

**PROPOSED**  
**RULES OF PROCEDURE OF THE**  
**ARKANSAS TAX APPEALS COMMISSION**

Title, Definitions, and Statement of Organization and Operations

Information for Public Guidance  
and Requests Under the Freedom of Information Act

General Organization

Rule-Making

Adjudicative Proceedings

(Revised November 14, 2022)

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**Rule 1 Title, Definitions, and Statement of Organization and Operations**

**§ 1-101 Title, Effective Date, Severability**

(a) The following Rules 1 through 5 shall be known as the Rules of Procedure of the Arkansas Tax Appeals Commission.

(b) These rules shall be effective December 10, 2022, or ten (10) days after filing with the Secretary of State, whichever is later.

(c) The provisions of these rules are severable. If any provision or its application is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

**§ 1-102 Definitions**

As used in these rules, these terms have the following meanings:

(a) “Authorized representative” means an individual authorized by a party to act on the party’s behalf in proceedings before the Commission in accordance with § 5-103.

(b) “Clerk” means the employee of the Commission designated by the Chief Commissioner to act as Clerk of the Commission.

(c) “Commission” means the Arkansas Tax Appeals Commission.

(d) “Days” means calendar days unless otherwise specified.

(e) “Department” means the Arkansas Department of Finance and Administration.

(f) “Expedited proceeding” means an adjudicative proceeding required by law to be expedited with a shorter petition deadline, hearing deadline, decision deadline, or a combination thereof.

(g) “Presiding Commissioner” means the Commissioner designated by the Chief Commissioner to preside over an adjudicative proceeding as provided in § 5-102.

(h) “Taxpayer” means an individual or entity that:

(1) Is challenging the state's taxing jurisdiction; or

(2) Has standing to challenge a decision by the Department:

(A) Imposing liability for a tax, penalty, or interest:

(B) Denying a credit or deduction:

(C) Denying a refund, credit, or incentive claim or application:

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

(E) Closing a **noncompliant taxpayer's** business:

(F) Relating to a jeopardy assessment:

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

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

### **§ 1-103 Organization**

(a) The Commission is an independent agency with tax expertise to resolve tax disputes between the Department and Taxpayers. The Commission was created by Act 586 of the 2021 regular session, the Independent Tax Appeals Commission Act, Arkansas Code § 26-18-1101 et seq.

(b) The Legislature has authorized the Commission to adjudicate certain disputes between Taxpayers and the Department.

(c) The individual charged with administration of the Commission is the Chief Commissioner, who is appointed by the Governor. There are two additional Commissioners, also appointed by the Governor.

(d) The Commission is an independent agency within the Department of Inspector General.

(e) The Commission principally adjudicates tax disputes. From time to time, the Commission promulgates rules relating to its procedures.

## **§ 1-104 Hours of Operation**

The Commission's office hours shall be 8:00 a.m. to 4:30 p.m., Monday through Friday, except state legal holidays.

## **Rule 2 Information for Public Guidance and Requests Under the Freedom of Information Act**

### **§ 2-101 Freedom of Information Act Requests**

(a)(1) The Commission employs persons holding certain responsibilities for handling Freedom of Information Act (FOIA) requests or other questions so that the public may obtain information about the Commission or make submissions or requests.

(2) Commission adjudicative hearings and associated files, proceedings, and records are confidential, closed to the public, and exempt from the FOIA. Arkansas Code § 26-18-1115.

(b) The names, mailing addresses, telephone numbers, and electronic addresses for handling FOIA requests or other informational inquiries may be obtained from the Commission's office or website, [www.tac.arkansas.gov](http://www.tac.arkansas.gov).

### **§ 2-102 Availability of Forms, Decisions, and Other Documents**

(a) The Commission maintains a list and copies of official forms used by the Commission and formal, written statements of policy issued by the Commission, which may be obtained from the Commission's office or website.

(b) The Commission indexes and publishes redacted decisions resulting from adjudications on its website.

## **Rule 3 General Organization**

### **§ 3-101 Public Meetings**

(a) The Chief Commissioner presides over public meetings or may designate another Commissioner to preside.

(b) The Commission will hold public meetings for rule-making.

(1) All public meetings are conducted in conformity with the Arkansas Freedom of Information Act.

(2) All public meetings will be specially scheduled.

(3) Special meetings are held on the call of the Chief Commissioner or two (2) Commissioners.

(c) A quorum for the transaction of business in non-adjudicative matters is all three Commissioners, or two Commissioners if there is a vacancy on the Commission.

(d) Meeting agenda.

(1) The Chief Commissioner will prepare the agenda for public meetings.

(2) The order of the agenda items is intended to be flexible and may be adjusted to meet the needs of the Commission.

(3) Additionally, the agenda may be amended by appropriate motion.

### **§ 3-102 Adjudicative Meetings**

A meeting of the Commission in connection with adjudication of one or more matters is confidential, closed to the public, and not publicly announced. Arkansas Code § 26-18-1115. Adjudications are further addressed in Rule 5.

## **Rule 4 Rule-Making**

### **§ 4-101 Authority**

(a) The purpose of this rule is to inform the public how to initiate rule-making and how to comment on a proposed rule.

(b) The Commission has been authorized by the General Assembly to promulgate rules. Arkansas Code §§ 25-15-203, 25-15-215, 26-18-1112, 26-18-1115, 26-18-1120.

(c) In rule-making, the Commission follows the procedural requirements of the Arkansas Administrative Procedure Act, specifically

Arkansas Code §§ 25-15-203, 25-15-204, and 25-15-218; Arkansas Code § 10-3-309; and any Executive Order of the Governor applicable at the time that rule-making is initiated.

(d) This rule does not provide a comprehensive description of the entire rule-making process.

#### **§ 4-102 Initiating Rule-Making**

(a) The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as “rule-making”) may be initiated:

(1) At the request of the Commission; or

(2) By third persons outside the Commission, who may petition for the issuance, amendment, or repeal of any rule in accordance with Ark. Code § 25-15-204. The petition to initiate rule-making must contain:

(A) The name, address, telephone number, and email address of the petitioner and the petitioner’s attorney, if represented by counsel;

(B) The specific rule or action requested;

(C) The reasons for the rule or action requested;

(D) Facts showing that the petitioner is regulated by the Commission or has a substantial interest in the rule or action requested; and

(E) The date of the request.

#### **§ 4-103 Public Comment**

(a) If the Commission proceeds with the rule-making process, it will provide the public with a reasonable opportunity to comment on a proposed rule.

(b) The public comment period will last at least thirty (30) days.

(c) The Commission will begin the public comment period by publishing notice of the proposed rule-making.

(1) The notice will include the terms or substance of the proposed rule, or a description of the subjects and issues involved.



(2) The notice will include a description of the time, location, and manner in which interested parties may submit their views.

(3) The notice will be published in compliance with Arkansas Code § 25-15-204. The Commission shall also publish the notice and the draft rules on its website.

(d) If the Commission chooses to or is required to hold a hearing at which the public may appear and comment on the proposed rule, such hearing will comply with the requirements of Arkansas Code § 25-15-213.

(e) The Commission shall accept and consider public comments as required by Arkansas Code § 25-15-204.

(f) The Commission shall track and respond to public comments as necessary to comply with Arkansas Code § 25-15-204(a)(2) and the rules of the Administrative Rules Subcommittee of Legislative Council.

#### **§ 4-104 Decision to Adopt a Rule**

(a) The Commission will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.

(b) Prior to adoption, the Commission will consider the factors described in Arkansas Code § 25-15-204.

(c) The Commission may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

#### **§ 4-105 Legislative Approval, Final Filings, and Effective Date**

(a) After the necessary legislative approvals are obtained, the Commission will file the final rule with the Secretary of State.

(b) The final rule will be effective ten (10) days after filing with the Secretary of State unless a later date is specified in the rule itself or by law.

#### **§ 4-106 Public Inspection and Records**

(a) After the expiration of the thirty (30) day public comment period and before the effective date of the rule, the Commission shall take appropriate measures to make the final rule known to the persons who may

be affected by the rule, pursuant to the specifications in Arkansas Code § 25-15-204.

(b) The Commission's rules shall be available for public inspection at its business address and on its website, [www.tac.arkansas.gov](http://www.tac.arkansas.gov).

(c) The Commission shall maintain copies of all filings and documentation associated with rule-making as necessary to comply with the Arkansas General Record Retention Schedule.

#### **§ 4-107 Emergency Rules**

##### **(a) Need for Emergency Rule**

(1) The Commission may enact an emergency rule if it finds that an imminent peril to the public health, safety, or welfare, or that compliance with a law or regulation, requires the adoption of a rule on less than thirty (30) days' notice.

(2) The Commission shall state in writing its reasons for that finding.

##### **(b) Filings and Effective Date of Emergency Rule.**

(1) The Commission will follow the process required by Arkansas Code § 25-15-204 and any applicable Executive Order of the Governor to enact an emergency rule.

(2) After receiving approval from both the Governor and the Legislature, an emergency rule may become effective immediately upon filing with the Secretary of State or at a stated time less than ten (10) days after filing if the Commission finds that such effective date is necessary due to imminent peril to the public health, safety, or welfare.

(3) The Commission will take appropriate measures to notify those who may be affected by the Emergency Rule.

## **Rule 5 Adjudicative Proceedings**

### **§ 5-101 Applicability**

This rule applies in all administrative adjudications conducted by the Commission and describes the process by which the Commission adjudicates appeal petitions challenging decisions of the Department within the jurisdiction of the Commission.

### **§ 5-102 Assignment of Proceedings**

(a) The Chief Commissioner shall assign the proceeding to one Commissioner or to all available Commissioners sitting en banc, depending on the nature and significance of the proceeding. It is presumed that:

(1) A controversy involving twenty-five thousand dollars (\$25,000) or less, exclusive of interest and penalties, should be assigned to one (1) Commissioner;

(2) A controversy involving expedited proceedings under § 5-204 should be assigned to one (1) Commissioner; and

(3) A controversy involving over two hundred fifty thousand dollars (\$250,000), exclusive of interest and penalties, should be assigned to all Commissioners sitting en banc.

(b) Presiding Commissioner.

(1) For en banc proceedings, the Chief Commissioner shall preside at the hearing or may designate another Commissioner to preside at the hearing.

(2) For proceedings assigned to a single Commissioner, that Commissioner shall preside at the hearing.

~~(c) If a Commissioner has withdrawn from an en banc proceeding, a special Commissioner shall be appointed under Arkansas Code § 25-16-805 or 26-18-1106, as applicable.~~

### **§ 5-103 Appearances and Representation**

(a) Any Taxpayer appearing in a Commission adjudicative proceeding has the right, at his or her own expense, to be represented by an authorized

representative, who can be an attorney, certified public accountant, or any other individual. Alternatively, the Taxpayer may appear on his or her own behalf.

(b) A Taxpayer's authorized representative must have a completed Power of Attorney form on file with the Commission before representing a Taxpayer in an adjudicative proceeding. The Commission's form must be used. Until a completed Power of Attorney form is filed, the Commission and the Department shall communicate directly with the Taxpayer.

(c) The Department shall be represented by an authorized representative licensed to practice law in the state of Arkansas. The Department is not required to obtain approval from the Commission for substitution of representatives.

(d) Service on an authorized representative is the equivalent of service on the party represented.

(e) On written motion served on the party represented and all other parties of record, the Presiding Commissioner may grant a Taxpayer's authorized representative leave to withdraw ~~for good cause shown~~.

#### **§ 5-104 In-Person Hearings Outside of Little Rock**

(a) The Commission may arrange for the use of state or local government facilities to allow it to conduct hearings throughout the state.

(b) A Taxpayer may request, in writing in the petition or on motion, to have an in-person hearing at a location more convenient than Little Rock.

(c) The Presiding Commissioner may grant such request or may require that the Taxpayer choose between an in-person hearing in Little Rock, a teleconference, or a videoconference.

(d) The Department may elect to appear by teleconference or videoconference.

#### **§ 5-105 Consolidation**

If there are separate matters that involve similar issues of law or fact and identical or related parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution

of the proceedings and would not unduly prejudice the rights of a party, including the Taxpayer's right to confidentiality.

### **§ 5-106 Filing and Service**

(a) Unless a filing is rejected by the Commission, a document is deemed filed on the earlier of:

(1) The date the document was submitted electronically via the electronic filing system; or

(2) The date the document is received in paper format by the Commission at its office during the hours of operation in § 1-104, whether by in-person delivery, United States Mail, or otherwise.

(b) The Commission shall establish a system for electronic filing and service. See § 5-601 et seq.

(c) Every pleading, except for the appeal petition, and every other document filed for the proceeding shall be served by the filing party on the other party's authorized representative or, if the party is not represented, on the party itself. Service shall be to the address provided by the authorized representative or party.

(1) If both parties or their authorized representatives are users of the Commission's electronic filing system, service shall be by the electronic filing system.

(2) If either the sending or the receiving party is not a user of the electronic filing system, then service on the party shall be by:

(A) First class mail;

(B) Hand delivery; or

(C) Email if agreed to in writing by the parties.

(3) The Taxpayer shall not serve the appeal petition on the Department. Service by the Taxpayer of the appeal petition upon the Department shall be void. The petition is served on the Department by the Commission within fifteen (15) days of the filing date of the petition.

(d) A party or authorized representative shall file with the Commission a notice of any change of address, phone number, or email address within ten (10) days of such change.

### **§ 5-107 Computing Time**

(a) Any period of time set forth in these rules or in the Independent Tax Appeals Commission Act, Arkansas Code § 26-18-1101 et seq., unless otherwise provided by law, shall begin on the first day following the day of the act that initiates the period.

(b) When the last day of the time period is a day on which the Commission is closed, the period shall run until the end of the next business day.

(c) For the purpose of computing time to respond, any document served on a day when the Commission is closed shall be deemed served on the next business day.

### **§ 5-108 Noncompliance**

If a document is timely submitted but noncompliant, the party shall have ten (10) days to cure. The corrected document shall be deemed filed on the date originally submitted.

### **§ 5-109 Ex Parte Communications**

(a) A Commissioner shall not initiate, permit, or consider ex parte communications or other communications made outside the presence of the parties or their representatives concerning a pending or impending matter.

(b) When circumstances require it, non-substantive communication for scheduling, administrative, or emergency purposes is permitted, provided the Commissioner reasonably believes that no party will gain a procedural, substantive, or tactical advantage.

(c) A Commissioner may consult with other Commissioners or with employees of the Commission, provided the Commissioner does not abrogate the responsibility personally to decide the matter.

(d) If a Commissioner receives an unauthorized ex parte communication bearing upon the substance of a matter, the Commissioner shall notify the

parties of the substance of the communication and provide the parties with an opportunity to respond.

(e) The parties shall not communicate or cause communication with employees of the Department of Inspector General regarding confidential proceedings except in connection with such officers or employees providing technical or administrative support to the Commission.

### **§ 5-201 Appeal Petition**

(a)(1) Only a Taxpayer or a Taxpayer's authorized representative can file an appeal petition. The definition of "Taxpayer" limits petitions to protesting certain actions or decisions of the Department that have become final or without more will become final after the expiration of time, such as a proposed assessment or a refund claim denial.

(2) The Commission cannot hear a petition protesting an interim Department action such as day-to-day administration of an ongoing audit.

(b) The Taxpayer is responsible for meeting the petition deadline, and the Commission cannot extend petition deadlines.

(1) Unless otherwise provided by law, petitions must be filed within ninety (90) days of the date of the action or decision of the Department.

(2) Certain actions of the Department can result in expedited proceedings that impose petition deadlines as short as five (5) days. The petition shall indicate whether proceedings are required to be expedited. See § 5-204, Expedited Proceedings.

(c)(1) The Commission encourages Taxpayers to submit petitions online at its website. An appeal petition shall be filed using the Petition form approved by the Commission or in such other form prepared by the Taxpayer.

(2) Regardless of the form used, the petition shall:

(A) State facts sufficiently clear to identify the Taxpayer, including name and address, and the Taxpayer's reasons for opposing the proposed assessment, denial of a claim for refund, or other action of the Department; and

(B) Reasonably specify the matter, including the relevant Department account ID, for consideration by the Commission.

(3) An appeal petition that is filed without the form or forms approved by the Commission shall be supplemented with the prescribed form for use as a cover sheet. The Clerk may prepare this form.

(d) The petition shall include whether the Taxpayer elects for the hearing to be in person, by teleconference, by videoconference, or by a combination thereof, or no hearing with the matter to be decided solely on written submissions.

(e) Petitions should not be made regarding the following, for which the Commission does not have jurisdiction:

(1) A tax that is excepted from the Arkansas Tax Procedure Act under Arkansas Code § 26-18-102;

(2) A question regarding the constitutionality of the application of statutes to a Taxpayer or the constitutionality of rules promulgated by the Department;

(3) A claim against enforcement of an illegal exaction under Arkansas Constitution, Article 16, § 13;

(4) A claim for which the Office of Hearings and Appeals has already issued an administrative decision or held a prehearing or hearing;

(5) A claim that is the subject of pending litigation; or

(6) A claim for a tax not administered by the Department, including without limitation the following: local ad valorem property tax, local advertising and promotion tax on lodging or restaurants, federal tax, tax of another state, or tax of a foreign country.

### **§ 5-202 Answer**

(a) The Department shall file an answer to an appeal petition within sixty (60) days of receipt of the petition from the Commission.

(b) An answer is not required in an expedited hearing. See § 5-204.



### **§ 5-203 Reply**

The Taxpayer may respond to the answer by filing a reply within thirty (30) days of service of the answer but is not required to do so. A reply may not exceed the scope of the petition ~~or and~~ answer.

### **§ 5-204 Expedited Proceedings**

(a) Certain types of proceedings are required by law to be heard on an expedited basis, including shortened petition deadlines. See the Appeal Petition for Expedited Proceeding form.

(b) The petition shall indicate that it is a type of proceeding that must be expedited by filing the Appeal Petition for Expedited Proceeding form.

(c) Upon filing a petition for an expedited proceeding, the Taxpayer or Taxpayer's authorized representative shall call the Clerk to notify the Commission of the need to expedite the proceedings.

(d) If the Taxpayer or Taxpayer's authorized representative fails to notify the Commission of the need to expedite the proceedings, and the Commission subsequently determines that the matter should be expedited, then the Commission shall expedite the matter.

(e) For an expedited proceeding, the hearing shall be scheduled within the applicable deadline after the petition is filed, and no other pleadings are required. The Department may elect to file an answer.

### **§ 5-205 Amended Pleadings**

(a) The Taxpayer may amend the appeal petition at any time before the period for filing an answer expires, once per petition.

(b) The Department may amend the answer at any time before the period for filing a reply expires, once per answer.

(c) Either party may amend a petition, answer, or reply after the period for responding to a pleading, if any, expires:

(1) With the written consent of the adverse party; or

(2) With the permission of the Commission.

(d) An amended petition shall not confer jurisdiction on a matter that would otherwise not come within the jurisdiction of the Commission, including matters that are time-barred.

(e) Upon filing of an amended pleading, the Commission shall provide deadlines to the parties for filing an answer, reply, or both, as applicable.

### **§ 5-206 Jurisdictional Objections**

(a) The Department may raise a jurisdictional objection to a proceeding by filing a motion under § 5-301.

(b) If the motion is filed within thirty (30) days after service of the petition, then the deadline for the Department to file the answer shall be tolled upon the filing of the motion, but not more than thirty (30) days.

(c) For a proceeding assigned to the Commission en banc, whether the Commission has jurisdiction shall be decided en banc. For a proceeding assigned to a single Commissioner, that Commissioner shall decide.

(d)(1) After notice and an opportunity for a response, if it is determined that the Commission lacks jurisdiction, after notice and an opportunity for a response, the case shall be dismissed and an order of dismissal entered. The order of dismissal shall explain the legal basis for dismissal and shall be published under § 5-502.

(2) If it is determined that the Commission has jurisdiction, at least in part, then an order shall be issued, including setting the deadline for any answer, and the case shall proceed. Any jurisdictional objection and the decision thereon shall be explained in the subsequent decision on the merits under § 5-501.

### **§ 5-207 Transition from the Department's Office of Hearings and Appeals**

(a) If an action or decision occurring before January 1, 2023, has been protested to the Department's Office of Hearings and Appeals, and neither a prehearing nor hearing has been held, the Taxpayer may convert the proceeding to the Commission by filing an appeal petition under § 5-201 on or after the effective date of these Rules.

(1) The petition shall include a copy of the protest to the Office of Hearings and Appeals and may include additional substantive filings by the Taxpayer in that proceeding, such as an answer to an information request.

(2) The Commission shall serve the appeal petition on the Department.

(3) Petitions submitted to the Commission before the effective date of these rules shall not be accepted.

(b) The Department shall answer under § 5-202. The answer may include copies of any substantive filings by the Department in that proceeding, such as an answer to an information request.

(c) Thereafter, the converted proceeding shall be conducted like other proceedings before the Commission, including the Taxpayer's option to reply under § 5-203.

### **§ 5-301 Motions**

(a) All requests for relief shall be by motion.

(1) Motions must be in writing or made during a hearing.

(2) Motions must fully state the action requested and the grounds relied upon.

(3) Written motions shall be filed with the Commission and served on the opposing party, consistent with § 5-106.

(4) When time allows, the other party may, within seven (7) days of the service of the written motion, file a response in opposition.

(5) When time allows, within seven (7) days of the service of the response, the moving party may, but is not required to, file a reply.

(6) The Commission may grant any motion not responded to without further notice.

(7) The Presiding Commissioner may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(b) A motion for summary judgment is not allowed.

(c) The Presiding Commissioner may grant a motion for continuance of a hearing or extension of a deadline for good cause shown, except that the Commission cannot extend an appeal petition deadline. A request for the extension of a deadline shall be filed prior to the expiration of the original deadline. Failure to timely file shall not preclude the Presiding Commissioner from extending a deadline. Stipulations of the parties for continuances will not be recognized.

(1) Such a motion shall be made in writing.

(2) The motion must state the grounds to be considered and be made as soon as practicable and for hearings, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing.

(3) In determining whether to grant a continuance or extension, the Presiding Commissioner may consider:

(A) Prior continuances or extensions;

(B) The interests of all parties;

(C) The likelihood of informal settlements;

(D) The existence of an emergency;

(E) Any objection;

(F) Any applicable time requirement;

(G) The existence of a conflict of the schedules of parties, their authorized representatives, or witnesses;

(H) The time limits of the request; and

(I) Other relevant factors.

(4) The Presiding Commissioner may require documentation of any grounds for continuance or extension.

(d) A request from a party that is not styled as a motion may be deemed a motion by the Presiding Commissioner.

### **§ 5-302 On-Site Observation**

(a) The Commission may conduct on-site observation of tangible personal property, real property, and activities that are relevant to a controversy.

(b) On-site observation may occur only with the consent of the Taxpayer and with all parties invited to observe and record.

### **§ 5-303 No Discovery**

(a) There is no discovery in Commission adjudications, including without limitation: interrogatories, requests for admission, requests for production, depositions, and requests for inspections.

(b) Neither the Commission nor a party or authorized representative shall issue subpoenas to the parties or outside parties in connection with proceedings before the Commission.

(c) A Taxpayer may contact the Department if the Taxpayer wants to obtain his or her tax records. **The Commission does not hear disputes concerning the production of documents by the Department under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or Arkansas Code § 26-18-403.**

### **§ 5-401 Hearing Scheduling**

(a) The Presiding Commissioner shall schedule the hearing, which, except in expedited proceedings, shall be held within ninety (90) days of the date the reply was filed or the expiration of the deadline to file the reply. For expedited proceedings, see § 5-204.

(b) A Notice of Hearing shall be provided to the parties within thirty (30) days of the filing of the reply or the expiration of the deadline to file a reply.

### **§ 5-402 Hearing Procedures**

(a) The Presiding Commissioner presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings.

(b) Parties have the right to participate or to be represented by an authorized representative in all hearings or pre-hearing conferences related to their proceeding. Refer to § 5-102.

(c) Parties have the right to introduce evidence that is probative of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, and present evidence in rebuttal.

(d) The parties shall disclose all witnesses, identifying those who may testify and those expected to testify, at least ten (10) days prior to the hearing unless otherwise specified by order.

(e) The Presiding Commissioner is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly. The Presiding Commissioner may limit the time allowed for arguments.

(f) The Presiding Commissioner will conduct the hearing in the following manner:

(1) The parties will be allowed to present their cases in the sequence determined by the Presiding Commissioner, taking into consideration the burden of proof.

(2) Each witness must be sworn or affirmed by the Presiding Commissioner and be subject to examination and cross-examination as well as questioning by Commissioners. The Presiding Commissioner may limit questioning in a manner consistent with the law.

(3) An authorized representative serving as an advocate, such as an attorney or consultant, shall not provide testimony. However, an officer, trustee, partner, or similar representative may provide testimony for a Taxpayer that is not an individual.

### **§ 5-403 Stipulation**

(a) The parties to a proceeding shall make every reasonable effort to stipulate all relevant and nonprivileged facts to the fullest extent to which a complete or qualified agreement can or fairly should be reached.

(b) The Commission may make a decision based on stipulated facts.

### **§ 5-404 Evidence**

(a) The Presiding Commissioner shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy.

(b) Irrelevant, immaterial, and unduly repetitive evidence shall be excluded.

(c) A party seeking admission of an exhibit must provide four (4) copies of each exhibit at the hearing, or six (6) copies for an en banc hearing, unless the party submits the exhibit electronically in a manner approved by the Presiding Commissioner. All exhibits admitted into evidence must be appropriately marked.

(d) Exhibits for the hearing shall be filed with the Commission and served on the opposing party or authorized representative at least five (5) days prior to the hearing, except in the case of expedited proceedings under § 5-204.

### **§ 5-405 Recording of Hearing**

(a) The parties may record the hearing. Notice of the intent to record a hearing shall be provided to the opposing party. Only audio recordings shall be permitted. Broadcasting of proceedings in any form is prohibited.

(b) If a party desires to have a written transcript made of the hearing, the requesting party shall bear all costs of having it prepared. The Commission shall not prepare a transcript of a proceeding.

(c) A party may arrange for a hearing to be reported verbatim by a court reporter. Such party shall pay all associated costs and provide notice to the Commission and the other party prior to the hearing. Such party shall provide the other party a verbatim copy, if transcribed, at no cost to the recipient.

### **§ 5-406 Failure to Appear at Hearing**

If a party fails to appear or participate in a hearing after proper service of notice, the Commission may proceed with the hearing and render a decision notwithstanding the party's failure to appear or participate.

### **§ 5-501 Issuance of Decision to the Parties**

(a) The Commission will issue a written decision. The decision will include findings of fact and conclusions of law. It will grant or deny relief and issue orders as the Commission deems appropriate to carry out the decision.

(b) The Clerk shall serve the decision on the parties. Service of the decision by the Clerk is the conclusion of substantive Commission proceedings to adjudicate the appeal petition, although the publication procedures under § 5-502 may continue.

(c) The decision shall be issued within ninety (90) days of the close of the hearing or the submission of the final post-hearing brief, unless it is an expedited proceeding with a shorter deadline. The Commission may extend this deadline for good cause by submitting a letter to the parties.

(d) A party may seek judicial relief by following the procedures stated in the Arkansas Tax Procedure Act, § 26-18-101 *et seq.* Neither the Commission nor any Commissioner shall be made a party in a suit for judicial relief.

### **§ 5-502 Redaction and Publication of Decision**

(a) The decision shall be published by the Commission on its website. Before publication of a decision, Taxpayer-identifying information shall be redacted.

(1) Taxpayer-identifying information includes Taxpayer names, identification or account numbers, addresses, and other information the disclosure of which would lead to identification of the Taxpayer. Dollar amounts will also be redacted unless necessary to understand the reasoning of the decision.

(2) Taxpayer-identifying information does not include facts about the Taxpayer's activities or operations, particularly those facts that serve as the basis of the decision, unless publication of such facts would allow the public to identify the Taxpayer.

(b) The Taxpayer shall have ten (10) days from service of the unredacted decision to file proposed redactions with the Commission using the Request for Redactions form. Such proposed redactions shall be based on the standards provided by this section.



(c) After expiration of the ten (10) day period and after due consideration of any proposed redactions from the Taxpayer, the Commission shall finalize the redaction of Taxpayer-identifying information, and the decision shall be published on the Commission's website.

### **§ 5-601 Scope and Application of Electronic Filing**

(a) Use of the electronic filing system for filings after the petition is required for an authorized representative, except for an authorized representative with a disability that prevents the use of the electronic filing system. The petition should be filed electronically if possible.

(b) Use of the electronic filing system by a Taxpayer without an authorized representative is encouraged but not required.

(c) Conventional paper filings shall be submitted in the event of electronic filing system errors or other technical problems pursuant to § 5-606.

(d) The Commission shall electronically file or issue any notice, order, decision, or other document prepared by the Commission. The Commission shall provide a paper copy of such document to any party not using the electronic filing system.

(e) An electronic document is the official record and has the same force and effect as a document filed conventionally.

(f) Conventional documents shall be scanned by the Clerk and made part of the electronic record. Once scanned, conventional documents may be destroyed.

### **§ 5-602 Time of Filing, Confirmation, and File-Mark**

(a) An electronic document is submitted when the transmission to the electronic filing system is completed. It is the user's responsibility to confirm that the transmission of the electronic document was completed.

(b) After review and acceptance by the Clerk, an electronic document shall be considered filed as of the date and time of submission.

(c) Notice of a rejection of a document will be provided to the filer electronically.

(d) The electronic filing system shall record the date of filing, which shall have the same force and effect as a manually affixed stamp of the Clerk.

(e) Any document received by the electronic filing system before midnight shall be deemed filed on that date.

### **§ 5-603 Signatures**

(a) An electronic document shall be deemed to be signed by the registered user who files it.

(b) An electronic document may be signed by scanned or digital signature, or, for signatures other than a Taxpayer's signature on a Power of Attorney form, a typewritten name may be used.

### **§ 5-604 Format of Documents**

Electronic documents shall be legible and shall not contain hyperlinks to external sources.

### **§ 5-605 Registration Requirements**

(a) Registration of users is limited to individuals. The log-in sequence for a user shall be used only by the user to whom it is assigned and by agents authorized by the user.

(b) Users shall furnish at least one email address for electronic service and other notices. It is the user's responsibility to ensure that the electronic filing system has the correct email address.

### **§ 5-606 Technical Failures**

(a) A technical failure of the electronic filing system shall excuse an untimely filing.

(b) A user's technical problem that prevents submitting an electronic filing is not a technical failure of the electronic filing system. Users that encounter difficulties with their systems shall use alternative means to comply, possibly including conventional filing.

(c) If a technical failure of the electronic filing system or other technical problem prevents a registered user from submitting an electronic filing, documents shall be submitted and served conventionally.

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
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

8  
9  
10 **APPROVED: 4/6/21**  
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1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H3/17/21

# A Bill

HOUSE BILL 1705

5 By: Representative Jett  
6 By: Senators J. Dismang, B. Johnson  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW RELATING TO THE  
10 ADMINISTRATION OF STATE TAXES; TO AMEND THE LAW  
11 CONCERNING THE HEARING AND APPEAL OF STATE TAX  
12 DISPUTES; TO PROVIDE CONFORMING CHANGES RELATED TO  
13 THE CREATION OF THE INDEPENDENT TAX APPEALS  
14 COMMISSION ACT; AND FOR OTHER PURPOSES.  
15

## Subtitle

16  
17  
18 TO AMEND THE LAW CONCERNING THE HEARING  
19 AND APPEAL OF STATE TAX DISPUTES; AND TO  
20 PROVIDE CONFORMING CHANGES RELATED TO THE  
21 CREATION OF THE INDEPENDENT TAX APPEALS  
22 COMMISSION ACT.  
23

24  
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 15-4-2711(a) and (b), concerning the  
28 administration of the Consolidated Incentive Act of 2003, are amended to read  
29 as follows:

30 (a) A person claiming ~~credit~~ an incentive under ~~§ 15-4-2706(e)~~ this  
31 subchapter is a “taxpayer” within the meaning of § 26-18-104~~(16)~~ and is  
32 subject to all applicable provisions of that section.

33 (b) Administration of § 15-4-2706(c) shall be under the Arkansas Tax  
34 Procedure Act, § 26-18-101 et seq., and the Independent Tax Appeals  
35 Commission Act, § 26-18-1101 et seq.  
36



1 SECTION 2. Arkansas Code § 15-4-3501(f), concerning the increased tax  
2 refund for major maintenance and improvement projects, is amended to read as  
3 follows:

4 (f) Except as otherwise provided in this section, a refund under this  
5 section is subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.,  
6 and the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., in the  
7 same manner as other refunds permitted under § 26-18-507.

8  
9 SECTION 3. Arkansas Code § 23-114-305 is amended to read as follows:  
10 23-114-305. Denial, suspension, or revocation of licenses.

11 (a)(1) ~~All proceedings for the suspension and revocation of the~~  
12 ~~license issued to a manufacturer, a distributor, or an authorized~~  
13 ~~organization under this chapter shall be before the Department of Finance and~~  
14 ~~Administration~~ The Secretary of the Department of Finance and Administration  
15 may suspend or revoke a license issued under this chapter if the secretary  
16 determines that issuing the license would violate this chapter.

17 (b)(2) ~~The department secretary~~ may deny an application for a  
18 license, or for the renewal of a license ~~issued~~ under this chapter if ~~it~~ the  
19 secretary determines that issuing the license would violate ~~any provisions of~~  
20 this chapter.

21 (c)(b) ~~The proceedings shall be conducted in accordance with~~ A license  
22 holder or applicant may seek administrative relief from a decision of the  
23 secretary under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or under  
24 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

25 (c) Judicial relief is available to a license holder, an applicant,  
26 and the secretary under §§ 26-18-602 and 26-18-1117.

27  
28 SECTION 4. Arkansas Code § 26-18-303(b)(8), concerning exceptions to  
29 the prohibition against disclosure of tax records, is amended to read as  
30 follows:

31 (8) Disclosure of information ~~other than income tax information~~  
32 at an administrative hearing held ~~regarding the issuance, cancellation,~~  
33 ~~revocation, or suspension of licenses or permits issued by the Secretary of~~  
34 ~~the Department of Finance and Administration or any other state agency or~~  
35 ~~department~~ under the Arkansas Tax Procedure Act, § 26-18-101 et seq., under  
36 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and in any

1 judicial proceeding in which the Secretary of the Department of Finance and  
2 Administration is a party;

3  
4 SECTION 5. Arkansas Code § 26-18-303(b), concerning exceptions to the  
5 prohibition against disclosure of tax records, is amended to add an  
6 additional subdivision to read as follows:

7 (26)(A) Disclosure of information related to a petition filed  
8 with the Tax Appeals Commission under the Independent Tax Appeals Commission  
9 Act, § 26-18-1101 et seq.

10 (B) Information received by the Tax Appeals Commission  
11 under subdivision (b)(26)(A) of this section is confidential and is not  
12 subject to disclosure except in accordance with this section.

13  
14 SECTION 6. Arkansas Code § 26-18-307 is amended to read as follows:

15 26-18-307. Notice requirements.

16 (a)(1) ~~The~~ Except as otherwise provided in this section, the Secretary  
17 of the Department of Finance and Administration shall give a taxpayer notice  
18 of any assessment, demand, decision, or hearing before the secretary ~~which~~  
19 that directly involves that taxpayer.

20 (2)(A) All notices required to be given by the secretary to a  
21 taxpayer shall be either served by personal service or sent by regular mail  
22 to the taxpayer's last address on record with the particular tax section of  
23 the Revenue Division of the Department of Finance and Administration in  
24 question.

25 (B) Service of the notice by mail is presumptively  
26 complete upon mailing, and the secretary may take any action permitted by any  
27 state tax law.

28 (3) All notices of final assessment under § 26-18-401 shall be  
29 sent by regular mail.

30 (b)(1) When giving notice to the secretary, the taxpayer shall give  
31 notice either by mail or by personal service on the secretary.

32 (2) The notice the taxpayer gives shall be effective when  
33 postmarked or, in case of personal service, when so served.

34 (c) By written agreement, the secretary and any taxpayer may provide  
35 for any other reasonable means of giving notice.

36 (d) All notices shall be in writing.

1       (e) For a petition filed with the Tax Appeals Commission, the notice  
2 of hearing and the administrative decision required under this section shall  
3 be issued by the commission under the Independent Tax Appeals Commission Act,  
4 § 26-18-1101 et seq.

5  
6       SECTION 7. Arkansas Code § 26-18-314, concerning transparency under  
7 the Arkansas Tax Procedure Act, is amended to add an additional subsection to  
8 read as follows:

9       (c)(1) A final decision of the Tax Appeals Commission under the  
10 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., shall be posted  
11 on the Arkansas.gov website.

12       (2) Any identifying facts and information that the commission  
13 determines to be confidential in nature concerning taxpayers or other  
14 individuals or entities shall be redacted from a final decision posted under  
15 this section.

16       (3) The commission may post a synopsis that fully describes the  
17 subject matter, facts, and conclusions reached by the commission instead of  
18 posting the complete decision.

19       (4) An administrative appeal that is settled or withdrawn from  
20 consideration before a final decision is made by the commission shall not be  
21 posted under this section.

22  
23       SECTION 8. Arkansas Code § 26-18-401(b)(2)(A) and (B), concerning the  
24 assessment and collection of taxes, are amended to read as follows:

25       (2)(A)(i) The secretary shall issue a final assessment to each  
26 taxpayer liable for the unpaid tax.

27               (ii) The final assessment shall state the amount of  
28 the assessment and demand payment within ten (10) days of the assessment.

29               (iii) The final assessment shall not be issued  
30 before the expiration of time for the taxpayer to request an administrative  
31 hearing under § 26-18-404 or under the Independent Tax Appeals Commission  
32 Act, § 26-18-1101 et seq.

33               (B) If the taxpayer has requested administrative relief  
34 under § 26-18-404 or under the Independent Tax Appeals Commission Act, § 26-  
35 18-1101 et seq., the final assessment shall be issued according to § 26-18-  
36 405 or the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., as

1 applicable.

2

3 SECTION 9. Arkansas Code § 26-18-402(b) and (c), concerning jeopardy  
4 assessments, are amended to read as follows:

5 (b)(1) Within five (5) days after the date on which a notice and  
6 demand for payment is made under subsection (a) of this section, the  
7 secretary shall provide the taxpayer with a written statement of the  
8 information upon which the secretary relies in making such assessment.

9 ~~(2) If the taxpayer fails or refuses to pay the tax upon demand~~  
10 ~~of the secretary or requests a hearing before the secretary within five (5)~~  
11 ~~business days after the day the taxpayer is furnished the written statement~~  
12 ~~described in subdivision (b)(1) of this subsection, the tax shall become~~  
13 ~~delinquent and the secretary shall proceed to issue a certificate of~~  
14 ~~indebtedness~~ A taxpayer may seek relief from a jeopardy assessment issued by  
15 the secretary under this section by filing an administrative protest of the  
16 assessment under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by  
17 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-  
18 1101 et seq., within five (5) business days of the issuance of a statement  
19 under subdivision (b)(1) of this section.

20 (c)(1)(A) When the taxpayer requests a hearing, the secretary or the  
21 Tax Appeals Commission, as applicable, shall hold the hearing within five (5)  
22 business days of receipt of the request.

23 (B) After a hearing, the secretary or the commission shall  
24 determine whether the making of the assessment under subsection (a) of this  
25 section is reasonable under the circumstances and shall render ~~his or her~~ a  
26 written decision.

27 (2) The taxpayer has three (3) days after the receipt of the  
28 ~~secretary's~~ written decision by the secretary or the commission under this  
29 section either to pay the tax and applicable penalty and interest due or to  
30 ~~protest the decision of the secretary as provided by § 26-18-406(a)~~ seek  
31 judicial relief from the decision under § 26-18-406 prior to the secretary's  
32 issuing a certificate of indebtedness.

33 (3) The secretary may seek judicial relief from a decision of  
34 the commission under § 26-18-406(c) or § 26-18-1117 by filing suit in the  
35 Pulaski County Circuit Court or in the circuit court of the county in which  
36 the taxpayer resides or has its principal place of business in the state

1 within three (3) days after the date of the written decision.

2  
3 SECTION 10. Arkansas Code § 26-18-403(a)(2)(B), concerning proposed  
4 assessments under the Arkansas Tax Procedure Act, is amended to read as  
5 follows:

6 (B) The notice required under subdivision (a)(2)(A) of  
7 this section shall:

8 (i) Explain the basis for the proposed assessment;

9 (ii)(a) State that a final assessment, as provided  
10 by § 26-18-401, will be made if the taxpayer does not protest the proposed  
11 assessment as provided by § 26-18-404 or file a petition under the  
12 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., as applicable.

13 (b) The taxpayer does not have to protest the  
14 proposed assessment to later be entitled to exercise the right to seek a  
15 judicial review of the assessment under § 26-18-406; and

16 (iii) Provide contact information for the taxpayer  
17 to use if the taxpayer wants to obtain his or her tax records, including  
18 without limitation the facts and evidence supporting the proposed assessment,  
19 from the Department of Finance and Administration.

20  
21 SECTION 11. Arkansas Code § 26-18-403(c)(2)(B), concerning proposed  
22 assessments under the Arkansas Tax Procedure Act, is amended to read as  
23 follows:

24 (B) The notice of proposed assessment to recover an  
25 erroneously paid refund shall explain the basis for the proposed assessment  
26 and shall inform the taxpayer that a final assessment under § 26-18-401 shall  
27 be made if the taxpayer fails to protest the assessment under § 26-18-404 or  
28 fails to file a petition under the Independent Tax Appeals Commission Act, §  
29 26-18-1101 et seq.

30  
31 SECTION 12. Arkansas Code § 26-18-403(c)(3), concerning proposed  
32 assessments under the Arkansas Tax Procedure Act, is amended to read as  
33 follows:

34 (3) Sections 26-18-404 – 26-18-406 and 26-18-701 and the  
35 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., apply to  
36 assessments of erroneously paid refunds.

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SECTION 13. Arkansas Code § 26-18-404, concerning taxpayer relief under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(e) Administrative relief is not available to a taxpayer under this section for a proposed assessment or a refund claim denial issued by the secretary on or after January 1, 2023.

SECTION 14. Arkansas Code § 26-18-405, concerning hearings on proposed assessments under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(g) Administrative relief is not available to a taxpayer under this section for a proposed assessment or a refund claim denial issued by the secretary on or after January 1, 2023.

SECTION 15. Arkansas Code § 26-18-406 is amended to read as follows:  
26-18-406. Judicial relief.

~~(a) After the issuance and service on the taxpayer of the final assessment of a deficiency in tax that is not protested by the taxpayer under § 26-18-403 or a final determination of the hearing officer or the Secretary of the Department of Finance and Administration under § 26-18-405, a taxpayer may seek judicial relief from the final assessment or determination~~ A taxpayer may seek judicial relief from a final assessment not protested by the taxpayer under § 26-18-404 or under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., or from a final decision by the Secretary of the Department of Finance and Administration under § 26-18-405 or by the Tax Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., by:

(1)(A) Filing suit for judicial relief from the final assessment or ~~determination~~ decision within one hundred eighty (180) days of the date of the final assessment or ~~determination~~ decision.

(B) A taxpayer filing suit under this subdivision (a)(1) shall not be required to pay the state tax, penalties, and interest due before filing suit;

(2) Paying the entire amount of state tax due within one (1) year of the date of the final assessment or ~~determination~~ decision and filing

1 suit to recover that amount within one (1) year of the date of payment; or

2 (3) Filing suit to recover assessed tax, penalty, and interest  
3 paid prior to the time for issuance of the final assessment within one (1)  
4 year of the date of the final ~~determination of the hearing officer or the~~  
5 ~~secretary under § 26-18-405~~ decision of the secretary under § 26-18-405 or  
6 the commission under the Independent Tax Appeals Commission Act, § 26-18-1101  
7 et seq.

8 (b)(1) A taxpayer may seek judicial relief from a final ~~determination~~  
9 decision denying a claim for refund by filing suit to recover the amount  
10 claimed within one (1) year from the mailing of the denial of the secretary  
11 under § 26-18-507, or a final ~~determination~~ decision of ~~the hearing officer~~  
12 ~~or~~ the secretary under § 26-18-405 or the commission under the Independent  
13 Tax Appeals Commission Act, § 26-18-1101 et seq., whichever is later.

14 (2) The secretary may seek judicial relief under § 26-18-1117  
15 from a decision of the commission concerning the assessment of a tax  
16 deficiency or the denial of a claim for refund by filing suit within (30)  
17 days of the date of the decision of the commission.

18 (c)(1)(A) Jurisdiction for a suit by a taxpayer to contest a ~~final~~  
19 ~~assessment or determination~~ decision of the secretary or the commission under  
20 this section ~~shall be~~ is in the Pulaski County Circuit Court or the circuit  
21 court of the county in which the taxpayer resides or has his or her principal  
22 place of business, where the matter shall be tried de novo.

23 (B) Jurisdiction for a suit by the secretary to contest a  
24 decision of the commission under this section is in the Pulaski County  
25 Circuit Court or in the circuit court of the county in which the taxpayer  
26 resides or has its principal place of business in the state, where the matter  
27 shall be tried de novo.

28 (2) An appeal of a circuit court decision under this section  
29 will lie from the circuit court to the Supreme Court, as in other cases  
30 provided by law.

31 (3) A presumption of correctness or weight of authority shall  
32 not attach to a final assessment or ~~determination~~ decision of the secretary  
33 or the commission in a trial de novo or an appeal under this section.

34 (d)(1) The methods provided in this section shall be the sole  
35 alternative methods for seeking relief from a written decision of the  
36 secretary ~~establishing a deficiency in tax or disallowing a claim for refund~~



1 or the commission.

2 (2) An injunction shall not issue to stay proceedings for  
3 assessment or collection of taxes levied under state tax law.

4 (e)(1) In a court proceeding under this section, the:

5 (A) Prevailing party may be awarded a judgment for court  
6 costs; and

7 (B) Taxpayer may be awarded reasonable attorney's fees if  
8 the:

9 (i) Secretary revised a decision of the hearing  
10 officer in favor of the taxpayer under § 26-18-405;

11 (ii) Taxpayer is the prevailing party in an action  
12 for judicial relief from the ~~determination~~ decision of the secretary under  
13 this section; and

14 (iii) Court finds that the secretary's revision was  
15 without a reasonable basis in law and fact.

16 (2) A judgment of court costs entered by the court in favor of  
17 either party or of attorney's fees awarded in favor of the taxpayer shall be  
18 treated, for purposes of this chapter, in the same manner as an overpayment  
19 or deficiency of tax, except that interest or penalty shall not be allowed or  
20 assessed with respect to a judgment for court costs or attorney's fees.

21 (f) If a taxpayer pays the tax, penalty, and interest assessed under §  
22 26-18-403 and does not request administrative relief according to § 26-18-404  
23 or the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., then:

24 (1) The taxpayer may seek judicial relief from the assessment  
25 only if the taxpayer files suit in circuit court within one (1) year from the  
26 date of payment of the assessment; and

27 (2) The provisions of § 26-18-507 shall not apply to the  
28 payments.

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

31

32 SECTION 16. Arkansas Code § 26-18-507(e)(1)(B)(ii)(c) and (d),  
33 concerning claims for refunds of overpayments under the Arkansas Tax  
34 Procedure Act, are amended to read as follows:

35 (c) A taxpayer who claims that only the  
36 taxpayer's spouse owes the delinquent state tax debt may seek administrative

1 relief by filing a written protest under ~~oath~~ § 26-18-404 or by filing a  
2 petition under the Independent Tax Appeals Commission Act, § 26-18-1101 et  
3 seq., within thirty (30) days after the notice under subdivision  
4 (e)(1)(B)(ii)(b) of this section is received that includes information  
5 regarding why the taxpayer does not owe the delinquent state tax debt and  
6 either requests a hearing in person or based upon the information submitted  
7 with the protest or petition.

8 (d) A hearing on a written protest or petition  
9 made under this subdivision (e)(1)(B)(ii) and any judicial relief requested  
10 following the administrative hearing process shall be provided in accordance  
11 with the applicable provisions of §§ 26-18-405 and 26-18-406 and the  
12 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

13  
14 SECTION 17. Arkansas Code § 26-18-507(e)(2)(B), concerning claims for  
15 refunds of overpayments under the Arkansas Tax Procedure Act, is amended to  
16 read as follows:

17 (B) The taxpayer may seek administrative review and relief  
18 from the secretary's decision to deny a claim for refund by protesting as  
19 provided in §§ 26-18-404 and 26-18-405 or by filing a petition under the  
20 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

21  
22 SECTION 18. Arkansas Code §§ 26-18-601 and 26-18-602 are amended to  
23 read as follows:

24 26-18-601. Cancellation or refusal of license or permit.

25 (a)(1) The Secretary of the Department of Finance and Administration  
26 may cancel or refuse to issue, extend, or reinstate a license, permit, or  
27 registration under any state tax law to ~~any~~ a person or taxpayer who has  
28 within the last three (3) years failed to comply with a state law concerning  
29 the timely reporting and payment of a state tax administered by the secretary  
30 or failed to observe or fulfill the conditions upon which the license or  
31 permit was issued.

32 (2) A failure to pay assessed interest and penalties on a  
33 delinquent state tax is grounds for a decision to cancel or refuse to issue,  
34 extend, or reinstate a license, permit, or registration under this  
35 subsection.

36 (b)(1) When the secretary determines, in his or her sole discretion,

1 that an emergency situation exists and that the public welfare and safety are  
2 endangered, he or she may issue an order temporarily suspending a license,  
3 permit, or registration pending a hearing before him or her or the Tax  
4 Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-  
5 1101 et seq., on the subject of the cancellation of the license, permit, or  
6 registration.

7 (2) The secretary shall give notice of the temporary suspension  
8 at the same time that he or she gives notice of his or her intention to  
9 cancel or to refuse to issue, extend, or reinstate any license, permit, or  
10 duplicate copy ~~thereof~~ of a license or permit, as provided by this section.

11 ~~(3) The secretary shall as soon as practicable, but in any event~~  
12 ~~within three (3) days after the request of the taxpayer, hold a hearing on~~  
13 ~~whether the temporary suspension should be made permanent.~~

14 ~~(4) The temporary suspension shall be made permanent without a~~  
15 ~~hearing unless the taxpayer requests a hearing within twenty (20) days of~~  
16 ~~receipt of notice of the temporary suspension~~ seeks administrative review and  
17 relief from the order of temporary suspension by filing a protest under § 26-  
18 18-404 or by filing a petition under the Independent Tax Appeals Commission  
19 Act, § 26-18-1101 et seq.

20 (4) If a taxpayer seeks administrative review and relief under  
21 subdivision (b)(3) of this section, a hearing shall be held within three (3)  
22 days after the request for review and relief, and a decision shall be issued  
23 within three (3) business days after the conclusion of the hearing.

24 (c)(1) Except as set out in subsection (b) of this section, before the  
25 secretary may cancel or refuse to issue, extend, or reinstate any license,  
26 permit, or registration, he or she shall give notice of his or her proposed  
27 action, and the owner or applicant shall have twenty (20) days after receipt  
28 of the secretary's decision to request a hearing under § 26-18-405 or under  
29 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

30 (2) A decision of the secretary or the Tax Appeals Commission  
31 shall be issued within twenty (20) days after the conclusion of the hearing  
32 authorized in subdivision (c)(1) of this section.

33 (3)(A) The taxpayer may request a revision of an adverse  
34 decision of a hearing officer appointed under § 26-18-405 by submitting the  
35 request in writing within twenty (20) calendar days of the date of the  
36 decision.

1                   (B) If the secretary refuses to make a revision under  
2 subdivision (c)(3)(A) of this section or if the taxpayer does not request a  
3 revision, the affected taxpayer may seek relief from the hearing officer's  
4 decision by following the method provided in § 26-18-602.

5           (d)(1) When a license, permit, or registration is cancelled by the  
6 secretary, all accrued fees, taxes, and penalties, even though not due and  
7 payable at the time of cancellation under the state tax law imposing and  
8 levying the tax, shall become due concurrently with the cancellation of the  
9 license, permit, or registration.

10           (2) The licensee or permittee shall within five (5) business  
11 days of cancellation make a report to the secretary covering the period not  
12 previously covered by reports filed by that person and ending with the date  
13 of the cancellation and shall pay all accrued fees, taxes, and penalties at  
14 the time the report is made.

15           (3) Violation of this subsection is a Class C misdemeanor.

16           ~~(e)(1) The affected taxpayer may seek relief from the decision of the~~  
17 ~~secretary cancelling a license, permit, or registration by requesting a~~  
18 ~~hearing, pursuant to subsections (b) and (c) of this section, by filing a~~  
19 ~~written protest of the action with the hearing officer appointed by the~~  
20 ~~secretary, pursuant to § 26-18-405, and the hearing officer shall hold all~~  
21 ~~hearings requested pursuant to this section.~~

22           ~~(2) The hearing officer shall issue a written decision on all~~  
23 ~~hearings which shall be final unless revised by the secretary.~~

24           ~~(3) The hearings and determinations~~ decisions of the hearing  
25 ~~officer~~ secretary and the commission under this section shall not be subject  
26 to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201  
27 et seq.

28           ~~(4)(A) A taxpayer may request a revision by the secretary of the~~  
29 ~~hearing officer's determination which is adverse to him or her within twenty~~  
30 ~~(20) days of the date of the mailing of the hearing officer's decision.~~

31           ~~(B) If the secretary refuses to make a revision, or if the~~  
32 ~~taxpayer does not request a revision, then the affected taxpayer may seek~~  
33 ~~relief from the hearing officer's decision or the final revision~~  
34 ~~determination by the secretary by following the method provided in § 26-18-~~  
35 ~~602.~~

36           (f)(1) Violations of this section shall be punished as provided in §

1 26-18-206.

2 (2) The secretary may seek to enjoin any violation of any state  
3 tax law the secretary is charged to enforce.

4 (g) Administrative relief from a decision of the secretary to  
5 temporarily suspend, cancel, or refuse to issue, extend, or reinstate a  
6 license, permit, or registration made on or after January 1, 2023, is  
7 available only to a taxpayer under the Independent Tax Appeals Commission  
8 Act, § 26-18-1101 et seq.

9

10 26-18-602. Judicial review of cancellation decision.

11 ~~(a)(1) The affected taxpayer may seek relief from the decision of the~~  
12 ~~Secretary of the Department of Finance and Administration, rendered after a~~  
13 ~~hearing, cancelling a license, permit, or registration.~~

14 ~~(2) The taxpayer's petition seeking an order to stay the effect~~  
15 ~~of the secretary's decision shall be filed within thirty (30) days after~~  
16 ~~receipt of notice of that decision by the taxpayer with the Pulaski County~~  
17 ~~Circuit Court or the circuit court of the county in which the taxpayer~~  
18 ~~resides or has his or her principal place of business, where the matter shall~~  
19 ~~be tried de novo.~~

20 ~~(b)(1) Relief from the decision of the secretary cancelling a license,~~  
21 ~~permit, or registration may be taken only as provided in this section.~~

22 ~~(2)(A) To stay the effect of the secretary's decision, the~~  
23 ~~person or taxpayer shall file a bond not to exceed twenty five thousand~~  
24 ~~dollars (\$25,000) with and in an amount fixed by the secretary, payable to~~  
25 ~~the State of Arkansas.~~

26 ~~(B) The bond shall be conditioned upon:~~

27 ~~(i) The faithful and diligent prosecution of the~~  
28 ~~appeal by the taxpayer to a final determination; and~~

29 ~~(ii) The immediate compliance of the taxpayer with~~  
30 ~~the secretary's decision if the secretary's decision is not enjoined by the~~  
31 ~~circuit court or upon appeal is upheld by the Supreme Court.~~

32 ~~(3) The secretary may, in his or her discretion, refuse to stay~~  
33 ~~the effect of his or her decision and permit a bond to be posted when he or~~  
34 ~~she determines in his or her sole discretion that the public safety and~~  
35 ~~welfare would be endangered by the stay.~~

36 ~~(c) The venue for all actions seeking relief from a decision of the~~

1 ~~secretary concerning the cancellation of or refusal of the issuance of a~~  
2 ~~license or permit shall be the Pulaski County Circuit Court or the circuit~~  
3 ~~court of the county in which the taxpayer resides or has his or her principal~~  
4 ~~place of business.~~

5 (a)(1) A taxpayer may seek judicial relief from an administrative  
6 decision rendered after a hearing cancelling a license, permit, or  
7 registration by filing suit within thirty (30) days of the date of the  
8 administrative decision.

9 (2) Jurisdiction for suit under subdivision (a)(1) of this  
10 section is in the Pulaski County Circuit Court or the Arkansas circuit court  
11 of the county in which the taxpayer resides or has his or her principal place  
12 of business, where the matter shall be tried de novo.

13 (3)(A) A taxpayer shall not operate a business after thirty (30)  
14 calendar days from the issuance of an administrative decision cancelling a  
15 license, permit, or registration unless the taxpayer obtains an order from  
16 the circuit court staying the effect of the administrative decision.

17 (B) An order of a circuit court to stay the effect of an  
18 administrative decision may be revoked if the Secretary of the Department of  
19 Finance and Administration provides proof that the taxpayer has failed to  
20 timely file returns for taxes administered by the secretary or has failed to  
21 timely pay taxes administered by the secretary after the date suit is filed  
22 under this section.

23 (b) The secretary may seek judicial relief from an adverse decision of  
24 the Tax Appeals Commission under § 26-18-1117 by filing suit in circuit court  
25 within thirty (30) calendar days of the date of the decision.

26  
27 SECTION 19. Arkansas Code § 26-18-701(a)(1)(A)(i), concerning the  
28 issuance of certificates of indebtedness and execution under the Arkansas Tax  
29 Procedure Act, is amended to read as follows:

30 ~~(a)(1)(A)(i) If a taxpayer does not timely and properly pursue his or~~  
31 ~~her remedies seeking relief from a decision of the Secretary of the~~  
32 ~~Department of Finance and Administration and a final assessment is made~~  
33 ~~against the taxpayer, or if the taxpayer fails to pay the deficiency assessed~~  
34 ~~upon notice and demand, then the secretary shall, as soon as practicable~~  
35 ~~thereafter, issue to the circuit clerk of any county of the state a~~  
36 ~~certificate of indebtedness certifying that the person named in the~~

1 ~~certificate of indebtedness is indebted to the state for the amount of the~~  
2 ~~tax established by the secretary as due. The Secretary of the Department of~~  
3 ~~Finance and Administration shall, as soon as practicable, issue to the~~  
4 ~~circuit clerk of any county of the state a certificate of indebtedness~~  
5 ~~certifying that the taxpayer named in the certificate of indebtedness is~~  
6 ~~indebted to the state for the amount of a tax deficiency assessed by the~~  
7 ~~secretary if:~~

8 (a) The taxpayer fails to timely and properly  
9 protest the assessment under § 26-18-404 or file a petition under the  
10 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and fails to  
11 pay the assessed tax upon notice and demand for payment; or

12 (b) The assessment is sustained by the  
13 secretary under § 26-18-405 or by the Tax Appeals Commission under the  
14 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and the  
15 taxpayer fails to pay the assessed deficiency upon notice and demand for  
16 payment.

17  
18 SECTION 20. Arkansas Code § 26-18-705(c)(2), concerning the settlement  
19 or compromise of liability controversies under the Arkansas Tax Procedure  
20 Act, is amended to read as follows:

21 (2) When the closing agreement is signed by the secretary, it  
22 shall be final and conclusive, and except upon a showing of fraud or  
23 misrepresentation of a material fact, no additional assessment or collection  
24 shall be made by the secretary, and the taxpayer shall not file a protest of  
25 the assessment under § 26-18-404, file a petition under the Independent Tax  
26 Appeals Commission Act, § 26-18-1101 et seq., or institute any a judicial  
27 proceeding to recover such liabilities as agreed to in the closing agreement.  
28

29 SECTION 21. Arkansas Code § 26-18-1002 is amended to read as follows:  
30 26-18-1002. Administrative hearing.

31 (a) A noncompliant taxpayer may request an administrative hearing  
32 concerning the decision of the Secretary of the Department of Finance and  
33 Administration to close the noncompliant taxpayer's business by following the  
34 procedures in this section.

35 (b) Within five (5) business days after the delivery or attempted  
36 delivery of the notice required by § 26-18-1001(c), the noncompliant taxpayer

1 may file a written protest or a petition, signed by the noncompliant taxpayer  
2 or his or her authorized agent, stating the reasons for opposing the closure  
3 of the business and requesting an administrative hearing before a hearing  
4 officer or the Tax Appeals Commission, as applicable.

5 (c)(1) A noncompliant taxpayer may request that an administrative  
6 hearing be held in person, by ~~telephone, upon written documents furnished by~~  
7 ~~the noncompliant taxpayer, or upon written documents and any evidence~~  
8 ~~produced by the noncompliant taxpayer at an administrative hearing~~  
9 teleconference, by video conference, or by other electronic means.

10 (2)(A) The secretary ~~has~~ and the commission have the discretion  
11 to determine whether an administrative hearing at which testimony is to be  
12 presented will be conducted in person, ~~or by telephone~~ by teleconference, by  
13 videoconference, or by other electronic means.

14 (B) An in-person hearing under this section shall be held  
15 in Little Rock, Arkansas.

16 ~~(3) A noncompliant taxpayer who requests an administrative~~  
17 ~~hearing based upon written documents is not entitled to any other~~  
18 ~~administrative hearing prior to the hearing officer's rendering a decision.~~

19 (d) ~~The~~ An administrative hearing ~~will~~ under this section shall be  
20 conducted by a hearing officer appointed by the secretary under § 26-18-405  
21 or by the commission.

22 (e)(1) The hearing officer ~~will~~ or the commission shall set the time  
23 and place for a hearing and ~~will~~ shall give the noncompliant taxpayer and the  
24 secretary notice of the hearing.

25 (2) At the administrative hearing, the noncompliant taxpayer may  
26 be represented by an authorized representative and may present evidence in  
27 support of his or her position.

28 (f)(1) ~~The hearing may be held in any city in which the Revenue~~  
29 ~~Division of the Department of Finance and Administration maintains a field~~  
30 ~~audit district office or in such other city as the secretary may designate.~~

31 ~~(2) The~~ An administrative hearing ~~will~~ under this section shall  
32 be held within fourteen (14) calendar days of receipt ~~by the secretary~~ of the  
33 request for hearing.

34 (2)(A) A written administrative decision under this section  
35 shall be issued within five (5) business days of the date of the hearing and  
36 shall be served by first class mail on the noncompliant taxpayer and the



1 secretary.

2 (B) A decision issued under subdivision (f)(2)(A) of this  
3 section:

4 (i) Is effective twenty (20) days after the date of  
5 the decision; and

6 (ii) Except as provided under § 26-18-1003, acts as  
7 an injunction prohibiting further operation of the business.

8 (g) The administrative hearing and ~~determinations~~ decision made by the  
9 ~~hearing officer under this subchapter~~ under this section are not subject to  
10 the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et  
11 seq.

12 (h) The defense or defenses to the closure of a business under this  
13 subchapter are:

14 (1) Written proof that the noncompliant taxpayer filed all  
15 delinquent returns and paid the delinquent tax due including interest and  
16 penalty; or

17 (2) That the noncompliant taxpayer has entered into a written  
18 payment agreement, approved by the secretary, to satisfy the tax delinquency.

19 ~~(i) The decision of the hearing officer must be in writing with copies~~  
20 ~~delivered to the noncompliant taxpayer and the Department of Finance and~~  
21 ~~Administration by the United States Postal Service or by hand delivery. For a~~  
22 notice issued under § 26-18-1001 on or after January 1, 2023, administrative  
23 relief is available to a taxpayer only under the Independent Tax Appeals  
24 Commission Act, § 26-18-1101 et seq.

25 ~~(j) A decision of the hearing officer to sustain the secretary's~~  
26 ~~decision to close the business of the noncompliant taxpayer is effective~~  
27 ~~twenty (20) days after the date of the decision and, except as provided under~~  
28 ~~§ 26-18-1003, acts as an injunction prohibiting further operation of the~~  
29 ~~business.~~

30

31 SECTION 22. Arkansas Code § 26-18-1003(b), concerning judicial relief  
32 related to a business closure under the Arkansas Tax Procedure Act, is  
33 amended to read as follows:

34 (b)(1) A noncompliant taxpayer may seek judicial relief from an  
35 adverse administrative decision under this subchapter by filing suit within  
36 twenty (20) calendar days of the date of the administrative decision.

1 (2) Jurisdiction for a suit under subdivision (b)(1) of this  
2 ~~section shall be~~ is in the Pulaski County Circuit Court or the circuit court  
3 of the county ~~where~~ in which the noncompliant taxpayer resides or has his or  
4 her principal place of business, where the matter shall be tried de novo.

5 (3) The secretary may seek judicial relief under § 26-18-1117  
6 from an adverse administrative decision issued by the Tax Appeals Commission  
7 by filing suit in the Pulaski County Circuit Court or in the circuit court of  
8 the county in which the noncompliant taxpayer resides or has its principal  
9 place of business in the state within twenty (20) days of the date of the  
10 administrative decision, where the matter shall be tried de novo.

11  
12 SECTION 23. Arkansas Code § 26-36-315(c)-(i), concerning joint tax  
13 refunds, are amended to read as follows:

14 (c)(1)(A) A taxpayer who claims that he or she is not a debtor of a  
15 claimant agency may seek administrative relief by filing a written protest or  
16 petition under oath within thirty (30) days after the notice under  
17 subdivision (b)(1) of this section is received.

18 (B) The written protest or petition shall be signed by the  
19 nondebtor taxpayer or the nondebtor taxpayer's authorized agent and include  
20 ~~the nondebtor taxpayer's reasons for opposing the proposed setoff~~  
21 documentation:

22 (i) Certified by the claimant agency verifying that  
23 the nondebtor taxpayer is not a debtor of the claimant agency; and

24 (ii) Supporting the proportionate share of the  
25 nondebtor taxpayer's payment of tax and the resulting amount of the joint  
26 refund that the nondebtor taxpayer claims is not subject to setoff.

27 (C) Administrative relief is not available to a nondebtor  
28 taxpayer who fails to:

29 (i) Timely submit a protest or a petition regarding  
30 a proposed setoff after the notice under subdivision (b)(1) of this section  
31 is received; or

32 (ii) Provide the documentation required under  
33 subdivision (c)(1)(B) of this section.

34 (2) The nondebtor taxpayer may request the secretary or the Tax  
35 Appeals Commission to consider his or her request for relief upon written  
36 documents furnished by the nondebtor taxpayer or upon the written ~~document~~

1 documents and the evidence produced by the nondebtor taxpayer at a hearing  
2 conducted under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or the  
3 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

4 (3)(A) ~~The nondebtor taxpayer's protest shall include~~  
5 ~~documentation supporting the proportionate share of the nondebtor taxpayer's~~  
6 ~~payment of tax and the resulting amount of the joint refund that the~~  
7 ~~nondebtor taxpayer claims is not subject to setoff~~ The secretary or the  
8 commission, as applicable, shall:

9 (i) Set the time and place of the hearing; and

10 (ii) Provide written notice of the hearing at least  
11 thirty (30) days before the scheduled hearing.

12 (B) At the hearing scheduled under subdivision (c)(3)(A)  
13 of this section, the nondebtor taxpayer may:

14 (i) Be represented by an authorized representative;  
15 and

16 (ii) Present evidence in support of his or her  
17 position.

18 (d) ~~A nondebtor taxpayer who requests the secretary to render his or~~  
19 ~~her decision based on written documents is not entitled by law to any other~~  
20 ~~administrative hearing before the secretary's rendering of his or her~~  
21 ~~decision.~~

22 (e) ~~Administrative relief shall not be available to a nondebtor~~  
23 ~~taxpayer who fails to protest a proposed setoff within the thirty (30) days~~  
24 ~~after the notice under subdivision (b)(1) of this section is received.~~

25 (f)(1) ~~If a taxpayer requests a hearing in person rather than on~~  
26 ~~written documents, a hearing officer shall set the time and place for hearing~~  
27 ~~on the written protest and shall give the nondebtor taxpayer reasonable~~  
28 ~~notice of the hearing.~~

29 (2) ~~At the hearing, the nondebtor taxpayer may be represented by~~  
30 ~~an authorized representative and may present evidence in support of his or~~  
31 ~~her position.~~

32 (3) ~~After the hearing scheduled under subdivision (c)(3)(A) of~~  
33 ~~this section, the hearing officer or the commission, as applicable, shall~~  
34 ~~render his or her a decision in writing and shall serve copies upon both on~~  
35 ~~the nondebtor taxpayer, the secretary, and the claimant agency by first class~~  
36 ~~mail.~~

1       ~~(g)~~(e) The hearings on written protests and ~~determinations~~ decisions  
2 made by the hearing officer or the commission are not subject to the Arkansas  
3 Administrative Procedure Act, § 25-15-201 et seq.

4       ~~(h)(1)~~(f)(1) After the issuance and service ~~on the taxpayer~~ of a  
5 decision of the hearing officer or the commission to sustain the setoff of  
6 the joint refund, a nondebtor taxpayer may seek judicial relief from the  
7 decision by filing suit within thirty (30) days after the date of the final  
8 ~~determination~~ decision of the hearing officer or the commission.

9               (2) Jurisdiction for a suit to contest a ~~determination~~ decision  
10 of the hearing officer or the commission under this section shall be in the  
11 Pulaski County Circuit Court or the circuit court of the county where the  
12 nondebtor taxpayer resides, and the matter shall be tried de novo.

13       ~~(i)~~(g) This section is the sole means by which a nondebtor taxpayer  
14 may challenge a proposed setoff for the benefit of a claimant agency.

15  
16       SECTION 24. Arkansas Code § 26-52-209 is amended to read as follows:  
17       26-52-209. Applicability of tax procedure provisions.

18       All proceedings relative to the issuance, revocation, or suspension of  
19 a permit under this subchapter shall be governed by the provisions of the  
20 Arkansas Tax Procedure Act, § 26-18-101 et seq., and the Independent Tax  
21 Appeals Commission Act, § 26-18-1101 et seq.

22  
23       SECTION 25. Arkansas Code § 26-52-515(b), concerning the refund of  
24 sales tax on vehicles returned as defective, is amended to read as follows:

25       (b)(1) Claims for refund of sales or use tax under this section shall  
26 be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the  
27 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

28               (2) Any claim ~~must~~ under subdivision (b)(1) of this section  
29 shall be made in writing and filed within three (3) years from the date the  
30 vehicle was first registered.

31  
32       SECTION 26. Arkansas Code § 26-52-519(b), concerning the credit  
33 voucher for sales tax on motor vehicles destroyed by catastrophic events, is  
34 amended to read as follows:

35       (b) Claims for credit vouchers of sales or use tax under this section  
36 shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., and

1 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq. Any claim  
2 must be made in writing and filed within one (1) year from the date the  
3 vehicle was first registered.

4  
5 SECTION 27. Arkansas Code § 26-55-219 is amended to read as follows:  
6 26-55-219. Distributor's license – Refusal.

7 ~~(a) In the event that any application for a license to transact~~  
8 ~~business as a distributor in the State of Arkansas shall be filed by any~~  
9 ~~person whose license shall at any time have been cancelled for cause by the~~  
10 ~~Secretary of the Department of Finance and Administration, or in case the~~  
11 ~~secretary shall be of the opinion that the application is not filed in good~~  
12 ~~faith or in the event that the application is filed by some person as a~~  
13 ~~subterfuge for the real person in interest whose license or registration~~  
14 ~~shall theretofore have been cancelled for cause by the secretary, or for any~~  
15 ~~other valid reason, then and in any of said events the secretary, after a~~  
16 ~~hearing of which the applicant shall have been given five (5) days' notice in~~  
17 ~~writing and at which the applicant shall have the right to appear in person~~  
18 ~~or by counsel and present testimony, shall have and is given the right and~~  
19 ~~authority to refuse to issue to the person a license certificate to transact~~  
20 ~~business as a distributor in the State of Arkansas.~~

21 ~~(b) Any distributor who is aggrieved by the action of the secretary in~~  
22 ~~refusing to issue the license applied for, within thirty (30) days from the~~  
23 ~~time of the refusal, may appeal to the circuit court of the county of the~~  
24 ~~distributor's residence where the distributor shall be entitled to a hearing~~  
25 ~~de novo. An appeal shall lie from the circuit court to the Supreme Court as~~  
26 ~~in other cases now provided by law.~~

27 (a) The Secretary of the Department of Finance and Administration may  
28 refuse to issue a distributor's license to a person if:

29 (1) The applicant has previously held a license that was  
30 cancelled for cause by the secretary;

31 (2) The secretary determines the application was not filed in  
32 good faith;

33 (3) The secretary determines the application was filed by a  
34 person as a subterfuge for the real person in interest whose license has been  
35 cancelled for cause; or

36 (4) The secretary determines there is other cause to refuse the

1 application for license.

2 (b) The secretary shall give the applicant written notice of his or  
3 her decision to refuse issuance of the license.

4 (c) An applicant may seek administrative relief from the decision of  
5 the secretary under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or  
6 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

7 (d) Judicial relief is available to the parties under §§ 26-18-602 and  
8 26-18-1117.

9  
10 SECTION 28. Arkansas Code § 26-55-224 is amended to read as follows:

11 26-55-224. Bonds – Additional bonds – Conditions for requirement.

12 ~~(a) In the event that upon a hearing, of which the distributor shall~~  
13 ~~be given five (5) days' notice in writing, the Secretary of the Department of~~  
14 ~~Finance and Administration shall decide that the amount of the existing bond~~  
15 ~~is insufficient to ensure payment to the State of Arkansas of the amount of~~  
16 ~~the tax and any penalties and interest for which the distributor is or may at~~  
17 ~~any time become liable, then the distributor upon the written demand of the~~  
18 ~~secretary shall immediately file an additional bond in the same manner and~~  
19 ~~form with a surety company thereon approved by the secretary in any amount~~  
20 ~~determined by the secretary to be necessary to secure at all times the~~  
21 ~~payment by the distributor to the State of Arkansas of all taxes, penalties,~~  
22 ~~and interest due under the provisions of this subchapter.~~

23 ~~(b) If the distributor fails to do so, the secretary shall immediately~~  
24 ~~cancel the license certificate of the distributor.~~

25 (a) If the Secretary of the Department of *Finance and Administration*  
26 determines the amount of the existing bond is insufficient to ensure payment  
27 of the tax, interest, and penalty the distributor currently owes or may owe,  
28 the secretary may issue a written demand that the distributor file an  
29 additional bond in the same manner and form with a surety company approved by  
30 the secretary.

31 (b) A distributor may seek administrative relief from a decision of  
32 the secretary under subsection (a) of this section by filing a written  
33 protest under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by  
34 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-  
35 1101 et seq.

36 (c) A hearing on the distributor's protest or petition under

1 subsection (b) of this section shall be held within twenty (20) days of the  
2 date of the protest or petition, and a decision shall be issued within twenty  
3 (20) calendar days of the date of the hearing.

4 (d)(1) A distributor may seek judicial relief from an adverse decision  
5 of the secretary or the Tax Appeals Commission by filing suit in the Pulaski  
6 County Circuit Court or in the circuit court of the county in which the  
7 distributor resides or has his or her principal place of business, where the  
8 matter shall be tried de novo.

9 (2) The secretary may seek judicial relief under § 26-18-1117  
10 from an adverse decision of the commission by filing suit in the Pulaski  
11 County Circuit Court or in the circuit court of the county in which the  
12 distributor resides or has its principal place of business in the state,  
13 where the matter shall be tried de novo.

14 (3) A complaint for judicial relief under this subsection shall  
15 be filed within thirty (30) days of the date of the hearing decision issued  
16 by the secretary or the commission under subsection (c) of this section.

17 (e) If a distributor fails to timely request a hearing to challenge  
18 the secretary's demand for additional bond under this section, the secretary  
19 shall cancel the license certificate of the distributor immediately.

20  
21 SECTION 29. Arkansas Code § 26-55-231(a), concerning the failure to  
22 report or pay tax and the resulting revocation or cancellation of a license,  
23 is amended to read as follows:

24 (a)(1) If a distributor at any time files a false monthly report of  
25 the data or information required by this subchapter or fails, refuses, or  
26 neglects to file the monthly report required by this subchapter, or to pay  
27 the full amount of the tax as required by this subchapter, the Secretary of  
28 the Department of Finance and Administration may give notice to the  
29 distributor of an intention to revoke the license of the distributor.

30 (2)(A) The distributor ~~shall be~~ is entitled to a period of five  
31 (5) days after receipt of the notice from the secretary, within which to  
32 apply for a hearing ~~before the secretary~~ on the question of having the  
33 distributor's license revoked. ~~The secretary shall grant a hearing at such~~  
34 ~~time and place as the secretary may designate of which the distributor shall~~  
35 ~~have five (5) days' advance notice in writing.~~

36 (B) A hearing conducted under this section shall be held

1 under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent  
2 Tax Appeals Commission Act, § 26-18-1101 et seq.

3 (3) After the hearing, at which time the distributor ~~shall be~~ is  
4 entitled to present evidence and argument of counsel, the secretary or the  
5 Tax Appeals Commission, as applicable, shall decide whether the distributor's  
6 license shall be revoked.

7 (4)(A) ~~Upon the issuance of an order revoking the license, the~~  
8 ~~distributor shall be entitled to an appeal to the circuit court in the county~~  
9 ~~where the distributor may do business where the question shall be tried de~~  
10 ~~novi.~~

11 (B) ~~An appeal shall lie from the circuit court of that~~  
12 ~~county as in other cases provided by law. The distributor or the secretary~~  
13 ~~may seek judicial relief from an adverse decision by filing suit under §§ 26-~~  
14 ~~18-602 and 26-18-1117.~~

15 (5) If the distributor fails to apply for a hearing within the  
16 time set out in subdivision (a)(2)(A) of this section, the secretary: may  
17 ~~forthwith~~

18 (A) May cancel the license of the distributor and notify  
19 the distributor of the cancellation by registered mail to the last known  
20 address of the distributor appearing on the files of the secretary; and

21 (B) ~~The secretary shall also~~ Shall notify the surety  
22 company on the distributor's bond in like manner.

23  
24 SECTION 30. Arkansas Code § 26-55-247(b), concerning confiscation and  
25 sale of equipment of persons transporting motor fuel unlawfully, is amended  
26 to read as follows:

27 (b)(1) ~~Unless the operator or owner of the tank truck or vehicle can~~  
28 ~~prove to the satisfaction of the secretary at a hearing for that purpose~~  
29 ~~within ten (10) days that the motor fuel was being transported, transferred,~~  
30 ~~or delivered in accordance with this subchapter or any other act affecting~~  
31 ~~the transportation of motor fuel, and in accordance with any rules issued~~  
32 ~~pursuant to this subchapter or any other act, the tank truck or vehicle and~~  
33 ~~the contents therein shall be sold by the secretary at auction without any~~  
34 ~~recourse or liability on the secretary or any of the secretary's agents or~~  
35 ~~the State of Arkansas. The owner or operator of a confiscated tank truck or~~  
36 vehicle may request a hearing under the Arkansas Tax Procedure Act, § 26-18-



1 101 et seq., or the Independent Tax Appeals Commission Act, § 26-18-1101 et  
2 seq., to challenge the confiscation.

3 (2) A request for a hearing under this section shall be made  
4 within five (5) business days of the date of the confiscation of the tank  
5 truck or vehicle.

6 (3) A hearing under this section shall be held within five (5)  
7 business days of the date of the request for hearing, and a decision on the  
8 confiscation shall be issued within five (5) business days of the hearing.

9  
10 SECTION 31. Arkansas Code § 26-55-247, concerning confiscation and  
11 sale of equipment of persons transporting motor fuel unlawfully, is amended  
12 to add an additional subsection to read as follows:

13  
14 (c) Unless the operator or owner of a confiscated tank truck or  
15 vehicle proves at a hearing held under this section that the motor fuel was  
16 being transported, transferred, or delivered in accordance with this  
17 subchapter or any other law affecting the transportation of motor fuel,  
18 including without limitation any rules issued under this subchapter or any  
19 other relevant statute, the secretary shall sell the confiscated tank truck  
20 or vehicle and the contents of the confiscated tank truck or vehicle at  
21 auction without any recourse or liability on the secretary, the secretary's  
22 agents, or the state.

23  
24 SECTION 32. Arkansas Code § 26-56-204(g), concerning licenses and  
25 bonds for suppliers and users, is amended to read as follows:

26 ~~(g)(1)(A) In the event that upon a hearing of which the supplier or~~  
27 ~~interstate user shall be given five (5) days' notice in writing, the~~  
28 ~~secretary shall decide that the amount of the existing bond is insufficient~~  
29 ~~to ensure payment to the State of Arkansas of the amount of the tax and any~~  
30 ~~penalties and interest for which said supplier or interstate user is or may~~  
31 ~~at any time become liable, then the supplier or interstate user upon written~~  
32 ~~demand of the secretary shall immediately file an additional bond in the same~~  
33 ~~manner and form and with a surety company thereon approved by the secretary~~  
34 ~~in any amount determined by the secretary to be necessary to secure at all~~  
35 ~~times the payment to the State of Arkansas of all taxes, penalties, and~~  
36 ~~interest due under the provisions of this section, failing which, the~~

1 ~~secretary shall immediately cancel the license of the supplier or interstate~~  
2 ~~user. If the secretary determines the amount of the existing bond is~~  
3 ~~insufficient to ensure payment of the tax, interest, and penalty the supplier~~  
4 ~~or interstate user currently owes or may owe, the secretary may issue a~~  
5 ~~written demand that the supplier or interstate user file an additional bond~~  
6 ~~in the same manner and form with a surety company approved by the secretary.~~

7 (B) The supplier or interstate user may seek  
8 administrative relief from the decision of the secretary by filing a written  
9 protest under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by  
10 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-  
11 1101 et seq.

12 (C) A hearing on the distributor's protest or petition  
13 shall be held within twenty (20) days of the date of the filing of the  
14 protest or petition, and a decision shall be issued within fifteen (15) days  
15 of the date of the hearing.

16 (2) If the supplier or interstate user fails to timely seek  
17 administrative relief from the decision of the secretary, the secretary shall  
18 cancel the license of the supplier or the interstate user immediately.

19  
20 SECTION 33. Arkansas Code § 26-56-311(b)-(d), concerning the  
21 revocation of a supplier's or dealer's license under the Special Motor Fuels  
22 Tax Law, are amended to read as follows:

23 (b)(1) The licensee shall be entitled to a period of ~~ten (10)~~ twenty  
24 (20) days after the mailing of the notice within which to apply for a hearing  
25 on the question of having his or her license revoked, and the secretary shall  
26 designate a time and place for the hearing, giving the licensee five (5)  
27 days' notice thereof.

28 (2) A hearing under this section shall be held under the  
29 Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax  
30 Appeals Commission Act, § 26-18-1101 et seq.

31 (c) After the hearing at which the licensee ~~shall be~~ is entitled to  
32 present evidence and be represented by counsel, the secretary or the Tax  
33 Appeals Commission, as applicable, shall determine whether the licensee's  
34 license shall be revoked.

35 (d)(1) ~~Upon the issuance of an order revoking the license, the~~  
36 ~~licensee shall be entitled to appeal to the circuit court in any county in~~

1 ~~which the licensee may do business, where the question shall be tried de~~  
2 ~~novo, but the secretary's order shall be affirmed if supported by substantial~~  
3 ~~evidence. The secretary or the licensee may seek judicial relief from an~~  
4 ~~adverse decision under this section by filing suit under §§ 26-8-602 and 26-~~  
5 ~~18-1117.~~

6 (2) An appeal may be had from the judgment of the circuit court  
7 as in other cases as provided by law.

8  
9 SECTION 34. Arkansas Code § 26-57-413(c) and (d), concerning the  
10 revocation or suspension of a license related to coin-operated amusement  
11 devices, are amended to read as follows:

12 (c)~~(1)~~ The licensee shall have fifteen (15) days in which to ~~notify~~  
13 ~~the secretary that a hearing is desired~~ request a hearing, after which time a  
14 hearing shall be had not less than ~~fifteen (15)~~ twenty (20) days subsequent  
15 to the expiration of the fifteen-day period of notice.

16 (2) A hearing under this subsection shall be held under the  
17 Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax  
18 Appeals Commission Act, § 26-18-1101 et seq.

19 ~~(d)(1) Any licensee whose license has been revoked or suspended may~~  
20 ~~appeal to the Pulaski County Circuit Court within twenty (20) days after~~  
21 ~~revocation or suspension by filing a copy of the notice of the revocation or~~  
22 ~~suspension with the clerk of the circuit court and causing a summons to be~~  
23 ~~served on the secretary.~~

24 ~~(2) The case shall be tried de novo in the circuit court.~~

25 ~~(3) Either party may prosecute an appeal to the Supreme Court as~~  
26 ~~in other cases. The licensee or the secretary may seek judicial relief from~~  
27 ~~an adverse decision under this section by filing suit under § 26-18-602.~~

28  
29 SECTION 35. Arkansas Code § 26-57-419(f), concerning licenses to sell  
30 coin-operated amusement devices, is amended to read as follows:

31 (f)(1) The secretary may revoke or suspend the licenses for cause.

32 (2) ~~Any~~ A licensee shall be notified in writing that the  
33 revocation or suspension of its license is being considered and the reason  
34 ~~therefor~~ for the revocation or suspension.

35 (3) The licensee shall have fifteen (15) days in which to ~~notify~~  
36 ~~the secretary that a hearing is desired~~ request a hearing, after which time a

1 hearing shall be held not less than ~~fifteen (15)~~ twenty (20) days subsequent  
2 to the expiration of the fifteen-day period of notice.

3 ~~(4)(A) Any licensee whose license has been revoked or suspended~~  
4 ~~may appeal to the Pulaski County Circuit Court by filing a copy of the notice~~  
5 ~~of revocation or suspension with the clerk of the court within twenty (20)~~  
6 ~~days of receipt thereof and causing the issuance of a summons to be served on~~  
7 ~~the secretary. The hearing shall be de novo in the Pulaski County Circuit~~  
8 ~~Court.~~

9 ~~(B) Either party may appeal to the Supreme Court as in~~  
10 ~~other cases. A hearing under this section shall be held under the Arkansas~~  
11 ~~Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax Appeals~~  
12 ~~Commission Act, § 26-18-1101 et seq.~~

13 (5) The licensee or the secretary may seek relief from an  
14 adverse decision under this section by filing suit under § 26-18-602.  
15

16 SECTION 36. Arkansas Code § 26-57-419, concerning licenses to sell  
17 coin-operated amusement devices, is amended to add an additional subsection  
18 to read as follows:

19 (g)(1) If a licensee fails to timely seek administrative relief from a  
20 decision of the secretary under subsection (f) of this section, the secretary  
21 may revoke the licensee's license immediately.

22 (2) The secretary shall provide notice of the revocation to the  
23 licensee by mailing the notice to the licensee via first class mail using the  
24 last known address of the licensee on file with the secretary.  
25

26 SECTION 37. Arkansas Code § 26-57-1202 is amended to read as follows:

27 26-57-1202. Administration of law.

28 The provisions of this subchapter will be subject to the provisions of  
29 the Arkansas Tax Procedure Act, § 26-18-101 et seq., ~~as those provisions~~  
30 ~~shall apply to the administration of this subchapter by the Secretary of the~~  
31 ~~Department of Finance and Administration and the Independent Tax Appeals~~  
32 Commission Act, § 26-18-1101 et seq.  
33

34 SECTION 38. Arkansas Code § 26-57-1212 is amended to read as follows:

35 26-57-1212. Procedure upon forfeiture.

36 (a) Upon the seizure of ~~the~~ a vending device, the vending device shall

1 ~~forthwith~~ be delivered, together with the cash, if any, contained in the  
2 receptacle of the vending device, to the Secretary of the Department of  
3 Finance and Administration.

4 ~~(b) The secretary or his or her authorized agent shall then proceed to~~  
5 ~~make an administrative determination of whether or not the vending device and~~  
6 ~~cash, if any, that have been seized should in fact be forfeited to the State~~  
7 ~~of Arkansas. The owner of a seized vending device may seek administrative~~  
8 ~~relief from the seizure under the Arkansas Tax Procedure Act, § 26-18-101 et~~  
9 ~~seq., or under the Independent Tax Appeals Commission Act, § 26-18-1101 et~~  
10 ~~seq., by filing a written protest of the seizure and proposed forfeiture with~~  
11 ~~the secretary under § 26-18-404 or by filing a petition with the Tax Appeals~~  
12 ~~Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et~~  
13 ~~seq., as applicable, within ten (10) business days of the date of the~~  
14 ~~seizure.~~

15 (c)(1) The owner of the vending device shall be given at least ~~thirty~~  
16 ~~(30)~~ five (5) business days' written notice of the date of the hearing on the  
17 seizure and proposed forfeiture of the vending device. ~~The notice shall be~~  
18 ~~considered a notice of proposed assessment under § 26-18-403, and the owner~~  
19 ~~shall be entitled to an administrative hearing pursuant to § 26-18-405.~~

20 (2) An administrative decision on the seizure and proposed  
21 forfeiture of the vending device shall be issued within five (5) business  
22 days after the date of the administrative hearing.

23 (d)(1) The owner of a seized vending device may seek relief from an  
24 adverse decision of the secretary or the commission by filing suit in the  
25 Pulaski County Circuit Court or in the circuit court of the owner's residence  
26 or principal place of business, where the matter shall be tried de novo.

27 (2) The secretary may seek relief under § 26-18-1117 from an  
28 adverse decision of the commission by filing suit in the Pulaski County  
29 Circuit Court or in the circuit court of the county in which the owner of a  
30 seized vending device resides or has its principal place of business in the  
31 state, where the matter shall be tried de novo.

32 (3) An action for relief under this subsection shall be filed  
33 within thirty (30) days of the date of service of the decision of the  
34 secretary or the commission.

35 (4) An appeal may be had from the judgment of the circuit court  
36 as in other cases as provided by law.

1  
2 SECTION 39. Arkansas Code § 26-57-1216 is repealed.

3 ~~26-57-1216. Forfeiture determination—Appeal.~~

4 ~~(a) The written determination of the Secretary of the Department of~~  
5 ~~Finance and Administration or his or her authorized agent declaring a~~  
6 ~~forfeiture of the vending device, including the cash contents thereof, if~~  
7 ~~any, and directing the sale of the vending device shall be a final~~  
8 ~~determination of the secretary and shall be treated for purposes of the~~  
9 ~~owner's or operator's appeal of the secretary's determination as a final~~  
10 ~~assessment, subject to the provisions of the Arkansas Tax Procedure Act, §~~  
11 ~~26-18-101 et seq.~~

12 ~~(b) Judicial review of the final determination by the secretary shall~~  
13 ~~be available pursuant to the provisions of § 26-18-406.~~

14  
15 SECTION 40. Arkansas Code § 26-62-204(g), concerning licenses and  
16 bonds for alternative fuels suppliers, interstate users, and IFTA carrier  
17 users, is amended to read as follows:

18 ~~(g)(1)(A) In the event that upon hearing of which the alternative~~  
19 ~~fuels supplier, interstate user, or IFTA carrier user shall be given five (5)~~  
20 ~~days' notice in writing, the secretary shall decide that the amount of the~~  
21 ~~existing bond is insufficient to ensure payment to the State of Arkansas of~~  
22 ~~the amount of the tax and any penalties and interest for which said~~  
23 ~~alternative fuels supplier, interstate user, or IFTA carrier user is or may~~  
24 ~~at any time become liable, then the alternative fuels supplier, interstate~~  
25 ~~user, or IFTA carrier user upon written demand of the secretary shall~~  
26 ~~immediately file an additional bond in the same manner and form and with a~~  
27 ~~surety company thereon approved by the secretary in any amount determined by~~  
28 ~~the secretary to be necessary to secure at all times the payment to the State~~  
29 ~~of Arkansas of all taxes, penalties, and interest due under the provisions of~~  
30 ~~this chapter; failing which, the secretary shall immediately cancel the~~  
31 ~~license of the alternative fuels supplier, interstate user, or IFTA carrier~~  
32 ~~user. If the secretary determines that the amount of the existing bond is~~  
33 ~~insufficient to ensure payment of the tax, interest, and penalty that are~~  
34 ~~currently owed or that may be owed by the alternative fuels supplier,~~  
35 ~~interstate user, or IFTA carrier, the secretary may issue a written demand~~  
36 ~~that an additional bond be filed in the same manner and form with a surety~~

1 company approved by the secretary.

2 (B) An alternative fuels supplier, interstate user, or IFTA  
3 carrier may seek administrative relief from the demand for additional bond by  
4 filing a written protest under the Arkansas Tax Procedure Act, § 26-18-101 et  
5 seq., or by filing a petition under the Independent Tax Appeals Commission  
6 Act, § 26-18-1101 et seq.

7 (C) A hearing on the protest or petition shall be held  
8 within twenty (20) days of the date of the filing of the protest or petition,  
9 and a decision shall be issued within twenty (20) days of the hearing.

10 (2) If the alternative fuels supplier, interstate user, or IFTA  
11 carrier fails to timely seek administrative relief from the decision of the  
12 secretary, the secretary shall cancel the license of the alternative fuels  
13 supplier, interstate user, or IFTA carrier immediately.

14  
15 SECTION 41. EFFECTIVE DATE. Sections 1-40 of this act are effective  
16 on and after January 1, 2023.

17  
18 SECTION 42. DO NOT CODIFY. Legislative intent – Contingent  
19 effectiveness.

20 (a) The General Assembly intends for this act to be effective only if  
21 the Arkansas Code is amended to expressly authorize, implement, and enable  
22 the hearing and determination of tax appeals by the Tax Appeals Commission  
23 under the Arkansas Tax Procedure Act, § 26-18-101 et seq., the Independent  
24 Tax Appeals Commission Act, § 26-18-1101 et seq., and any other relevant  
25 laws.

26 (b)(1) This act shall not become effective unless HB1468 of 2021 is  
27 enacted during the Ninety-Third Regular Session of the General Assembly.

28 (2) If HB1468 of 2021 is not enacted during the Ninety-Third  
29 Regular Session of the General Assembly, this act expires retroactively upon  
30 the sine die adjournment of the Ninety-Third Regular Session of the General  
31 Assembly.

32  
33  
34 /s/Jett

35 APPROVED: 4/6/21