

# PUBLICATION

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## Spotlight on Tennessee: State Tax Appeals Procedures Amended

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During the 2014 Session, the Tennessee Legislature considered several tax and related initiatives before adjourning in late April. Among the provisions enacted were changes to the procedures for contesting taxes that are collected or administered by the Tennessee Department of Revenue (Department).

Effective January 1, 2015, this new law (2014 Public Chapter No. 854) amends various aspects of Tennessee's state tax appeals and certain other state-related procedures. Following is an overview of some provisions within this new law.

### Compromise of Tax Liabilities

The Department is authorized to compromise tax liabilities in the interest of the State, provided that the Comptroller of the Treasury or the Attorney General can require that such compromise be subject to prior review and written approval from those Offices. Previously, the Department was required to obtain Comptroller and Attorney General approval of a compromise of tax liabilities, and it now appears that the Comptroller and Attorney General will be required to assert their right to review and approve. This legislative change may facilitate the more timely resolution of voluntary disclosure agreements.

### Concept of "Proposed Assessment"

The current procedures are amended so that in most situations the Department will issue a notice of proposed assessment (the finality of which can be contested by the taxpayer) as compared to the current law under which the Department issues a notice of assessment (which is contestable to reverse the finality of the assessment). At least one intent of this change is to allow taxpayers to have the opportunity to contest the Department's position prior to the finality of an assessment, thereby hopefully avoiding the possible adverse consequences that a current notice of assessment may have on a taxpayer's business affairs. Under the new law, the Department must notify the taxpayer in the notice of proposed assessment of the right to an informal conference.

### Requesting Informal Conference

A taxpayer can contest a proposed assessment either by timely requesting an informal conference or timely filing suit in the appropriate chancery court. As to the informal conference, the taxpayer must make a written request for such conference within 30 days of the date of the notice of proposed assessment. Further, under the new law the taxpayer can request the conference not only to discuss the proposed assessment but also, at the Department's discretion, may discuss a final assessment or discuss the denial or deemed denial of a claim for refund. The informal conference does not, however, toll any period of limitation applicable to a final assessment or refund claim.

If a taxpayer does not timely request an informal conference, the proposed assessment becomes a final assessment on the 31st day after the date of the notice of proposed assessment.

### Interest on Deficiency

Under the new law, no interest shall accrue on any deficiency during the period running on the eleventh day after the conclusion of the informal conference and ending upon issuance of the decision relative to said conference.

### **Informal Conference Characteristics**

There are a number of characteristics that have been statutorily enacted by this new law regarding the conduct of the conference itself, just some of which include that (1) the personnel conducting the conference shall exercise independent judgment with the objective of resolving the dispute without litigation; (2) informal conference personnel shall not engage in ex parte communications with the Department's audit division but may ask ministerial, administrative or procedural questions if they do not address substantive issues in the audit; (3) informal conference decisions shall not be considered precedent; and (4) informal conference personnel may recommend a compromise of the proposed assessment to the Commissioner.

The informal conference decision must be issued, in writing, within 10 days of the conclusion of the conference. If the decision does not result in an adjustment of the proposed assessment, the assessment becomes final as of the date of the decision.

### **Published Guidance Authorized**

The Department is authorized to publish or otherwise publicize guidance to taxpayers with respect to conference decisions. However, such conference decisions cannot be considered as precedent in any instance, nor as guidance unless published pursuant to the authorization granted by the new law to the Department; and, in any event, such publication cannot be construed as authorizing the disclosure of confidential return or tax information.

### **Filing Lawsuit**

Current law requires a calculation of various time periods in order to determine the deadline for filing suit in chancery court in the event that a taxpayer has requested an informal conference but disagrees with the conference decision. This new law revises that calculation process and simply directs that the Department shall advise the taxpayer of the right to file suit in the appropriate chancery court to challenge the final assessment and collection of the tax "within ninety (90) days from the date such assessment becomes final." The purpose of that particular revision is to provide clarity in determining the lawsuit deadline date.

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While Tennessee, unlike other states in recent years, including its neighbors Alabama, Georgia, and Mississippi, chose not to adopt a tax appeals tribunal, the amendments to Tennessee's state tax appeals procedures do provide helpful modifications or clarifications to such procedures. If you have questions regarding Tennessee's new state tax appeals procedures, please contact one of the attorneys in the Firm's Tax Group.