

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1468

Amendment Number: H2

Bill Subtitle: TO CREATE THE INDEPENDENT TAX APPEALS COMMISSION ACT.

Basic Change :

Sponsors: Rep. Jett and Sen. B. Johnson

House Amendment No. 2 --- HB1468-H2 (engrossed 3/17/21) clarifies the proper venue for lawsuits brought under the Independent Tax Appeals Commission Act. Specifically, a taxpayer may appeal a decision of the Commission in the circuit court where the taxpayer resides or has its principal place of business. The amendment also provides that the bill will not become effective unless its companion bill, HB1705, is enacted.

House Amendment No. 1 --- HB1468-H1 (engrossed 3/3/2021) exempts the following confidential taxpayer information submitted to the Tax Appeals Commission (Commission) from the Arkansas Freedom of Information Act:

- Tax returns and audit reports submitted to the Commission in connection with a tax dispute;
- Hearings held by the Commission; and
- Certain Commission files and records pertaining to an action filed by a taxpayer or the Secretary of the Department of Finance and Administration.

Original Bill --- HB1468 creates the Independent Tax Appeals Commission Act at § 26-18-1101, et seq. The Tax Appeals Commission will be created by July 1, 2022, within the Department of Inspector General to resolve tax disputes between the Arkansas Department of Finance and Administration (DFA) and taxpayers. Under current law, taxpayers who receive a proposed assessment or refund claim denial from DFA can protest the decision to DFA's Office of Hearings and Appeals, which consists of two administrative law judges. The administrative decision from the administrative law judge is appealable to an Arkansas circuit court.

The Tax Appeals Commission will be composed of three commissioners. The Governor will appoint three commissioners among a pool of candidates nominated by the Arkansas Bar Association (ABA), a majority of the Arkansas Supreme Court, and the Arkansas Society of Certified Public Accountants (ASCPA). Each organization will nominate three candidates, and the Governor must appoint one nominee from each pool of candidates. The chief commissioner must be licensed to practice law in Arkansas and certified as a certified public accountant in Arkansas. The chief commissioner will be appointed from the pool of candidates nominated by the Arkansas Supreme Court. The ABA will appoint three candidates that are licensed to practice law in Arkansas. The pool of candidates nominated by the ASCPA must be certified as a certified public accountant in Arkansas. Each commissioner shall be appointed to an initial staggered term of three, six, or nine years. Each commissioner may be reappointed. The Commission is also authorized to employ the necessary personnel to support the Commission.

A taxpayer may initiate a proceeding with the Tax Appeals Commission by filing a petition to protest a proposed assessment or refund claim denial. HB1468 establishes procedures for hearings before the Commission. A decision by the Commission is also appealable to an Arkansas circuit court. The Commission will have jurisdiction to hear disputes involving all state taxes administered by DFA. The Commission will not have jurisdiction to hear: (1) disputes concerning taxes excepted from the Arkansas Tax Procedure Act; (2) questions regarding the constitutionality of statutes or rules

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promulgated by DFA, (3) illegal exaction claims; (4) claims for which the Office of Hearings and Appeals has issued a decision; or (5) a claim that is the subject of pending litigation.

Upon receipt of a petition, the Commission shall notify DFA, and DFA shall file a responsive pleading. The Commission shall receive evidence, conduct hearings, and render a decision. HB1468 provides the deadlines for the Commission to schedule a hearing and issue its decision. A hearing conducted by the Commission shall be confidential and closed to the public. A taxpayer may elect to have a hearing held in person, by teleconference or videoconference, or a combination of the above. The taxpayer may also elect to have his or her petition held solely on written documents. The Commission may assign one commissioner to hear a matter; however, HB1468 provides circumstances where all three commissioners may hear a matter en banc. The burden of proof provided in § 26-18-313 shall apply to proceedings conducted by the Commission. A decision of the Commission shall be issued in writing and published in print or electronic format with all personally-identifiable taxpayer information redacted.

Upon creation of the Commission, the Commission shall begin accepting and hearing tax disputes no later than January 1, 2023. The Office of Hearings and Appeals shall conclude its decisions on tax disputes by May 31, 2023, and shall fully cease operations by June 30, 2023.

HB1468 requires the Commission to promulgate the rules necessary under the bill on or before December 1, 2022, or as soon as practicable.

Revenue Impact :

When fully staffed and operational, it is anticipated that the Tax Appeals Commission would require an appropriation of \$2,573,695 per fiscal year.

Taxpayer Impact :

A taxpayer that has a dispute with DFA within the jurisdiction of the Tax Appeals Commission will be able to file a petition with the Commission. The taxpayer or DFA may appeal a decision of the Commission to an Arkansas circuit court.

Resources Required :

Rules of the Tax Appeals Commission will need to be promulgated.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

DFA's computer system will require programming changes. DFA employees and the taxpayer community will need to be educated on the new procedures to appeal an administrative determination issued by DFA.

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Other Comments :

None.

Legal Analysis :

House Amendment No. 2 --- HB1468-H2 (engrossed 3/17/2021) provides that the act will not become effective unless HB1705 of 2021 is enacted during the 93rd Regular Session of the General Assembly. If HB1705 is not enacted, the act will expire retroactively upon adjournment.

Original Bill --- HB1468 contains a contingent effectiveness clause that prevents HB1468 from becoming effective unless a separate act is adopted during this Regular Session that modifies other provisions of Arkansas law to allow the Tax Appeals Commission to hear and determine tax appeals.