-311 concerning the revocation of suppliers licenses and leaves in place expedited hearing requirements. As § 26-18-311 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601. Lines 2 and 4 of page 39 of the bill authorize the commission to determine whether to revoke or reinstate the supplier's license. As the license cannot be revoked until the time to seek relief has passed or a decision is issued sustaining the decision to revoke, there is no need to include reinstatement language in this section of the bill.

Section 24 of the bill (pages 38-39) amends § 26-18-311 concerning the revocation of suppliers licenses and leaves in place expedited hearing requirements. As § 26-18-311 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601.

Section 25 of the bill (pages 39-40) amends § 26-57-413 concerning the revocation of licenses for coin-operated amusement devices and leaves in place expedited hearing requirements. As §

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB560**

**Bill Subtitle: AN ACT TO AMEND THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO CREATE THE TAX APPEALS COMMISSION ACT; AND TO CREATE A FUND FOR THE TAX APPEALS COMMISSION.**

---

26-57-413 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601. Lines 35-36 on page 39 and lines 1-2 on page 40 provide that a licensee whose license has been revoked or suspended by a decision of the Director or by a decision of the commission, or both may appeal to circuit court by causing a summons to be served upon the Director or the commission. First, as the commission is responsible for rendering a determination in relation to a decision to revoke if a taxpayer timely seeks relief from the commission, there would never be a circumstance where both the Director and the commission issue a revocation decision, and this should be corrected. Second, the Director is responsible for the issuance, revocation, and suspension of licenses rather than the commission and he, not the commission, is the proper party for service of a summons in circuit court.

Section 25 of the bill (pages 40-41) amends § 26-57-419 concerning the revocation of licenses to sell coin-operated amusement devices and leaves in place expedited hearing requirements. As § 26-57-419 was adopted prior to the Tax Procedure Act, it should be amended to provide that the taxpayer is entitled to a hearing using the process authorized in § 26-18-601. Lines 28-33 on page 40 provide that a licensee whose license has been revoked or suspended by a decision of the Director or by a decision of the commission, or both may appeal to circuit court by causing a summons to be served upon the Director or the commission or both. First, as the commission is responsible for rendering a determination in relation to a decision to revoke if a taxpayer timely seeks relief from the commission, there would never be a circumstance where both the Director and the commission issue a revocation decision, and this should be corrected. Second, the Director is responsible for the issuance, revocation, and suspension of licenses rather than the commission and he, not the commission, is the proper party for service of a summons in circuit court.

There are other provisions of the tax code that will also need to be amended to authorize hearings before the commission:

- § 26-55-247 (concerning the confiscation of property);
- § 26-52-803 (concerning revocation of licenses to sell manufactured homes);
- §§ 26-55-224 and 26-56-204 (concerning decisions that bonds are insufficient); and
- § 26-62-204 (concerning IFTA license revocations).

The bill does not contain an emergency clause and is therefore effective on the 91st day following an adjournment sine die of the General Assembly.