
An Update on the Reorganization of the Mississippi State Tax Commission*

By Stephen M. Wilson

Stephen Wilson discusses the transformation of the Mississippi State Tax Commission into the Mississippi Department of Revenue and the Mississippi Board of Tax Appeals, a beneficial change that should address prior questions regarding the objectivity and independence of the administrative tax appeals process.

As of July 1, 2010, the Mississippi State Tax Commission (“the Commission”), the longstanding tax collection agency and administrator of the state’s revenue laws, was totally reorganized and restructured by legislation designed to provide more independence between the tax collection administration and enforcement processes of the state government and the tax assessment appeals process.

Prior to this landmark change, the Commission had exclusive jurisdiction not only over the administration, collection, enforcement, and processing of returns for state taxes, but also over all levels of administrative review of any tax disputes between a taxpayer and the Commission itself. The now-repealed statutes provided that the Commission consisted of a chairman and two associate commissioners, all of whom were appointed by the Governor. As a result, the appointed chairman held two titles—Chairman of the Commission and Commissioner of Revenue. The individual appointed as Chairman was further described in the statute as the executive officer of the Commission, having the power and authority to perform all duties prescribed by law to be performed by the Chairman of the Commission, the Commissioner of Revenue, or the Commission. He or she was designated by the former law, along with the two associate commissioners, to serve on a three-

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person appeal board for administrative appeals by taxpayers of assessments issued by the Commission. As Commissioner of Revenue, his or her powers and duties included directing the Commission's function of administering the state's tax laws, processing tax returns, collecting taxes determined to be due on those returns, and enforcing the collection of those taxes.

In practice, questions of objectivity and independence in the administrative appeals process arose since the audit function of the Commission was also under the supervision of the Chairman. The audit staff would conduct audits and issue assessments under the name and authority of the Chairman. If the taxpayer disagreed with the assessment and was unable to work out a satisfactory settlement at the audit level, the taxpayer's first level of appeal was to the Commission's Board of Review. An appeal had to be filed by the taxpayer within 30 days of the Commission's action. The

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Board of Review was composed of senior level employees of the Commission who were knowledgeable in the particular area of tax law at issue on appeal. If the taxpayer disagreed with a decision rendered by the Board of Review, its next level of appeal was to the "full commission," the three-member Appeal Board composed of the Commissioner and the two associate commissioners described above. Again, an appeal had to be filed by the taxpayer within 30 days after the action taken by the Board of Review in order to take this next step. If a taxpayer was not satisfied with the Appeal Board's decision, the taxpayer could then obtain an "independent" review by appealing to the chancery court of the county or judicial district in which the taxpayer had a place of business or in the First Judicial District of Hinds County, Mississippi (in which the city of Jackson is located) and receive a *de novo* hearing. A resident individual taxpayer could file in the chancery court of the county in which he or she was resident. A non-resident taxpayer could file in any county in which the taxpayer had a place of business or in Hinds County.

If the taxpayer was appealing a denial of a refund claim by the Commission, then no bond was required to be posted with an appeal. However, if a taxpayer chose to file an appeal of an assessment of the Com-

mission that was confirmed by the Appeal Board, then the taxpayer was required to post a surety bond, issued by a surety company qualified to write surety bonds in the state, at the time that the appeal was filed with the chancery court. This surety bond was required to be in an amount equal to twice the amount of the disputed tax assessed.¹ An alternative to the bond requirement for the appeal of an assessment was for the taxpayer to pay the tax under protest prior to filing the appeal petition and then to seek a refund in the appeal. This penal bond requirement, or the payment of the tax under protest and then seeking a refund on appeal

alternative, became quite a deterrent for a taxpayer seeking review by the chancery court. Making matters even more difficult for the taxpayer, any appeal of a tax assessment was required to be filed within 30 days after the date of the order of the Commission, a relatively short time in which to perfect an appeal.² Once

an appeal was filed with the chancery court, the court was required to conduct a "full evidentiary judicial hearing on the issues" raised in the taxpayer's appeal of the assessment, but was also directed by statute to give deference to the decision and interpretation of the law and regulations by the Commission as it did with the decisions and interpretations of any administrative agency in Mississippi.³

The design of this system for resolving tax disputes with the Commission was somewhat confusing for the taxpayer and continually subjected the appeals process to claims of lack of independence and objectivity. The audit function, which produced the assessment in dispute, was supervised and directed by the same individual (the Chairman) who sat on the Appeal Board (the Commissioner) hearing the disputed decision. Although in practice the Appeal Board could and would overturn the decisions of the audit function and the Board of Review from time to time, questions of independence in the administrative appeals process continued to be raised by aggrieved taxpayers and tax practitioners.

In an attempt to address these issues and to provide more independence, clarity, and objectivity to the state tax administrative appeals process in Mississippi, the Mississippi State Legislature, in its 2009 legislative

session, passed Senate Bill 2712, and adopted 2009 Miss. Law Chapter 402, which became effective July 1, 2010. The new statutory scheme, codified at Mississippi Code Ann. § 27-3-1, *et seq.* and § 27-4-1, *et seq.* (together, the “Act”), eliminated the Commission and reorganized and restructured the duties formerly delegated to it and its Chairman and Commissioners. The Act created the Mississippi Department of Revenue, supervised by the Commissioner of Revenue as its executive officer, which is parallel to the structure of most other state departments of revenue or taxation around the country. Ed Morgan, formerly the Chairman of the Commission and also the Commissioner of Revenue, now serves as the Commissioner of Revenue of the new Mississippi Department of Revenue. The Commissioner of Revenue is appointed by the Governor for a six-year term, and that individual no longer carries with him or her the additional title of Chairman. The Commissioner of Revenue may not be removed except by impeachment or other statutory removal during a term, and may be reappointed to subsequent six-year terms by the then-sitting Governor.⁴

As described in the Act, the Mississippi Department of Revenue has responsibility for most of the administrative, return processing, collection, and enforcement functions formerly assigned to the Commission. The Commissioner of Revenue is vested with, and is to exercise, all of the powers, duties, and functions previously vested in the Chairman/Commissioner and the Commission, except for the duties and powers devolved upon the new Board of Tax Appeals by Mississippi Code Ann. § 27-4-3.⁵ All documents, records, property, etc., and all actions taken by the Chairman and/or the Commission (other than those transferred to the Board of Tax Appeals) became those of the Department of Revenue, and the creation of the Department is to be “treated as only a change of name.” Any reference in any rules or regulations of the Commission to “Chairman” now automatically is deemed to be a reference to the Commissioner of Revenue.⁶ Any use of the term “State Tax Commission” or the like in the statutes is now deemed to refer to the Department of Revenue, and any use of

the term “Chairman of the State Tax Commission” or the like in the statutes is now deemed to refer to the Commissioner of Revenue.⁷

As already indicated, the Act also created the Board of Tax Appeals, an entity separate and apart from the Department of Revenue, which “shall not in any way be subject to the supervision or control of the Department of Revenue ...”⁸ The Board of Tax Appeals is established as a three-member appeal panel and is to conduct the final level of administrative appeal review for any tax disputes with the Department of Revenue. Janet Mann, who previously

served as Deputy Director of Audit and Recovery for the Mississippi Division of Medicaid, was appointed by the Governor as the Chair of the Board of Tax Appeals, and, along with Associate Members James Wilkinson, a former county tax assessor and collector, and Marcus Martin, a practicing certified public accountant, they now serve

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as the three members of the Board of Tax Appeals. Wilkinson and Martin were the two acting Associate Commissioners of the Commission prior to July 1, 2010. The members of the Board serve staggered terms and are not subject to removal from office other than by impeachment or other statutory grounds.

In addition to being the final administrative level of review for the assessments and decisions of the Board of Review, the Board of Tax Appeals has jurisdiction over administrative appeals involving Department decisions under the alcoholic beverage control laws, certain homestead exemption matters, statewide equalization of the property tax rolls of a county, and objections to *ad valorem* tax assessments issued by the Department of Revenue. The Act also created the position of Executive Director of the Board, with administrative responsibilities for operation of the Board’s functions. Sam Polk, formerly the Secretary of the Commission, was designated as Executive Director of the Board.

In addition to the restructuring described above, there are several other important changes made by the Act. For example, the Department of Revenue was granted the right to appeal to the chancery court an adverse decision of the Board of Tax Appeals. Prior to that change, only a taxpayer had the right to appeal

an adverse decision on an assessment by the former Appeal Board. Venue for the appeals of decisions of the Board of Tax Appeals is similar to the prior venue rules for taxpayer appeals from decisions of the Appeal Board under prior law, with the exception that venue for an appeal by the Department does not appear to be appropriate in a county where a taxpayer resides unless the taxpayer also has a place of business in that county or the appeal is being filed in the First Judicial District of Hinds County.⁹

If both the taxpayer and the Department of Revenue appeal a decision issued by the Board of Tax Appeals, then the two appeals will be consolidated and the chancery court where the taxpayer filed the appeal will have jurisdiction over the consolidated cases. As was previously the case, the appeal at the chancery court level is a trial *de novo* and the court is still required to give deference to the Department's decisions and interpretations in its review. Fortunately, however, the Act reduces the appeal bond requirement. Now, the taxpayer must post an appeal bond in an amount equal to half of the disputed tax assessed, instead of double the disputed amount, as under previous law. In addition, this bond requirement can now be reduced or waived by the chancery court if, upon the taxpayer's motion and following a hearing, the court finds that the interests of the state in collecting the tax ultimately determined to be due are otherwise protected.¹⁰ However, since this reduction or waiver can only be done after a motion, notice, and hearing, it seems that the Department may argue that the bond must still be required as part of the filing of the appeal petition, but that after the bond and appeal petition are filed, the taxpayer could then make a motion to the court seeking a reduced bond or no bond.

The Act also now provides the taxpayer with 60 days in which to appeal decisions of the Department in each step in the administrative review process, as opposed to the prior 30-day requirement, and further provides 60 days to appeal an order of the Board of Tax Appeals to the chancery court.¹¹ This change is consistent with one of the fundamental recommendations of the well-respected Council On State Taxation (COST) published for consideration in order to create a fair appeals process for state taxpayers. (See COST Policy Statements under "About COST" at www.cost.org/public for COST's "Fair, Efficient and Customer-Focused Tax Administration" policy position.) As a cautionary note, the change to increase the time in which to appeal to 60 days does not apply to certain

ad valorem tax appeals, appeals of alcohol beverage control law permit decisions, or appeals of denials or suspensions by the Department of certain other permits and licenses, although the appeals of these matters will be handled by the Board of Tax Appeals under the new statutory scheme.

There is a transition rule for any appeal from an action taken by the Commission prior to July 1, 2010. Section 144 of 2009 Miss. Law Ch. 492 provides a savings clause which says that any administrative or judicial appeal procedure in place prior to July 1, 2010 remains in effect for any appeal of an action taken by the Commission prior to July 1, 2010. The only exception is that the final level of administrative appeal of such an action will be before the Board of Tax Appeals instead of the "full commission" or the Appeal Board, as under prior law.

We understand that both the Department of Revenue and the Board of Tax Appeals are currently drafting proposed regulations interpreting certain provisions of the Act and addressing additional issues, as authorized by the Act and the Mississippi Administrative Procedures Law. In the meantime, a helpful new website has been created for the Board of Tax Appeals at www.bta.ms.gov. Several of the pages are under construction as of the writing of this article, but they will ultimately have the necessary appeal forms and instructions for filing an appeal, along with rules and contact information. The website for the Mississippi State Tax Commission has been converted into the website for the Mississippi Department of Revenue, found at www.dor.ms.gov, and contains all the information previously found on the Commission's website. Tax practitioners have been encouraged by the new system and with the spirit of cooperation being exhibited by the officials of the Mississippi Department of Revenue and of the Mississippi Board of Tax Appeals.

ENDNOTES

* All opinions expressed herein are those of the author and not necessarily those of his firm or any other organization with which he is affiliated.

¹ See Miss. CODE ANN § 27-77-7(3).

² See Miss. CODE ANN § 27-77-5(7).

³ See Miss. CODE ANN § 27-77-7.

⁴ See Miss. CODE ANN § 27-3-1(1) and (4).

⁵ See Miss. CODE ANN § 27-3-4(1).

⁶ See Miss. CODE ANN § 27-3-4(4).

⁷ See Miss. CODE ANN § 27-3-4(5) and (6).

⁸ See Miss. CODE ANN § 27-4-1(1).

⁹ See Miss. CODE ANN § 27-77-7(2).

¹⁰ See Miss. CODE ANN § 27-77-7(3).

¹¹ See Miss. CODE ANN § 27-77-5(7) and § 27-77-7(1).