

## **Title 26. Taxation**

### **Chapter XXVI. Tax Appeals Commission, Department of Inspector General**

#### **Subchapter A. Generally**

#### **Part 410. Tax Appeals Commission General Rules of Procedure**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

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

#### **Subpart 1. Title, Definitions, and Statement of Organization and Operations**

##### **26 CAR § 410-101. Title.**

This part and 26 CAR pt. 411 shall be known as the Rules of Procedure of the Tax Appeals Commission.

**Authority.** Arkansas Code § 26-18-1120.

##### **26 CAR § 410-102. Definitions.**

As used in this part and 26 CAR pt. 411, these terms have the following meanings:

- (1) "Authorized representative" means an individual authorized by a party to act on the party's behalf in cases before the Tax Appeals Commission in accordance with 26 CAR § 411-103;
- (2) "Commission" means the Tax Appeals Commission;
- (3) "Days" means calendar days unless otherwise specified;
- (4) "Department" means the Department of Finance and Administration;
- (5) "Expedited case" means a case required by law to be expedited with a shorter petition deadline, hearing deadline, decision deadline, or a combination thereof;

(6) "Presiding commissioner" means the commissioner designated by the Chief Commissioner to preside over a case as provided in 26 CAR § 411-102; and

(7) "Taxpayer" means an individual or entity that:

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

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

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

(ii) Denying a credit or deduction;

(iii) Denying a refund, credit, or incentive claim or application;

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

(v) Closing a business;

(vi) Relating to a jeopardy assessment;

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

or

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

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-103. Organization.**

(a)(1) The Tax Appeals Commission is an independent agency with tax expertise to resolve tax disputes between the Department of Finance and Administration and taxpayers.

(2) The commission was created by Acts 2021, No. 586, the Independent Tax Appeals Commission Act, Arkansas Code § 26-18-1101 et seq.

(b) The General Assembly has authorized the commission to adjudicate certain disputes between taxpayers and the Department of Finance and Administration.

(c)(1) The commission is comprised of three (3) commissioners appointed by the Governor.

(2)(A) The Governor designates one (1) of the commissioners as Chief Commissioner and can change the designation at any time.

(B) The Chief Commissioner is charged with administration of the commission.

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

(e)(1) The commission principally adjudicates tax disputes.

(2) From time to time, the commission promulgates rules relating to its procedures.

**Authority.** Arkansas Code § 26-18-1120.

#### **26 CAR § 410-104. Hours of operation.**

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

**Authority.** Arkansas Code § 26-18-1120.

### **Subpart 2. Information for Public Guidance and Requests Under the Freedom of Information Act of 1967**

#### **26 CAR § 410-201. Freedom of Information Act of 1967 requests.**

(a)(1) The Tax Appeals Commission employs persons holding certain responsibilities for handling Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., requests or other questions so that the public may obtain information about the commission or make submissions or requests.

(2)(A) Commission adjudicative hearings and associated files, proceedings, and records are:

- (i) Confidential;
- (ii) Closed to the public; and
- (iii) Exempt from the Freedom of Information Act of 1967.

(B) See Arkansas Code § 26-18-1115.

(b) The names, mailing addresses, telephone numbers, and electronic addresses for handling Freedom of Information Act of 1967 requests or other informational inquiries may be obtained from the commission's office or website, [www.tac.arkansas.gov](http://www.tac.arkansas.gov).

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-202. Availability of forms, decisions, and other documents.**

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

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

**Authority.** Arkansas Code § 26-18-1120.

**Subpart 3. General Organization**

**26 CAR § 410-301. Public meetings.**

(a) The Chief Commissioner:

- (1) Presides over public meetings; or
- (2) May designate another commissioner to preside.

(b)(1) The Tax Appeals Commission will hold public meetings for rulemaking.

(2) All public meetings are conducted in conformity with the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(3) All public meetings will be specially scheduled.

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

(c) A quorum for the transaction of business in nonadjudicative matters is:

- (1) All three (3) commissioners; or
- (2) Two (2) commissioners if there is a vacancy on the commission.

(d) **Meeting agenda.**

- (1) The Chief Commissioner will prepare the agenda for public meetings.
- (2) The order of the agenda items:
  - (A) Is intended to be flexible; and
  - (B) May be adjusted to meet the needs of the commission.
- (3) Additionally, the agenda may be amended by appropriate motion.

**Authority.** Arkansas Code § 26-18-1120.

#### **26 CAR § 410-302. Adjudicative meetings.**

(a)(1) A meeting of the Tax Appeals Commission in connection with adjudication of one (1) or more matters is:

- (A) Confidential;
- (B) Closed to the public; and
- (C) Not publicly announced.

(2) See Arkansas Code § 26-18-1115.

(b) Adjudications are further addressed in 26 CAR pt. 411.

**Authority.** Arkansas Code § 26-18-1120.

#### **Subpart 4. Rulemaking**

##### **26 CAR § 410-401. Authority.**

(a) The purpose of this subpart is to inform the public how to:

- (1) Initiate rulemaking; and

(2) Comment on a proposed rule.

(b)(1) The Tax Appeals Commission has been authorized by the General Assembly to promulgate rules.

(2) See Arkansas Code §§ 25-15-203, 25-15-215, 26-18-1112, 26-18-1115, and 26-18-1120.

(c) In rulemaking, the commission follows:

(1) The procedural requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., specifically Arkansas Code §§ 25-15-203, 25-15-204, and 25-15-218;

(2) Arkansas Code § 10-3-309; and

(3) Any Executive Order of the Governor applicable at the time that rulemaking is initiated.

(d) This part does not provide a comprehensive description of the entire rulemaking process.

**Authority.** Arkansas Code § 26-18-1120.

### **26 CAR § 410-402. Initiating rulemaking.**

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as "rulemaking") may be initiated:

(1) At the request of the Tax Appeals Commission; or

(2)(A) By third persons outside the commission, who may petition for the issuance, amendment, or repeal of any rule in accordance with Arkansas Code § 25-15-204.

(B) The petition to initiate rulemaking must contain:

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

(ii) The specific rule or action requested;

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

- (iv) Facts showing that the petitioner is regulated by the commission or has a substantial interest in the rule or action requested; and
- (v) The date of the request.

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-403. Public comment.**

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

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

(c)(1) The commission will begin the public comment period by publishing notice of the proposed rulemaking.

(2) The notice will:

(A) Include the terms or substance of the proposed rule, or a description of the subjects and issues involved;

(B) Include a description of the time, location, and manner in which interested parties may submit their views; and

(C)(i) Be published in compliance with Arkansas Code § 25-15-204.

(ii) The commission shall also publish the notice and the draft rules on its website.

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

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

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

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-404. Decision to adopt a rule.**

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

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

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

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-405. Legislative approval, final filings, and effective date.**

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

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

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-406. Public inspection and records.**

(a) After the expiration of the thirty-day public comment period and before the effective date of the rule, the Tax Appeals Commission shall take appropriate measures to make the final rule known to the persons who may be affected by the rule, pursuant to the specifications in Arkansas Code § 25-15-204.

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

(c) The commission shall maintain copies of all filings and documentation associated with rulemaking as necessary to comply with the Arkansas General Records Retention Schedule, 25 CAR pt. 60.

**Authority.** Arkansas Code § 26-18-1120.

**26 CAR § 410-407. Emergency rules.**

**(a) Need for emergency rule.**

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

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

**(b) Filings and effective date of emergency rule.**

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

(2) After receiving approval from both the Governor and the General Assembly, an emergency rule may become effective:

(A) Immediately upon filing with the Secretary of State; or

(B) At a stated time less than ten (10) days after filing if the commission finds that such effective date is necessary due to imminent peril to the public health, safety, or welfare.

(3) The commission will take appropriate measures to notify those who may be affected by the emergency rule.

**Authority.** Arkansas Code § 26-18-1120.