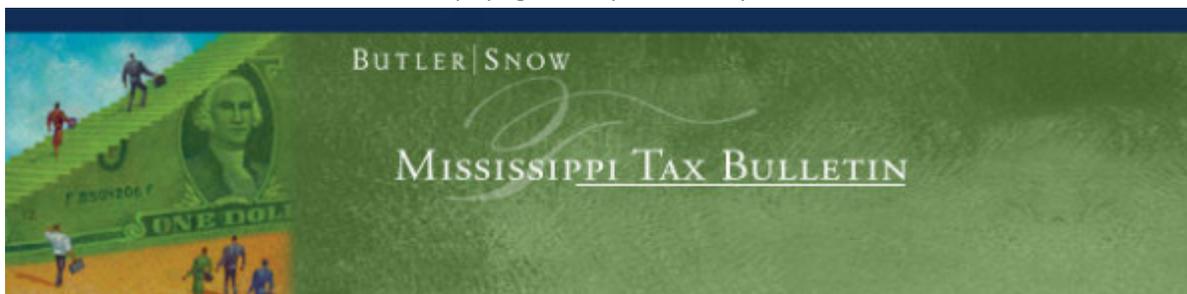


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## Mississippi's Tax Commission is Replaced by Department of Revenue and Independent Board of Tax Appeals

As of July 1, 2010, the state agency known as the Mississippi State Tax Commission no longer exists. Senate Bill 2712, which was enacted during the 2009 Legislative Session but was not effective until July 1, 2010, reorganized the Mississippi State Tax Commission by creating the Department of Revenue to conduct most of the administrative functions formerly conducted by the State Tax Commission. The legislation also created an independent Board of Tax Appeals to conduct the second and final level of administrative review for tax disputes.

Historically, most state taxes in Mississippi were under the jurisdiction of the State Tax Commission. The head of the State Tax Commission had two primary responsibilities and two titles: Chairman and Commissioner of Revenue. As Commissioner of Revenue, he served as the Chief Executive Officer of the State Tax Commission in its function as the state agency for collection of taxes, processing of tax returns, and administration and enforcement of the state's tax laws. As Chairman, he served as one of the three persons constituting the second level of administrative review for tax disputes, which appeal board was commonly called the "full Commission." The other two members of that appeal board were the Associate Commissioners, whose only responsibility was to serve on the appeal board.

Prior to July 1, 2010, tax assessments were made by audit staff overseen by the Chairman of the State Tax Commission, who also signed the assessment notices sent to taxpayers. A taxpayer's first administrative appeal opportunity was to the Board of Review, which was composed of senior employees of the State Tax Commission. Taxpayers not obtaining the desired relief at the Board of Review had the opportunity to appeal to the full Commission, which was the three

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person panel consisting of the Chairman and two Associate Commissioners.

The prior system for resolving Mississippi tax disputes created confusion, and the administrative appeals process lacked independence. The confusion resulted from the fact that the state's taxing agency and the second level of administrative review for tax disputes were both referred to as the "State Tax Commission." The lack of independence resulted from the fact that the Chairman oversaw the audit staff who made the assessments, signed the assessment notices, and then sat on the panel that heard the second administrative appeal of the assessments he had signed. Senate Bill 2712 cured these and other problems.

To provide independence and objectivity in the tax appeals process, Senate Bill 2712 divided the job of Chairman and Commissioner of Revenue into two separate positions, and it spun off the three-member appeal panel as a new state agency known as the Board of Tax Appeals "which shall not in any way be subject to the supervision or control of the Department of Revenue." The old State Tax Commission was renamed the Department of Revenue and, to avoid confusion, the name "State Tax Commission" will no longer be used.

The chief executive officer of the revamped Department of Revenue is the Commissioner of Revenue. He may be reappointed to serve additional six-year terms at the discretion of the Governor. The Commissioner of Revenue may not be removed during an unexpired term except by impeachment.

The new Board of Tax Appeals serves exclusively as an independent appeals board to hear taxpayer appeals coming from the Board of Review. The appeal board consists of a Chairman and two associate members, who are appointed by the Governor for staggered six-year terms. The Board of Tax Appeals is required to have an Executive Director who is licensed to practice law and must have a familiarity with the tax appeals process. Hearings before the Board of Tax Appeals will continue to be informal using relaxed rules of evidence, and no record will be made of the hearing.

Ed Morgan, who previously served as Chairman and Commissioner of Revenue of the State Tax Commission, has been appointed as the first Commissioner of Revenue of the Department of Revenue. Janet Mann, who previously served as Deputy Director of Audit and Recovery for the Mississippi Division of Medicaid, has been appointed as the first Chair of the Board of Tax Appeals. Sam Polk, who

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previously served as Commission Secretary for the State Tax Commission, will serve as the Executive Director of the Board of Tax Appeals.

Under prior law, only the taxpayer had the right to appeal an adverse decision of the full Commission to a court for judicial review of the assessment. Under the new law, the Department of Revenue also has the authority to appeal a decision of the Board of Tax Appeals in favor of the taxpayer. If both the agency and the taxpayer appeal a decision of the Board of Tax Appeals, then the cases will be consolidated, and the Chancery Court where the taxpayer filed the appeal will have jurisdiction of the case. Judicial review of decisions of the Board of Tax Appeals will continue to be de novo proceedings and the court is required to “conduct a full evidentiary judicial hearing on the issues raised.”

Under the prior law, taxpayers were required to post a bond of twice the amount of disputed tax in order to seek judicial review. This “pay-to-play” requirement was a very real impediment to some taxpayers seeking judicial review of their tax case. Importantly, Senate Bill 2712 reduced the amount of the required appeal bond to 50% of the amount of tax in dispute. In addition, the new law allows the court to reduce or waive the bond requirement upon motion, hearing, and a finding that the interests of the state to obtain payment of the tax are otherwise protected.

Under the prior law, appeals of tax assessments were required only 30 days after notice of the assessment. Effective July 1, 2010, that statutory notice period is extended for most tax matters to 60 days.

Senate Bill 2712 heralds a new day of independence in the administrative review of tax assessments in Mississippi, and otherwise corrects inadequacies in the tax appeal system.

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