

**ARKANSAS SENATE**  
92nd General Assembly - Regular Session, 2019  
**Amendment Form**

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**Subtitle of Senate Bill No. 560**

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

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**Amendment No. 1 to Senate Bill 560**

Amend Senate Bill No. 560 as originally introduced:

Add Representative Richmond as a cosponsor of the bill

AND

Page 3, line 6, delete "five (5)" and substitute "three (3)"

AND

Page 4, delete line 1, and substitute the following:

"(A) One (1) of the commissioners who is initially"

AND

Page 4, line 5, delete "two (2) other commissioners" and substitute "one (1) other commissioner"

AND

Page 5, delete lines 24 through 27, and substitute the following:

"(2) One (1) commissioner shall be a non-attorney who is a certified public accountant or a tax professional admitted to practice before the Internal Revenue Service.

(3) Each of the commissioners shall satisfy the requirements of"

AND

Page 5, line 32, delete "December 31, 2019" and substitute "July 1, 2020"

AND



Page 6, delete lines 28 through 36, and substitute the following:

"(a) Except as provided under § 26-18-1118, the Tax Appeals Commission:

(1) Shall have jurisdiction to hear disputes involving all state taxes except those stated in § 26-18-102 and taxes not administered by the Director of the Department of Finance and Administration;"

AND

Page 7, delete lines 1 through 8

AND

Page 7, line 9, delete "Reduce" and substitute "May reduce"

AND

Page 7, line 13, delete "law." and substitute "law; and"

AND

Page 7, line 14, delete "The commission shall" and substitute "Shall"

AND

Page 7, line 22, delete "January" and substitute "July"

AND

Page 7, delete lines 24 through 27, and substitute the following:

"(c) The commission shall not have jurisdiction:

(1) To hear disputes involving exceptions to the Arkansas Tax Procedure Act under § 26-18-102; or

(2)(A) Over protests filed before July 1, 2021, unless a protest is transferred to the commission from the Office of Hearings and Appeals of the Department of Finance and Administration.

(B) A protest may be transferred to the commission from the office only upon the agreement of both the Chief Commissioner and the Director of the Department of Finance and Administration.

(C) A protest shall not be transferred to the commission before July 1, 2021."

AND

Page 7, delete lines 30 through 36, and substitute the following:

"A taxpayer and legal counsel for the Department of Finance and Administration may settle or compromise controversies at any time under § 26-18-705."

AND

Page 8, delete lines 1 through 6

AND

Page 8, delete lines 9 through 11, and substitute the following:

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

AND

Page 8, delete lines 24 through 35, and substitute the following:

"Department of Finance and Administration."

AND

Page 9, line 10, delete "(2)" and substitute "(2)(A)"

AND

Page 9, delete line 12, and substitute the following:

"taxpayer directly, and shall file proof of service with the answer.

(B) An attorney's certification that the attorney sent the pleading by first class mail, postage prepaid, or email to the taxpayer or the authorized representative of the taxpayer is sufficient proof of service under this subdivision (c)(2)."

AND

Page 9, delete lines 19 and 20, and substitute the following:

"subsection (c) of this section within thirty (30) days of the date the answer was mailed or emailed to the taxpayer or the authorized representative of the taxpayer, as reflected by the postmark on the envelope or the date stamp on the email."

AND

Page 9, delete lines 24 and 25, and substitute the following:

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

(ii) A certification by the taxpayer or the authorized representative of the taxpayer stating that he or she mailed the pleading by first class mail, postage prepaid, or e-mailed the pleading to the department's authorized representative is sufficient proof of service under this subdivision (d)(2)(B)."

AND

Page 9, delete lines 27 and 28, and substitute the following:

"the date the answer was mailed or emailed to the taxpayer or the authorized representative of the taxpayer, a hearing shall be scheduled under subdivision (d)(4) of this section."

AND

Page 9, line 33, delete "seven (7)" and substitute "thirty (30)"

AND

Page 10, line 4, delete "may" and substitute "shall"

AND

Page 10, delete lines 11 and 12, and substitute the following:  
"within the prescribed time, a hearing shall be scheduled under subdivision (d)(4) of this section."

AND

Page 10, delete lines 25 through 31, and substitute the following:  
"taxpayer's business under §§ 26-18-1001 and 26-18-1002; and  
(3) A jeopardy assessment by the Director of the Department of Finance and Administration under § 26-18-402."

AND

Page 11, line 24, delete "available" and substitute "produced"

AND

Page 11, delete line 36, and substitute the following:  
"(a) Hearings under this subchapter shall be tried before the appointed commissioners of the Tax Appeals Commission and are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

AND

Page 12, delete lines 1 through 3, and substitute the following:  
"(b) Except as stated in this subchapter, the Tax Appeals Commission shall:"

AND

Page 12, line 7, delete "open to the public and shall be"

AND

Page 12, delete lines 11 through 14, and substitute the following:  
"(2) Hearings shall be conducted in private and shall not be scheduled to begin at the same time as an unrelated hearing.  
(3) Hearings, files, and records of the commission are:  
(A) Confidential to the same extent as tax records under § 26-18-303; and

(B) Closed and exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq."

AND

Page 12, delete lines 35 and 36, and substitute the following:

"(i)(1) The Chief Commissioner shall be the presiding commissioner at all hearings.

(2) The Chief Commissioner and the other commissioner who is an attorney shall attend each hearing."

AND

Page 13, delete lines 1 through 4

AND

Page 13, delete lines 20 through 26, and substitute the following:

"taxpayer has filed a petition with the commission; and

(D) Under § 26-18-402 within five (5) business days after a taxpayer has filed a petition with the commission.

(m)(1) A taxpayer may elect to have his or her petition heard in-person, by telephone, or solely upon the documents filed with the commission.

(2) The taxpayer shall make an election under this subsection in the taxpayer's initial petition.

(3) If the taxpayer fails to make an election under this subsection in the taxpayer's initial petition, the petition shall be set for an in-person hearing in Little Rock.

(4) The taxpayer may amend his or her election only up to the date the taxpayer's reply is filed or due to be filed."

AND

Page 13, line 34, delete "Commissioner" and substitute "Commissioner or the other commissioner who is an attorney"

AND

Page 14, line 2, delete "26-18-1121" and substitute "26-18-1120"

AND

Page 14, line 3, delete "three (3) months" and substitute "thirty (30) days"

AND

Page 14, delete lines 6 and 7, and substitute the following:

"(B) However, the commission shall issue a decision:

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

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

(iii) Within five (5) days after a hearing is concluded under § 26-18-1002."

AND

Page 14, line 8, delete "three-month" and substitute "thirty-day"

AND

Page 14, line 9, delete "forty-five (45)" and substitute "thirty (30)"

AND

Page 14, delete lines 10 through 12, and substitute the following:

"(B) However, the commission shall not extend the period to render a decision under subdivision (b)(1)(B) of this section with regard to hearings held under:

(i) Section 26-18-402;

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

(iii) Section 26-18-1002.

AND

Page 14, delete lines 13 through 36

AND

Page 15, delete line 1

AND

Page 15, line 2, delete "(e)" and substitute "(c)"

AND

Page 15, delete line 4, and substitute the following:  
"decision is overturned on appeal."

AND

Page 15, line 5, delete "(f)(1)" and substitute "(d)(1)"

AND

Page 15, delete lines 17 through 24

AND

Page 15, line 26, delete "26-18-1119" and substitute "26-18-1118"

AND

Page 15, delete lines 27 through 36, and substitute the following:

"(a) A taxpayer may seek judicial relief from a decision of the Tax Appeals Commission by following the procedures stated in §§ 26-18-406 and 26-18-507.

"(b) The Department of Finance and Administration may seek judicial relief from a decision of the commission by filing suit in the Pulaski County Circuit Court."

AND

Page 16, delete lines 1 through 5

AND

Page 16, line 7, delete "26-18-1120" and substitute "26-18-1119"

AND

Page 16, delete lines 8 and 9, and substitute the following:

"(a) A taxpayer may be represented at a hearing by an authorized representative who has provided a completed power of attorney form to the Tax Appeals Commission in the form prescribed by the commission."

AND

Page 16, line 13, delete "26-18-1121" and substitute "26-18-1120"

AND

Page 16, delete lines 16 and 17, and substitute the following:  
"convenience."

AND

Page 16, line 24, delete "26-18-1122" and substitute "26-18-1121"

AND

Page 16, line 30, delete "and the Small Claims"

AND

Page 16, line 31, delete "Division of the Tax Appeals Commission"

AND

Page 16, line 34, delete "August 1, 2020" and substitute "January 1, 2021"

AND

Page 16, line 35, delete "September 1, 2020" and substitute "January 1, 2021"

AND

Page 16, line 36, delete "September 1, 2020" and substitute "January 1, 2021"

AND

Page 17, delete lines 35 and 36, and substitute the following:

"(b)(1) A final ~~determination of a hearing officer or the director~~ decision issued ~~under § 26-18-405~~ on or after January 1, 2016, under § 26-18-405 or the Tax Appeals Commission Act, § 26-18-1101 et seq., shall be posted on the Arkansas.gov website."

AND

Page 18, delete lines 1 and 2

AND

Page 19, delete lines 12 through 36, and substitute the following:

"(2) If the taxpayer fails or refuses to pay the tax upon demand of the director or requests a hearing before the ~~director~~ Tax Appeals Commission within five (5) business days after the day the taxpayer is furnished the written statement described in subdivision ~~(1) of this subsection~~ (b)(1) of this section, the tax shall become delinquent and the director shall proceed to issue a certificate of indebtedness.

(c)(1) When the taxpayer requests a hearing, the ~~director~~ commission shall hold the hearing within five (5) business days of receipt of the request. After a hearing, the ~~director~~ commission shall determine whether the making of the assessment under subsection (a) of this section is reasonable under the circumstances and shall render ~~his or her~~ its decision.

(2) The taxpayer has three (3) days after the receipt of the ~~director's~~ commission's decision either to pay the tax and applicable penalty and interest due or to protest the decision of the director as provided by § 26-18-406(a) prior to the director's issuing a certificate of indebtedness."

AND

Page 20, delete lines 1 through 8

AND

Page 24, delete lines 32 through 36, and substitute the following:

"(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 the issuance of a final determination decision of the hearing officer or the director under § 26-18-405~~ Tax Appeals Commission, a taxpayer



may seek judicial relief from the final assessment or ~~determination~~ decision by:"

AND

Page 25, delete lines 1 through 3

AND

Page 25, line 5, delete "or ~~determination~~ decision" and substitute "~~or~~ determination issued"

AND

Page 25, line 13, delete "or ~~determination~~ decision by the director," and substitute "~~or determination~~"

AND

Page 25, line 20, delete "or decision of" and substitute "by"

AND

Page 25, line 29, "or ~~determination~~ decision" and substitute "~~or~~ determination issued"

AND

Page 25, line 36, delete "assessment or" and substitute "assessment ~~or~~"

AND

Page 26, line 1, delete "decision" and substitute "issued"

AND

Page 26, line 6, delete "or decision of" and substitute "~~decision of~~ issued by"

AND

Page 26, delete lines 14 through 21, and substitute the following:  
"the:

- (i) ~~Director revised a decision of the hearing officer in favor of the taxpayer under § 26-18-405;~~
- (ii) Taxpayer is the prevailing party in an action for judicial relief from ~~the a~~ a determination of the director under this section or a decision of the commission under the Tax Appeals Commission Act, § 26-18-1101 et seq.; and

~~(iii)~~(ii) Court finds that the director's ~~revision determination or the commission's decision~~ was ~~without a reasonable basis in law and fact~~ clearly erroneous."

AND

Page 28, line 6, delete "taxpayer" and substitute "taxpayer or the director"

AND

Page 31, line 25, delete "a decision of" and substitute "~~a decision of~~ the assessment of a tax deficiency by"

AND

Page 32, line 2, delete "director" and substitute "director, the director's legal counsel, or another authorized representative of the director"

AND

Page 32, delete lines 28 through 34, and substitute the following:

"(c)(1) A noncompliant taxpayer may request that ~~an administrative a~~ hearing be held in person, in Little Rock or by telephone, ~~upon written documents furnished by the noncompliant taxpayer, or upon written documents and any evidence produced by the noncompliant taxpayer at an administrative hearing.~~

(2) The ~~director has the discretion to~~ commission may determine whether an administrative hearing at which testimony is to be presented will be conducted in person or by telephone."

AND

Page 33, line 31, delete "or"

AND

Page 33, line 32, delete "rehearing, or both"

AND

Page 35, delete lines 17 through 20, and substitute the following:

"(d) A nondebtor taxpayer who requests the ~~director~~ commission to render ~~his or her~~ its decision based on ~~written documents~~ pleadings filed with the commission is not entitled by law to any other administrative hearing before the ~~director's~~ commission's rendering of ~~his or her~~ its decision."

AND

Page 35, line 21, delete "~~(e)~~(d)" and substitute "(e)"

AND

Page 36, line 2, delete "(e)(1)" and substitute "(f)(1)"

AND

Page 36, line 6, delete "26-18-1119" and substitute "26-18-1118"

AND

Page 36, line 11, delete "~~(i)~~(f)" and substitute "(g)"

AND

Immediately following SECTION 21 of the bill, add an additional section to read as follows:

"SECTION 22. Arkansas Code § 26-52-209 is amended to read as follows:  
26-52-209. Applicability of tax procedure provisions.

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

AND

Page 36, delete lines 23 through 36, and substitute the following:

"interest whose license or registration ~~shall theretofore have~~ has been cancelled for cause by the director, or for any other valid reason, then ~~and in any of said events the director~~ Tax Appeals Commission, after a hearing ~~of which the applicant shall have been given five (5) days' notice in writing and at which the applicant shall have the right to appear in person or by counsel and present testimony, shall have and is given the right and authority to~~ under the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the Tax Appeals Commission Act, § 26-18-1101 et seq., may refuse to issue to the person a license certificate to transact business as a distributor in the State of Arkansas."

AND

Page 37, line 3, delete "either the director or"

AND

Page 37, delete line 9, and substitute the following:

"Court as in other cases now provided by law.

(c) If the licensee fails to commence an action within the time prescribed under § 26-18-601 and the Tax Appeals Commission Act, § 26-18-1101 et seq., the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director."

AND

Page 37, delete lines 20 through 33, and substitute the following:

"(2) The distributor shall be entitled to a ~~period of five (5) days after receipt of the notice from the director, within which to apply for a hearing before the director on the question of having the distributor's license revoked. The director shall grant a hearing at such time and place as the director may designate of which the distributor shall have five (5) days' advance notice in writing~~ hearing under § 26-18-601(c) and the Tax Appeals Commission Act, § 26-18-1101 et seq."

AND

Page 38, delete lines 27 through 32, and substitute the following:

"(b)(1) The licensee shall be entitled to a ~~period of ten (10) days after the mailing of the notice within which to apply for a hearing on the question of having his or her license revoked, and the director shall designate a time and place for the hearing, giving the licensee five (5) days' notice thereof~~ under § 26-18-601(c) and the Tax Appeals Commission Act, § 26-18-1101 et seq."

AND

Page 39, delete lines 1 through 10, and substitute the following:

~~"whether the licensee's license shall be revoked, the commission shall render a decision as to whether the licensee's license should be revoked.~~

(2) If the commission decides that a licensee's license should be revoked, the commission shall authorize the director to immediately revoke the licensee's license.

(d)(1) Upon the commission's issuance of an order revoking the license, the licensee ~~shall be entitled to~~ may appeal to the circuit court in any county in which the licensee may do business, where the question shall be tried de novo, but the ~~director's~~ commission's order shall be affirmed if supported by substantial evidence."

AND

Page 39, line 14, delete "under" and substitute "under § 26-18-601(c) and"

AND

Page 39, delete lines 24 through 36, and substitute the following:

"(c) The licensee ~~shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be had not less than fifteen (15) days subsequent to the expiration of the fifteen-day period of notice~~ is entitled to a hearing under § 26-18-601(c) and the Tax Appeals Commission Act, § 26-18-1101 et seq.

(d)(1)(A) ~~Any~~ A licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court within twenty (20) days after revocation or suspension by filing a copy of the notice of the revocation or

suspension with the clerk of the circuit court and causing a summons to be served on the director.

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

~~(3)(C)~~ Either party may prosecute an appeal to the Supreme Court as in other cases.

(2) If the licensee fails to commence an action under § 26-18-601(c) or the Tax Appeals Commission Act, § 26-18-1101 et seq., the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director."

AND

Page 40, delete lines 1 through 7

AND

Page 40, delete lines 16 through 26, and substitute the following:

~~"(3) The licensee shall have fifteen (15) days in which to notify the director that a hearing is desired, after which time a hearing shall be held not less than fifteen (15) days subsequent to the expiration of the fifteen day period of notice is entitled to a hearing under § 26-18-601(c) and the Tax Appeals Commission Act, § 26-18-1101 et seq."~~

AND

Page 40, delete lines 27 through 29, and substitute the following:

~~"(4)(A)(i) Any A licensee whose license has been revoked or suspended may appeal to the Pulaski County Circuit Court by filing a copy of"~~

AND

Immediately following SECTION 26 of the bill, add an additional section to read as follows:

"SECTION 28. Arkansas Code § 26-57-419, concerning licenses to sell coin-operated amusement devices, is amended to add an additional subsection to read as follows:

(g) If the licensee fails to commence an action within the time prescribed under § 26-18-601(c) and the Tax Appeals Commission Act, § 26-18-1101 et seq., the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director."

AND

Immediately following SECTION 27 of the bill, add an additional section to read as follows:

"SECTION 30. EFFECTIVE DATE. Sections 4-29 of this act are effective on and after July 1, 2021."

AND

Appropriately renumber the sections of the bill

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator B. Johnson

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Secretary