

## **ARKANSAS TAX APPEALS COMMISSION**

*The following Rule 5 governs procedures in tax cases before the Commission.*<sup>1</sup>

### **Rule 5 Adjudicative Proceedings**

#### **§ 5-101 Applicability**

This rule applies in all administrative adjudications conducted by the Commission and describes the process by which the Commission adjudicates appeal petitions challenging decisions of the Department within the jurisdiction of the Commission.

#### **§ 5-102 Assignment of Proceedings**

(a) The Chief Commissioner shall assign the proceeding to one Commissioner or to all available Commissioners sitting en banc, depending on the nature and significance of the proceeding. It is presumed that:

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<sup>1</sup> Rule 5 uses definitions provided by § 1-102.

#### **§ 1-102 Definitions**

As used in these rules, these terms have the following meanings:

- (a) "Authorized representative" means an individual authorized by a party to act on the party's behalf in proceedings before the Commission in accordance with § 5-103.
- (b) "Clerk" means the employee of the Commission designated by the Chief Commissioner to act as Clerk of the Commission.
- (c) "Commission" means the Arkansas Tax Appeals Commission.
- (d) "Days" means calendar days unless otherwise specified.
- (e) "Department" means the Arkansas Department of Finance and Administration.
- (f) "Expedited proceeding" means an adjudicative proceeding required by law to be expedited with a shorter petition deadline, hearing deadline, decision deadline, or a combination thereof.
- (g) "Presiding Commissioner" means the Commissioner designated by the Chief Commissioner to preside over an adjudicative proceeding as provided in § 5-102.
- (h) "Taxpayer" means an individual or entity that:
  - (1) Is challenging the state's taxing jurisdiction; or
  - (2) Has standing to challenge a decision by the Department:
    - (A) Imposing liability for a tax, penalty, or interest;
    - (B) Denying a credit or deduction;
    - (C) Denying a refund, credit, or incentive claim or application;
    - (D) 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;
    - (E) Closing a 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 right to a hearing with the Commission under state law.

(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 expedited proceedings under § 5-204 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.

(b) Presiding Commissioner.

(1) For en banc proceedings, the Chief Commissioner shall preside at the hearing or may designate another Commissioner to preside at the hearing.

(2) For proceedings assigned to a single Commissioner, that Commissioner shall preside at the hearing.

### **§ 5-103 Appearances and Representation**

(a) Any 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. Alternatively, the Taxpayer may appear on his or her own behalf.

(b) 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. The Commission's form must be used. Until a completed [Power of Attorney form](#) is filed, the Commission and the Department shall communicate directly with the Taxpayer.

(c) The Department shall be represented by an authorized representative licensed to practice law in the state of Arkansas. 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.

#### **§ 5-104 In-Person Hearings Outside of Little Rock**

(a) The 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 an in-person hearing in Little Rock, a teleconference, or a videoconference.

(d) The Department may elect to appear by teleconference or videoconference.

#### **§ 5-105 Consolidation**

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 promote the just, speedy, and inexpensive resolution of the proceedings and would not unduly prejudice the rights of a party, including the Taxpayer's right to confidentiality.

#### **§ 5-106 Filing and Service**

(a) Unless a filing is rejected by the 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 in paper format by the Commission at its office during the hours of operation in § 1-104, whether by in-person delivery, United States Mail, or otherwise.

(b) The Commission shall establish a system for electronic filing and service. See § 5-601 *et seq.*

(c) Every pleading, except for the appeal petition, and every other document filed for the proceeding 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. Service shall be to the address provided by the authorized representative or party.

(1) If both parties or their authorized representatives are users of the Commission's electronic filing system, service shall be by the electronic filing system.

(2) 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 in writing by the parties.

(3) The Taxpayer shall not serve the appeal petition on the Department. Service by the Taxpayer of the appeal petition upon the Department shall be void. The petition is served on the Department by the Commission within fifteen (15) days of the filing date of the petition.

(d) A party or authorized representative shall file with the Commission a notice of any change of address, phone number, or email address within ten (10) days of such change.

### **§ 5-107 Computing Time**

(a) Any period of time set forth in these rules 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 time period is a day on which the 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.

### **§ 5-108 Noncompliance**

If a document is timely submitted but noncompliant, the party shall have ten (10) days to cure. The corrected document shall be deemed filed on the date originally submitted.

### **§ 5-109 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, non-substantive 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 Commission, 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 notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(e) The parties shall not communicate or cause communication with employees of the Department of Inspector General regarding confidential proceedings except in connection with such officers or employees providing technical or administrative support to the Commission.

### **§ 5-201 Appeal Petition**

(a)(1) Only a Taxpayer or a Taxpayer's authorized representative can file an appeal petition. The definition of "Taxpayer" limits petitions to protesting certain actions or decisions of the Department 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.

(2) The Commission cannot hear a petition protesting an interim Department action such as day-to-day administration of an ongoing audit.

(b) The Taxpayer is responsible for meeting the petition deadline, and the Commission cannot extend petition deadlines.

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

(2) Certain actions of the Department can result in expedited proceedings that impose petition deadlines as short as five (5) days. The petition shall indicate whether proceedings are required to be expedited. See § 5-204, Expedited Proceedings.

(c)(1) The Commission encourages Taxpayers to submit petitions online at its website. 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; and

(B) Reasonably specify the matter, including the relevant Department account ID, for consideration by the Commission.

(3) An appeal petition that is filed without the form or forms approved by the Commission shall be supplemented with the prescribed form for use as a cover sheet. The Clerk may prepare this form.

(d) The petition shall include whether the Taxpayer elects for the hearing to be in person, by teleconference, by videoconference, or by a combination thereof, or no hearing with the matter to be decided solely on written submissions.

(e) Petitions should not be made regarding the following, for which the Commission does not have jurisdiction:

(1) A tax that is excepted from the Arkansas Tax Procedure Act 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 for which the Office of Hearings and Appeals has already issued an administrative decision or held a prehearing or hearing;

(5) A claim that is the subject of pending litigation; or

(6) A claim for a tax not administered by the Department, including without limitation the following: local ad valorem property tax, local advertising and promotion tax on lodging or restaurants, federal tax, tax of another state, or tax of a foreign country.

### **§ 5-202 Answer**

(a) The Department shall file an answer to an appeal petition within sixty (60) days of receipt of the petition from the Commission.

(b) An answer is not required in an expedited hearing. See § 5-204.

### **§ 5-203 Reply**

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

### **§ 5-204 Expedited Proceedings**

(a) Certain types of proceedings are required by law to be heard on an expedited basis, including shortened petition deadlines. See the [Appeal Petition for Expedited Proceeding form](#).

(b) The petition shall indicate that it is a type of proceeding that must be expedited by filing the [Appeal Petition for Expedited Proceeding form](#).

(c) Upon filing a petition for an expedited proceeding, the Taxpayer or Taxpayer's authorized representative shall call the Clerk to notify the Commission of the need to expedite the proceedings.

(d) If the Taxpayer or Taxpayer's authorized representative fails to notify the Commission of the need to expedite the proceedings, and the Commission subsequently determines that the matter should be expedited, then the Commission shall expedite the matter.

(e) For an expedited proceeding, the hearing shall be scheduled within the applicable deadline after the petition is filed, and no other pleadings are required. The Department may elect to file an answer.

### **§ 5-205 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 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 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.

### **§ 5-206 Jurisdictional Objections**

(a) The Department may raise a jurisdictional objection to a proceeding by filing a motion under § 5-301.

(b) If the motion is filed within thirty (30) days after service of the petition, then the deadline for the Department to file the answer shall be tolled upon the filing of the motion.

(c) For a proceeding assigned to the Commission en banc, whether the Commission has jurisdiction shall be decided en banc. For a proceeding assigned to a single Commissioner, that Commissioner shall decide.



(d)(1) After notice and an opportunity for a response, if it is determined that the Commission lacks jurisdiction, the case shall be dismissed and an order of dismissal entered. The order of dismissal shall explain the legal basis for dismissal and shall be published under § 5-502.

(2) 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. Any jurisdictional objection and the decision thereon shall be explained in the subsequent decision on the merits under § 5-501.

### **§ 5-207 Transition from the Department's Office of Hearings and Appeals**

(a) If an action or decision occurring before January 1, 2023, has been protested to the Department's Office of Hearings and Appeals, and neither a prehearing nor hearing has been held, the Taxpayer may convert the proceeding to the Commission by filing an appeal petition under § 5-201 on or after the effective date of these Rules.

(1) The petition shall include a copy of the protest to the Office of Hearings and Appeals and may include additional substantive filings by the Taxpayer in that proceeding, such as an answer to an information request.

(2) The Commission shall serve the appeal petition on the Department.

(3) Petitions submitted to the Commission before the effective date of these rules shall not be accepted.

(b) The Department shall answer under § 5-202. The answer may include copies of any substantive filings by the Department in that proceeding, such as an answer to an information request.

(c) Thereafter, the converted proceeding shall be conducted like other proceedings before the Commission, including the Taxpayer's option to reply under § 5-203.

### **§ 5-301 Motions**

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

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

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

(3) Written motions shall be filed with the Commission and served on the opposing party, consistent with § 5-106.

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

(5) 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.

(6) The Commission may grant any motion not responded to without further notice.

(7) The Presiding Commissioner may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

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

(c) 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. A request for the extension of a deadline shall be filed prior to the expiration of the original deadline. Failure to timely file shall not preclude the Presiding Commissioner from extending a deadline. Stipulations of the parties for continuances will not be recognized.

(1) Such a motion shall be made in writing.

(2) 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.

(3) 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.

(4) 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.

#### **§ 5-302 On-Site Observation**

(a) The 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 the consent of the Taxpayer and with all parties invited to observe and record.

#### **§ 5-303 No Discovery**

(a) There is no discovery in Commission adjudications, including without limitation: interrogatories, requests for admission, requests for production, depositions, and requests for inspections.

(b) Neither the Commission nor a party or authorized representative shall issue subpoenas to the parties or outside parties in connection with proceedings before the Commission.

(c) A Taxpayer 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 the Department under the

Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., or Arkansas Code § 26-18-403.

### **§ 5-401 Hearing Scheduling**

(a) The Presiding Commissioner shall schedule the hearing, which, except in expedited proceedings, shall be held within ninety (90) days of the date the reply was filed or the expiration of the deadline to file the reply. For expedited proceedings, see § 5-204.

(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.

### **§ 5-402 Hearing Procedures**

(a) The Presiding Commissioner presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings.

(b) Parties have the right to participate or to be represented by an authorized representative in all hearings or pre-hearing conferences related to their proceeding. Refer to § 5-102.

(c) Parties have the right to introduce evidence that is probative of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, and present evidence in rebuttal.

(d) The parties shall disclose all witnesses, identifying those who may testify and those expected to testify, at least ten (10) days prior to the hearing unless otherwise specified by order.

(e) 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. The Presiding Commissioner may limit the time allowed for arguments.

(f) 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.

(2) 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. The Presiding Commissioner may limit questioning in a manner consistent with the law.

(3) An authorized representative serving as an advocate, such as an attorney or consultant, shall not provide testimony. However, an officer, trustee, partner, or similar representative may provide testimony for a Taxpayer that is not an individual.

### **§ 5-403 Stipulation**

(a) The parties to a proceeding shall 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 Commission may make a decision based on stipulated facts.

### **§ 5-404 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) A party seeking admission of an exhibit must provide four (4) copies of each exhibit at the hearing, or six (6) copies for an en banc hearing, unless the party submits the exhibit electronically in a manner approved by the Presiding Commissioner. All exhibits admitted into evidence must be appropriately marked.

(d) Exhibits for the hearing shall be filed with the Commission and served on the opposing party or authorized representative at least five (5) days prior to the hearing, except in the case of expedited proceedings under § 5-204.

### **§ 5-405 Recording of Hearing**

(a) The parties may record the hearing. Notice of the intent to record a hearing shall be provided to the opposing party. Only audio recordings shall be permitted. Broadcasting of proceedings in any form is prohibited.

(b) If a party desires to have a written transcript made of the hearing, the requesting party shall bear all costs of having it prepared. The Commission shall not prepare a transcript of a proceeding.

(c) A party may arrange for a hearing to be reported verbatim by a court reporter. Such party shall pay all associated costs and provide notice to the Commission and the other party prior to the hearing. Such party shall provide the other party a verbatim copy, if transcribed, at no cost to the recipient.

### **§ 5-406 Failure to Appear at Hearing**

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

### **§ 5-501 Issuance of Decision to the Parties**

(a) The Commission will issue a written decision. The decision will include findings of fact and conclusions of law. It will grant or deny relief and issue orders as the Commission deems appropriate to carry out the decision.

(b) The Clerk shall serve the decision on the parties. Service of the decision by the Clerk is the conclusion of substantive Commission proceedings to adjudicate the appeal petition, although the publication procedures under § 5-502 may continue.

(c) The decision shall be issued within ninety (90) days of the close of the hearing or the submission of the final post-hearing brief, unless it is an expedited proceeding with a shorter deadline. The Commission may extend this deadline for good cause by submitting a letter to the parties.

(d) A party may seek judicial relief by following the procedures stated in the Arkansas Tax Procedure Act, § 26-18-101 *et seq.* Neither the Commission nor any Commissioner shall be made a party in a suit for judicial relief.

## **§ 5-502 Redaction and Publication of Decision**

(a) The decision shall be published by the Commission on its website. Before publication of a decision, Taxpayer-identifying information shall be redacted.

(1) Taxpayer-identifying information includes Taxpayer names, identification or account numbers, addresses, and other information the disclosure of which would lead to identification of the Taxpayer. Dollar amounts will also be redacted unless necessary to understand the reasoning of the decision.

(2) 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.

(b) The Taxpayer shall have ten (10) days from service of the unredacted decision to file proposed redactions with the Commission using the [Request for Redactions form](#). Such proposed redactions shall be based on the standards provided by this section.

(c) After expiration of the ten (10) day period and after due consideration of any proposed redactions from the Taxpayer, the Commission shall finalize the redaction of Taxpayer-identifying information, and the decision shall be published on the Commission's website.

## **§ 5-601 Scope and Application of Electronic Filing**

(a) 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.

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

(c) Conventional paper filings shall be submitted in the event of electronic filing system errors or other technical problems pursuant to § 5-606.

(d) The Commission shall electronically file or issue any notice, order, decision, or other document prepared by the Commission. The Commission shall provide a paper copy of such document to any party not using the electronic filing system.

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

(f) Conventional documents shall be scanned by the Clerk and made part of the electronic record. Once scanned, conventional documents may be destroyed.

### **§ 5-602 Time of Filing, Confirmation, and File-Mark**

(a) An electronic document is submitted when the transmission to the electronic filing system is completed. It is the user's responsibility to confirm that the transmission of the electronic document was completed.

(b) After review and acceptance by the Clerk, 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 of the Clerk.

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

### **§ 5-603 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.

### **§ 5-604 Format of Documents**

Electronic documents shall be legible and shall not contain hyperlinks to external sources.



### **§ 5-605 Registration Requirements**

(a) Registration of users is limited to individuals. The log-in sequence for a user shall be used only by the user to whom it is assigned and by agents authorized by the user.

(b) Users shall furnish at least one email address for electronic service and other notices. It is the user's responsibility to ensure that the electronic filing system has the correct email address.

### **§ 5-606 Technical Failures**

(a) A technical failure of the electronic filing system shall excuse an untimely filing.

(b) A user's technical problem that prevents submitting an electronic filing is not a technical failure of the electronic filing system. Users that encounter difficulties with their systems shall use alternative means to comply, possibly including conventional filing.

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

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