



## Mississippi Will Create an Independent Board of Tax Appeals and Reduce Cost of Pay-to-Play for Judicial Review of Tax Cases

Senate Bill 2712 will reorganize the Mississippi State Tax Commission and create an independent Board of Tax Appeals. The bill passed both houses of the Mississippi legislature and was signed by Mississippi Governor Haley Barbour (R) on April 6, 2009. The Bill was introduced pursuant to the recommendation of the Tax Study Commission appointed by Governor Barbour in 2008.

Under current law, except for fees collected by the State Insurance Commissioner, state taxes in Mississippi are under the jurisdiction of the State Tax Commission. The head of the Tax Commission has two primary responsibilities and two titles: Chairman and Commissioner of Revenue. As Commissioner of Revenue, he serves as the Chief Executive Officer of the State Tax Commission in its function as a state agency for the collection of taxes, processing of tax returns and the administration and enforcement of the state's tax laws. As Chairman, he serves as one of the three persons that constitute the second level of administrative review for tax disputes, which appeal board is commonly called the "full Commission." The other two members of that appeal board are the Associate Commissioners, whose only responsibility is to serve on the appeal board. The Chairman and the two Associate Commissioners are appointed by the Governor and serve for staggered six year terms.

Tax assessments are made by audit staff overseen by the Chairman of the State Tax Commission, who also signs the assessment notices sent to taxpayers. A taxpayer's first administrative appeal opportunity is to the Board of Review, which is composed of various higher level staff members of the State Tax Commission depending on the type of tax in dispute. Taxpayers not getting the desired relief at the Board of Review may appeal to the full Commission, which is the three person panel consisting of the Chairman and two Associate Commissioners.

The current system for resolving Mississippi tax disputes

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creates confusion for those not experienced with the process and the perception of a lack of independence or objectivity. The confusion results from the fact that under current law the state's taxing agency and the second level of administrative review for tax disputes are both referred to as the "State Tax Commission." The perceived lack of objectivity results from the fact that the Chairman oversees the audit staff who make the assessments, signs the assessment notices and then sits on the three person panel that hears the second administrative appeal of tax disputes. Senate Bill 2712 was enacted to cure these and other problems.

In order to provide independence and objectivity in the tax appeals process, Senate Bill 2712 will divide the current job of Chairman and Commissioner of Revenue into two separate positions, and it will spin off the three member appeal panel to a new state agency known as the Board of Tax Appeals on July 1, 2010. The state agency currently known as the State Tax Commission will be renamed the Department of Revenue, and the name "State Tax Commission" will cease to be used to eliminate the current confusion.

The three member Board of Tax Appeals will serve exclusively as an independent appeals Board that will hear taxpayer appeals coming from the Board of Review. The appeal board will consist of a Chairman and two associate members, who will be appointed by the Governor for staggered six year terms. The Chairman will appoint an Executive Director, who is required to be licensed to practice law and have a familiarity with the tax appeals process. The executive director is, among other duties, required to keep a record of the proceedings of the Board of Tax Appeals. Hearings before the Board of Tax Appeals will be informal using relaxed rules of evidence, and no record will be made of the hearing.

The chief executive officer of the Department of Revenue will be the Commissioner of Revenue, who will be appointed by the Governor for a six year term. He may be reappointed to serve additional six-year terms at the discretion of the Governor. The Commissioner of Revenue may not be removed during an unexpired term except by impeachment action of the Senate.

Under current law, only the taxpayer has the right to appeal an adverse decision of the full Commission for a judicial review of the assessment. Senate Bill 2712 gives the Department of Revenue the authority to appeal an adverse decision of the Board of Tax Appeals for a judicial review of a decision in favor of the taxpayer. If both the agency and the taxpayer appeal a decision of the Board of Tax Appeals, then the cases will be consolidated, and the Chancery Court where the taxpayer filed the appeal will have jurisdiction of the case. Judicial review of decisions

of the Board of Tax Appeals will be *de novo* proceedings.

Under current law, taxpayers are required to post a bond in an amount equal to twice the tax in dispute in order for a court to have jurisdiction to hear the case. This “pay-to-play” requirement has been a very real impediment to some taxpayers seeking a judicial review of their tax case. Importantly, Senate Bill 2712 reduces the amount of the required appeal bond to 50% of the amount of tax in dispute. Importantly, the bill allows the court to waive the bond requirement if it finds, after a hearing on a motion to waive the bond, that the interest of the state to obtain payment of the tax are otherwise protected.

The bill also extends the current 30-day statutory notice period for administrative appeals of tax assessments and certain other tax matters to 60 days.

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