Proposed Rulemaking

Title

Promulgated by:
Department of Inspector General
Tax Appeals Commission

Title 26. Taxation

Chapter XXVI. Tax Appeals Commission, Department of Inspector General

Subchapter A. Generally

Part 410. Tax Appeals Commission General Rules of Procedure

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.

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)~~(2) "Days" means calendar days unless otherwise specified;

~~(4) "Department" means the Department of Finance and Administration;~~

~~(5)~~(3) "Expedited case" means a case required by law to be expedited with a shorter petition deadline, hearing deadline, decision deadline, or a combination thereof; and

~~(6)~~(4) "Presiding commissioner" means the commissioner designated by the Chief Commissioner of the Tax Appeals Commission 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.~~

26 CAR § 410-103. Organization.

(a)(1) The Tax Appeals Commission is an independent agency within the Department of Inspector General 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 tax 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)~~(c) From time to time, the commission promulgates rules relating to its procedures.

~~**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.~~

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.

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.

Subpart 3. General Organization

26 CAR § 410-301. Public meetings.

(a) The Chief Commissioner of the Tax Appeals Commission:

(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~~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~~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.

26 CAR § 410-302. Adjudicative meetings.

(a)(1) A meeting of the Tax Appeals Commission ~~in connection with~~involving 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.

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.

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.

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.

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.

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.

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.~~:

(1) The commission's business address; and

(2) The state's official online Code of Arkansas Rules.

(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.

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~~rule, 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, unless a specific date less than ten (10 days after filing with the Secretary of State is stated, an emergency rule ~~may~~shall become effective~~:~~

~~(A) Immediately~~ 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.

Proposed Rulemaking

Title

Promulgated by:
Department of Inspector General
Tax Appeals Commission

Title 26. Taxation

Chapter XXVI. Tax Appeals Commission, Department of Inspector General

Subchapter A. Generally

Part 411. Tax Appeals Commission Tax Appeals

Subpart 1. Generally

26 CAR § 411-101. Applicability.

(a) This part:

(1) Applies in all administrative adjudications conducted by the Tax Appeals Commission; and

(2) Describes the process by which the commission ~~hears~~ resolves appeal petitions challenging decisions of the Department of Finance and Administration within the jurisdiction of the commission.

(b) The commission may determine the parties' compliance with this part.

(c) ~~Unless a statute or rule expressly precludes it, the~~ The presiding commissioner may waive application of this part if, in the commissioner's discretion, a waiver is required for fairness ~~requires~~.

26 CAR § 411-102. Assignment of cases.

(a) Once a petition is filed with the Tax Appeals Commission, the Chief Commissioner of the Tax Appeals Commission or staff of the commission at the ~~Chief~~

~~Commissioner's~~chief commissioner's direction shall designate a presiding commissioner and assign the case to one (1) commissioner or to all available commissioners sitting en banc, depending on the nature and significance of the case.

~~(b) It is presumed that:~~

~~(1) A controversy involving twenty-five thousand dollars ($25,000) or less, exclusive of interest and penalties, should be assigned to one (1) commissioner;~~

~~(2) A controversy involving an expedited case under 26 CAR § 411-204 should be assigned to one (1) commissioner; and~~

~~(3) A controversy involving over two hundred fifty thousand dollars ($250,000), exclusive of interest and penalties, should be assigned to all commissioners sitting en banc.~~

~~(c) The Chief Commissioner may reassign a case.~~

~~(d)~~(b)(1) A party may request en banc consideration by filing a motion under 26 CAR § 411-301.

(2) Such motion shall be decided by the ~~Chief Commissioner~~chief commissioner after consulting with the assigned presiding commissioner.

26 CAR § 411-103. Appearances and representation.

(a)(1) Any taxpayer has the right, at his or her own expense, to be represented by an authorized representative, who can be:

(A) An attorney;

(B) A certified public accountant; or

(C) Any other individual.

(2) Alternatively, a taxpayer may be self-represented, including self-representation by an owner, officer, managing member, partner, trustee, or similar individual with authority for an entity taxpayer.

(b)(1) A taxpayer's authorized representative must have a completed Power of Attorney form on file with the Tax Appeals Commission before representing a taxpayer in a case.

(2) ~~The commission's form must be used.~~Failure to provide the information requested on the form shall be grounds for exclusion from participation as a representative in any proceeding before the commission.

(c)(1) The Department of Finance and Administration shall be represented by an authorized representative licensed to practice law in the State of Arkansas.

(2) The department is not required to obtain approval from the commission for substitution of representatives.

(d) Service on an authorized representative is the equivalent of service on the party represented.

(e) On written motion served on the party represented and all other parties of record, the presiding commissioner may grant a taxpayer's authorized representative leave to withdraw.

26 CAR § 411-104. In-person hearings outside of Little Rock.

(a) The Tax Appeals Commission may arrange for the use of state or local government facilities to allow it to conduct hearings throughout the state.

(b) A taxpayer may request, in writing in the petition or on motion, to have an in-person hearing at a location more convenient than Little Rock.

(c) The presiding commissioner may grant such request or may require that the taxpayer choose between:

(1) An in-person hearing in Little Rock;

(2) A teleconference; or

(3) A videoconference.

(d) The Department of Finance and Administration may elect to appear by teleconference or videoconference.

26 CAR § 411-105. Consolidation.

(a) If there are separate matters that involve similar issues of law or fact and identical or related parties, the matters may be consolidated if it appears that consolidation would:

(1) Promote the just, speedy, and inexpensive resolution of the cases; and

(2) Not unduly prejudice the rights of a party, including the taxpayer's right to confidentiality.

(b) A presiding commissioner may deconsolidate for any reasonable cause.

26 CAR § 411-106. Filing and service.

(a) Unless a filing is rejected by the Tax Appeals Commission, a document is deemed filed on the earlier of:

(1) The date the document was submitted electronically via the electronic filing system; or

(2) The date the document is received by the commission, whether by in-person delivery, United States mail, or otherwise.

(b) A filing that is delivered to the commission by United States mail after the deadline shall be deemed filed as of the postmark date.

(c)(1) The commission shall establish a system for electronic filing and service.

(2) See 26 CAR § 411-601 et seq.

(d)(1) ~~Every pleading, except~~Except for the appeal petition, ~~and~~ every ~~other~~ document filed ~~for the case~~ shall be served by the filing party on the other party's authorized representative or, if the party is not represented, on the party itself.

(2) Service shall be to the address provided by the authorized representative or party.

(3) If both parties or their authorized representatives are users of the commission's electronic filing system, service shall be as directed under the electronic filing system.

(4) If either the sending or the receiving party is not a user of the electronic filing system, then service on the party shall be by:

(A) First class mail;

(B) Hand delivery; or

(C) Email, if agreed to verbally on record during a hearing or in writing by the parties.

(5)(A) The taxpayer shall not serve the appeal petition on the Department of Finance and Administration.

(B) Service by the taxpayer of the appeal petition upon the department shall be void.

(C) The petition is served on the department by the commission within fifteen (15) days of the filing date of the petition electronically or, if the commission cannot serve the petition on the department electronically, by hand delivery.

(e) A party or authorized representative ~~shall file with~~must notify the commission ~~a notice~~ of any change of address, phone number, or email address within ten (10) days of such change.

26 CAR § 411-107. Computing time.

(a) Any period of time set forth in this part or in the Independent Tax Appeals Commission Act, Arkansas Code § 26-18-1101 et seq., unless otherwise provided by law, shall begin on the first day following the day of the act that initiates the period.

(b) When the last day of the period is a day on which the Tax Appeals Commission is closed, the period shall run until the end of the next business day.

(c) For the purpose of computing time to respond, any document served on a day when the commission is closed shall be deemed served on the next business day.

26 CAR § 411-108. Noncompliance.

(a)(1) If a petition, answer, reply, or other document is timely filed but determined by the presiding commissioner to be noncompliant, the party shall be allowed fourteen (14) days from the date of notice to cure, except that, for cure of a Power of Attorney, thirty (30) days shall be allowed.

(2) The presiding commissioner may extend the deadline.

(3) The corrected document shall be deemed filed on the date originally submitted.

(b) Any deadline to answer, reply, or otherwise respond to a filing is automatically tolled pending cure of the noncompliant filing.

(c) After the cure period has expired, a petition, answer, reply, or other document that is noncompliant may be rejected by the Tax Appeals Commission.

26 CAR § 411-109. Ex parte communications.

(a) A commissioner shall not initiate, permit, or consider ex parte communications or other communications made outside the presence of the parties or their representatives concerning a pending ~~or impending~~ matter.

(b) When circumstances require it, nonsubstantive communication for scheduling, administrative, or emergency purposes is permitted, provided the commissioner reasonably believes that no party will gain a procedural, substantive, or tactical advantage.

(c) A commissioner may consult with other commissioners or with employees of the Tax Appeals Commission or the Department of Inspector General, provided the commissioner does not abrogate the responsibility personally to decide the matter.

(d) If a commissioner receives an unauthorized ex parte communication bearing upon the substance of a matter, the commissioner shall:

(1) Notify the parties of the substance of the communication; and

(2) Provide the parties with an opportunity to respond.

~~(e) The parties shall not communicate or cause communication with employees of the department regarding cases, except in connection with such officers or employees providing technical or administrative support to the commission.~~

Subpart 2. Pleadings

26 CAR § 411-201. Appeal petition.

(a)(1)(A) Only a taxpayer or a taxpayer's authorized representative can file an appeal petition to the Tax Appeals Commission.

(B) ~~The definition of "taxpayer" limits petitions to protesting certain actions or decisions of the Department of Finance and Administration that have become final or without more will become final after the expiration of time, such as a proposed~~

~~assessment or a refund claim denial.~~Only a petition signed by the taxpayer or the taxpayer's authorized representative will be accepted by the commission.

(2) The commission cannot hear a petition protesting an interim ~~department~~ Department of Finance and Administration action such as day-to-day administration of an ongoing audit.

(b)(1) The taxpayer is responsible for meeting the petition deadline, and the commission cannot extend petition deadlines.

(2) Unless otherwise provided by law, petitions must be filed within ninety (90) days of the date of the action or decision of the department.

(3)(A) Certain actions of the department can result in expedited cases that impose petition deadlines as short as five (5) business days.

~~(B) The petition shall indicate whether the case is required to be expedited.~~

~~(C)~~(B) See 26 CAR § 411-204, expedited cases.

(c)~~(1)(A)~~ The commission encourages taxpayers to submit petitions online at its website.

~~(B) An appeal petition shall be filed using the petition form approved by the commission or in such other form prepared by the taxpayer.~~

~~(2) Regardless of the form used, the petition shall:~~

~~(A) State facts sufficiently clear to identify the taxpayer, including name and address, and the taxpayer's reasons for opposing the proposed assessment, denial of a claim for refund, or other action of the department, including the relief sought; and~~

~~(B) Reasonably specify the matter, including identifying the relevant department account, and other identifying information for consideration by the commission.~~

(d) The petition shall include whether the taxpayer elects for:

(1) The hearing to be:

(A) In person;

(B) By teleconference;

(C) By videoconference; or

(D) By a combination thereof; or

(2) No hearing with the matter to be decided solely on written submissions.

(e)(1) Petitions should not be made ~~regarding the following, for~~ disputing issues over which the commission does not have jurisdiction, including:

~~(1) A tax that is excepted from the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq., under Arkansas Code § 26-18-102;~~

~~(2) A question regarding the constitutionality of the application of statutes to a taxpayer or the constitutionality of rules promulgated by the department;~~

~~(3) A claim against enforcement of an illegal exaction under Arkansas Constitution, Article 16, § 13;~~

~~(4) A claim that is the subject of pending litigation;~~

~~(5)~~(A) A claim for a tax not administered by the department, including without limitation the following:

~~(A)~~(i) Local ad valorem property tax;

~~(B)~~(ii) Local advertising and promotion tax on lodging or restaurants;

~~(C)~~(iii) Federal tax;

~~(D)~~(iv) Tax of another state; or

~~(E)~~(v) Tax of a foreign country; or

~~(6)~~(B) An appeal from a final assessment for which a notice of proposed assessment was previously issued.

(2) See also Arkansas Code § 26-18-1110.

26 CAR § 411-202. Answer.

(a) ~~The~~If required, the Department of Finance and Administration shall file an answer to an appeal petition within sixty (60) days of receipt of the petition from the Tax Appeals Commission.

(b)(1) An answer is not required ~~in an expedited hearing.~~:

(A) In an expedited case; or

(B) For a small claim following streamlined procedures.

(2) See 26 CAR §§ 411-204 and 411-306.

(c) The answer shall state the department's reasons for opposing the petition, in all or in part, such that the commission can understand the department's position in the dispute and the taxpayer can fairly reply.

(d)(1) An answer shall not be filed in lieu of a motion for voluntary dismissal or for withdrawal from consideration.

(2) See 26 CAR § 411-301.

26 CAR § 411-203. Reply.

(a) The taxpayer may respond to the answer by filing a reply within thirty (30) days of service of the answer but is not required to do so.

(b) A reply may not exceed the scope of the petition or answer.

26 CAR § 411-204. Expedited cases.

(a) Certain types of cases are required by law to be heard on an expedited basis, including shortened petition deadlines.

~~(b) The petition shall indicate that it is a type of case that must be expedited.~~

~~(c)~~(b)(1) For an expedited case, the hearing, if any, shall be scheduled within the applicable deadline after the petition is filed, and no other pleadings are required.

(2) The Department of Finance and Administration may elect to file an answer.

~~(d)~~(c) Joint refund offset cases under Arkansas Code § 26-36-315 have specific requirements:

(1) The petition must include the following items:

(A) A copy of the notice of refund offset at issue;

(B) The signature of the nondebtor taxpayer~~ to the petition~~;

(C)(i) A certification from the claimant agency that the nondebtor taxpayer is not a debtor of the claimant agency.

(ii) This certification may use the form promulgated by the Tax Appeals Commission or other form of certification issued by the agency.

(iii) The commission may provide a taxpayer with the relevant claimant agency contact information for obtaining this certification; and

(D)(i) Tax documentation necessary to determine each taxpayer's proportionate share of the refund.

(ii) In general, copies of the full Arkansas income tax return and all Forms W-2 or 1099 or other documentation showing sources of income and tax payment are needed; and

(2) Taxpayers cannot petition the commission to dispute the validity or amount of the debt to the claimant agency.

26 CAR § 411-205. Amended pleadings.

~~(a) The taxpayer may amend the appeal petition at any time before the period for filing an answer expires, once per petition.~~

~~(b) The Department of Finance and Administration may amend the answer at any time before the period for filing a reply expires, once per answer.~~

~~(c) Either party may amend a petition, answer, or reply after the period for responding to a pleading, if any, expires:~~

~~(1) With the written consent of the adverse party; or~~

~~(2) With the permission of the Tax Appeals Commission.~~

~~(d) An amended petition shall not confer jurisdiction on a matter that would otherwise not come within the jurisdiction of the commission, including matters that are time-barred.~~

~~(e) Upon filing of an amended pleading, the commission shall provide deadlines to the parties for filing an answer, reply, or both, as applicable.~~

Pleadings may be amended in accordance with Arkansas Code § 26-18-1113(f).

26 CAR § 411-206. Jurisdictional objections or deficiencies.

(a)(1) Any objection to Tax Appeals Commission jurisdiction shall be raised by filing a motion to dismiss under 26 CAR § 411-301.

(2) The commission may raise a jurisdictional matter on its own.

(b) All case deadlines, including the deadline for the Department of Finance and Administration to file an answer, are automatically tolled upon the filing of such a motion to dismiss or the commission's notice or order raising a jurisdictional matter.

(c)(1) For a case assigned to the commission en banc, whether the commission has jurisdiction shall be decided en banc.

(2) For a case assigned to a single commissioner, that commissioner shall decide.

(d)(1)(A) After notice and an opportunity for a response, if it is determined that the commission lacks jurisdiction, the case shall be dismissed.

(B) The dismissal shall:

(i) Explain the legal basis; and

(ii) Be published under 26 CAR § 411-502.

(2)(A) If it is determined that the commission has jurisdiction, at least in part, then an order shall be issued, including setting the deadline for any answer, and the case shall proceed.

(B) Any jurisdictional objection ~~and the decision thereon~~ that is overruled shall be explained in the subsequent decision on the merits under 26 CAR § 411-501, if not explained by an order denying the objection.

Subpart 3. Motions and Other Procedures

26 CAR § 411-301. Motions.

(a)(1) All requests for relief shall be by motion.

(2) Motions must be in writing or made during a hearing or conference.

(3) Motions must fully state the action requested and the grounds relied upon.

(4) Written motions shall be:

(A) Filed with the Tax Appeals Commission; and

(B) Served on the opposing party, consistent with 26 CAR § 411-106.

(5) When time allows, the other party may, within seven (7) days of the service of the written motion, file a response in opposition.

(6) When time allows, within seven (7) days of the service of the response, the moving party may, but is not required to, file a reply.

(7) The commission may grant any motion not responded to without further notice.

(8) The presiding commissioner may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(9)(A) A party that disputes the commission's jurisdiction or authority shall not file a notice or other document declaring limitations of the commission's jurisdiction or authority.

(B) Any such dispute shall be brought before the commission by appropriate motion.

(b) A motion for summary judgment is not allowed.

(c)(1)(A) The presiding commissioner may grant a motion for continuance of a hearing or extension of a deadline for good cause shown, except that the commission cannot extend an appeal petition deadline.

(B) A request for the extension of a deadline should be filed prior to the expiration of the original deadline, but failure to timely file shall not preclude the presiding commissioner from extending a deadline.

(C) Stipulations of the parties for continuances will not be recognized.

(2) Such a motion shall be made in writing or made during a hearing or conference.

(3) The motion must state the grounds to be considered and be made as soon as practicable and for hearings, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing.

(4) In determining whether to grant a continuance or extension, the presiding commissioner may consider:

(A) Prior continuances or extensions;

(B) The interests of all parties;

(C) The likelihood of informal settlements;

(D) The existence of an emergency;

(E) Any objection;

(F) Any applicable time requirement;

(G) The existence of a conflict of the schedules of parties, their authorized representatives, or witnesses;

(H) The time limits of the request; and

(I) Other relevant factors.

(5) The presiding commissioner may require documentation of any grounds for continuance or extension.

(d) A request from a party that is not styled as a motion may be deemed a motion by the presiding commissioner.

(e)(1) A party or parties may move for voluntary dismissal or withdrawal from consideration based on:

(A) Department of Finance and Administration withdrawal of the action or decision at issue;

(B) Taxpayer withdrawal of the petition;

(C) Settlement by the parties under Arkansas Code § 26-18-1111;

(D) Mootness; or

(E) Any other resolution such that the commission does not need to reach a decision or jurisdictional dismissal in the case.

(2) The filing of such a motion automatically tolls any pending case deadlines, including the deadline for the department to file an answer.

26 CAR § 411-302. Case management.

(a) In any case, the presiding commissioner may direct the parties to appear for a conference.

(b) This conference may consider:

(1) The simplification of issues;

(2) The status of efforts to stipulate pursuant to 26 CAR § 411-403;

(3) The necessity or desirability of amendments to the petition, answer, or reply;

(4) The possibility of settlement;

(5) The scheduling of the hearing and other case events or deadlines; and

(6) Such other matters as may aid in the disposition of the action.

(c)(1) After the conference, the presiding commissioner may make an order that:

(A) Recites the action taken at the conference, any amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered; and

(B) Limits the issues for hearing to those not disposed of by stipulation or other agreement of the parties.

(2) Such order, when entered, controls the subsequent course of the case, unless subsequently modified.

26 CAR § 411-303. On-site observation.

(a) The Tax Appeals Commission may conduct on-site observation of tangible personal property, real property, and activities that are relevant to a controversy.

(b) On-site observation may occur only with:

(1) The consent of the taxpayer; and

(2) All parties invited to observe and record.

(c)(1) A party may request on-site observation by motion.

(2) See 26 CAR § 411-301.

26 CAR § 411-304. No discovery.

(a) There is no discovery between the parties in Tax Appeals Commission adjudications, including without limitation:

(1) Interrogatories;

(2) Requests for admission;

(3) Requests for production;

(4) Depositions; and

(5) Requests for inspections.

(b) ~~Neither the commission nor a party or authorized representative shall~~ The parties shall not issue subpoenas ~~to the parties or outside parties~~ in connection with cases before the commission.

(c)(1) A taxpayer may contact the Department of Finance and Administration if the taxpayer wants to obtain his or her tax records.

(2) The commission does not hear disputes concerning the production of documents by the department under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or Arkansas Code § 26-18-403.

(d) The presiding commissioner may order the parties to provide relevant documents and other information deemed necessary to resolve an appeal.

26 CAR § 411-305. Closure of record in written submissions cases.

(a) For small claims and nonexpedited cases to be decided on written submissions without a hearing, ~~after the reply has been filed or the deadline to do so has passed under 26 CAR § 411-203,~~ the Tax Appeals Commission shall schedule the closure of the written record, as a deadline for briefs, motions, or other submissions.

(b) Once the record is closed, the deadline for the commission to issue a decision shall commence.

26 CAR § 411-306. Streamlined procedure to resolve a small claim.

Under Arkansas Code § 26-18-1113(h), small claims are subject to the following streamlined procedures unless the presiding commissioner designates otherwise:

(1) No answer or reply is required unless ordered by the presiding commissioner; and

(2) A ruling, including a summary decision, may be issued by the presiding commissioner at any time when warranted by the documents submitted.

Subpart 4. Hearings

26 CAR § 411-401. Hearing scheduling.

(a)(1) The presiding commissioner shall schedule the hearing, which, except in expedited cases, shall be held within ninety (90) days of the date the reply was filed or the expiration of the deadline to file the reply.

(2) For expedited cases, see 26 CAR § 411-204.

(b) A Notice of Hearing shall be provided to the parties within thirty (30) days of the filing of the reply or the expiration of the deadline to file a reply.

(c) The presiding commissioner may order hearing by a means other than the means elected by the taxpayer for good cause, or when it is in the interest of justice.

26 CAR § 411-402. Prehearing, hearing, and post-hearing procedures.

(a) The presiding commissioner:

(1) Presides at the hearing;

(2) Presides over prehearing, post-hearing, and other case conferences and matters, including if a hearing has been waived altogether; and

(3) May rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the case.

(b) Parties have the right to participate or to be represented by an authorized representative in all hearings or other proceedings related to their appeal.

(c) Prehearing conferences and reports may be delegated by the presiding commissioner to Tax Appeals Commission staff, provided that staff may not rule on motions.

(d) Parties have the right to:

(1) Introduce evidence that is ~~probative of material fact;~~:

(A) Probative of material fact; and

(B) Relative to the issues raised in the petition.

(2) Cross-examine witnesses as necessary for a full and true disclosure of the facts; and

(3) Present evidence in rebuttal.

(e)(1) The presiding commissioner may require disclosure of all witnesses, identifying those witnesses who may testify and those expected to testify, by a specified date in advance of the hearing.

(2) Advance disclosure of witnesses is never required in expedited cases under 26 CAR § 411-204.

(f)(1) The presiding commissioner is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.

(2) The presiding commissioner may limit the time allowed for arguments.

(g) The presiding commissioner will conduct the hearing in the following manner:

(1) The parties will be allowed to present their cases in the sequence determined by the presiding commissioner, taking into consideration the burden of proof; and

(2)(A) Each witness must be sworn or affirmed by the presiding commissioner and be subject to examination and cross-examination as well as questioning by commissioners.

(B) The presiding commissioner may limit questioning in a manner consistent with the law.

26 CAR § 411-403. Stipulation.

(a) The parties to a case shall, in good faith, make every reasonable effort to stipulate all relevant and nonprivileged facts to the fullest extent to which a complete or qualified agreement can or fairly should be reached.

(b) The Tax Appeals Commission may decide a case based on stipulated facts.

(c) Efforts to stipulate are not required in expedited cases under 26 CAR § 411-204.

(d) If the amount of tax in dispute is less than ten thousand dollars ($10,000), it is presumed that efforts to stipulate are ~~not reasonable and thus~~ unnecessary, unless the presiding commissioner specifies otherwise.

26 CAR § 411-404. Evidence.

(a) The presiding commissioner shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy.

(b) Irrelevant, immaterial, and unduly repetitive evidence shall be excluded.

(c)(1) The presiding commissioner may require prefiling of exhibits by a specified date in advance of the hearing.

(2) Prefiling of exhibits is never required in expedited cases under 26 CAR § 411-204.

(d)(1) Spreadsheets or workbooks shall be provided electronically.

(2) See 26 CAR § 411-604.

26 CAR § 411-405. Recording of hearing.

(a)(1) The parties may record the hearing.

(2) Only audio recordings shall be permitted.

(3) Broadcasting of hearings in any form is prohibited.

(b)(1) If a party desires to have a written transcript made of the hearing, the requesting party shall bear all costs of having it prepared.

(2) The Tax Appeals Commission is not required to prepare a transcript of a hearing.

(c)(1) A party may arrange for a hearing to be reported verbatim by a court reporter.

(2) Such party shall pay all associated costs and provide notice to the commission and the other party prior to the hearing.

(3) Such party shall provide the other party a verbatim copy, if transcribed, at no cost to the recipient.

(d) The commission may record the hearing and may provide a copy of the recording to the parties upon request.

26 CAR § 411-406. Failure to appear at hearing or prosecute case.

(a) If a party fails to appear or participate in a hearing after proper service of notice, the Tax Appeals Commission may proceed with the hearing and render a decision notwithstanding the party's failure to appear or participate.

(b)(1) If a taxpayer stops communicating with the commission or becomes unreachable, the presiding commissioner may issue a warning to the taxpayer of potential dismissal for nonprosecution, which provides at least ten (10) days to respond.

(2) If the taxpayer fails to respond to the warning, the presiding commissioner may issue an order to show cause why the case should not be dismissed for nonprosecution, which provides at least ten (10) days to respond.

(3) If the taxpayer fails to respond to the order to show cause, the commission may dismiss the case.

(4) Any warning or order to show cause issued under this subsection shall be served on the taxpayer by first-class mail and by electronic means, if available.

26 CAR § 411-407. Bifurcation of proceedings.

(a) If the Tax Appeals Commission determines that a resolution of a threshold issue, such as a statute of limitations, may dispose of a case, the commission may bifurcate proceedings to hear and decide the threshold matter.

(b)(1) If the determination of the threshold issue does not resolve the case, then an order shall be issued, and the case shall proceed.

(2) The determination of the threshold issue shall be explained in the subsequent decision on the merits under 26 CAR § 411-501.

Subpart 5. Decisions

26 CAR § 411-501. Issuance of decision to the parties.

(a)~~(1)~~ The Tax Appeals Commission will issue a written decision in accordance with Arkansas Code § 26-18-1116.

~~(2) The decision will include findings of fact and conclusions of law.~~

~~(3) It will grant or deny relief and issue orders as the commission deems appropriate to carry out the decision.~~

~~(b)(1) The Commission shall serve the decision on the parties.~~

~~(2)~~(b) Service of the decision is the conclusion of substantive commission proceedings to adjudicate the appeal petition.

~~(c)(1) The decision shall be issued within ninety (90) days of the close of the hearing, submission of final post-hearing brief, or other close of the record, unless it is an expedited case with a shorter deadline.~~

~~(2) The commission may extend this deadline for good cause by submitting a letter to the parties.~~

~~(d)(1) A party may seek judicial relief by following the procedures stated in the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.~~

~~(2)~~(c) Neither the commission nor any commissioner shall be made a party in a suit for judicial relief.

~~(e)~~(d)(1) A party may, within seven (7) days of the decision, move for reconsideration to correct a clear error of fact or law.

(2) Such a motion is optional and not required to seek judicial relief.

~~(f)~~(e) The commission may correct an error in a decision on its own initiative.

26 CAR § 411-502. Redaction and publication of decision.

~~(a)~~ The decision shall be redacted and published by the Tax Appeals Commission ~~on its website~~ in accordance with Arkansas Code § 26-18-1119.

~~(b)(1) Before publication of a decision, taxpayer-identifying information shall be redacted.~~

~~(2) Taxpayer-identifying information includes taxpayer:~~

~~(A) Names;~~

~~(B) Identification or account numbers;~~

~~(C) Addresses; and~~

~~(D) Other information the disclosure of which would lead to identification of the taxpayer.~~

~~(3) Taxpayer-identifying information does not include facts about the taxpayer's activities or operations, particularly those facts that serve as the basis of the decision, unless publication of such facts would allow the public to identify the taxpayer.~~

26 CAR § 411-503. En banc decisions.

(a) In an en banc case, a commissioner may join in, concur with, or dissent from a decision, in all or in part.

(b) A decision or portion of a decision in which two (2) or more commissioners join creates binding precedent as provided in Arkansas Code § 26-18-1116(d).

(c)(1) Where only two (2) commissioners are available, if the vote on the outcome of all or part of the case is split, then such a split shall be resolved by sustaining that part of the Department of Finance and Administration's action or decision that requires the taxpayer to bear the burden of proof and by resolving in favor of the taxpayer that part of the department's action or decision that requires the department to bear the burden of proof.

(2) If there is disagreement between the participating commissioners as to which party bears the burden of proof under subdivision (c)(1) of this section, the party bearing the burden shall be determined by the presiding commissioner.

Subpart 6. Electronic Filing

26 CAR § 411-601. Scope and application of electronic filing.

(a)(1) 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.

(2) The petition should be filed electronically if possible.

(b) Use of the electronic filing system by a taxpayer without an authorized representative is encouraged but not required.

(c)(1) Only one (1) method of submission is necessary.

(2) Once a document has been submitted through the electronic filing system, neither mail nor email it to the Tax Appeals Commission.

(3) In the event the same document is submitted more than once, the earliest-submitted filing will be received as the official submission, and subsequent submissions will be disregarded.

~~(c)~~(d) Filings shall be submitted by mail, hand delivery, or email in the event of electronic filing system errors or other technical problems under 26 CAR § 411-606.

~~(d)~~(e)(1) The ~~Tax Appeals Commission~~ commission shall electronically file or issue any notice, order, decision, or other document prepared by the commission.

(2) The commission shall provide a paper copy of such document to any party not using the electronic filing system.

~~(e)~~(f) An electronic document is the official record and has the same force and effect as a document filed conventionally.

~~(f)~~(g)(1) Conventional documents shall be scanned by the commission and made part of the electronic record.

(2) Once scanned, conventional paper documents may be destroyed.

26 CAR § 411-602. Time of filing.

(a)(1) An electronic document is submitted when the transmission to the electronic filing system is completed.

(2) It is the user's responsibility to confirm that the transmission of the electronic document was completed.

(b) After review and acceptance by the Tax Appeals Commission, an electronic document shall be considered filed as of the date and time of submission.

(c) Notice of a rejection of a document will be provided to the filer electronically.

(d) The electronic filing system shall record the date of filing, which shall have the same force and effect as a manually affixed stamp.

(e) Any document received by the electronic filing system before midnight shall be deemed filed on that date.

26 CAR § 411-603. Signatures.

(a) An electronic document shall be deemed to be signed by the ~~registered~~ user who files it.

(b) An electronic document may be signed by scanned or digital signature, or, for signatures other than a taxpayer's signature on a Power of Attorney form, a typewritten name may be used.

26 CAR § 411-604. Format of documents.

(a) Electronic documents filed by the parties shall:

(1) Be legible; and

(2) Not contain hyperlinks to external sources.

(b) ~~Upon request of the Tax Appeals Commission, spreadsheets~~ Spreadsheets or workbooks shall be provided in both:

(1) A static format readable by a document viewer, such as portable document format; and

(2)(A) An unlocked format compatible with commonly used spreadsheet software.

(B) Subdivision (b)(2)(A) of this section shall not apply to expedited proceedings.

(c) Any encrypted or password-protected document will not be considered effectively filed with the Tax Appeals Commission until the commission and the opposing party both have unrestricted access to the document.

(d) A filing that requires the download of software, enrollment, or authorization from a third-party electronic system is prohibited.

26 CAR § 411-605. ~~Registration requirements.~~Email Requirement.

Users of the Tax Appeals Commission's electronic filing system shall furnish at least one (1) valid email address for electronic service and other notices.

26 CAR § 411-606. Technical failures.

(a) A technical failure of the electronic filing system shall excuse an untimely filing upon receipt of sufficient evidence of the attempt to file timely.

(b)(1) A user's technical problem that prevents submitting an electronic filing is not a technical failure of the electronic filing system.

(2) Users that encounter difficulties with their systems shall use alternative means to comply, including conventional filing.

(c) If a technical failure of the electronic filing system or other technical problem prevents a user from submitting an electronic filing, documents shall be submitted and served conventionally.