

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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As Engrossed: S4/10/19
A Bill

SENATE BILL 560

By: Senators B. Johnson, J. Hendren

By: *Representative Richmond*

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO THE ADMINISTRATION OF STATE TAXES; TO AMEND THE ADMINISTRATIVE HEARING PROCEDURES FOR STATE TAXES; TO AMEND THE PROCEDURES OF TAXPAYER JUDICIAL RELIEF; TO CREATE THE TAX APPEALS COMMISSION ACT; TO CREATE A FUND FOR THE TAX APPEALS COMMISSION; AND FOR OTHER PURPOSES.

Subtitle

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

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

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

Subchapter 11 – Tax Appeals Commission Act

26-18-1101. Title.

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



26-18-1102. Legislative purpose.

The purpose of this subchapter is to increase public confidence in the fairness of the state tax system by establishing an independent tax appeals commission within the executive branch of state government to ensure due process in the resolution of tax disputes between taxpayers and the Department of Finance and Administration.

26-18-1103. Legislative intent - Construction.

This subchapter shall be interpreted and construed to further the intent of the General Assembly to provide the people of Arkansas with a fair and independent Tax Appeals Commission to hear and resolve tax disputes between taxpayers and the Department of Finance and Administration.

26-18-1104. Definition.

As used in this subchapter, "taxpayer" means a supplier, distributor, partnership, limited liability company, corporation, person, user, off-road consumer, or any entity that:

(1) Is challenging the state's jurisdiction over the taxpayer;

or

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

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

(B) Denying a refund or credit application;

(C) Canceling, refusing, or revoking a license or permit under § 26-18-601, § 26-55-219, § 26-55-231, or § 26-56-311;

(D) Proposing an assessment of taxes;

(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 taxpayer the right to a hearing with the Tax Appeals Commission under state law.

26-18-1105. Tax Appeals Commission - Creation.

(a) The Tax Appeals Commission is created in the executive branch of state government.

(b) The commission shall be separate from and independent of the authority, control, and supervision of the Department of Finance and Administration.

(c) The commission shall have a seal.

26-18-1106. Appointment of commissioners.

(a)(1) The Tax Appeals Commission shall consist of three (3) commissioners.

(2) Each commissioner shall be subject to the requirements under § 26-18-1107.

(b)(1) The commissioners shall be appointed by the Governor, subject to confirmation by the Senate.

(2) However, if a commissioner is appointed while the General Assembly is not in session, the commissioner may qualify and hold the position of commissioner unless the appointment is rejected by the Senate under § 10-2-113.

(c)(1) The Governor shall designate one (1) of the commissioners as Chief Commissioner.

(2)(A) The Chief Commissioner shall serve at the pleasure of the Governor.

(B) The Governor may revoke the designation of Chief Commissioner and may designate a new Chief Commissioner at any time.

(3) The Chief Commissioner shall:

(A) Be an attorney licensed to practice law in the State of Arkansas;

(B) Act as the executive officer of the commission;

(C) Be charged with the administration of the commission;

(D) Apportion among the commissioners all causes, matters, and hearings coming before the commission; and

(E) Take any actions necessary to enable the commission to properly exercise the duties, functions, and powers of the commission provided under this subchapter.

(d)(1) Except as provided in subdivision (d)(3) of this section, commissioners shall be appointed to terms of five (5) years.

(2) A commissioner shall not serve more than two (2) terms.

(3) The commissioners who are appointed during the creation of

the commission shall be given initial terms of differing lengths as follows:

(A) One (1) of the commissioners who is initially appointed shall serve an initial term of four (4) years and shall be eligible for appointment to one (1) subsequent term of five (5) years after the initial term; and

(B) The Chief Commissioner and one (1) other commissioner shall serve an initial term of five (5) years and may be appointed to one (1) subsequent term of five (5) years after the initial term.

(e) Each commissioner shall receive an annual salary comparable to the salary provided to district court judges in the state.

(f) Once appointed, each commissioner shall continue his or her term until the:

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

(2) Commissioner is not appointed to a second term;

(3) Commissioner's second term expires;

(4) Commissioner retires his or her position;

(5) Commissioner relinquishes his or her position; or

(6) Commissioner is unable to perform his or her duties.

(g)(1) Once appointed, each commissioner shall take an oath or make an affirmation that he or she will faithfully discharge his or her duties.

(2) The oath or affirmation required under subdivision (g)(1) of this section shall be filed in the office of the Secretary of State.

(h)(1) If a vacancy occurs on the commission, the Governor shall appoint a commissioner to fill the vacancy, subject to confirmation by the Senate.

(2) However, if an appointment is made while the General Assembly is not in session, a commissioner may qualify and hold the position unless the appointment is rejected by the Senate under § 10-2-113.

(i)(1) The Governor may remove a commissioner for:

(A) Neglect of duty;

(B) Inability to perform duties;

(C) Malfeasance in office; or

(D) Other good cause.

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

(j) A commissioner shall conduct himself or herself in an impartial manner and may withdraw from a hearing at any time if he or she deems himself or herself disqualified from performing his or her duties in an impartial manner.

(k)(1) A commissioner shall not:

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

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

(2) However, a commissioner may own passive interests in business entities and earn income from incidental teaching and scholarly activities, unless such activities conflict with his or her duties as an impartial commissioner.

26-18-1107. Qualifications of commissioners.

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

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

(2) Have obtained a minimum of a bachelor's degree from an accredited college or university; and

(3) Possess substantial knowledge of Arkansas tax and revenue law.

(b)(1) Including the Chief Commissioner, two (2) commissioners shall be attorneys licensed to practice law in the State of Arkansas.

(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 subsection (a) of this section.

(c) To assist with the creation of the commission, one (1) of the two (2) initial attorney commissioners appointed by the Governor shall be an Administrative Law Judge serving in the Office of Hearings and Appeals of the Department of Finance and Administration as of July 1, 2020.

26-18-1108. Location of the Tax Appeals Commission.

(a)(1) The principal office of the Tax Appeals Commission shall be

located in Little Rock, Arkansas.

(2) The principal office of the commission shall be located in a building that is separate and apart from a building in which a division of the Department of Finance and Administration is located.

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

(1) Its principal office; or

(2) Buildings or facilities, or both, leased or owned by state or local public agencies or entities, within the State of Arkansas.

(c) The commission may contract only with state and local public agencies or entities in the State of Arkansas to arrange for hearing rooms, chambers, offices, or other appropriate facilities:

(1) For its principal office in Little Rock, Arkansas; and

(2) For hearings not held at the commission's principal office.

26-18-1109. Employees.

(a) The Tax Appeals Commission may employ clerks, court reporters, and other employees as necessary to carry out the duties of the commission.

(b) An employee of the commission shall not act as an attorney, a representative, or an accountant for a taxpayer in a matter involving a tax imposed or levied under state law by the Department of Finance and Administration.

(c) In addition to employing a court reporter, the commission may contract for the reporting of its hearings and, in the contract, fix the terms and conditions under which the contractor will supply transcripts to the commission or parties.

26-18-1110. Jurisdiction of the Tax Appeals Commission.

(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;

(2) May reduce, set aside, alter, change, or remedy the decision by the department subject to appeal, if the commission finds that the decision:

(A) Was made in bad faith; or

(B) May be reduced, set aside, altered, changed, or remedied for any reason under state law; and

(3) Shall compel the Director of the Arkansas Department of Finance and Administration to issue a final assessment, decision, determination, or take other appropriate action, consistent with a decision issued by the commission.

(b) Upon the creation of the commission:

(1) Existing hearings pending with the Office of Hearings and Appeals of the Department of Finance and Administration shall remain with the office;

(2) Hearings initiated on or after July 1, 2021 shall be heard by the commission.

(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.

26-18-1111. Settlement of tax disputes.

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

26-18-1112. Service of process.

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

(1) The address of the taxpayer given on the taxpayer's petition;

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

(3) The address designated by the Department of Finance and

Administration as the proper place of service on the department.

(b) The commission may:

(A) Prescribe other methods of service of process; and

(B) Order that notice be given to additional persons.

26-18-1113. Pleadings.

(a) A taxpayer may commence an action under this subchapter by filing a petition with the Tax Appeals Commission protesting a decision by the Department of Finance and Administration:

(b)(1) A petition under subsection (a) of this section shall be filed with the commission no later than ninety (90) days from the date the department issues a decision or course of action, or both, to be taken against the taxpayer by the department.

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

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

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

(3) Material facts alleged in the petition, if not expressly admitted or denied in the answer, are deemed admitted.

(4) If the department fails to file an answer within the prescribed time under subsection (c)(1) of this section, all material facts alleged in the petition shall be deemed admitted.

(d)(1) The taxpayer may file a reply to an answer filed under 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.

(2) The taxpayer shall:

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

(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).

(3) If the taxpayer fails to reply within thirty (30) days after 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.

(4) The commission shall schedule a hearing:

(A) No later than thirty (30) days after a reply has been filed under this section; or

(B) If no reply has been filed within thirty (30) days, no later than thirty (30) days after the deadline for filing an answer under this section.

(e)(1) Either party may amend a pleading once without leave at any time before the period for responding to the pleading expires.

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

(3) The commission shall allow a party to file an answer or reply, or both, to an amended pleading.

(4) The filing of an answer or an amended answer shall be made no later than sixty (60) days after the filing of an amended petition.

(5)(A) The filing of a reply or an amended reply shall be made within thirty (30) days after the filing of the amended answer.

(B) If a party fails to file a reply or an amended reply within the prescribed time, a hearing shall be scheduled under subdivision (d)(4) of this section.

(6) A taxpayer may not amend a pleading for a petition after the expiration of the time for filing a petition if the amended petition would

have the effect of conferring jurisdiction over a matter that would otherwise not come within the jurisdiction of the commission.

(7) An amended pleading shall relate back to the time of the filing of the original pleading, unless the commission orders otherwise, either on motion of a party or on the commission's own initiative.

(f) Subsections (b)-(e) of this section do not apply to the following administrative hearings before the commission:

(1) A cancelation or refusal to issue, extend, or reinstate a license, permit, or registration under § 26-18-601;

(2) A decision by the director to close a noncompliant 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.

26-18-1114. Fees.

(a) The Tax Appeals Commission shall not impose any filing fees for petitions filed with the commission.

(b) The commission may charge fees that do not exceed the fees charged and collected by the clerks of the courts of Arkansas for the following services:

(1) Comparing, or preparing and comparing, a transcript of the record; and

(2) Copying a record, entry, or other paper and the comparison and certification of the record, entry, or other paper.

(c) All fees and moneys assessed and collected by the commission under this subchapter shall be deposited into the State Treasury and credited to the Tax Appeals Commission Fund.

26-18-1115. Discovery and stipulation.

(a) Subject to reasonable limitation as prescribed by the Tax Appeals Commission, each party shall make every effort to achieve discovery by informal consultation or communication.

(b)(1) Upon the request of any party to the hearing, a commissioner or any duly authorized clerk of the commission shall issue a subpoena requiring:

(A) The attendance of a witness to give testimony;

(B) The production of evidence or a thing; or

(C) Both the attendance of a witness and the production of evidence or a thing.

(2) However, a commissioner or any duly authorized clerk of the commission shall not issue a subpoena requiring a party to produce evidence or a thing that:

(A) Was previously produced to the Department of Finance and Administration during an audit between the taxpayer and the department; and

(B) Is not directly related to the petition filed with the commission.

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

(d) A witness subpoenaed under this subchapter shall be allowed fees as provided under § 16-43-801, which shall be part of the expense of administering this subchapter and shall be paid by the commission.

26-18-1116. Hearings.

(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.

(b) Except as stated in this subchapter, the Tax Appeals Commission shall:

- (1) Receive evidence;
- (2) Conduct hearings; and
- (3) Render decisions.

(c)(1) Hearings shall be conducted in accordance with the rules of practice and procedure as the commission may promulgate in conformity with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(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.

(d) Hearings shall:

(1) Not be bound by the rules of evidence applicable to civil cases in state courts;

(2) Admit relevant evidence, including hearsay, if it is probative of a material fact in controversy; and

(3) Exclude irrelevant and repetitious evidence.

(e) The rules of privilege recognized by state law shall apply to hearings under this subchapter.

(f) Testimony shall be given on oath or affirmation.

(g) The petition and other pleadings in the hearing are deemed to conform to the proof presented at the hearing unless:

(1) A party satisfies to the commission that the presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits; or

(2) Deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the commission over a matter that would not otherwise come within the jurisdiction of the commission.

(h) Both the taxpayer and the Department of Finance and Administration shall have the burden of persuasion by a preponderance of the evidence in the record.

(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.

(j) Except in a case involving the denial of a claim for refund, the taxpayer shall have the right to have his or her case heard before paying any of the amounts asserted as due by the department and before posting a bond.

(k) If a taxpayer pays all or part of the tax or other amount in issue, with or after the filing of a timely petition, the commission shall treat the taxpayer's petition as a protest of a denial of a claim for refund of the amount paid by the taxpayer.

(1)(1) The commission shall schedule and hold a hearing pursuant to § 26-18-1113(d)(4).

(2) However, the commission shall schedule and hold a hearing:

(A) Under § 26-18-601(b) within three (3) days after a taxpayer has filed a petition with the commission;

(B) Under § 26-18-601(c) within twenty (20) days after a

taxpayer has filed a petition with the commission;

(C) Under § 26-18-1002 within fourteen (14) days after a 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.

26-18-1117. Decisions.

(a)(1) The Tax Appeals Commission shall render a decision in writing, including a concise statement of the facts and conclusions of law.

(2) The commission's decision shall grant relief, invoke remedies, and issue orders as the commission deems appropriate to carry out its decision.

(3) The Chief Commissioner or the other commissioner who is an attorney shall prepare a written decision that reflects the view of the majority of the presiding commissioners at the hearing.

(4) The written decision shall be officially published as provided in § 26-18-1120.

(b)(1)(A) A decision shall be issued no later than thirty (30) days after the submission of the last brief filed or the completion of the hearing, whichever is later.

(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.

(2)(A) The commission may extend the thirty-day period to render a decision up to an additional thirty (30) days for good cause.

(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.

(c) A decision of the commission has the same effect and shall be enforced in the same manner as a judgment of a circuit court, unless the decision is overturned on appeal.

(d)(1) The interpretation of a taxing statute by the commission shall be followed by the commission in subsequent cases involving the same statute.

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

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

(A) The interpretation or application conflicts with an interpretation or application of a federal or state court; or

(B) The commission provides satisfactory reasons for reversing precedent.

26-18-1118. Judicial relief.

(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.

26-18-1119. Representation.

(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.

(b) The Department of Finance and Administration shall be represented

by an authorized representative at a hearing.

26-18-1120. Publication of decisions.

(a) The Tax Appeals Commission shall index and publish a decision in print or electronic form that the commission deems best adapted for public convenience.

(b) Any identifying facts and information that the commission determines to be confidential in nature concerning a taxpayer or other individual or entities shall be redacted from a publication.

(c) A publication of a decision shall be made permanently available and constitute an official report of the commission.

26-18-1121. Promulgation of rules.

(a) The Tax Appeals Commission may promulgate rules and forms as necessary to carry out the intent and purpose of this subchapter and implement the duties assigned to the commission.

(b) The commission may promulgate rules governing pleadings and service of process requirements to commence a hearing under this subchapter and the practice and procedure rules of the commission.

SECTION 2. DO NOT CODIFY. Creation of the Tax Appeals Commission.

(a) The Tax Appeals Commission shall be created by January 1, 2021.

(b) The initial commissioners shall be appointed by January 1, 2021.

(c) The Chief Commissioner shall be designated by January 1, 2021.

(d) This act does not affect any hearing, prosecution, action, suit or appeal, commenced in the judicial branch before the creation of the commission.

SECTION 3. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1263. Tax Appeals Commission Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "Tax Appeals Commission Fund".

(b) The fund shall consist of fees and moneys assessed and collected by the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-

1101 et seq., and any other revenues authorized by law.

(c) The fund shall be administered by the commission.

(d) The fund shall be used by the commission for the administration, maintenance, and operation of the commission.

SECTION 4. Arkansas Code § 25-18-224(b), concerning the distribution of quasijudicial opinions and orders, is amended to read as follows:

(b) Administrative decisions of the ~~Office of Hearings and Appeals of the Department of Finance and Administration~~ Tax Appeals Commission and opinions of the Department of Finance and Administration ~~which that~~ contain information ~~which that~~ is confidential ~~pursuant to~~ under Arkansas Tax Procedure Act, § 26-18-101 et seq., ~~shall be~~ are exempt from the disclosure provisions of subsection (a) of this section.

SECTION 5. Arkansas Code § 26-18-303(b), concerning confidential records, is amended to add an additional subdivision to read as follows:

(26) Disclosure of information to the Tax Appeals Commission of information relevant to any case or controversy before the Tax Appeals Commission.

SECTION 6. Arkansas Code § 26-18-314(b), concerning the transparency of legal opinions regarding tax decisions, is amended to read as follows:

(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.~~

(2) Any identifying facts and information that the ~~director~~ commission determines to be confidential in nature concerning taxpayers or other individuals or entities under the Tax Appeals Commission Act, § 26-18-1101 et seq., shall be redacted from a ~~final determination~~ decision posted under this section.

(3) The ~~director~~ commission may post a synopsis that fully describes the subject matter, facts, and conclusions reached by the ~~hearing officer or director~~ commission instead of posting the complete ~~determination~~ decision.

(4) An administrative appeal to the commission that is settled or

withdrawn from consideration before a ~~final determination~~ decision is made by the commission shall not be posted under this section.

SECTION 7. Arkansas Code § 26-18-401(b), concerning the assessment and collection of taxes, is amended to read as follows:

(b)(1) The director shall collect all taxes imposed by any state tax law.

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

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

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

(B) If the taxpayer has requested administrative relief ~~under § 26-18-404 the final assessment shall be issued according to § 26-18-405.~~ under the Tax Appeals Commission Act, § 26-18-1101 et seq., the director shall issue a final assessment according to the decision of the commission.

(C)(i) If the taxpayer has paid the assessment before the time for the issuance of the final assessment, no final assessment shall be issued.

(ii) The taxpayer may seek to recover the payment of the assessment only if § 26-18-403 or § 26-18-406 applies.

(3) Upon receipt of the final assessment from the director, the person liable for the tax shall pay the stated amount including any interest, additions to tax, and assessable penalties at the place and time stated in the final assessment.

SECTION 8. Arkansas Code § 26-18-402(b) and (c), concerning jeopardy assessments, are amended to read as follows:

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

(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.

SECTION 9. Arkansas Code § 26-18-403(a)(2)(B), concerning proposed assessments, is amended to read as follows:

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

(i) Explain the basis for the proposed assessment;

(ii)(a) State that a final assessment, as provided by § 26-18-401, will be made if the taxpayer does not ~~protest~~ file a petition with the Tax Appeals Commission protesting the proposed assessment as provided by ~~§ 26-18-404~~ under the Tax Appeals Commission Act, § 26-18-1101 et seq.

(b) The taxpayer does not have to ~~protest~~ file a petition with the commission protesting the proposed assessment under the Tax Appeals Commission Act, § 26-18-1101 et seq., to later be entitled to exercise the right to seek a judicial ~~review~~ relief of the assessment under § 26-18-406; and

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

SECTION 10. Arkansas Code § 26-18-403(c), concerning proposed

assessments, is amended to read as follows:

(c)(1) An erroneously paid refund is a tax deficiency and is subject to assessment under this section.

(2)(A) When an erroneously paid refund is issued to a taxpayer, the director shall issue a notice of proposed assessment for the amount of the erroneously paid refund, plus interest and any penalty authorized under this chapter.

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

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

(4) Interest and penalties imposed on a tax deficiency are subject to waiver or abatement in accordance with the procedure established in § 26-18-705(b) if the tax deficiency arose from an error by the Department of Finance and Administration that resulted in the issuance of an erroneously paid refund.

SECTION 11. Arkansas Code § 26-18-404 is repealed.

~~26-18-404. Taxpayer relief.~~

~~(a) Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or from a denial of a claim for refund by the director shall follow the procedure provided by this section.~~

~~(b)(1) A taxpayer may at his or her option either request the director to consider his or her request for relief solely upon written documents furnished by the taxpayer or upon the written documents and any evidence produced by the taxpayer at a hearing.~~

~~(2) A taxpayer who requests the director to render his or her decision based on written documents is not entitled by law to any other administrative hearing prior to the director's rendering of his or her decision and, if necessary, the issuing of a final assessment and demand for payment or issuing of a certificate of indebtedness.~~

~~(c)(1) Within sixty (60) days after service of notice of the proposed assessment or denial of a claim for refund, the taxpayer may file with the director a written protest under oath, signed by the taxpayer or the taxpayer's authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment or the denial of a claim for refund.~~

~~(2) No administrative relief will be available to a taxpayer who fails to protest or to a taxpayer who fails to request an extension of time to protest a proposed assessment of tax or denial of a claim for refund within the sixty (60) days following the service of notice of the proposed assessment or denial of a claim for refund.~~

~~(d) The director may, in his or her discretion, extend the time for filing a protest for any period of time not to exceed an additional ninety-day period.~~

SECTION 12. Arkansas Code § 26-18-405 is repealed.

~~26-18-405. Hearing on proposed assessments.~~

~~(a)(1) The director shall appoint a hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment or the denial of the claim for refund.~~

~~(2) Decisions of the hearing officer shall be final unless revised by the director.~~

~~(3) The hearings on written and oral protests and determinations made by the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(b) The director may appoint one (1) or more hearing officers, but the persons occupying these appointments shall not contemporaneously with the holding of these appointments have any other administrative duties within the Revenue Division of the Department of Finance and Administration.~~

~~(c) The actual hearing on the written protest shall be held in any city in which the division maintains a field audit district office or in such other city as the director shall, in his or her discretion, designate.~~

~~(d)(1)(A) All written protests filed with the director shall be delivered promptly to the hearing officer.~~

~~(B) The hearing officer shall set the time and place for the hearing on a written protest and shall give the taxpayer reasonable~~

~~notice of the hearing.~~

~~(C) If it is not possible for the hearing officer to hold a hearing and issue a decision on a protest of a proposed assessment within one hundred eighty (180) days after the taxpayer files a written protest for reasons that the hearing officer determines are beyond the taxpayer's control, the director shall waive the interest for the period from the time the written protest is filed until the final assessment is issued.~~

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

~~(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the taxpayer and the section or division of the Department of Finance and Administration which proposed the assessment or the denial of the claim for refund.~~

~~(4)(A)(i) If the proposed assessment or denial of a claim for refund is sustained, in whole or part, the taxpayer or legal counsel for the director may request in writing, within twenty (20) days of the mailing of the decision, that the director revise the decision of the hearing officer.~~

~~(ii) No request for revision will be considered unless it is received by the director within twenty (20) days of the mailing of the hearing decision.~~

~~(iii) Either the taxpayer or legal counsel for the director shall provide a copy of any written request for revision to the other.~~

~~(iv) The director may hold the supplemental proceedings on any request for revision and shall issue a decision on the request within sixty (60) days of the receipt of the request for revision.~~

~~(B) If the director refuses to make a revision or if the taxpayer or legal counsel for the director does not make a request for revision, then the director shall send either:~~

~~(i) A final assessment to the taxpayer, as provided by § 26-18-401, that is made upon the final determination of the hearing officer that sustained a proposed assessment of tax; or~~

~~(ii) A notice in writing to both the taxpayer and legal counsel for the director, if a revision was requested, of his or her decision not to revise a decision that resulted in no tax due, including the~~

~~denial of a claim for refund.~~

~~(C)(i) If the director revises the decision of the hearing officer, the director shall send the final decision of the director to the taxpayer and to the legal counsel for the director.~~

~~(ii) A notice of final assessment shall be made upon the decision of the director if the director's decision sustained a proposed assessment of tax.~~

~~(iii) No further notice will be issued for a final decision of the director that results in no tax due, including the denial of a claim for refund.~~

~~(D) A taxpayer may not request revision of a decision issued by the director under this subdivision (d)(4).~~

~~(e) A taxpayer may seek relief from the final decision of the hearing officer or the director on a final assessment of a tax deficiency or a notice of denial of a claim for refund by following the procedure set forth in § 26-18-406.~~

~~(f)(1) In addition to the hearing procedures set out in subsections (a) (e) of this section, the director may hold administrative hearings by telephone, video conference, or other electronic means if the director determines that conducting the hearing in such a manner:~~

~~(A) Is in the best interest of the taxpayer and the department;~~

~~(B) Is agreed to by both parties;~~

~~(C) Is not fiscally unsound or administratively burdensome; and~~

~~(D) Adequately protects the confidentiality of the taxpayer's information.~~

~~(2) The director may contract with third parties for all services necessary to conduct hearings by telephone, video, or other electronic means.~~

~~(3) Any person who enters into a contract with the director to provide services necessary to conduct hearings by telephone, video, or other electronic means shall be subject to the requirements of this chapter providing for the confidentiality of all taxpayer records.~~

SECTION 13. 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 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~~ decision by:

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

(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~~ a decision of the commission or a final assessment or determination and filing suit to recover that amount within one (1) year of the date of payment; or

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

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

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

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

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

(d)(1) The methods provided in this section and the Tax Appeals Commission Act, § 26-18-1101 et seq., shall be the sole alternative methods for seeking relief from a ~~written decision by the commission or a final assessment decision of~~ issued by the director establishing a deficiency in tax or disallowing a claim for refund.

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

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

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

(B) Taxpayer may be awarded reasonable attorney's fees if *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 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.~~

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

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

(1) The taxpayer may seek judicial relief from the assessment

only if the taxpayer files suit in circuit court within one (1) year from the date of payment of the assessment; and

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

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

SECTION 14. Arkansas Code § 26-18-507(e), concerning claims for refunds of overpayments, is amended to read as follows:

(e)(1)(A) The director shall make a written determination and give notice to the taxpayer concerning whether or not a refund is due.

(B)(i) If a refund is due, the director shall certify that the claim is to be paid to the taxpayer as provided by law or credited against state taxes due or to become due.

(ii)(a) If the director determines that the taxpayer entitled to the refund has an outstanding state tax delinquency for which a certificate of indebtedness has been filed, the director shall apply the refund due as payment against the outstanding state tax delinquency. If the amount of the state tax refund exceeds the amount of the outstanding state tax delinquency, the excess amount shall be paid to the taxpayer in accordance with subdivision (e)(1)(B)(i) of this section.

(b) The director shall notify each taxpayer in writing whose refund results from the filing of a joint return that the joint refund will be applied against the outstanding state tax delinquency.

(c) A taxpayer who claims that only the taxpayer's spouse owes the delinquent state tax debt may seek administrative relief ~~by filing a written protest under oath within thirty (30) days~~ by filing a petition protesting the director's written determination within ninety (90) days with the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq., after the notice under subdivision (e)(1)(B)(ii)(b) of this section is received that includes information regarding why the taxpayer does not owe the delinquent state tax debt and either requests a hearing in person or based upon the information submitted with the petition of protest.

(d) A hearing ~~on a written protest made~~ under this subdivision (e)(1)(B)(ii) and any judicial relief requested following

the administrative hearing process with the commission shall be provided in accordance with the applicable provisions of ~~§§ 26-18-405 and 26-18-406~~, § 26-18-406 and the Tax Appeals Commission Act, § 26-18-1101 et seq.

(2)(A) If the director's ~~determination~~ decision is to disallow the claim for refund, in whole or in part, then the director shall immediately issue a written decision giving notice to the taxpayer of the denial of the claim for refund.

(B) The taxpayer may seek administrative review and relief from the director's decision to deny a claim for refund ~~by protesting as provided in §§ 26-18-404 and 26-18-405~~, by filing a petition of protest with the commission under the Tax Appeals Commission Act, § 26-18-1101 et seq.

(3) The *taxpayer* or the director may seek judicial relief under the provisions of § 26-18-406 and the Tax Appeals Commission Act, § 26-18-1101 et seq., from:

(A) A notice of a denial of a claim for refund issued by the director; ~~or~~

(B) The director's failure to issue a written decision after the claim for refund has been filed for six (6) months; or

(C) A decision by the commission.

SECTION 15. Arkansas Code § 26-18-601 is amended to read as follows:

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

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

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

(b)(1) When the director determines, in his or her sole discretion, that an emergency situation exists and that the public welfare and safety are endangered, he or she may issue an order temporarily suspending a license,

permit, or registration pending a hearing before ~~him or her~~ the Tax Appeals Commission on the subject of the cancellation of the license, permit, or registration.

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

(3)(A) The provisions of § 26-18-1113(b)-(e) do not apply to a hearing with the commission under this subsection.

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

(C) The commission shall issue a decision under this subsection within three (3) days.

(4) The temporary suspension shall be made permanent without a hearing unless the taxpayer requests a hearing with the commission within twenty (20) days of receipt of notice of the temporary suspension.

(c)(1) Except as set out in subsection (b) of this section, before the director may cancel or refuse to issue, extend, or reinstate any license, permit, or registration, he or she shall give notice of his or her proposed action, and the owner or applicant shall have twenty (20) days after receipt of the director's decision to request a hearing with the commission.

(2) The provisions of § 26-18-1113(b)-(e) do not apply to a hearing with the commission under this subsection.

(3) The commission shall issue a decision under this subsection within twenty (20) days.

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

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

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

(e)(1) The affected taxpayer may seek relief from the decision of the director cancelling a license, permit, or registration by requesting a hearing, pursuant to subsections (b) and (c) of this section, by filing a ~~written protest of the action~~ petition with the hearing officer appointed by the director, pursuant to § 26-18-405 the commission pursuant to the Tax Appeals Commission Act, § 26-18-1101 et seq., and the hearing officer commission shall hold all hearings requested pursuant to this section.

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

~~(3) The hearings and determinations of the hearing officer shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

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

~~(B)(3) If the director refuses to make a revision, or if the taxpayer does not request a revision, then the~~ The affected taxpayer may seek relief from the ~~hearing officer's~~ commission's decision ~~or the final revision determination by the director~~ by following the method provided in § 26-18-602 and the Tax Appeals Commission Act, § 26-18-1101 et seq.

(f) Violations of this section shall be punished as provided in § 26-18-206. The director may seek to enjoin any violation of any state tax law the director is charged to enforce.

SECTION 16. Arkansas Code § 26-18-602 is amended to read as follows:

26-18-602. Judicial ~~review~~ relief of cancellation decision.

(a)(1) The affected taxpayer may seek judicial relief from ~~the a~~ decision of the ~~director, rendered after a hearing,~~ Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq., affirming the decision of the Director of the Department of Finance and Administration to eancelling cancel a license, permit, or registration.

(2) The taxpayer's petition seeking an order to stay the effect of the ~~director's~~ commission's decision shall be filed within thirty (30) days after receipt of notice of that decision by the taxpayer with the Pulaski County Circuit Court or the circuit court of the county in which the

taxpayer resides or has his or her principal place of business, where the matter shall be tried de novo.

(b)(1) Judicial Relief relief from the decision of the ~~director~~ cancelling commission to affirm the director's decision to cancel a license, permit, or registration may be taken only as provided in this section.

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

(B) The bond shall be conditioned upon:

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

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

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

(c) The venue for all actions seeking relief from a decision of the ~~director concerning the cancellation of or refusal of the issuance of~~ commission to affirm the director's decision to cancel or refuse to issue a license or permit shall be the Pulaski County Circuit Court or the circuit court of the county in which the taxpayer resides or has his or her principal place of business.

SECTION 17. Arkansas Code § 26-18-701(a)(1)(A), concerning issuance of certificates of indebtedness and execution, is amended to read as follows:

(a)(1)(A) If a taxpayer does not timely and properly pursue his or her remedies seeking relief from ~~a decision of~~ the assessment of a tax deficiency by the Director of the Department of Finance and Administration or a decision made by the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq., and a final assessment is made against the taxpayer, or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the director shall, as soon as practicable thereafter, issue to the

circuit clerk of any county of the state a certificate of indebtedness certifying that the person named in the certificate of indebtedness is indebted to the state for the amount of the tax established by the director as due.

SECTION 18. Arkansas Code § 26-18-705(c), concerning settlement or compromise of liability controversies, is amended to read as follows:

(c)(1) In settling or compromising any controversy relating to the liability of a person for any state tax for any taxable period, the *director, the director's legal counsel, or another authorized representative of the director* may enter into a written closing agreement concerning the liability.

(2) When the closing agreement is signed by the director, it shall be final and conclusive, and except upon a showing of fraud or misrepresentation of a material fact, no additional assessment or collection shall be made by the director, and the taxpayer shall not institute any hearing with the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq., or a judicial proceeding to recover such liabilities as agreed to in the closing agreement.

SECTION 19. Arkansas Code § 26-18-1002 is amended to read as follows:

26-18-1002. Administrative hearing.

(a) A noncompliant taxpayer may request an administrative hearing concerning the decision of the Director of the Department of Finance and Administration to close the noncompliant taxpayer's business with the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq., by following the procedures in this section.

(b)(1) ~~Within five (5) business days~~ The noncompliant taxpayer shall have five (5) days after the delivery or attempted delivery of the notice required by § 26-18-1001(c), ~~the noncompliant taxpayer may file a written protest to file a petition with the commission protesting the decision of the director,~~ signed by the noncompliant taxpayer or his or her authorized agent, stating the reasons for opposing the closure of the business and requesting an administrative hearing.

(2) The provisions of § 26-18-1113(b)-(e) do not apply to a hearing with the commission under this section.

(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.~~

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

~~(d) The administrative hearing will be conducted by a hearing officer appointed by the director under § 26-18-405.~~

~~(e)(1)(c)(1) The hearing officer commission will conduct the administrative hearing under the Tax Appeals Commission Act, § 26-18-1101 et seq., and will set the time and place for a hearing and will give the noncompliant taxpayer notice of the hearing.~~

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

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

~~(2) The administrative hearing will be held within fourteen (14) calendar days of receipt by the ~~director~~ commission of the request for hearing petition.~~

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

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

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

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

~~(i)(e) The decision of the hearing officer commission ~~must~~ shall be in~~

writing with copies delivered to the noncompliant taxpayer and the Department of Finance and Administration by the United States Postal Service or by hand delivery.

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

SECTION 20. Arkansas Code § 26-18-1003(a) and (b), regarding judicial relief, is amended to read as follows:

(a) As used in this section:

(1) "Administrative decision" means a decision by the Tax Appeals Commission issued under § 26-18-1002 and the Tax Appeals Commission Act, § 26-18-1101 et seq., to affirm the decision of the Director of the Department of Finance and Administration to close the business of a noncompliant taxpayer;

(2) "Business" means a business subject to an administrative decision; and

(3) "Business closure order" means a notice of closure issued by the director under § 26-18-1001.

(b)(1) A noncompliant taxpayer may seek judicial relief from an administrative decision by the commission by filing suit within twenty (20) calendar days of the date of the administrative decision.

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

SECTION 21. Arkansas Code § 26-36-315 is amended to read as follows:
26-36-315. Joint refunds.

(a) When a taxpayer who is a debtor as defined in this subchapter has filed a joint return for which he or she is due a refund or has filed a separate return on the same form resulting in a joint refund, the entire amount of the refund shall be subject to setoff.

(b)(1) The Director of the Department of Finance and Administration

shall notify each taxpayer due a joint refund of the amount and the date of a proposed setoff for a debt certified by a claimant agency to the Revenue Division of the Department of Finance and Administration.

(2) The notice under subdivision (b)(1) of this section shall be in writing and sent to the address listed on the taxpayer's most recently filed income tax return.

(c)(1)(A) A taxpayer who claims that he or she is not a debtor of a claimant agency may seek administrative relief by filing a ~~written protest under oath within thirty (30) days after the notice under subdivision (b)(1) of this section is received.~~ petition protesting the director's decision with the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq.

(B) The ~~written protest~~ petition of protest shall be signed by the nondebtor taxpayer or the nondebtor taxpayer's authorized agent and include the nondebtor taxpayer's reasons for opposing the proposed setoff.

~~(2) The nondebtor taxpayer may request the director to consider his or her request for relief upon written documents furnished by the nondebtor taxpayer or upon the written document and the evidence produced by the nondebtor taxpayer at a hearing conducted under the Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

~~(3)~~ (2) The nondebtor taxpayer's petition of protest shall include documentation supporting the proportionate share of the nondebtor taxpayer's payment of tax and the resulting amount of the joint refund that the nondebtor taxpayer claims is not subject to setoff.

(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.

(e) Administrative relief ~~shall not be~~ is not available to a nondebtor taxpayer who fails to ~~protest~~ file a petition protesting a proposed setoff within the ~~thirty (30)~~ ninety (90) days after the notice under subdivision (b)(1) of this section is received.

~~(f)(1) If a taxpayer requests a hearing in person rather than on written documents, a hearing officer shall set the time and place for hearing~~

~~on the written protest and shall give the nondebtor taxpayer reasonable notice of the hearing.~~

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

~~(3) After the hearing, the hearing officer shall render his or her decision in writing and shall serve copies upon both the nondebtor taxpayer and the claimant agency.~~

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

~~(h)(1) (f)(1)~~ After the issuance and service on the taxpayer of a decision of the ~~hearing officer~~ commission to sustain the setoff of the joint refund, a nondebtor taxpayer may seek judicial relief from the decision by filing suit within thirty (30) days after the date of the ~~final determination decision~~ decision of the ~~hearing officer~~ commission under § 26-18-1118.

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

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

*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.

*SECTION 23. Arkansas Code § 26-55-219 is amended to read as follows:
26-55-219. Distributor's license – Refusal.*

~~(a)(1) In the event that any~~ If an application for a license to transact business as a distributor in the State of Arkansas ~~shall be~~ is filed by ~~any~~ a person whose license ~~shall at any time have~~ has been cancelled ~~at any time~~ at for cause by the Director of the Department of Finance and

Administration, or ~~in case~~ if the director ~~shall be of the opinion~~ determines that the application is not filed in good faith or ~~in the event~~ that the application is filed by some person as a subterfuge for the real person in 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.

(b)(1) ~~Any A distributor may seek judicial relief of an action by the commission who is aggrieved by the action of the director~~ in refusing to issue the license applied for, within thirty (30) days from the time of the refusal, ~~may appeal~~ by appealing to the circuit court of the county of the distributor's residence where the distributor ~~shall be~~ is entitled to a hearing de novo.

(2) An appeal shall lie from the circuit court to the Supreme 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.

SECTION 24. Arkansas Code § 26-55-231(a), concerning the failure to report or pay tax relating to the revocation or cancellation of licenses under the Motor Fuel Tax Law, is amended to read as follows:

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

~~(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.~~

(3) After the hearing, ~~at which time the distributor shall be entitled to present evidence and argument of counsel,~~ the director the commission shall decide whether the distributor's license shall be revoked.

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

(B) An appeal shall lie from the circuit court of that county as in other cases provided by law.

(5)(A) If the distributor fails to ~~apply for a hearing~~ file a petition with the commission within the time set out in subdivision (a)(2)(A) of this section, the director may ~~forthwith cancel~~ revoke the license of the distributor and notify the distributor of the ~~cancellation~~ revocation by registered mail to the last known address of the distributor appearing on the files of the director.

(B) The director shall also notify the surety company on the distributor's bond in like manner.

SECTION 25. Arkansas Code § 26-56-311 is amended to read as follows:

26-56-311. Revocation of supplier's or dealer's license.

(a) If a licensed liquefied gas special fuels supplier or dealer fails to file any report required by this subchapter, or falsely or fraudulently files a report, or fails to pay the full amount of the tax levied by this subchapter, or if at any time the surety on the licensee's bond becomes unsatisfactory or inaccessible to the Director of the Department of Finance and Administration or the bond is discharged or cancelled, and a new bond is not furnished by the licensee within five (5) days after the demand of the director, the director may give notice to the licensee of an intention to revoke his or her license.

~~(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.~~

(2) The provisions of § 26-18-1113(b)-(e) do not apply to a hearing with the commission under this section.

~~(c)(1) After the hearing, at which the licensee shall be entitled to present evidence and be represented by counsel, the director shall determine 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.~~

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

(e)(1) If the licensee fails to apply for a hearing within the prescribed time 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.

(2) The director shall also notify the surety company on the licensee's bond in like manner.

SECTION 26. Arkansas Code § 26-57-413(c) and (d), concerning the revocation of licenses for coin-operated amusement devices, are amended to read as follows:

~~(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.

SECTION 27. Arkansas Code § 26-57-419(f), concerning the revocation of licenses to sell coin-operated amusement devices, is amended to read as follows:

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

(2) Any licensee shall be notified in writing that the revocation or suspension of ~~its~~ the licensee's license is being considered and the reason therefor.

~~(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.~~

(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 the notice of revocation or suspension with the clerk of the court within twenty (20) days of receipt ~~thereof~~ of the notice of revocation or suspension and causing the issuance of a summons to be served on the director or the commission, or both.

(ii) The hearing shall be de novo in the Pulaski

County Circuit Court.

(B) Either party may appeal to the Supreme Court as in other cases.

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.

SECTION 29. Arkansas Code § 26-57-1212(c), concerning the procedure upon forfeiture of vending devices, is amended to read as follows:

(c)(1) The owner of the vending device shall be given at least thirty (30) days' written notice of the date of the hearing on the forfeiture of the vending device.

(2) The notice shall be considered a notice of proposed assessment under § 26-18-403, and the owner shall be entitled to an administrative hearing ~~pursuant to § 26-18-405~~ with the Tax Appeals Commission under the Tax Appeals Commission Act, § 26-18-1101 et seq.

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

/s/B. Johnson