



UNIVERSITY OF CENTRAL ARKANSAS
DECEMBER 8, 2023

ACT 586 OF 2021 – THE INDEPENDENT TAX APPEALS COMMISSION ACT

PAUL GEHRING – ASSISTANT COMMISSIONER OF REVENUE – POLICY & LEGAL
ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION

THE ARKANSAS TAX PROCEDURE ACT

Ark. Code Ann. § 26-18-101, et seq

Provides the procedures and remedies with
respect to Arkansas state taxes

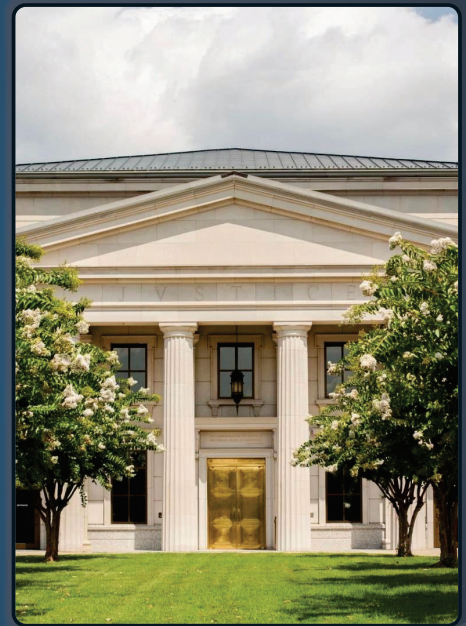
Prior to Act 586, administrative hearing relief
was available through the Office of Hearings
and Appeals within DFA



OFFICE OF REVENUE LEGAL COUNSEL

Represents DFA in state tax litigation and other matters relating to the Revenue Division of DFA

21 current attorneys within staff



LEGISLATIVE PURPOSE AND TIMELINE

Legislative purpose of Act 586 :

To create within the Department of Inspector General an independent agency with tax expertise to resolve disputes between DFA and taxpayers before requiring the payments of the amount in issue

By establishing the Tax Appeals Commission as an independent tax tribunal within the executive branch of government, the Act provides taxpayers with a means of resolving controversies with the DFA before a neutral body

2019 Session
SB560
Sen. Blake
Johnson

2021 Session
Act 568 (HB1468)
Sen. Blake
Johnson
Rep. Joe Jett

2022
Appointment of
Commissioners
and adoption of
Rules

January 1, 2023
Commission
must begin to
accept tax
petitions

June 30, 2023
Office of
Hearings and
Appeals must
close

THE COMMISSIONERS

Nominations for Commissioners are provided by:

- The Arkansas Bar Association
- Majority of the Supreme Court
- Arkansas Society of Certified Public Accountants

The Governor appoints the Commissioners

Nine-year terms – staggered to provide for reappointment every three years

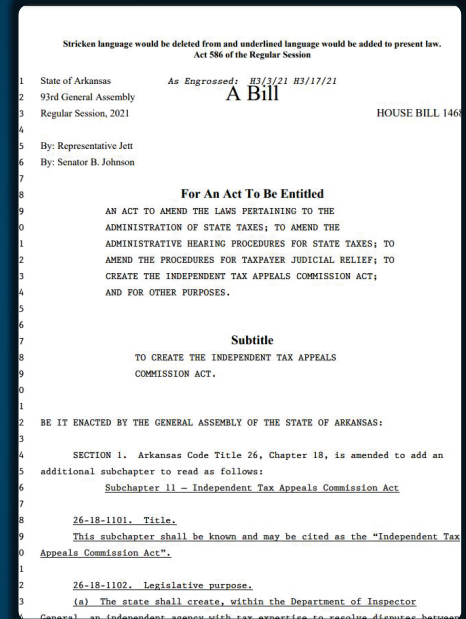
Limited to two terms

Current Commissioners -

Matt Boch, Chief Commissioner

Joe Sanford, Commissioner

Clay Sloan, Commissioner



MATTERS HEARD BY THE COMMISSION

The Commission hears matters where a taxpayer is challenging a DFA decision:

- Imposing liability for a tax, penalty, or interest
- Denying a credit or deduction
- Denying a refund, credit, or incentive claim or application
- Canceling, refusing, or revoking a license or permit
- Closing a noncompliant taxpayer's business

The Commission does not hear the following matters:

- Disputes involving taxes that are excepted from the Arkansas Tax Procedure Act
- Questions regarding the constitutionality of the application of statutes to a taxpayer or the constitutionality of rules promulgated by DFA
- Illegal exaction claims under Arkansas Constitution, Article 16, § 13
- Claims for which the Office of Hearings and Appeals has issued an administrative decision
- Claims that are the subject of pending litigation

ARKANSAS TAX APPEALS COMMISSION
PETITION
(See Instructions)

Part I Taxpayer. Enter the information regarding the taxpayer below.

Taxpayer Name(s): _____ EIN or SSN (last four digits): _____
Letter ID: _____
Street Address: _____ Account ID/VIN: _____
(attach a copy of the DFA notice)
City: _____ State _____ Zip: _____
Phone Number (optional): _____ Email (optional): _____

Part II Decision Being Appealed (provide a copy).

Tax type at issue (see instructions for list): _____
Tax period(s): _____
Amount disputed: \$ _____ (do not include penalties or interest)
Related Matter Pending? If this appeal is related to an ongoing proceeding with the Commission, enter:
• The taxpayer's name(s) _____
• The docket number (if known): _____

Part III Reasons for Your Appeal. State the facts sufficiently clear on which you rely – see instructions.

FILING A PETITION WITH THE COMMISSION

- For a non-expedited matter, a petition must be filed within 90 days of the date DFA issues a proposed assessment or refund claim denial
- Must contain facts sufficiently clear to identify the taxpayer and the taxpayer's reasons for opposing the proposed assessment, denial of a claim for refund, or other action of the secretary, and the specific items at issue

PETITION TIMELINES

- The Commission serves the taxpayer's Petition upon DFA within 15 days of receipt
- DFA files an Answer within 60 days of service of the Petition
- Taxpayer may file a Reply within 30 days of service of the Answer
- Within 30 days after a Reply has been filed or the deadline to file a Reply has passed, the Commission shall schedule a hearing to be held within 90 days of the date the Reply was filed or the deadline to file a Reply has passed
- Amended pleadings are permitted

HEARINGS AND DECISIONS

- Hearings are conducted by one Commissioner or all three Commissioners consistent with rules adopted by the Commission
 - Proceedings are confidential
 - Arkansas Rules of Evidence do not apply
 - Hearing documents are not subject to release under the Freedom of Information Act
 - May be conducted in person, by telephone or videoconference, or upon written documents
- A Commission decision shall:
 - Include concise findings of fact and conclusions of law
 - Grant relief, invoke remedies, and issue orders to carry out the Commission’s decision
 - Be issued no later than 90 days after the submission of the last pleading or brief filed or the completion of the hearing, whichever is later, (except for specific expedited proceedings)
 - Be published with all personally identifying taxpayer information redacted

COMMISSION DECISIONS

IG.ARKANSAS.GOV/
TAX-APPEALS-COMMISSION/IG-DECISIONS-SEARCH/

File	Docket Number	Presiding Commissioner	Tax Type	Appeal Type	En Banc	Decision Type	Decision Date
View	23-TAC-00112	Joseph A. Sanford	Sales & Use Tax (SLS)	Proposed Tax Assessment	Yes	Decision Party in Favor of Both Parties	11/27/2023
View	23-TAC-02728	Matt Boch	Individual Income Tax (IIT)	Joint Refund Offset	No	Dismissal Sua Sponte	11/20/2023
View	23-TAC-01661	Joseph A. Sanford	Motor Vehicle Sales & Use Tax (VIN)	Proposed Tax Assessment	No	Decision in Favor of Department	11/20/2023
View	23-TAC-01864	Joseph A. Sanford	Sales & Use Tax (SLS)	Refund Claim Denial	Yes	Decision in Favor of Department	11/20/2023
View	23-TAC-02734	Matt Boch	Individual Income Tax (IIT)	Proposed Tax Assessment	No	Dismissal Sua Sponte	11/20/2023
View	23-TAC-02840	D. Clay Sloan	Sales & Use Tax (SLS)	Business Closure	No	Decision in Favor of Department	11/17/2023
View	23-TAC-02540	Matt Boch	Sales & Use Tax (SLS)	Proposed Tax Assessment	No	Dismissal Sua Sponte	11/16/2023
View	23-TAC-02129	Joseph A. Sanford	Pass-Through Entity Tax (PET)	Proposed Tax Assessment	No	Dismissal Sua Sponte	11/16/2023
View	23-TAC-02644	Matt Boch	Individual Income Tax (IIT)	Proposed Tax Assessment	No	Dismissal Sua Sponte	11/15/2023
View	23-TAC-02698	Matt Boch	Motor Vehicle Sales & Use Tax (VIN)	Proposed Tax Assessment	No	Dismissal Sua Sponte	11/14/2023
View	23-TAC-02431	Joseph A. Sanford	Individual Income Tax (IIT)	Proposed Tax Assessment	No	Jurisdictional Dismissal on DFA Motion	11/14/2023
View	23-TAC-02597	Matt Boch	Individual Income Tax (IIT)	Joint Refund Offset	No	Dismissal Sua Sponte	11/14/2023
View	23-TAC-01907	Joseph A. Sanford	Individual Income Tax (IIT)	Proposed Tax Assessment	No	Decision in Favor of Department	11/14/2023
View	23-TAC-01856	Joseph A. Sanford	Withholding Tax (WHW)	Proposed Tax Assessment	No	Decision in Favor of Department	11/14/2023

COMMISSION RULES

RULES OF PROCEDURE OF THE ARKANSAS TAX APPEALS COMMISSION

Title, Definitions, and Statement of Organization and Operations

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

General Organization

Rule-Making

Adjudicative Proceedings

NOTEWORTHY COMMISSION RULES

§ 5-103 Appearances and Representation

- A Taxpayer appearing in a Commission adjudicative proceeding has the right, at his or her own expense, to be represented by an authorized representative, who can be an attorney, certified public accountant, or any other individual
- The Taxpayer may appear on his or her own behalf
- A Taxpayer's authorized representative must have a completed Power of Attorney form on file with the Commission before representing a Taxpayer in an adjudicative proceeding and the Commission's POA form must be used
- Until a completed Power of Attorney form is filed, the Commission and DFA shall communicate directly with the Taxpayer
- DFA shall be represented by an authorized representative licensed to practice law in the State of Arkansas
- DFA is not required to obtain approval from the Commission for substitution of its legal representative

§ 5-303 No Discovery

- There is no discovery in Commission adjudications (that is, no interrogatories, requests for admission, requests for production, depositions, or requests for inspections)
- No subpoenas to issued to parties or third parties
- Taxpayers may contact the Department if the Taxpayer wants to obtain his or her tax records
- The Commission does not hear disputes concerning the production of documents by DFA under the Freedom of Information Act or the Arkansas Tax Procedure Act

COMMISSION RULES CONTINUED

§ 5-402 Hearing Procedures

- Parties have the right to participate or to be represented by an authorized representative
- Parties have the right to introduce evidence, cross-examine witnesses, and present evidence in rebuttal
- **Parties shall disclose all witnesses, identifying those who may testify and those expected to testify, at least 10 days prior to the hearing unless otherwise specified by order**
- Each witness must be sworn and be subject to examination and cross-examination as well as questioning by the Commissioner
- **An authorized representative serving as an advocate, such as an attorney or consultant, shall not provide testimony**
- An officer, trustee, partner, or similar representative may provide testimony for a Taxpayer that is not an individual

§ 5-404 Evidence

- The Commission shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy
- Irrelevant, immaterial, and unduly repetitive evidence shall be excluded
- **Exhibits for the hearing shall be filed with the Commission and served on the opposing party at least 5 days prior to the hearing (except for expedited proceedings)**

§ 5-405 Recording of Hearing

- The parties may record the hearing (audio only) and notice of the intent to record a hearing shall be provided to the opposing party
- Broadcasting of proceedings in any form is prohibited
- The Commission will not transcribe the hearing, but a party may have the proceedings transcribed at his or her own cost
- If a transcript is prepared by a party, a copy shall be provided to the opposing party at no cost

RULES CONTINUED

§ 5-601 Scope and Application of Electronic Filing

- **Use of the electronic filing system for filings after the petition is required for an authorized representative, except for an authorized representative with a disability that prevents the use of the electronic filing system**
- The petition should be filed electronically if possible
- Use of the electronic filing system by a Taxpayer without an authorized representative is encouraged but not required

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

JIM HUDSON, IN HIS OFFICIAL CAPACITY
AS CABINET SECRETARY FOR THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

PLAINTIFF

v.

CASE NO.: 60CV-23-7595

WEST FRASER, INC.

DEFENDANT

ORDER

Comes before the Court, the Plaintiff (the "Department") and the Defendant ("West Fraser"), having evidenced their agreement to this Order by their signatures affixed herein, and the Court, being well and fully advised and in consideration of the facts and evidence presented, does hereby find:

1. The Arkansas Tax Appeals Commission issued a decision on September 7, 2023 reversing the Department's refund claim denial for West Fraser's repairs to a lumber drying kiln.
2. The Arkansas Tax Appeals Commission erred in considering the lumber drying kiln real property when it applied Arkansas Code Annotated § 26-52-301(3)(B)(vii)(a) in its decision.
3. The lumber drying kiln is a necessary and integral piece of machinery that is used directly in the manufacturing and production of a new article of commerce, lumber. Accordingly,

JUDICIAL RELIEF

A taxpayer may seek judicial relief from a decision of the Commission by following the procedures stated in the Arkansas Tax Procedure Act

DFA may seek judicial relief from a decision of the Commission by filing suit against the taxpayer in Pulaski County Circuit Court or in the circuit court of the county in which the taxpayer resides or has its principal place of business in the state

A taxpayer may remove a suit filed by DFA to the circuit court of the county in which the taxpayer resides or has its principal place of business in the state

A matter subject to judicial relief under this section shall be tried *de novo* (a new proceeding independent of the Commission's decision)

An appeal from the circuit court is made to the Arkansas Supreme Court

Taxpayer may seek judicial relief without a Commission proceeding

Must be licensed to practice law in Arkansas file a Complaint for judicial relief on behalf of a third party

THANK YOU!

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