

CHAPTER 60
South Carolina Revenue Procedures Act

Article 1
General Provisions

SECTION 12-60-10. Short title.

This chapter may be cited as the "South Carolina Revenue Procedures Act."

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-20. Legislative intent.

It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

HISTORY: 1995 Act No. 60, § 4A; 2000 Act No. 399, § 3(M)(2), eff August 17, 2000; 2003 Act No. 69, § 3.CC, eff June 18, 2003; 2007 Act No. 110, § 32.A, eff June 21, 2007; 2007 Act No. 116, § 38.A, eff June 28, 2007.

SECTION 12-60-30. Definitions.

As used in this chapter and in Chapter 54 of this title except when the context clearly indicates a different meaning:

(1) "Administrative Law Court" means the Administrative Law Court created by Section 1-23-500. The Administrative Law Court holds the contested case hearings.

(2) "Assessment" means the department's recording the liability of the taxpayer in the office of the department, subject to the restrictions in Section 12-60-440.

(3) "Classification" means the various categories of property subject to property tax to which specific property tax assessment ratios apply.

(4) "Contested case hearing" has the same meaning as it has in Section 1-23-310. It is a hearing conducted pursuant to Article 3, Chapter 23, Title 1, the South Carolina Administrative Procedures Act, and includes the hearings conducted by the Administrative Law Court to review county boards of assessment appeals decisions, county auditor decisions, decisions on claims for refund made by a majority of county auditor, county treasurer, and county assessor, and department determinations.

(5) "County assessor" or "assessor" means a county officer or official who issues an official property tax assessment for real property.

(6) "County auditor" or "auditor" means a county officer or official who issues an official property tax assessment for personal property.

(7) "County board of assessment appeals" or "county board" means the board of assessment appeals which considers appeals of property tax assessments issued by the property tax assessor for the county and which also hears appeals of refund claims of property as determined by the majority of the county assessor, county auditor, and county treasurer.

(8) "Deficiency" means the amount by which a tax exceeds the amount shown on a return or report filed by a taxpayer, if any, plus the amounts previously assessed, or collected without assessment, as a deficiency.

(9) "Department" means the South Carolina Department of Revenue.

(10) "Department determination" means the final determination within the department from which a taxpayer or a local governing body, as applicable, may request a contested case hearing before the Administrative Law Court.

(11) "Department representative" means the person appointed by the department to prepare the department's determination and represent the department at the contested case hearing.

(12) "Director" means the director of the department.

(13) "Division decision" means a decision by a division of the department that affects the rights or obligations of a person for which no specific appeals rights are provided by this act. Division decision includes the refusal to expunge or satisfy a lien.

(14) "Exhaustion of the taxpayer's administrative remedy" means that the taxpayer has:

(a) exhausted his prehearing remedy; and

(b) had a hearing held pursuant to the Administrative Procedures Act with the Administrative Law Court.

(15) "Exhaustion of the taxpayer's prehearing remedy" means that the taxpayer:

(a) filed a written protest as required by this chapter;

(b) attended the conference with the county board of assessment appeals for the purposes of Subarticle 9, Article 9 of this chapter, or met with the auditor for purposes of Subarticle 13, Article 9 of this chapter; and

(c) provided the facts, the law, and other authority supporting the taxpayer's position to:

(i) the county board of assessment appeals at its conference for appeals made pursuant to Subarticle 9, Article 9 of this chapter;

(ii) the auditor in the taxpayer's protest or claim for refund for appeals made pursuant to Subarticle 13, Article 9 of this chapter; or

(iii) the department representative in the protest for regulatory violation matters, and within thirty days after filing the protest for other matters, or the later date agreed to by the department representative. For the purpose of this section, regulatory violation matters are violations of a statute or regulation which controls the conduct of alcoholic beverage licensees, bingo licensees, or coin-operated device licensees. It includes violations which may result in the suspension or revocation of a license, but it does not include taxes or interest on taxes or monetary penalties in Chapter 54 of this title.

(16) "Internal Revenue Code" means the Internal Revenue Code as provided in Section 12-6-40(A).

(17) "Mathematical or clerical error" means:

(a) an error in addition, subtraction, multiplication, or division shown on a return;

(b) an incorrect use of a table provided by the department for use with a return, if the incorrect use is apparent from the existence of other information on the return;

(c) an omission of information which is required to be supplied on the return to substantiate an entry on the return; or

(d) an entry of a deduction or credit item in an amount which exceeds the statutory limit that is either:

(i) a specified monetary amount; or

(ii) a percentage, ratio, or fraction, if the items entering into the application of that limit appear on the return.

(18) "Property tax" means ad valorem taxes on real and personal property.

(19) "Property tax assessment" means a valuation or determination of property value for annual property tax purposes arrived at by multiplying the fair market value or special use value of the property by the appropriate assessment ratio for the taxable property's classification.

(20) "Property tax assessment ratio" means the percentages established for the property classification by Section 12-43-220.

(21) "Property tax assessor" means the county assessor, the county auditor, the department, or a government official who issues a property tax assessment.

(22) "Property taxpayer" means a person who is liable for, or whose property or interest in property, is subject to, or liable for, a property tax imposed by this title.

(23) "Proposed assessment" means the first written notice sent or given to the taxpayer stating that a division within the department has concluded that a tax is due. The term proposed assessment does not

include the auditor's work papers, draft audit reports, or a document specifically stating that it is not a proposed assessment.

(24) "Protest" means a written appeal of a proposed assessment or a division decision made in accordance with this chapter.

(25) "Special use value" means property valued pursuant to Section 12-43-220(d).

(26) "State tax" means taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by this title, or assessed or collected by the department, except property taxes.

(27) "Tax" or "taxes" means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department.

(28) "Tax notice" or "tax bill" means the demand for payment of property taxes.

(29) "Taxpayer" means a person who is liable for a tax or who is responsible for collecting and remitting a tax. "Taxpayer" includes a licensee and an applicant for a license, issued by or administered by the department.

(30) "Local governing body" means, for property tax purposes, the governing body of a county, municipality, or other political subdivision that is entitled to receive any portion of the tax revenue generated from a property tax assessment.

(31) "Affected county" means, for property tax purposes, a county that administers property tax collections for its own jurisdiction or for another local governing body and is in a property tax dispute with a taxpayer.

(32) "Chief executive officer" means, for property tax purposes, the official identified in Section 8-13-1110(B)(5).

(33) "Chief administrative official" means, for property tax purposes, the official identified in Section 8-13-1110(B)(6).

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 6; 1997 Act No. 114, § 9; 2000 Act No. 399, § 3(M)(3), eff August 17, 2000; 2003 Act No. 69, § 3.CC, eff June 18, 2003; 2006 Act No. 386, § 28, eff June 14, 2006; 2018 Act No. 265 (S.1043), §§ 8.A, 8.B, eff October 3, 2018.

Effect of Amendment

2018 Act No. 265, § 8.A, added (30) to (33), relating to the definitions of "local governing body", "affected county", "chief executive officer", and "chief administrative official", respectively.

2018 Act No. 265, § 8.B, in (10), substituted "taxpayer or a local governing body, as applicable," for "person".

SECTION 12-60-40. Taxpayers' rights; waiver; time limitations suspended during stay.

(A) A taxpayer may waive his rights under this chapter, providing the waiver is in writing and is signed by the taxpayer or his representative. The department may extend time limitations provided by this title and for other taxes, including requirements provided in Article 5 or Article 9 of this chapter.

(B) Time limitations provided pursuant to this chapter and Chapter 54 are suspended during a stay ordered by the Taxpayers' Rights Advocate.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 7; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-50. End of period falls on Saturday, Sunday, or legal holiday; legal holiday defined.

(A) For purposes of this title and for other taxes, when the last day of a specified time period is a Saturday, Sunday, or a legal holiday, the end of the period is extended to the next business day. For this purpose, a legal holiday is any day the department or the offices of the United States Postal Service are closed and for Subarticles 9 and 13, Article 9 any day the county office is closed.

(B) Except where payment of taxes is required to be made in funds which are immediately available to the State by electronic funds transfer or otherwise, the provisions of Internal Revenue Code Section 7502 relating to timely mailing as timely filing and paying are applicable to returns, other documents, or payment of taxes imposed by this title, or subject to assessment and collection by the department.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 8; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-60. Court, administrative law judge, or hearing officer cannot stay tax collections.

An action of a court or an administrative law judge cannot stay or prevent the department or an officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-70. Writ of mandamus.

A writ of mandamus must not be granted or issued from a court or an administrative law judge directing or compelling the reception of funds not authorized to be received by law.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) Except as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

(C) Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.CC, eff June 18, 2003.

SECTION 12-60-90. Administrative tax process.

(A) For the purposes of this section, the administrative tax process includes matters connected with presentation to a state or local tax authority, or their officials or employees, relating to a client's rights, privileges, or liabilities pursuant to laws, regulations, or rules administered by state or local tax authorities. These presentations include the preparation and filing of necessary documents, correspondence with, and communications to, state and local tax authorities, and the representation of a client at conferences and meetings, including conferences with the county boards of assessment appeals. It does not include contested case hearings held by the Administrative Law Court or the courts.

(B) State and local government tax officials and state and local government employees may represent their offices, agencies, or both, during the administrative tax process.

(C) Taxpayers may be represented during the administrative tax process by:

(1) the same individuals who may represent them in administrative tax proceedings with the Internal Revenue Service pursuant to Section 10.3(a), (b), and (c), Section 10.7(a), (c)(1)(i) through (c)(1)(vi), and (c)(1)(viii), and Section 10.7(d) and (e) of United States Treasury Department Circular No. 230; and

(2) a real estate appraiser who is registered, licensed, or certified pursuant to Chapter 60, Title 40 during the administrative tax process in a matter limited to questions concerning the valuation of real property.

(D) The department may suspend or disbar from practice in the administrative tax process or censure any person authorized by these rules to represent taxpayers, if the person is shown to be incompetent, disreputable, or fails or refuses to comply with the rules in subsection (E), or in any manner, with intent to defraud, wilfully and knowingly deceives, misleads, or threatens any person or prospective person to be represented, by word, circular, letter, or by advertisement. The department may impose a monetary penalty on the representative, and if the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the department may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of the conduct. The penalty may not exceed the gross income derived, or to be derived, from the conduct giving rise to the penalty and may be in addition to, or instead of, suspension, disbarment, or censure of the representative. For the purposes of this section, incompetence and disreputable conduct is defined in Section 10.51 of United States Treasury Department Circular No. 230. The department may review a petition for reinstatement as provided in Section 10.81.

(E) Representatives of taxpayers must comply with the duties and restrictions contained in Sections 10.20 through 10.24 and 10.27 through 10.34 of United States Treasury Department Circular No. 230.

(F) For purposes of this section the terms in United States Treasury Department Circular No. 230 must be given the meanings necessary to effectuate this section. For example, unless a different meaning is required:

(1) references to United States Treasury Department Circular No. 230 mean the United States Treasury Department Circular No. 230 as revised through the date provided for in the definition of the Internal Revenue Code in Section 12-6-40(A);

(2) references in United States Treasury Department Circular No. 230 to:

(a) the United States or federal are deemed to include references to this State, any of its political subdivisions, or any two or more of them;

(b) the Internal Revenue Service, the Department of Treasury, Examination Division, or District Director are deemed to include references to any state or local tax authority; and

(c) the Director of Practice is deemed to mean the director or his designee.

(3) references to tax return mean appropriate return, including property tax returns filed with the department;

(4) references to federal tax obligations include all South Carolina taxes, including property taxes and property tax assessments, where administered by the department."

HISTORY: 1995 Act No. 60, § 4A; 2001 Act No. 89, § 40, eff July 20, 2001; 2003 Act No. 69, § 3.CC, eff June 18, 2003; 2005 Act No. 161, §§ 13, 14, eff June 9, 2005; 2007 Act No. 110, § 33, eff June 21, 2007; 2007 Act No. 116, § 39, eff June 28, 2007, applicable for tax years beginning after 2007.

Article 5 State Revenue Appeals Procedure

Subarticle 1 General Appeal Procedures

SECTION 12-60-410. Assessment of taxes; supplemental assessment; no assessment after final order; exception for fraud.

The department shall assess state taxes, including interest, additions to taxes, and penalties. An assessment is made by an employee of the department recording the liability of the taxpayer in the office of the department in accordance with the procedures of the department. Upon request of the taxpayer, the department shall furnish a copy of the assessment. The department, at any time within the time period for assessment, may make a supplemental assessment when it is determined that an assessment is imperfect or incomplete. Except in the case of fraud, an order abating a jeopardy assessment, or additional

assessments resulting from adjustments made by the Internal Revenue Service, the department may not assess taxes imposed by the same article, or chapter if the chapter has no article, for a tax period for which a final order has been issued by the Administrative Law Court or a court determining the taxpayer's liability for that tax period.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 9; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-420. Deficiency in state or local tax; division decisions or proposed assessments; protest.

(A) If a division of the department makes a division decision or determines there is a deficiency in a state or local tax administered by the department, it may send by first class mail or deliver the division decision or the proposed assessment to the taxpayer. The division decision or the proposed assessment must explain the basis for the division decision or the proposed assessment and state that assessment will be made or the decision will become final unless the taxpayer protests the division decision or the proposed assessment as provided in Section 12-60-450.

(B) If the taxpayer fails to file a protest, the division decision or proposed assessment will become final and, if applicable, an assessment will be made for the amount of a proposed assessment. The department shall make available forms which taxpayers may use to protest the division decision or the proposed assessments. The division decision or the proposed assessment is effective if mailed to the taxpayer's last known address even if the taxpayer refuses or fails to take delivery, is deceased, or is under a legal disability, or, if a corporation, has terminated its existence. For a joint tax return or liability, one division decision or the proposed assessment may be mailed to both taxpayers unless the department has notice that the taxpayers have separate addresses in which event a duplicate original of the division decision or the proposed assessment must be sent to each taxpayer at his last known address.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2005 Act No. 145, § 38.A, eff January 1, 2005.

SECTION 12-60-430. Failure to make report or file return or filing frivolous return; proposed assessment.

(A) If a taxpayer fails or refuses to make a report or to file a return required by the provisions of this title or required to be filed with the department, the department may make an estimate of the tax liability from the best information available and issue a proposed assessment for the taxes, including penalties and interest.

(B) If the department determines a return or report filed by a taxpayer is frivolous, the department may make an estimate of the tax liability from the best information available and issue a proposed assessment for the tax, including penalties and interest.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2007 Act No. 110, § 46, eff June 21, 2007; 2007 Act No. 116, § 51, eff June 28, 2007, applicable for tax years beginning after 2007.

SECTION 12-60-440. Deficiency assessment restrictions.

(A) The department may not assess a deficiency until ninety days after sending the proposed assessment as provided in Section 12-60-420, or, if the taxpayer files a timely written protest with the department, until the taxpayer's appeal is finally decided. For purposes of this section, the final decision of an appeal includes the decision of the Administrative Law Court or court, if the matter was heard by the Administrative Law Court or appealed to a court as provided in this article. This restriction on assessments does not apply to:

- (1) mathematical or clerical errors;

- (2) interest imposed by this title or subject to assessment or collection by the department;
- (3) penalties for failure to file or failure to pay, or penalties that are determined as a percentage of interest;
- (4) amounts reported on a return or other document, or paid as tax; or
- (5) assessments as provided in Section 12-60-910.

(B) If a proposed assessment was not issued, the taxpayer may request an abatement of an assessment due to a mathematical or clerical error, or for a penalty described in subsection (A)(3) within thirty days of the date of the assessment. Upon receipt of the request for abatement the department shall abate the assessment. A further assessment of the tax with respect to which an abatement is made under this paragraph is subject to the proposed assessment procedures described in this chapter. A levy or collection proceeding may not begin for a mathematical or clerical error during the thirty-day period during which a taxpayer may request an abatement.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 10; 2003 Act No. 69, § 3.DD, eff January 1, 2004.

SECTION 12-60-450. Appeal of proposed assessment; contents of written protest.

(A) A taxpayer can appeal a division decision or a proposed assessment by filing a written protest with the department within ninety days of the date of the division decision or the proposed assessment. The department may extend the time for filing a protest at any time before the period has expired.

(B) The written protest must contain:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) if relevant, the tax period or date for which the tax was proposed;
- (4) if relevant, the nature and kind of tax in dispute;
- (5) a statement of facts supporting the taxpayer's position;
- (6) a statement outlining the reasons for the appeal, including law or other authority upon which the taxpayer relies; and
- (7) other relevant information the department may reasonably prescribe. The taxpayer does not need to provide legal or other authority, as provided in item (6), if the total amount of the proposed assessment is less than two thousand five hundred dollars, unless the taxpayer is a partnership, an "S" corporation, an exempt organization, or an employee plan and the proposed tax is imposed by Chapter 6, 11, or 13 of this title.

(C) The filing of an appeal of a proposed assessment as provided in subsection (A) extends the time for assessment as provided in Section 12-54-85(G).

(D)(1) After the protest is filed, the taxpayer and department shall stipulate the facts and issues upon which they can agree and may attempt to settle the case.

(2) If the taxpayer fails to respond or participate in this process with the department, the department may view the appeal as abandoned and make a department determination using information provided in accordance with Section 12-60-30(15)(c)(iii).

(E)(1) The department shall make a department determination using the information provided by the taxpayer in accordance with Section 12-60-30(15)(c)(iii).

(2) A department determination must be in writing and must:

- (a) be sent by first class mail or delivered to the taxpayer and any affected county;
 - (b) explain the basis for the department's determination;
 - (c) inform the taxpayer and any affected county of the right to request a contested case hearing;
- and
- (d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer or any local governing body requests a contested case hearing.

(3) The department must issue the department determination not later than one year after the date the written protest or claim was filed with the department by the taxpayer unless the department requests and is granted an extension of time not to exceed six months from the Administrative Law Court. Upon failure of the department to timely issue the department determination, the department shall notify the taxpayer and any affected county of the right to request a contested case hearing before the Administrative Law Court for a determination of the tax controversy. A request for a contested case hearing before the Administrative Law Court must be made in accordance with its rules and must be made within thirty days after the date the department's notice was sent by first class mail or delivered to the taxpayer or any affected county.

(4) In order to comply with the provisions of this section requiring the department to notify affected counties, the department shall notify the chief executive officer, auditor, assessor, and treasurer of each affected county. The county auditor, upon notification, shall notify any local governing bodies by notifying the chief administrative official of each local governing body.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff January 1, 2004; 2018 Act No. 265 (S.1043), § 8.C, eff October 3, 2018.

Effect of Amendment

2018 Act No. 265, § 8.C, rewrote (E), requiring the department to notify affected counties in certain instances.

SECTION 12-60-460. Taxpayers' hearing; time limitation for requesting hearing.

Upon exhaustion of his prehearing remedy, a taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty days after the date the department's determination was sent by first class mail or delivered to the taxpayer. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-470. Taxpayers' refund claim; time for filing; contents.

(A) A taxpayer may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within the period specified in Section 12-54-85 even though the time for filing a protest under Section 12-60-450 has expired and no protest was filed.

(B) The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

The department will make forms available which taxpayers may use to file a claim for refund.

(C)(1) Only the taxpayer legally liable for the tax may file a claim for refund or receive a refund, except that:

- (a) a person who acts as a collector and remitter of state taxes may claim a credit or refund of the tax collected, but only if the person establishes that he has paid the tax in question to the State; and
 - (i) repaid the tax to the person from whom he collected it; or

(ii) obtained the written consent of the person from whom he collected the tax to the allowance of the credit or refund;

(b) a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the State has assigned, in writing, the right to a refund of that sales tax to the purchaser.

(2) The taxpayer legally liable for the tax may assign a refund to another person only after the taxpayer's claim is allowed, the amount of the refund is finally decided, and the department has approved the refund. The assignment must be in writing.

(3) A credit card or debit card issuer may claim a refund on behalf of a foreign mission or a foreign diplomat for purchases exempt from the sales and use tax imposed pursuant to Chapter 36 of this title as a result of treaties signed by the United States if the:

(i) credit card or debit card issuer is authorized by the United States Department of State to participate in a diplomatic tax exemption program allowing the card or card issuer to seek refunds in accordance with procedures established by the United States Department of State;

(ii) sale to the foreign mission or foreign diplomat qualifies as exempt under treaties signed by the United States;

(iii) Department of Revenue approves the refund; and

(iv) credit or debit card issuer credits the foreign mission's or foreign diplomat's credit card or debit card account to reflect the issuance of the refund.

(4) The provisions of Section 12-60-490 also apply to a person claiming or receiving a refund pursuant to this section, except for a credit card or debit card issuer seeking a sales and use tax refund on behalf of a foreign mission or foreign diplomat pursuant to subsection (C)(3) above. A refund may be issued only after the application of Section 12-60-490 against the taxpayer legally liable for the tax and, if applicable, against another person claiming or receiving the refund pursuant to this subsection.

(5) In case of a claim for refund filed by, or a refund assigned to, a person other than the taxpayer legally liable for the tax, the department may advise the person who filed the claim or who was assigned the refund that, if applicable, the refund was reduced or eliminated as a result of taxes owed by the taxpayer legally liable for the tax and the application of Section 12-60-490 and the amount by which the refund was reduced by taxes owed by the taxpayer legally liable for the tax.

(D) The appropriate division of the department shall decide what refund is due, if any, and give the taxpayer written notice of its decision as soon as practicable after a claim has been filed.

(E) A taxpayer may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-450. For purposes of complying with the provisions of Section 12-60-450, the written denial of any part of a claim for refund is the equivalent of a proposed assessment.

(F) Upon exhaustion of his prehearing remedy, a taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty days after the date the department's determination was sent by first class mail or delivered to the taxpayer. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules.

(G) Even if a taxpayer has not filed a claim for refund, if the department determines that money has been erroneously or illegally collected from a taxpayer or other person, the department, in its discretion, may, upon making a record in writing of its reasons, grant a refund to the taxpayer or other person.

(H) A claim for refund can be amended before, but not after, the expiration of the time for filing the claim for refund under Section 12-54-85(F). The claim as amended must be treated as if it were first filed when the amendment was filed, and the procedures and time periods provided by this section must begin again.

(I) A taxpayer who requests a contested case hearing as provided in Section 12-60-460 is considered to have elected his remedy and is denied the benefits of this section.

HISTORY: 1995 Act No. 60, § 4A; 1999 Act No. 114, § 4; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2006 Act No. 386, § 29.A, eff July 1, 2006.

SECTION 12-60-480. Refund after prevailing on merits of lawsuit; refund to similarly situated taxpayers.

When a taxpayer prevails on the merits in a lawsuit seeking a refund or abatement of a license fee or a tax based upon an allegation that the tax or fee has been imposed wrongfully as a matter of law, the department shall issue a refund to similarly situated taxpayers who properly applied for a refund pursuant to the requirements of this chapter. A taxpayer is considered to have prevailed on the merits in a lawsuit only when a tax or license fee is refunded or abated as a result of a finding of law by a court of competent jurisdiction, and after the exhaustion of, or expiration of, the time for making relevant appeals. A taxpayer must not be considered similarly situated if the taxpayer did not file a claim for refund within the period provided in Section 12-54-85.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-490. Application of refund to other taxes due.

If a taxpayer is due a refund, the refund must be applied first against any amount of that same tax that is assessed and is currently due from the taxpayer. The remaining refund, if any, must then be applied against any other state taxes that have been assessed against the taxpayer and that are currently due, or offset as provided in Chapter 56 of this title, or offset to collect a debt pursuant to Section 12-4-580, or both. If any excess remains, the taxpayer must be refunded the amount plus interest as determined in Section 12-54-25, or, at the taxpayer's request, it may be credited to future tax liabilities.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2005 Act No. 145, § 39, eff June 7, 2005.

SECTION 12-60-500. Tax refund; preference to other claims against state treasury.

If it is determined that a refund is due of a tax paid to, or collected by the State, the department shall issue its order to the State Treasurer to refund the taxes. Refunds must be paid in preference to other claims against the state treasury. If the State Treasurer does not have in his custody or possession enough funds to pay a refund of taxes, he shall request that the General Assembly appropriate the refund.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-510. Exhaustion of prehearing remedy; request for hearing before Administrative Law Court.

(A) Before a taxpayer may seek a contested case hearing before the Administrative Law Court, he shall exhaust the prehearing remedy.

(1) If a taxpayer requests a contested case hearing before the Administrative Law Court within ninety days of the date of the proposed assessment without exhausting his prehearing remedy because he failed to file a protest with the department, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed timely to provide the department with the facts, law, and other authority supporting his position, he shall provide them to the department. The administrative law judge shall then remand the case to the department for reconsideration in light of the new facts or issues unless the department elects to forego the remand.

(2) If a taxpayer fails to file a protest with the department within ninety days of the date of the proposed assessment, the taxpayer is in default, and the department must issue an assessment for the taxes. The assessment may be removed by the Administrative Law Court for good cause shown, and the matter may be remanded to the department.

(B) Upon remand the department has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its department determination. The department shall issue its amended department determination in the same manner as the original. The taxpayer has thirty days after the date the department's amended determination was sent by first class mail or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the department fails to issue its amended department determination within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer may request again a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2005 Act No. 161, § 23.G, eff June 9, 2005.

SECTION 12-60-520. Designation as small claims case; no precedential value.

A taxpayer who requests a contested case hearing may elect to designate the action as a small claims case if no more than ten thousand dollars of taxes, including penalties, but not including interest, are in controversy at the time of filing the request for a contested case hearing. The designation must be made at the time the request for a contested case hearing is made and be included in the request. The decision of the administrative law judge in an action designated as a small claims case is final and conclusive and may not be reviewed by a court. A case decided pursuant to this section may not be cited by either the department or a taxpayer in a future action and establishes no precedent except for the taxpayer involved and the tax period or periods in controversy. This section does not apply to actions that raise constitutional issues.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

Subarticle 5

Jeopardy Assessment Appeals Procedures

SECTION 12-60-910. Jeopardy assessment; notice.

(A) If the department finds that the assessment or the collection of a tax or a deficiency for a tax period is jeopardized in whole or in part by delay, the department may terminate the taxpayer's current tax period and immediately assess the tax for the current period and prior periods not barred by the statute of limitations including interest, penalties, and other amounts provided by law. An action by the department made pursuant to this subsection is a "jeopardy assessment".

(B) If a jeopardy assessment is made pursuant to subsection (A), notice of the jeopardy assessment must be provided to the taxpayer by one of the following means:

- (1) personal delivery of the assessment to the taxpayer;
- (2) mailing a copy of the assessment to the last known address of the taxpayer by first class mail; or
- (3) other means reasonably designed to provide notice to the taxpayer.

(C) A jeopardy assessment is immediately due and payable, and proceedings for collection may begin as soon as the jeopardy assessment is made.

(D) A taxpayer may obtain a stay of the collection for all or part of the jeopardy assessment by:

- (1) posting a bond with the department equal to the amount of the assessment that will be stayed, including interest to the date of payment; or
- (2) providing security in an amount the department considers necessary to secure all or part of the amount of the jeopardy assessment. The security required by the department cannot exceed twice the assessed amount for which the taxpayer seeks a stay.

(E) The department may stay collection at any time it finds that an assessment or the collection of a tax in whole or in part is no longer in jeopardy.

(F) The taxpayer may at any time waive part or all of the stay of collection.

(G) Where collection of part or all of the jeopardy assessment is stayed under this section, the period of limitation on any action to collect the assessment is tolled during the time of the stay.

(H) The bond or security must be reduced if:

(1) the taxpayer pays part of the tax covered by the bond or security and the taxpayer requests the reduction. The reduction must be proportionate to the amount paid;

(2) the department abates a portion of the jeopardy assessment. The reduction in the bond or security must be proportionate to the amount abated.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-920. Written statement of information relied on in making jeopardy assessment; jeopardy hearings; contested case hearings; burden of proof.

(A) Within five days after the day on which a jeopardy assessment is made, the department shall provide the taxpayer with a written statement of the information the department relied on in making the assessment.

(B) Within thirty days after the day on which the taxpayer is furnished the written statement described in subsection (A), or within thirty days after the last day of the period within which the statement is required to be furnished, the taxpayer may request a contested case hearing before the Administrative Law Court by filing a request with the department.

(C) Within ten days after a request for a contested case hearing is received by the department, it shall file its response with the Administrative Law Court. Within twenty days after a request for a contested case hearing is received by the department, or as soon thereafter as practicable, an administrative law judge shall hold the contested case hearing and determine whether or not the making of the jeopardy assessment is reasonable under the circumstances, and whether the amount assessed as a result of the action taken under Section 12-60-910 is appropriate under the circumstances.

(D) If the administrative law judge determines that the making of the jeopardy assessment is unreasonable or that the amount assessed or demanded is inappropriate, he may order the department to abate the assessment, to redetermine, in whole or in part, the amount, or to take other action as the judge finds appropriate.

(E) The decision made by the administrative law judge under subsection (D) is final and conclusive and may not be reviewed by a court.

(F)(1) In a contested case hearing pursuant to subsection (C), the department has the burden of proof showing the making of the jeopardy assessment was reasonable under the circumstances.

(2) In a contested case hearing pursuant to subsection (C), the taxpayer has the burden of proof of showing the tax assessed as a result of the action taken pursuant to Section 12-60-910 is not appropriate.

(G)(1) If the administrative law judge determines that the collection of the tax assessed is in jeopardy, the administrative law judge shall remand the case to the department to issue a department determination for the period or period in issue within the time period determined by the judge. This department determination is not limited by the administrative law judge's finding of the appropriate amount to collect as a jeopardy assessment. The taxpayer may appeal this department determination in accordance with Section 12-60-460. At the contested case hearing on this department determination, the parties can raise issues and arguments previously presented at the jeopardy hearing;

(2) if the administrative law judge determines that the collection of the tax assessed is not in jeopardy, the department may issue a department determination in accordance with Section 12-60-450(E).

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

Subarticle 9
Applications for Licenses and Suspensions and Revocations of Licenses

SECTION 12-60-1310. Denial, proposed suspension, cancellation, or revocation of License; written protest; contents.

(A) If a division of the department denies a person a license that the department administers, or sends by first class mail or delivers a notice to the license holder that the division of the department shall suspend, cancel, or revoke a license administered by the department, then the person can appeal by filing a written protest with the department within ninety days of the denial, or proposed suspension, cancellation, or revocation. The department may extend the time for filing a protest at any time before the period has expired.

(B) The written protest must contain:

- (1) the name, address, and telephone number of the person;
- (2) the appropriate taxpayer number or numbers, if any;
- (3) the kind of license in dispute;
- (4) a statement of facts supporting the person's position;
- (5) a statement outlining the reasons for the appeal, including law or other authority upon which the person relies; and
- (6) other relevant information the department may reasonably prescribe.

(C) After the protest is filed, the person and the department shall stipulate the facts and issues upon which they can agree and may attempt to settle the case. If the person fails to respond or participate in the process, the department may view the appeal as abandoned and make a department determination using information provided in accordance with Section 12-60-30(15)(c)(iii).

(D)(1) The department shall make a department determination using the information provided by the person in accordance with Section 12-60-30(15)(c)(iii).

- (2) A determination of the department adverse to the person must be in writing and must:
 - (a) be sent by first class mail or delivered to the person;
 - (b) explain the basis for the department's determination;
 - (c) inform the person of his right to request a contested case hearing; and
 - (d) explain that the license must not be issued or the license must be suspended or revoked in thirty days unless the person requests a contested case hearing.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-1320. Exhaustion of prehearing remedies; request for hearing; time limitation.

Upon exhaustion of his prehearing remedy, a person may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This request must be made within thirty days after the date the department's determination was sent by first class mail or delivered to the person. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-1330. Hearing after exhaustion of prehearing remedy; request for contested case hearing after determination by department.

(A) Before a person may seek a determination by an administrative law judge pursuant to Section 12-60-1320, he shall exhaust his prehearing remedy.

- (1) If a person requests a contested case hearing before the Administrative Law Court within ninety days of the date of the denial or proposed suspension, cancellation, or revocation without exhausting his

prehearing remedy because he failed to file a protest with the department, the administrative law judge shall dismiss the action without prejudice.

(2) If the person failed to provide the department within the ninety-day- time period with the facts, law, and other authority supporting his position, he shall provide them to the department. The administrative law judge shall then remand the case to the department for reconsideration in light of the new facts or issues unless the department elects to forego the remand.

(3) If a person fails to file a protest with the department within ninety days of the date of the denial or proposed suspension, cancellation, or revocation, the person is in default, and the department shall deny, suspend, cancel, or revoke the license or permit appropriate. The denial, suspension, cancellation, or revocation of the license or permit may be lifted by the Administrative Law Court for good cause shown, and remand the matter to the department.

(B) Upon remand the department has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its department determination. The department shall issue its amended department determination in the same manner as the original. The person has thirty days after the date the department's amended determination was sent by first class mail or delivered to the person to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the department fails to issue its amended department determination within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the person may request again a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing have been presented in a timely manner for purposes of exhausting the person's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003; 2005 Act No. 161, § 23.H, eff June 9, 2005.

SECTION 12-60-1340. Emergency revocation order.

Anything else in this chapter notwithstanding, if the department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency revocation order from the Administrative Law Court, pursuant to Section 1-23-370(c).

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

SECTION 12-60-1350. Applicability of chapter.

Provisions in this chapter do not apply to, or have an effect on, a license suspended or revoked (1) by judicial decision or order, (2) where a statute requires the department to suspend or revoke a license, or (3) by other operation of law.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.DD, eff June 18, 2003.

Article 9

Property Tax Protest, Appeal, and Refund Procedures

Subarticle 1

Provisions Applicable to All Property Tax Protests, Appeals, and Refunds

SECTION 12-60-1710. Appeal procedures for real or personal property tax assessments.

The procedures provided in this article for appealing property tax assessments apply to all property tax assessments made for real or personal property tax purposes.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-1720. Department to prescribe regulations, rules, procedures, forms and instructions.

The department shall prescribe rules, procedures, forms, and instructions it considers appropriate and that are consistent with this article. Property tax assessors, auditors, and taxpayers shall comply with the department's regulations, rules, and procedures, and shall use the forms the department prescribes.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-1730. Written protest required to appeal property tax assessment or denial of exemption; assessors must notify taxpayer of right to appeal and time limitation.

A property taxpayer may appeal any property tax assessment or denial of exemption if a written protest is filed in accordance with this article. All property tax assessors shall notify taxpayers of their right to appeal and of the applicable time limitations. The department shall provide protest forms, and the property tax assessor shall make the forms available to property taxpayers. A property taxpayer's use of the department's protest forms is not mandatory.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-1740. Tax refunds; preference over other claims.

If it is determined that any tax in excess of the amount due was paid to or collected by a county, municipality, or other political subdivision, the treasurer within thirty days of the final determination shall refund the taxes and penalties, if any, so paid. The refund must be paid in preference to other claims against the county, municipality, or other political subdivision together with interest determined in accordance with Section 12-54-25. The full faith and credit of the county, municipality, or other political subdivision, as the case may be, is pledged as security for the funds. A county treasurer may refund the tax from current tax collections of the county, municipality, or other political subdivision if the treasurer collected and distributed the incorrectly collected tax for the county, municipality, or other political subdivision. When the treasurer has no current taxes of the county, municipality, or other political subdivision or when the treasurer did not collect the tax, notice of the approved refund must be transmitted to the entity or entities that received or collected the tax, and that entity or entities shall provide for the refund from other sources. If a treasurer does not have available the necessary funds, he shall report the refund due to the governing body of the appropriate political subdivision, and the governing body shall provide for the payment.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-1750. Refund of property taxes; exceptions.

Notwithstanding any other provision of law, no refund of property taxes must be given:

- (1) for a property tax exemption requiring an application, unless the application was timely filed; or
- (2) for errors in valuation, unless the assessment was appealed in accordance with Section 12-60-2110, 12-60-2510, or 12-60-2910, as appropriate. For the purposes of this item, the taxation of exempt property is not an error in valuation.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-1755. Crediting of erroneous property tax payments.

If a taxpayer or his agent pays property taxes in error, or the payment is erroneously credited, the treasurer shall credit the amount paid against the actual liability of the taxpayer for the tax year in question. This section applies for any tax year for which proof is provided.

HISTORY: 1995 Act No. 145, Part II, § 119F.

Code Commissioner's Note

This section was enacted as 12-47-75 by 1995 Act No. 145, Part 11, § 119F, and redesignated at the direction of the Code Commissioner.

SECTION 12-60-1760. Action pending against county officer.

(A) The county shall pay the reasonable attorney's fees, expenses, damages, and costs resulting from defending an action brought against a county officer for performing or attempting to perform a duty imposed on him by this title if the plaintiff prevails in the action and it affects the interest of the county. The county may ratably apportion the fees, expenses, damages, and costs among all parties, except the State, interested in the revenue involved in the action.

(B) If an action involves only a municipal levy, the municipality shall pay the attorney's fees, expenses, damages, and costs which may be awarded in the action. In such an action, the county may cause a municipality interested in the revenue involved in an action to be made a party to the action. The Administrative Law Judge or the court in which the action is pending shall join the municipality as a party.

HISTORY: 1995 Act No. 60, § 4A; 2015 Act No. 87 (S.379), § 67, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, § 67, in (A), substituted "The county may" for "The county auditor shall"; and in (B), substituted "the county may" for "a county auditor or treasurer may", and substituted "The Administrative Law Judge" for "The administrative law judge".

SECTION 12-60-1770. Small claims case.

A taxpayer who requests a contested case hearing before the Administrative Law Court pursuant to this article may avail himself of the small claims case provisions of Section 12-60-520 if the case otherwise meets the requirements of that section. In an action commenced by a county assessor or auditor, the taxpayer in his response to the county assessor's or auditor's request, may designate the case a small claims case if no more than ten thousand dollars of taxes and penalties, not including interest, are in controversy at the time the taxpayer's response is made.

HISTORY: 1995 Act No. 60, § 4A.

Subarticle 5

Protests, Appeals, and Refunds for Property Valued by the Department—Exemption Determinations

SECTION 12-60-2110. Property tax assessment protest; time for filing.

In the case of property tax assessments made by a division of the department, protests must be filed within ninety days after the date of the property tax assessment notice. If the division does not send a taxpayer a property tax assessment notice, a protest must be filed within ninety days after the tax notice is mailed to the taxpayer. If a division of the department denies a property tax exemption, a protest must be filed within ninety days after the date the notice of denial is mailed to the taxpayer.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.EE, eff June 18, 2003.

SECTION 12-60-2120. Property taxpayer appeal by written protest; contents.

(A)(1) A property taxpayer may appeal a property tax assessment proposed by a division of the department by filing a written protest with the department.

(2) The department shall notify any affected counties of the written protest.

(B)(1) A property taxpayer may protest any denial of a tax exemption by the department for property he believes is exempt from property tax by filing a written protest with the department.

(2) If a written protest is filed by a taxpayer, other than an individual, then the department must notify any affected counties of the written protest.

(C) The protest of property taxes under this section must be mailed or delivered to either the director, or his designee, within the time limits provided in Section 12-60-2110, and the protest must include the information required in Section 12-60-450(B) and also the fair market value, special use value, if applicable, and property classification of the property the taxpayer believes is correct. If the protest claims the property is exempt, the protest must state the basis on which exemption is claimed.

(D) All appeals must be conducted as provided in Section 12-60-450(C) through (E).

HISTORY: 1995 Act No. 60, § 4A; 2018 Act No. 265 (S.1043), § 8.D, eff October 3, 2018.

Effect of Amendment

2018 Act No. 265, § 8.D, in (A), inserted the (1) designator, and added (2), relating to notifying affected counties of written protests, and in (B), inserted the (1) designator and added (2), requiring the department to notify affected counties of written protests.

SECTION 12-60-2130. Taxpayer or local governing body may request contested case hearing.

A property taxpayer or the local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the department with the facts, law, and other authority supporting his position, he shall provide the department with the facts, law, and other authority he failed to present to the department earlier. The administrative law judge shall then remand the case to the department for reconsideration in light of the new facts or issues unless the department elects to forego the remand.

Upon remand the department will have thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its department determination. The department shall issue its amended department determination in the same manner as the original. The taxpayer has thirty days after the date the department's amended determination was sent by first class mail or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the department fails to issue its amended department determination within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 11.

SECTION 12-60-2140. Payment of adjusted assessment if appeal not concluded by December thirty-first of tax year; payment or refund of difference after final determination.

(A) If it is reasonably expected that the appeal will not be resolved by December thirty-first of the tax year, the department shall notify the auditor of the county where the property is located to adjust the property tax assessment of property under protest to eighty percent of the protested property tax

assessment, or any valuation greater than eighty percent agreed to in writing by the taxpayer, and enter the adjusted property tax assessment on the tax duplicate. The tax must be paid as in other cases.

(B) After a final determination, if the property tax assessment is greater than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. Interest determined in accordance with Section 12-54-25 must be collected in the same manner as the tax.

(C) After a final determination, if the property tax assessment is less than the adjusted property tax assessment, a corrected property tax assessment must be made and entered, provided that a refund is not due for any tax year before the three tax years immediately preceding the final determination unless the Administrative Law Court approves the refund. The overpayment of tax must be refunded together with interest determined in accordance with Section 12-54-25 on the overpayment.

(D) For purposes of this section, the "final determination" includes the decision of the Administrative Law Court or court if the property tax assessment was heard by the Administrative Law Court or appealed to a court as provided in this subarticle.

HISTORY: 1995 Act No. 60, § 4A; 2018 Act No. 265 (S.1043), § 8.E, eff October 3, 2018.

Effect of Amendment

2018 Act No. 265, § 8.E, in (C), in the first sentence, inserted ", provided that a refund is not due for any tax year before the three tax years immediately preceding the final determination unless the Administrative Law Court approves the refund" at the end.

SECTION 12-60-2150. Filing claim for a refund; contents.

(A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of property taxes paid and assessed by the department by filing a claim for refund with the department if it originally assessed the property or the taxpayer believes the property is exempt, other than from the homestead exemption, from property taxes.

(B) The department shall notify the counties affected by the claim for refund by notifying the chief executive officer, auditor, assessor, and treasurer of each affected county. A county auditor, upon notification, shall notify the chief administrative official of any local governing bodies affected by the claim for refund.

(C) The claim for refund under this section must be mailed or delivered to the department, and must include the information required in Section 12-60-450(B), the fair market value, special use value, if applicable, and property classification of the property the taxpayer believes correct. If the claim for refund states the property is exempt, the claim for refund must state the basis on which exemption is claimed.

(D) The appropriate division of the department shall determine what refund is due, if any, and give the taxpayer written notice of its determination as soon as practicable after a claim has been filed, but not later than six months after the date the claim for refund was filed with the department. If the department fails to timely issue a written notice of its determination, that failure is considered a written denial of the claim for refund.

(E) A taxpayer may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-2110. For purposes of complying with the provisions of Section 12-60-2110, the written denial of any part of a claim for refund is the equivalent of a property tax assessment notice.

(F) The department shall consider the written protest, determine the correct property tax assessment, and issue a department determination in accordance with the provisions of Section 12-60-450(E). All appeals before the department must be conducted as provided in Section 12-60-450(C) through (E).

(G) Even if a taxpayer has not filed a claim for refund, where no question of fact or law is involved, and it appears from the record that money has been erroneously or illegally collected from a taxpayer or other person under a mistake of fact or law, the department may, subject to the limitations in Section 12-60-1750, within the period specified in Section 12-54-85 and upon making a record in writing of its reasons, order a refund to the taxpayer or other person.

(H) A property taxpayer or the local governing body who disagrees with the department determination may request a contested case hearing before the Administrative Law Court by filing the request in accordance with the Administrative Law Court rules within thirty days of the date of the department determination.

If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the department with the facts, law, and other authority supporting his position, he shall provide the department with the facts, law, and other authority he failed to present to the department earlier. The administrative law judge shall then remand the case to the department for reconsideration in light of the new facts or issues unless the department elects to forego the remand.

Upon remand the department has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its department determination. The department shall issue its amended department determination in the same manner as the original. The taxpayer has thirty days after the date the department amended determination was sent by first class mail or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the department fails to issue its amended department determination within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 456, § 12; 1997 Act No. 106, § 5; 2018 Act No. 265 (S.1043), § 8.F, eff October 3, 2018.

Effect of Amendment

2018 Act No. 265, § 8.F, in (B), in the first sentence, inserted "by notifying the chief executive officer, auditor, assessor, and treasurer of each affected county" at the end, and in the second sentence, substituted "the chief administrative official of any local governing bodies affected by the claim for refund" for "any affected municipalities or other political subdivisions"; in (D), in the first sentence, inserted ", but not later than six months after the date the claim for refund was filed with the department" at the end, and added the second sentence; and in (F), in the first sentence, substituted "written protest" for "claim" and "a department determination in accordance with the provisions of Section 12-60-450(E)" for "necessary orders".

Subarticle 9

Appeals, Protests, and Refunds for Property Valued by County Assessors

SECTION 12-60-2510. Property tax assessment notice; contents; written notice of objection.

(A)(1) In the case of property tax assessments made by the county assessor, whenever the assessor increases the fair market value or special use value in making a property tax assessment by one thousand dollars or more, or whenever the first property tax assessment is made on the property by a county assessor, the assessor, by July first in the year in which the property tax assessment is made, or as soon after as is practical, shall send the taxpayer a property tax assessment notice. In years when real property is appraised and assessed under a countywide equalization program, substantially all property tax assessment notices must be mailed by October first of the implementation year. In these reassessment years, if substantially all of the tax assessment notices are not mailed by October first, the prior year's property tax assessment must be the basis for all property tax assessments for the current tax year. A property tax assessment notice under this subsection must be in writing and must include:

- (a) the fair market value;

- (b) value as limited by Article 25, Chapter 37, Title 12;
- (c) the special use value, if applicable;
- (d) the assessment ratio;
- (e) the property tax assessment;
- (f) the number of acres or lots;
- (g) the location of the property;
- (h) the tax map number; and
- (i) the appeal procedure.

(2) The notice must be served upon the taxpayer personally or by mailing it to the taxpayer at his last known place of residence which may be determined from the most recent listing in the applicable telephone directory, the Department of Motor Vehicles' motor vehicle registration list, county treasurer's records, or official notice from the property taxpayer.

(3) In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment.

(4) In years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time. The appeal must be submitted in writing to the assessor. An appeal submitted before the first penalty date applies for the property tax year for which that penalty would apply. An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

(B) The department shall prescribe a standard property tax assessment notice designed to contain the information required in subsection (A) in a manner that may be easily understood.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 431, § 28; 1998 Act No. 298, § 1; 2000 Act No. 283, § 4(B), eff May 19, 2000; 2002 Act No. 271, § 1, eff May 28, 2002; 2003 Act No. 69, § 3.FF, eff June 18, 2003; 2006 Act No. 388, Pt IV, § 2.B, eff upon ratification of amendment to Article X of the Constitution (ratified April 26, 2007); 2007 Act No. 57, § 9, eff June 6, 2007.

SECTION 12-60-2520. Written request to meet with assessor constitutes notice of objection; written protest following conference; contents.

(A) A property taxpayer may object to a property tax assessment made by a county assessor by requesting in writing to meet with the assessor within the time limits provided in Section 12-60-2510. This written request is a notice of objection for purposes of this subarticle.

(B) If, upon examination of the property taxpayer's written objection, the county assessor agrees with the taxpayer, the county assessor must correct the error. If, upon the examination, the county assessor does not agree with the taxpayer, the assessor shall schedule a conference with the property taxpayer within thirty days of the date of the request for a meeting or as soon after that as practical. If the matter is not resolved at the conference, the assessor shall advise the property taxpayer of the right to protest and provide the taxpayer a form on which to file the protest. The property taxpayer has thirty days after the date of the conference to file a written protest with the assessor. The protest must contain:

- (1) the name, address, and telephone number of the property taxpayer;
- (2) a description of the property in issue;
- (3) a statement of facts supporting the taxpayer's position;
- (4) a statement outlining the reasons for the appeal, including any law or other authority, upon which the taxpayer relies; and
- (5) the value and classification which the property taxpayer considers the fair market value, special use value, if applicable, and the proper classification.

The taxpayer may use the form prepared by the department, but use of the form is not mandatory.

(C) The assessor shall respond to the written protest and the response must:

- (1) be in writing;

(2) be mailed to the property taxpayer by first class mail within thirty days of the date of receipt of the property taxpayer's protest or as soon thereafter as practical;

(3) include a statement of the initial property tax assessment and the redetermined property tax assessment;

(4) state that the redetermined property tax assessment will become final if the property taxpayer does not appeal the property tax assessment to the county board of assessment appeals; and

(5) inform the taxpayer of procedures for all further appeals.

(D) The assessor may amend, modify, or rescind any property tax assessment, except claims relating to property tax exemptions.

(E) Each protest and each response must be filed and maintained at the office of the assessor for four years, and must be made available for examination and copying by any property taxpayer, at the taxpayer's expense pursuant to Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1995 Act No. 60, § 4A; 1998 Act No. 442, § 4E.

SECTION 12-60-2530. County board of assessment appeals.

(A) Within thirty days after the date of the county assessor's response provided in Section 12-60-2520, a property taxpayer may appeal a real property tax assessment to the county board of assessment appeals. The board may rule on any timely appeal relating to the correctness of any of the elements of the property tax assessment, and also other relevant claims of a legal or factual nature, except claims relating to property tax exemptions. Conferences held by the board are subject to any rules prescribed for the county boards of assessment appeals by the Administrative Law Court. The assessor may extend the time period for filing a taxpayer's appeal if the request for an extension is received by the assessor within thirty days of the date of the county assessor's response provided in Section 12-60-2520.

(B) An appeal to the board begins by giving written notice of intent to appeal to the assessor.

(C) A conference on the appeal must be conducted by the board within thirty days after the date of receiving a notice of appeal, or as soon thereafter as practical. The board shall:

(1) set the place, date, and time for the conference;

(2) give the assessor and the property taxpayer at least thirty days' written notice of the conference;

(3) advise the property taxpayer that all evidence must be presented at the conference; and

(4) have the authority and jurisdiction to enter a default decision if either the property taxpayer or the assessor fails to appear at the conference, if proper notice of the conference was given. If a default decision is entered against the property taxpayer for failure to appear at the conference, the property tax assessment becomes a final property tax assessment. A default order entered against the assessor for failure to appear at the conference results in a final property tax assessment based on the value stated in the property taxpayer's written protest. However, the board may grant a continuance and refrain from entering a default order upon good cause shown by any party.

(D) The intervention by an interested person not a party to the action is allowed where:

(1) the intervenor has a legal or equitable interest in the property which is the subject of the property tax assessment;

(2) the intervention is not prevented by any applicable statute of limitations and the intervenor has exhausted his prehearing remedies;

(3) the disposition of the action could, as a practical matter, impede protection of that interest; and

(4) the intervenor's interest is not being adequately represented by the existing parties, and could be impeded, as a practical matter, if intervention is denied.

(E) Each appeal must be considered by all board members present at a meeting. The lesser of a majority of the members or three members of the board is a quorum, unless the parties agree to a lesser number.

(F) At least fifteen days before the date of the conference, the assessor shall file with the board:

(1) a copy of the original property tax assessment for the subject property;

(2) the written protest of the property taxpayer;

(3) a written response to the taxpayer's protest; and

(4) copies of documents, including appraisals, property sales, and a brief description of other evidence to be presented by him. Copies of the documents filed with the board must be mailed or delivered to the property taxpayer at the same time.

(G) At least fifteen days before the date of the conference, the property taxpayer shall file with the board copies of documents, including appraisals, property sales, and a brief description of other evidence to be presented. Copies of the documents and lists must be mailed or delivered to the assessor at the same time. The requirement that the property taxpayer file the material with the board and mail or deliver it to the assessor may be waived by the board.

(H) At least seven days before the date of the conference, the parties may file with the board any response each may have to the information filed by the other. This material must be mailed or delivered to the other party at the same time.

(I) The conference must be held as follows:

(1) Conferences are open to the public.

(2) The board may meet in closed session to consider evidence presented at the conference.

(3) The assessor shall explain the property tax assessment and his response to the taxpayer's written protest.

(4) The assessor may provide the board with evidence to support the property tax assessment.

(5) The property taxpayer shall state his reasons for protesting the property tax assessment.

(6) The property taxpayer may provide the board with evidence to support amending, modifying, or rescinding the property tax assessment.

(7) A person intervening as a party in the appeal may state his position and present evidence in support of his position.

(8) The assessor may rebut information and arguments presented by the taxpayer or intervenor.

(9) The property taxpayer and intervenors, if any, may rebut information and arguments presented by the assessor.

(10) Any member of the board may question the property taxpayer, the assessor, and anyone else providing information at the conference. Any member of the board may request additional information.

(J) After the conference, the board shall issue a decision based upon the evidence before it as follows:

(1) The decision must be made by a majority vote of the board members present at the conference. In case of a tie, the assessor's determination is upheld.

(2) At the conclusion of the conference, the decision may be announced orally or it may be reserved for consideration. In either event, the board shall mail a written decision to the parties within fifteen days after the date of the conference, or as soon thereafter as practical.

(3) The written decision of the board shall:

(a) explain the basis for the decision;

(b) state that if the decision is not appealed, it must be certified to the county auditor for entry upon the property tax assessment rolls or tax duplicate; and

(c) inform the parties of their right to request a contested case hearing before the Administrative Law Court.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-2540. Contested case hearing; time for requesting following board's decision.

(A) Within thirty days after the date of the board's written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the board by requesting a contested case hearing before the Administrative Law Court in accordance with the rules of the Administrative Law Court.

(B) If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest or attend the conference with the county board of assessment appeals, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the county board with the facts, law, and other authority

supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the county board earlier. The administrative law judge shall then remand the case to the county board for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand.

Upon remand the county board has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its decision. The county board shall issue its amended decision in the same manner as the original. The taxpayer has thirty days after the date the county board's decision was mailed or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the county board fails to issue its amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-2545. Agricultural use appeals; attorney's fees.

Notwithstanding Section 12-60-3350, if a taxpayer appeals a county assessor's decision to remove the agricultural use classification from a property, the county shall pay reasonable attorney's fees if the taxpayer prevails in the contested case hearing and the administrative law judge makes a finding that the county assessor's decision was not reasonable.

HISTORY: 2007 Act No. 57, § 1, eff June 6, 2007.

SECTION 12-60-2550. Payment of adjusted assessment if protest or appeal not concluded by December thirty-first of tax year; payment or refund of difference after final determination.

(A) If it is reasonably expected that the written protest or appeal will not be resolved by December thirty-first of the tax year, the county assessor shall notify the auditor to adjust the property tax assessment of the property under protest to eighty percent of the protested property tax assessment, or any valuation greater than eighty percent agreed to in writing by the taxpayer, and enter the adjusted property tax assessment on the tax duplicate. The tax must be paid as in other cases.

(B) After final review of the protest or appeal, if the property tax assessment is greater than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. Interest determined in accordance with Section 12-54-25 must be collected in the same manner as the tax.

(C) After final review of the protest or appeal, if the property tax assessment is less than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. The overpayment of tax must be refunded together with interest determined in accordance with Section 12-54-25.

(D) For purposes of this section the "final review of the protest or appeal" includes the final decision of the Administrative Law Court or court with respect to the property tax assessment if the property tax assessment was heard by the Administrative Law Court or appealed to a court as provided in this subarticle.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-2560. Filing claim for refund; contents.

(A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of real property taxes assessed by the county assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought.

The assessor, upon receipt of a claim for refund, shall immediately notify the county treasurer and the county auditor for the county from which the refund is sought. The majority of these three officials shall determine the taxpayer's refund, if any, and shall notify the taxpayer in writing of their decision.

(B) Within thirty days after the decision is mailed to the taxpayer on the claim for refund, a property taxpayer may appeal the decision to the county board of assessment appeals. The board may rule on any timely refund appeal relating to the correctness of the property tax assessment. Conferences conducted by the board are pursuant to the same rules and procedures provided in Section 12-60-2530 except that a taxpayer's denied claim for refund is considered the assessor's response to a protest of property tax assessment.

(C) Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Court. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules.

If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a claim for refund or attend the conference with the county board of assessment appeals, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the county board with the facts, law, and other authority supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the county board earlier. The administrative law judge shall then remand the case to the county board for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand.

Upon remand the county board has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its decision. The county board shall issue its amended decision in the same manner as the original. The taxpayer has thirty days after the date the county board's decision was mailed or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the county board fails to issue its amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A.

Subarticle 13

Protests, Appeals, and Refunds for Personal Property Valued by County Auditor

SECTION 12-60-2910. Request to meet with auditor regarding personal property tax assessment; written protest following conference; contents.

(A) A property taxpayer may object to a personal property tax assessment or a denial of a homestead exemption made by the county auditor by requesting, in writing, to meet with the auditor at any time on or before the later of:

- (1) thirty days after the tax notice is mailed; or
- (2) last day the tax levied upon the assessment may be timely paid.

(B) Within thirty days of the request for a meeting, or as soon thereafter as practical, the auditor shall schedule a conference with the taxpayer. If the matter is not resolved at the conference, the auditor shall advise the taxpayer of the right to protest and provide the taxpayer a form on which to file the protest. The taxpayer shall file with the auditor a written protest within thirty days after the date of the conference. The protest shall contain:

- (1) the name, address, and phone number of the taxpayer;

- (2) a copy of the tax notice or a description of the property including the receipt number of the tax notice;
 - (3) a statement of facts supporting the taxpayer's position;
 - (4) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies; and
 - (5) the value which the taxpayer considers the fair market value of the property.
- The taxpayer may use the form provided by the auditor but is not required to use this form.
- (C) The auditor shall respond to the written protest and the response must:
- (1) be in writing;
 - (2) be mailed to the taxpayer by first class mail within thirty days of receipt of the taxpayer's protest or as soon thereafter as practical;
 - (3) if applicable, include a statement of the initial personal property tax assessment and the redetermined personal property tax assessment, including the recalculated fair market value;
 - (4) state that a recalculated personal property tax assessment will be made, or the auditor's decision on the homestead exemption will become final, if the taxpayer does not request a contested case hearing before the Administrative Law Court; and
 - (5) inform the taxpayer of his right to request a contested case hearing before the Administrative Law Court.
- (D) The auditor may amend, modify, or rescind any property tax assessment, except claims relating to property tax exemptions, other than the homestead exemption.
- (E) Each protest and each response must be filed and maintained at the office of the auditor for four years, and must be made available for examination and copying by any property taxpayer at the taxpayer's expense pursuant to Chapter 4, Title 30, the Freedom of Information Act.

HISTORY: 1995 Act No. 60, § 4A; 1996 Act No. 431, § 29; 1998 Act No. 442, § 4F.

SECTION 12-60-2920. Contested case hearing following county auditor's response.

(A) Within thirty days after the date of the county auditor's response provided in Section 12-60-2910, a taxpayer may appeal a personal property tax assessment, or denial of a homestead exemption, by requesting a contested case hearing before the Administrative Law Court in accordance with its rules.

(B) If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest or meet with the auditor, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the auditor with the facts, law, and other authority supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the auditor earlier. The administrative law judge shall then remand the case to the auditor for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand.

Upon remand the auditor has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its decision. The auditor shall issue his amended decision in the same manner as the original. The taxpayer has thirty days after the date the auditor's decision was mailed or delivered to the taxpayer to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the auditor fails to issue its amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-2930. Payment or refund following final review of protest.

(A) After final review of the protest, if the property tax assessment is greater than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. Interest determined in accordance with Section 12-54-25 must be collected in the same manner as the tax.

(B) After final review of the protest, if the property tax assessment is less than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. The overpayment of tax must be refunded together with interest determined in accordance with Section 12-54-25.

(C) For purposes of this section the "final review of the protest" includes the final decision of the Administrative Law Court or court with respect to the property tax assessment if the property tax assessment was heard by the Administrative Law Court or appealed to a court as provided in this subarticle.

HISTORY: 1995 Act No. 60, § 4A.

SECTION 12-60-2940. Claim for refund of personal property tax; request for contested case hearing following denial of claim.

(A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of property taxes assessed by the county auditor and paid, other than taxes paid on property the taxpayer claims is exempt unless the exemption is the homestead exemption, by filing a claim for refund with the county auditor who made the personal property tax assessment on the property for which the tax refund is sought. The auditor upon receipt of a claim for refund shall immediately notify the county treasurer and county assessor. A majority of these three officials shall determine the taxpayer's refund, if any, and shall notify the taxpayer in writing of their decision.

(B) A taxpayer may appeal the decision by requesting a contested case hearing before the Administrative Law Court in accordance with its rules within thirty days of the written denial of the claim for refund.

(C) If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a claim for refund, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the auditor with the facts, law, and other authority supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the auditor earlier. The administrative law judge shall then remand the case to the three county officials for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand.

Upon remand the three county officials have thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend their decision. The three county officials shall issue their amended decision in the same manner as the original. The taxpayer has thirty days after the date the taxpayer was notified of the amended decision to again request a contested case hearing. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules. If the three county officials fail to issue their amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer's prehearing remedy. The statute of limitations remains suspended by Section 12-54-85(G) during this process.

HISTORY: 1995 Act No. 60, § 4A.

Article 13
Procedures In Revenue Cases Administrative Law Court

SECTION 12-60-3310. Requesting contested case hearing.

A party permitted to request a contested case hearing with the Administrative Law Court shall make his request and serve it on opposing parties in accordance with rules established by the Administrative Law Court.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3312. Contested hearings open to public.

Except as otherwise provided by law or proper judicial order, all proceedings and records of a contested case hearing of the Administrative Law Court of a matter covered by the South Carolina Revenue Procedures Act are open to the public.

HISTORY: 2007 Act No. 110, § 6.A, eff June 21, 2007; 2007 Act No. 116, § 12.A, eff June 28, 2007.
Editor's Note

2007 Acts 110 and 116 added identical versions of this section.

2007 Act No. 110, § 6.B and 2007 Act No. 116, § 12.B provide as follows:

"This section takes effect upon approval by the Governor and applies to all tax decisions and associated information filed of record, whether or not the decision in the contested case hearing was issued before, on, or after that date."

SECTION 12-60-3320. Stipulation of facts and issues in contested cases.

In order to increase the efficiency and reduce the costs of contested cases, parties to a contested case hearing, in good faith, shall do their best to stipulate the facts and issues upon which they can agree.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3330. Administrative law judge may request department's participation in property tax matters; department may intervene.

In view of the desirability of consistent property tax treatment throughout the State and of the department's oversight of county property tax matters, the administrative law judge can request the participation of the department in a case before it which arose from a property tax assessed by a county assessor or county auditor, and the department may intervene at the administrative law judge level in a case which arose from a property tax assessed by a county assessor or county auditor.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3340. Contested case hearings; rules.

Contested case hearings must be without a jury and, except as otherwise provided by this chapter, must be held in accordance with Chapter 23, Title 1 and the rules of the Administrative Law Court.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3350. Costs or disbursements are not allowed; exceptions.

In an action covered by this chapter, no costs or disbursements may be charged or allowed to either party, except for the service of process and the attendance of witnesses.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3360. Decisions by the Administrative Law Court available to public.

The Administrative Law Court shall make its decisions available to the public in accordance with Section 1-23-600.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003.

SECTION 12-60-3370. Bond required prior to appeal to court of appeals.

Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals. For property tax cases covered by Section 12-60-2140 or 12-60-2550, the taxpayer need pay only the amount assessed pursuant to the appropriate section.

HISTORY: 1995 Act No. 60, § 4A; 2000 Act No. 399, § 3(M)(1), eff August 17, 2000; 2003 Act No. 69, § 3.HH, eff June 18, 2003; 2006 Act No. 387, § 12, eff July 1, 2006.

Editor's Note

2006 Act No. 387, § 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, § 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

SECTION 12-60-3380. Appeal of decision to court of appeals.

Except as otherwise provided in this chapter, a party may appeal a decision of the Administrative Law Court to the court of appeals. Appeal of a decision of the Administrative Law Court must be made in accordance with Section 1-23-610(B).

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003; 2006 Act No. 387, § 13, eff July 1, 2006.

Editor's Note

2006 Act No. 387, § 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, § 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and

petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

SECTION 12-60-3390. Dismissal of action covered by chapter brought in circuit court.

If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.

HISTORY: 1995 Act No. 60, § 4A; 2003 Act No. 69, § 3.HH, eff June 18, 2003; 2006 Act No. 387, § 14, eff July 1, 2006.

Editor's Note

2006 Act No. 387, § 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, § 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."