

HOUSE BILL 1431

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 67,  
Chapter 1, relative to tax administration.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-1-102(b)(8), is amended by deleting the first sentence in its entirety and by substituting instead the following language:

Compromise tax liabilities upon such terms as, in the commissioner's opinion, may seem to be in the best interests of the state; provided, that either the comptroller of the treasury or the attorney general and reporter may require that such compromises or any class of such compromises be subject to the comptroller's or attorney general's prior review and written approval.

SECTION 2. Tennessee Code Annotated, Section 67-1-110(c), is amended by deleting subdivision (9) and by substituting instead the following language:

(9) Dispute any proposed assessment by filing a timely request for an informal conference;

and is further amended by deleting the language of subdivision (16) and by substituting instead the following language:

(16) A speedy, informal, and inexpensive review of a proposed assessment in an informal conference with an impartial representative of the department and to be represented by an attorney, certified public accountant, or other representative; and

SECTION 3. Tennessee Code Annotated, Section 67-1-801(a)(2), is amended by deleting each occurrence of the word "tax" and by substituting instead the word "final".

SECTION 4. Tennessee Code Annotated, Section 67-1-1403, is amended by inserting the word “proposed” between the words “initial” and “assessment” in the second sentence of subsection (a), and is further amended by inserting the word “proposed” between the words “original” and “assessment” in the second sentence of subsection (a), and is further amended by inserting the word “proposed” between the words “the” and “assessment” in the third sentence of subsection (a), and is further amended by inserting the word “proposed” between the words “original” and “assessment” in the third sentence of subsection (b).

SECTION 5. Tennessee Code Annotated, Section 67-1-1426(a)(2), is amended by deleting the language “it shall then be assessed; and” and by substituting instead the language “a notice of proposed assessment shall then be issued; and”.

SECTION 6. Tennessee Code Annotated, Section 67-1-1429(a)(1)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(A) Within six (6) years after the assessment of the tax becomes final; or

SECTION 7. Tennessee Code Annotated, Section 67-1-1438, is amended by deleting the section in its entirety and by substituting instead the following:

(a) When the commissioner determines that any person has failed to pay the correct amount of any tax administered by the commissioner under this or any other title, the commissioner shall promptly issue to such taxpayer a notice of proposed assessment, together with notice that the taxpayer shall have the right to an informal conference with the commissioner or the commissioner’s designee as set forth in this subsection (b) and that the proposed assessment shall become a final assessment as set forth herein. The notice shall also state that, upon an assessment becoming final, the taxpayer shall have the right, as set forth in § 67-1-1801, to file suit to challenge the final assessment and collection of the tax in the appropriate chancery court of this state within ninety (90) days from the date such assessment becomes final. The commissioner may authorize any division, unit, or official within the department to issue notices of proposed assessment on the commissioner’s behalf.

(b) Any taxpayer to whom a notice of proposed assessment is issued shall have the right to an informal conference with the commissioner or the commissioner's designee to discuss the proposed assessment and to present such matters as may be relevant to the proposed assessment; provided, that written request for such conference is made within thirty (30) days after the date of the notice of proposed assessment. If a timely request for a conference is made, the commissioner or the commissioner's designee shall set a time and place for the conference within ten (10) days from the date of the request and shall give the taxpayer written notice of the conference. Upon written request by the taxpayer, the commissioner or the commissioner's designee may grant, in the commissioner's or designee's discretion, a continuation of the conference in writing for a period of time reasonably necessary for the taxpayer to provide additional information or documentation relevant to the proposed assessment. A continuation may be granted either before or after the conference is held, and the conference shall not be deemed to be concluded until the expiration of any such period of continuation. Within ten (10) days after the conclusion of the conference, the commissioner or the commissioner's designee shall give the taxpayer written notification of the commissioner's decision. If the commissioner's decision does not result in an adjustment to the proposed assessment, the proposed assessment shall become a final assessment as of the date of such decision. If the commissioner's decision results in an adjustment to the proposed assessment, the commissioner shall issue to the taxpayer a written determination setting forth the amount of tax that is due, if any, and such amount shall be a final assessment.

(c) If the taxpayer does not request an informal conference within the time period prescribed in subsection (b), the proposed assessment shall become a final assessment on the thirty-first day after the date of the notice of proposed assessment. In addition,

any taxpayer that has requested a conference as provided in subsection (b) may cancel the request, in writing, at any time before, during, or after such conference; in which case the proposed assessment shall become a final assessment on the date of the written notification by the taxpayer of such cancellation or on the thirty-first day after the date of the notice of proposed assessment, whichever is later.

(d) Except as provided in subsection (c), the taxpayer shall not be prejudiced in any manner by either seeking or failing to seek an informal conference. The informal conference shall not be considered to be an administrative remedy and shall not constitute a contested case subject to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner shall not be prejudiced in any manner as a result of such conference, including any failure to issue a decision within the ten (10) day period prescribed in subsection (b); provided, however, that no interest shall accrue on any deficiency during the period beginning on the eleventh day after conclusion of the conference and ending upon issuance of the decision.

(e) The informal conference process shall have all of the following characteristics:

(1) Personnel conducting informal conferences shall exercise independent judgment with the objective of resolving disputed proposed assessments without litigation;

(2) Informal conferences shall be conducted in an informal manner either by telephone or in person, at the taxpayer's option;

(3) The taxpayer may participate in an informal conference without representation; may be represented by an officer, employee, partner, or member of the taxpayer; or may be represented by a third party of the taxpayer's choice;

(4) Informal conference personnel shall make determinations regarding individual issues based on the facts and the law;

(5) Informal conference personnel shall consider arguments as to the applicability of the tax laws and any new evidence presented; provided, that if the new evidence is substantial and should have been presented at the time of audit, the informal conference personnel may request the audit division to examine the evidence and to make a recommendation as to the effect of the evidence on the relevant issue;

(6) The taxpayer shall have the right to bring witnesses to an in-person conference;

(7) Informal conference personnel shall not engage in ex parte communications with audit division personnel regarding the issue under review; provided, however, that informal conference personnel may, on an ex parte basis, ask questions that involve ministerial, administrative, or procedural matters and that do not address the substance of the issues or the positions taken in the audit;

(8) Informal conference decisions shall not be considered as precedent; and

(9) Informal conference personnel may recommend to the commissioner that the department compromise a proposed assessment in accordance with § 67-1-102(b)(8).

(f) When an assessment becomes final by operation of subsection (b) or (c), the taxpayer shall have the rights and remedies provided in part 18 of this chapter.

(g) The commissioner or the commissioner's designee, in such person's discretion, may hold an informal conference with a taxpayer to discuss an assessment

that has become final by operation of subsection (c). Any such conference shall not toll any period of limitation or otherwise affect any remedy provided in part 18 of this chapter.

(h) No claim, cause of action or other proceeding to challenge an assessment or seek a refund shall arise based on the department's procedures for issuing a proposed or final assessment or recording the liability of the taxpayer in the office of the department under this section, regulations promulgated by the commissioner, or bulletins issued by the commissioner.

SECTION 8. Tennessee Code Annotated, Section 67-1-1501(b), is amended by adding the following language as a new subdivision (6):

(6) For purposes of this section, the term "assessed" or "assessment" shall be deemed to include any notice of proposed assessment issued by the commissioner or any other authorized person under § 67-1-1438, and the time periods set forth in this subsection (b) are met if the commissioner issues a notice of proposed assessment within the period of time prescribed for an assessment.

SECTION 9. Tennessee Code Annotated, Section 67-1-1801, is amended by inserting the word "finally" between the word "shall" and the word "assess" in subdivision (a)(1);

and is further amended by deleting the language "following the mailing of a notice of assessment to the taxpayer" in subdivision (a)(1)(B) and substituting instead the language "after an assessment becomes final";

and is further amended by deleting the language "of the mailing of the notice of assessment to the taxpayer by the commissioner, with a copy of the notice of assessment attached" in subdivision (b)(1) and substituting instead the language "the assessment becomes final, with a copy of the notice of proposed assessment issued pursuant to § 67-1-1438 attached";

and is further amended by inserting the language “final” between the word “the” and the word “assessment” wherever it appears in subsections (a), (b), (c), (d), (f), and (g);

and is further amended by deleting subdivision (c)(3) in its entirety;

and is further amended by deleting subsection (j) in its entirety and substituting instead the following:

(j) Any notice of a proposed or final assessment issued by the department shall include notice that the taxpayer has the right to file suit in the appropriate chancery court of this state in accordance with this section to challenge the final assessment and collection of the tax within ninety (90) days from the date such assessment becomes final.

SECTION 10. Tennessee Code Annotated, Section 67-1-1803(d), is amended by inserting the word “finally” between the word “amount” and the word “assessed”.

SECTION 11. This act shall take effect on January 1, 2015, the public welfare requiring it.