

HOUSE BILL 961

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 55 and Title 67, to enact the "Tennessee Administrative Tax Tribunal Act".

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

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, is amended by adding Sections 2 through 21 of this act as a new part 19:

SECTION 2.

(a) This part shall be known and may be cited as the "Tennessee Administrative Tax Tribunal Act".

(b) The purpose of this part is to increase public confidence in the fairness of the state tax system by requiring the state to provide an independent agency with tax expertise to resolve disputes between the department of revenue and taxpayers, prior to requiring the payment of the amounts in issue or the posting of a bond, but after the taxpayer has had a full opportunity to attempt settlement with the department of revenue based, among other things, on the hazards of litigation. By establishing an independent tax tribunal within the executive branch of government, this part provides taxpayers with a means of resolving controversies that insures both the appearance and the reality of due process and fundamental fairness.

(c) The tax tribunal established by this part shall provide hearings in all tax matters and any other matters over which the department of revenue has jurisdiction, except those specified by this part or any other law, and render decisions and orders relating to such matters. A tax tribunal hearing shall be commenced by the filing of a petition protesting a determination made by the department of revenue relating to the following:

(1) Assessments or levies of taxes, fees, fines, penalties, interest, or the waiver of penalties;

(2) Denial of an application for a refund or credit of taxes paid, including any offset of taxes against a refund pursuant to § 67-1-1808;

(3) Any determination of the department in connection with either an application for and entitlement to the issuance of, or the proposed revocation of, any certificate, license, permit, privilege or right;

(4) Any determination relating to the confiscation of any property, including seizures as provided in chapter 4, part 10 of this title; and

(5) Any other adverse action proposed or taken to implement any revenue regulatory or registration law administered by the commissioner of revenue.

(d) A final decision of the tax tribunal shall have the same force and effect as, and shall be subject to appeal, except in the case of claims over which the small claims division has jurisdiction pursuant to Section 16, in the same manner as, a final decision of a state trial court. It is the intent of the general assembly that this part foster the settlement or other resolution of tax disputes to the extent possible and, in cases in which litigation is necessary, to provide the people of this state with a fair, independent, pre-payment procedure to determine a dispute with the department of revenue. This part shall be interpreted and construed to further this intent.

SECTION 3. For purposes of this part:

(1) "Commissioner" means the commissioner of revenue;

(2) "Department" means the department of revenue;

(3) "Tax laws" means any laws enforced or administered by the commissioner of revenue governing any of the matters specified in Section 2; and

(4) "Taxpayer" includes a person:

(A) Who is challenging the state's jurisdiction over the person; and

(B) Who has standing to challenge the validity or applicability of the tax or any tax laws of this state.

#### SECTION 4.

(a) A tax tribunal is established in the executive branch of government. The tribunal is referred to in this part as the "tax tribunal".

(b) The tax tribunal shall be separate from and independent of the authority of the commissioner and the department.

(c) The tax tribunal shall have a seal.

(d) The tax tribunal shall be created and exist on and after January 1, 2014; provided, that the judges of the tribunal may be appointed prior to such date and may then take any action that is necessary to enable the judges to properly exercise after that date the duties, functions and powers given the tax tribunal under this part.

#### SECTION 5.

(a) The tax tribunal shall consist of three (3) full-time judges. Each judge shall exercise the powers of the tax tribunal. The judges shall hold office for staggered terms.

(b)

(1) The first judge of the tax tribunal shall be appointed by the governor, the second judge of the tax tribunal shall be appointed by the speaker of the senate, and the third judge of the tax tribunal shall be appointed by the speaker of the house of representatives.

(2) The first judge appointed by the governor shall serve an initial term of ten (10) years to begin on January 1, 2014.

(3) The second judge appointed by the speaker of the senate shall serve a term of ten (10) years to begin on January 1, 2015.

(4) The third judge appointed by the speaker of the house of representatives shall serve a term of ten (10) years to begin on January 1, 2016.

(c) Each judge of the tax tribunal shall receive an annual salary no less than that provided for general sessions judges under § 16-15-5003(a)(1) which salary shall not be diminished during the judge's term of appointment.

(d) Once appointed and confirmed, each judge shall continue in office until the judge's term expires and until a successor has been appointed and confirmed.

(e) A vacancy in the tax tribunal occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as an original appointment.

(f) The governor shall designate the governor's appointee as chief judge. The chief judge shall be the executive of the tax tribunal, shall have sole charge of the administration of the tax tribunal and shall apportion among the judges all causes, matters and proceedings coming before the tax tribunal. The individual designated as chief judge shall serve in that capacity at the pleasure of the governor.

(g) The governor may remove a judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or other good cause, with the advice and consent of the senate.

(h) Whenever the tax tribunal trial docket or business becomes congested or any judge of the tax tribunal is absent, is disqualified or for any other reason is unable to perform the duties as judge, and it appears to the governor that it is advisable that the services of an additional judge or judges be provided, the governor may appoint a judge, or judges, pro tempore of the tax tribunal. Any person appointed judge pro tempore of the tax tribunal shall have the qualifications set forth in Section 6(a) and (b) and shall be entitled to serve for a period no longer than six (6) months.

(i) A judge may disqualify himself or herself on the judges's own motion in any matter, and may be disqualified for any of the causes specified in § 4-5-302.

#### SECTION 6.

(a) Each judge of the tax tribunal shall be a citizen of the United States and, during the period of the judge's service, a resident of this state. No person shall be appointed as a judge unless at the time of appointment the individual has substantial knowledge of the tax laws of this state and substantial experience making the record in a tax case suitable for judicial review.

(b) Before entering upon the duties of office, each judge shall take and subscribe to an oath or affirmation that the judge will faithfully discharge the duties of the office, and such oath shall be filed in the office of the secretary of state.

(c)

(1) Each judge shall devote full time during business hours to the duties of office. A judge shall not engage in any other gainful employment or business, nor hold another office or position of profit in a political subdivision of this state, this state, any other state or the United States.

(2) Notwithstanding subsection (c)(1), a judge may own passive interests in business entities and earn income from incidental teaching or scholarly activities.

#### SECTION 7.

(a) The tax tribunal's principal office shall be located in Nashville.

(b) The tax tribunal shall conduct hearings at its principal office. The tax tribunal may also hold hearings at any place within the state, with a view toward securing to taxpayers a reasonable opportunity to appear before the tax tribunal with as little inconvenience and expense as practicable.

(c) The principal office of the tax tribunal shall be located in a building that is separate and apart from the building in which the department of revenue is located. When the tax tribunal holds hearings outside of its principal office, it shall do so in a location that is physically separated from facilities regularly occupied by the department.

(d) The state shall provide hearing rooms, chambers and offices for the tax tribunal at its principal office and shall arrange for hearing rooms, chambers and offices or other appropriate facilities when hearings are held elsewhere.

#### SECTION 8.

(a) The tax tribunal shall appoint a clerk and a reporter, and may appoint such other employees and make such other expenditures, including expenditures for library, publications and equipment, as are necessary to permit it to efficiently execute its functions.

(b) The reporter shall be subject to title 20, chapter 9, part 1 as if appointed by a judge of the chancery court, except where such provisions are in conflict with this part.

(c) No employee of the tax tribunal shall act as attorney, representative or accountant for others in a matter involving any tax imposed or levied by this state.

(d) An employee of the tax tribunal may be removed by the chief judge after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or for other good cause.

(e) In addition to the services of the official reporter, the tax tribunal may enter into a contract for the reporting of its proceedings and, in the contract, fix the terms and conditions under which transcripts will be supplied by the contractor to the tax tribunal and to other persons and agencies.

#### SECTION 9.

(a)

(1) The tax tribunal shall be the sole, exclusive and final authority for the hearing and determination of questions of law and fact arising under the tax laws of this state, and no person shall contest any matter within the jurisdiction of the tax tribunal in any action, suit or proceeding in the general sessions court, chancery court or any other court of this state, except as permitted by Section 17 relating to judicial review or as provided by any other provision of law, and except in the following cases:

(A) In inheritance tax cases in which only issues of valuation are raised, as provided by § 67-8-411, the state board of equalization shall have jurisdiction concurrent with the tax tribunal;

(B) In gift tax cases in which only issues of valuation are raised, as provided by § 67-8-116, the board designated in § 67-8-116 shall have jurisdiction concurrent with the tax tribunal;

(C) In the case of actions or proceedings to enforce a lien in favor of the commissioner or to collect a jeopardy assessment pursuant to the Tax Enforcement Procedures Act compiled in part 14 of this chapter; and

(D) In the case of bad checks, debit memos based on mathematical errors caused by the taxpayer's own figures, and delinquent partial payment agreements.

(2)

(A) All taxes paid shall be governed by the laws regarding petitions for the recovery of taxes as set out in this part and subject to any other procedures specified in part 18 of this chapter that are consistent with the purposes of this part.

(B) It shall not be a condition precedent for any petition for recovery of taxes, that the taxes be paid under protest, involuntarily, or under duress.

(C) To the extent that this part conflicts with any other law, this part shall control and supersede all such laws.

(b) If any person attempts to contest any matter as prohibited by subdivision (a)(1), then such action, suit, or proceeding shall be dismissed without prejudice. The improper commencement of any action, suit, or proceeding shall not extend the time period for commencing a proceeding in the tax tribunal.

(c) Except as provided in § 67-1-1406 or § 67-1-1431, the taxpayer shall have the right to have the taxpayer's case heard by the tax tribunal prior to the payment of any of the amounts asserted as due by the department of revenue and prior to the posting of any bond.

(d) If, with or after the filing of a timely petition filed pursuant to this part, the taxpayer pays all or part of the tax or other amount in issue before the tax tribunal has rendered a decision, the tax tribunal shall treat the taxpayer's petition as a protest of a denial of a claim for refund of the amount so paid. To the extent of any amounts collected by or paid to the commissioner with respect to an assessment, or any portion of the assessment, challenged by petition by the taxpayer, the petition shall proceed as a timely petition for refund of taxes paid, as if a timely claim for refund had been filed by the taxpayer and denied by the commissioner.

(e) The tax tribunal shall decide questions regarding the constitutionality of the application of statutes to the taxpayer and the constitutionality of regulations promulgated by the department but shall not have the power to declare a statute



unconstitutional on its face. A taxpayer desiring to challenge the constitutionality of a statute on its face may, at the taxpayer's election, do so by one of the following methods:

(1) Commence a declaratory action in the chancery courts of this state pursuant to Title 29, Chapter 14, with respect to the constitutional challenge, and file a petition in the tax tribunal with respect to the remainder of the matter, which proceeding shall be stayed by the tax tribunal pending final resolution of the constitutional challenge;

(2) File a petition with the tax tribunal with respect to issues other than the constitutional challenge, in which the taxpayer preserves the constitutional challenge until the entire matter, including the constitutional challenge and the facts related to the constitutional challenge, is presented to the appellate court; or

(3) Commence and simultaneously prosecute a declaratory action in the chancery court with respect to the constitutional challenge and a proceeding in the tax tribunal with respect to the remainder of the issues.

#### SECTION 10.

(a) Before the department of revenue finalizes a determination that triggers a taxpayer's right to commence a proceeding in the tax tribunal under Section 11, the department shall provide to the taxpayer, including for purposes of this section any person asserted by the department to be a taxpayer, the option to obtain review of the audit division's proposed assessment, or a proposed determination of any other division of the department, by an independent administrative appeal. An independent administrative appeal is a process of holding conferences and negotiating settlements that is designed to resolve the vast majority of tax controversies without litigation on a basis that is fair and impartial to the state and the taxpayer and that enhances voluntary compliance and public confidence in the integrity and efficiency of the department.

(b) The independent administrative appeals process shall have all of the following characteristics:

(1) Appeals personnel shall exercise independent judgment with the objective of settling as many disputed issues as possible without litigation;

(2) Appeals personnel shall have expertise in, and extensive experience with, the state's tax laws;

(3) Appeals personnel shall concede or settle individual issues based on the facts and the law, including the hazards of litigation, and an issue specifically conceded or settled by appeals personnel shall not thereafter be contested by the taxpayer or the department;

(4) Appeals conferences shall be conducted in an informal manner;

(5) Appeals conferences shall be conducted, at the taxpayer's option, by correspondence, by telephone or in person;

(6) Appeals personnel shall consider arguments as to the applicability of the tax laws; settlement proposals and counterproposals; and new evidence in support of the taxpayer's position; provided, that if the new evidence is substantial and should have been presented at the time of audit or other review by any other division of the department, appeals personnel may request the audit division to examine the evidence and to make a recommendation as to the effect of the evidence on the relevant issue;

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

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

including a person specified in Section 18(a); provided, nothing in this section or Section 18(a) shall be construed as sanctioning or authorizing the unauthorized practice of law in any proceeding requiring the professional judgment of a lawyer;

(9) Appeals personnel shall not engage in ex parte communications with department employees to the extent that such communications appear to compromise the independence of the appeals function. Consistent with this rule, appeals personnel may on an ex parte basis:

(A) Ask questions that involve ministerial, administrative, or procedural matters and that do not address the substance of the issues or positions taken in the case; and

(B) Seek legal advice on an issue from a department attorney who was not involved in providing advice on that issue to the employees who made the determination being reviewed. In all other cases, appeals personnel shall allow the taxpayer to participate in any communications with department employees;

(10) Appeals decisions and agreements shall not be considered as precedent;

(11) A taxpayer's decision to forego appeals consideration shall not constitute a failure to exhaust administrative remedies, nor shall a taxpayer's decision to request appeals consideration with respect to a determination preclude the taxpayer from commencing a proceeding in the tax tribunal with respect to any issue not resolved by settlement or concession; and

(12) The department may promulgate emergency and other rules governing the operation of the independent administrative appeals process, including, without limitation, a rule allowing the department to finalize its

determination if the taxpayer fails to timely request or pursue appeals consideration or a rule allowing the department to publicly designate specific issues that appeals personnel may not compromise.

#### SECTION 11.

(a) A taxpayer may commence a proceeding in the tax tribunal by filing a petition protesting any determination of the department which:

- (1) Imposes a liability for taxes, fees, fines, penalties or interest;
- (2) Denies an application for a refund or credit of taxes;
- (3) Sets off a debtor's refund pursuant to § 67-1-1808;
- (4) Cancels, revokes, suspends or denies an application for or entitlement to the issuance of, or proposed revocation of, any certificate, license, permit, privilege, or registration;
- (5) Confiscates any property pursuant to chapter 4, part 10 of this title; or
- (6) Proposes or takes any other adverse action to implement any tax laws administered by the commissioner.

(b) The petition shall be filed in the tax tribunal no later than ninety (90) days after receipt of the department of revenue's written notice of such determination; except, that in the case of a debtor challenging an offset of taxes pursuant to § 67-1-1808, the petition shall be filed within twenty (20) days from the receipt of such notice, and except as may otherwise be provided in part 18 of this chapter, or chapter 4, part 10, of this title.

(c) The department of revenue shall file its answer in the tax tribunal no later than seventy-five (75) days after its receipt of the tax tribunal's notification that the taxpayer has filed a petition in proper form. Upon written request, the tax tribunal may grant up to fifteen (15) additional days to file an answer. The department shall serve a copy by certified mail return receipt requested on the taxpayer's representative or, if the

taxpayer is not represented, on the taxpayer, and shall file proof of such service with the answer. Material facts alleged in the petition, if not expressly admitted or denied in the answer, shall be deemed admitted. If the department fails to answer within the prescribed time, all material facts alleged in the petition shall be deemed admitted.

(d) The taxpayer may file a reply in the tax tribunal within thirty (30) days after receipt of the answer. The taxpayer shall serve a copy by certified mail return receipt requested on the authorized representative of the department and shall file proof of such service with the reply. If the taxpayer fails to reply within the prescribed time, all material facts alleged in the answer shall be deemed denied. When a reply has been filed, or, if no reply has been filed, then thirty (30) days after the filing of the answer, the controversy shall be deemed at issue and will be scheduled for hearing.

(e) Either party may amend a pleading once without leave at any time before the period for responding to it expires. After such time, a pleading may be amended only with the written consent of the adverse party or with the permission of the tax tribunal. The tax tribunal shall freely grant consent to amend upon such terms as may be just. Except as otherwise ordered by the tax tribunal, there shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Filing of the answer, or, if the answer has already been filed, the amended answer, shall be made no later than seventy-five (75) days after filing of the amended petition. Filing of the reply or, if the reply has already been filed, the amended reply, shall be made within thirty (30) days after filing of the amended answer. The taxpayer may not amend a petition after expiration of the time for filing a petition, if such amendment would have the effect of conferring jurisdiction on the tax tribunal over a matter that would otherwise not come within its jurisdiction. An amendment of a pleading shall relate back to the time of

filing of the original pleading, unless the tax tribunal shall order otherwise either on motion of a party or on the tax tribunal's own initiative.

(f) The filing of the petition with the tax tribunal under this part by the taxpayer tolls all statutes of limitations as to other persons potentially liable to the taxpayer due to the occurrence from which the claim before the tax tribunal arises until the final determination of the suit.

#### SECTION 12.

(a) Upon filing a petition, the taxpayer shall pay to the clerk a fee in the amount of fifty dollars (\$50.00); except, that in case of a petition filed in the small claims division as provided in Section 16, the fee shall be twenty-five dollars (\$25.00). A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(b) The tax tribunal may fix a fee, not in excess of the fees charged and collected by the clerks of the chancery courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

#### SECTION 13.

(a) The parties to a proceeding shall make every effort to achieve discovery by informal consultation or communication, before invoking the discovery mechanisms authorized by this section.

(b) The parties to a proceeding shall stipulate all relevant and non-privileged matters to the fullest extent to which complete or qualified agreement can or fairly should be reached. Neither the existence nor the use of the discovery mechanisms authorized by this section shall excuse failure to comply with this subsection (b).

(c) Subject to reasonable limitations prescribed by the tax tribunal, a party may obtain discovery by written interrogatories; requests for the production of documents, including returns, books, papers, documents, correspondence or other evidence; depositions of parties, non-party witnesses and experts; and requests for admissions. The tax tribunal may provide for other forms of discovery.

(d) A judge or the clerk of the tax tribunal, on the request of any party to the proceeding, shall issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas duces tecum requiring the production of evidence or things.

(e) Any employee of the tax tribunal may administer oaths, as designated in writing by a judge for such purpose.

(f) Any witness subpoenaed or whose deposition is taken shall receive the same fees and mileage reimbursement as a witness in a chancery court of this state. The party requesting the subpoena shall bear the cost of paying the fees and mileage reimbursement.

(g) The tax tribunal may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party.

#### SECTION 14.

(a) Proceedings before the tax tribunal shall be tried de novo and, to the extent permissible under the state and federal constitutions, without a jury.

(b) Except as set forth in this part or otherwise precluded by law, the tax tribunal shall take evidence, conduct hearings and issue final and interlocutory decisions.

(c)

(1) Hearings shall be open to the public and shall be conducted in accordance with such rules of practice and procedure as the tax tribunal may promulgate.

(2) Notwithstanding subdivision (c)(1), on motion of either party the tax tribunal shall issue a protective order or an order closing part or all of the hearing to the public, if the party shows good cause to protect certain information from being disclosed to the public.

(3) Notwithstanding part 17 of this chapter, or any other law prohibiting disclosure of a taxpayer's identity or tax information, all information disseminated or presented by the department or its employees or officers necessary to accomplish the purpose of this part is lawful.

(d) The tax tribunal shall not be bound by the rules of evidence applicable to civil cases in the chancery courts of this state. The tax tribunal shall admit relevant evidence, including hearsay, if it is probative of a material fact in controversy. The tax tribunal shall exclude irrelevant and unduly repetitious evidence. Notwithstanding the foregoing, the rules of privilege recognized by law shall apply.

(e) Testimony may be given only on oath or affirmation.

(f) The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing, unless a party satisfies the tax tribunal that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the tax tribunal over a matter that would not otherwise come within its jurisdiction.

(g) In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the



department shall have the burden of persuasion in the case of a confiscation of any property pursuant to chapter 4, part 10, of this title, or in the case of any assertion of fraud, an intention to avoid payment, deceit, or intentional misrepresentation of a material fact.

(h) Proceedings before the tax tribunal, except those before the small claims division as provided in Section 16, shall be officially reported. The state shall pay the expense of reporting from the appropriation for the tax tribunal, to the extent that funds have been appropriated by the general appropriations act and are available for the tribunal.

#### SECTION 15.

(a) The tax tribunal shall render its decision in writing, which shall include a concise statement of the finding of fact and conclusions of law. The tax tribunal's decision shall, except as otherwise provided by law, grant such relief, invoke such remedies, and issue such orders as it deems appropriate to carry out its decision.

(b) The tax tribunal shall render its decision no later than six (6) months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, then no later than six (6) months after completion of the hearing. The tax tribunal may extend the six-month period, for good cause, up to three (3) additional months.

(c) If the tax tribunal fails to render a decision within the prescribed period, either party may institute a proceeding in the chancery court of Davidson County, or in the chancery court in the county of the taxpayer's domicile, or in the county of the taxpayer's principal place of business, to compel the issuance of such decision.

(d) The tax tribunal's decision shall finally decide the matters in controversy, unless any party to the matter timely appeals the decision as provided in Section 17.

(e) The tax tribunal's decision shall have the same effect, and shall be enforced in the same manner, as a judgment of a chancery court of the state.

(f) The tax tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the tax tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the tax tribunal in subsequent cases involving similar facts, unless the tax tribunal's interpretation or application conflicts with that of an appellate court or the tax tribunal provides satisfactory reasons for reversing prior precedent.

#### SECTION 16.

(a) There is established a small claims division of the tax tribunal.

(b) The judges of the tax tribunal shall sit as the judges of the small claims division.

(c) If the taxpayer timely elects, the small claims division shall have jurisdiction over any proceeding with respect to any calendar year for which the base amount of the tax deficiencies or delinquencies and claimed refunds or credits in controversy does not exceed twenty-five thousand dollars (\$25,000), exclusive of interest and penalties.

(d) A taxpayer may elect to proceed in the small claims division of the tax tribunal by filing a petition in the form prescribed by the tax tribunal no later than ninety (90) days after the taxpayer's receipt of written notice of the determination that is the subject of the petition. A taxpayer may not revoke an election to proceed in the small claims division.

(e) No later than thirty (30) days after receipt of notice that the taxpayer has filed a petition in proper form, or at such other time as the tax tribunal may order, the department of revenue shall file with the tax tribunal an answer similar to that required by Section 11.

(f) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the small claims division by notifying the clerk of the tax tribunal in writing. Such dismissal shall be with prejudice, and shall not have the effect of revoking the election made in accordance with subsection (d).

(g) Hearings in the small claims division shall be informal, and the judges may receive such evidence as the judges deem appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(h) A judgment of the small claims division shall be conclusive upon all parties and may not be appealed. A judgment of the small claims division shall not be considered as precedent in any other case, hearing or proceeding.

(i) Notwithstanding any law to the contrary, Sections 2 through 15 and Sections 16 through 21 shall apply to proceedings in the small claims division unless expressly inapplicable thereto or inconsistent with this section.

#### SECTION 17.

(a) The taxpayer or the department shall be entitled to judicial review of a final decision of the tax tribunal, excluding a final decision of the small claims division, in accordance with the procedure for appeal from a decision of a chancery court pursuant to the Tennessee Rules of Appellate Procedure, and without regard to the sum involved. The taxpayer or the department may obtain judicial review of an interlocutory decision of the tax tribunal under the same conditions and in the same manner as an interlocutory decision of the chancery court pursuant to the Tennessee Rules of Appellate Procedure.

(b) The record on judicial review shall include the decision of the tax tribunal, the stenographic transcript of the hearing before the tax tribunal, the pleadings and all exhibits and documents admitted into evidence.

(c) If an order of the tax tribunal established pursuant to this part is appealed, the appellate court shall award to the prevailing party reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the amount assessed or denied, including interest after payment. For purposes of this subsection (c), attorneys' fees shall not exceed fees calculated on the basis of reasonable hourly rates multiplied by a reasonable number of hours expended in the case and shall not be calculated by application of any premium, enhancement, or contingency.

(d) For purposes of this subsection (d), the state shall be deemed the prevailing party where the taxpayer is found by a court to be the transferee of assets conveyed in violation of title 66, chapter 3, or the tax, penalty or interest at issue in the case arises from the same underlying activity with respect to which the taxpayer or one of its officers, owners or employees was found to have committed fraud.

#### SECTION 18.

(a) Appearances in proceedings conducted by the tax tribunal may be by the taxpayer, by an attorney admitted to practice in this state, including an attorney who is a partner or member of, or is employed by, an accounting or other professional services firm, by an accountant licensed in this state, or by an enrolled agent authorized to practice before the internal revenue service. The tax tribunal may allow any attorney or accountant authorized to practice or licensed in any other jurisdiction of the United States to appear and represent a taxpayer in proceedings before the tax tribunal for a particular matter. In addition, the tax tribunal may promulgate rules and regulations permitting a taxpayer to be represented by an officer, employee, partner, or member.

(b) The department shall be represented by an authorized representative in all proceedings before the tax tribunal.

SECTION 19. Except for decisions issued by the small claims division, the tax tribunal shall index and publish its final decisions in such print or electronic form as it deems best adapted for public convenience. Such publications shall be made permanently available and constitute the official reports of the tax tribunal.

SECTION 20.

(a) Mailing by certified mail, return receipt requested, to the address of the taxpayer given on the taxpayer's petition, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the department, shall constitute personal service on the other party. The tax tribunal may by rule prescribe that notice by other means shall constitute personal service and may in a particular case order that notice be given to additional persons or by other means.

(b) Mailing by certified mail or delivery by a private delivery service approved by the internal revenue service in accordance with § 7502 of the Internal Revenue Code of 1986, as amended, shall be deemed to have occurred, respectively, on the date of mailing or the date of submission to the private delivery service.

SECTION 21. The tax tribunal is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 22. Tennessee Code Annotated, Section 67-1-105, is amended by deleting the section in its entirety.

SECTION 23. Tennessee Code Annotated, Section 55-5-117, is amended by adding the following as a new subsection:

(c) Any notice of suspension or revocation sent pursuant to this section shall state that the vehicle's operator or owner, or both, are entitled to an administrative

hearing held by the tax tribunal pursuant to a petition protesting such action under title 67, chapter 1, part 19.

SECTION 24. Tennessee Code Annotated, Section 67-4-1006(b)(6), is amended by deleting the language "67-4-1021" and by substituting instead the language "chapter 1, part 19 of this title."

SECTION 25. Tennessee Code Annotated, Section 67-4-1021, is amended by deleting the section in its entirety and by substituting instead the following:

**67-4-1021.**

(a) In all cases of seizure of any tobacco products or other property subject to forfeiture under this part, the officer or other person making the seizure shall proceed as follows:

(1)

(A) Upon confiscation, or as soon thereafter as practicable, written notice shall be given by the department to the person from whom the confiscation was made, and to all others with a legal interest in the property confiscated who are either made known to the department or who, by a reasonable examination of public records of titles and liens, should have been discovered;

(B) The notice shall state a description of the property confiscated, the reason for confiscation, the method for seeking recovery, the time limit for seeking recovery, and the result of failure to seek or obtain recovery by the designated method;

(C) Such notice may be by personal delivery or by mail, either of which may be made to the last known address of the interested party;

(2) All such property seized and confiscated under this part shall be sold at public sale by the department of general services, when the property has been turned over to it by the commissioner of revenue, as authorized by law under title 12, chapter 2, part 2;

(3) In the case of any contraband property seized by any law enforcement officer of any incorporated municipality or of any county and turned over to the department of revenue for confiscation, there shall be paid to the municipality or to the county served by such officer fifty percent (50%) of the net proceeds thereof; and

(4) Any person claiming any property so seized as contraband goods may, within ninety (90) days from the date of the notice of confiscation, file with the tax tribunal at Nashville a petition in writing, requesting a hearing and stating the person's interest in the articles seized; provided, that such petition and any hearing commenced upon proper petition shall comply with the requirements of chapter 1, part 19 of this title.

(b) In any hearing convened upon proper petition of an interested party, the initial burden shall be upon the state to show by a preponderance of the evidence that the property in question was of such nature or was used in such manner as to be declared as contraband. Upon meeting this burden, the property shall be forfeited as provided by law, unless the claimant shall prove that the claimant is nevertheless qualified under this part, or otherwise, to recover the property in question.

(c)

(1) In the event the ruling of the tax tribunal is favorable to the claimant, the tax tribunal shall deliver to the claimant the tobacco products or property so seized.

(2) If the ruling of the tax tribunal is adverse to the claimant, the sale of such contraband goods shall be by the department of general services as provided by subsection (a).

(3) The expenses of storage, transportation, and other costs shall be adjudged as a part of the cost of the proceeding in such manner as the tax tribunal shall fix.

(d) Pending any proceeding to recover any tobacco product, vending machine, vehicle, aircraft, or boat seized under this part, the commissioner may order delivery of such item to any claimant who shall establish the claimant's right to immediate possession of the tobacco product, vending machine, vehicle, aircraft, or boat.

(e) The confiscated goods shall not be sold pending review by the tax tribunal, but shall be stored by the department until the final disposition of the case.

(f)

(1) Within the discretion of the tax tribunal, the claimant may be awarded possession of the confiscated goods pending the decision of an appellate court; provided, that the claimant shall be required to execute a bond payable to the state of Tennessee in an amount double the value of the property seized, the sureties to be approved by the tax tribunal.

(2) The condition of the bond shall be that the obligors shall pay to the state, through the department, the full value of the goods or property seized, unless upon certiorari the decision of the tax tribunal shall be reversed and the property awarded to the claimant.

(g)

(1) Either party dissatisfied with the judgment or decree of the appellate court may, upon giving bond as required in other suits, appeal and have a



reexamination, in the appellate court, of the whole matter of law and fact appearing in the record.

(2) When any such appeal is made, the clerk of the tax tribunal in which such petition was pending shall include as a part of the record the original certified transcript of the proceedings had before the tax tribunal when identified by the judge instead of a bill of exceptions, which need not be made and filed.

(3) The appeal shall be advanced upon the docket of the appellate court as one of such precedence, and heard as promptly as practicable.

(h) If no claim is interposed, such tobacco products or other property shall be forfeited without further proceedings and the property shall be sold as provided in this section.

(i) The procedure in chapter 1, part 19 of this title is the sole remedy of any claimant, and no court shall have jurisdiction to interfere with the remedy by replevin, injunction, supersedeas, or in any other manner.

(j)

(1) Whenever, in any proceeding under chapter 1, part 19 of this title, a petition is filed for any vending machine, vehicle, aircraft, or boat seized, as provided in this section, by an owner or other person asserting the interest of the owner, the tax tribunal shall not allow the claim, unless and until the claimant proves that:

(A) The claimant has an interest in such property that the claimant acquired in good faith; and

(B) The claimant had at no time any knowledge or reason to believe that the seized item was being or would be used in the violation of the laws of the United States or of this state relating to tobacco products.

(2) Whenever, in any proceeding under chapter 1, part 19 of this title, a petition is filed for any property seized, as provided in this section, by a person who is the holder of a security interest or other claim arising out of a contract or agreement, the tax tribunal shall not allow the claim, unless and until the claimant proves that the claimant has an interest in such property that the claimant acquired in good faith. An interest that is acquired in the ordinary course of business shall be presumed to be in good faith, unless the tax tribunal receives evidence that the holder of the security interest had knowledge, at the time the interest attached, of the intended illegal use of the vehicle or was a co-conspirator in furtherance of the illegal activity. A holder of a security interest that is other than a natural person shall be considered a co-conspirator for purposes of this section, if evidence shows that an officer, employee, or agent of the holder acting within the scope of employment is a co-conspirator, and the holder either:

(A) Has actual knowledge of the illegal activities of the officer, employee or agent from an individual other than the officer, employee, or agent and fails to take appropriate action; or

(B) Has failed to reasonably supervise or monitor the activities of the holder's officer, employee or agent.

(3) In the event the interest of the owner is forfeited as provided in subdivision (j)(1) and the interest of the holder of a security interest is not forfeited as provided in subdivision (j)(2), the tax tribunal may, at the request of the holder of such interest, return the property to the holder for disposition in accordance with the applicable security agreement or other contract. If the tax

tribunal does not return the property to the holder, the forfeiture shall be subject to the holder's interest.

(4) An owner whose interest is forfeited after being arrested for or charged with any felony shall be ineligible to purchase the property from, or to bid at any sale of the property by, the commissioner or any seizing agency. The owner whose interest is forfeited after being arrested for or charged with any felony shall also be ineligible to redeem the property from, or to bid at any sale of the property by, any holder of a security interest acting pursuant to the agreement contract or title 47, chapter 9.

SECTION 26. Tennessee Code Annotated, Section 67-1-1801, is amended by deleting the section in its entirety and by substituting instead the following:

**67-1-1801.**

(a) In all cases in which any officer, charged by law with the authority to assess taxes that are collected or administered by the commissioner of revenue, assesses a tax alleged or claimed to be due, if the taxpayer against whom the assessment is made believes the assessment to be unjust, illegal, or incorrect, the taxpayer's remedies shall be as follows:

(1) The taxpayer may pay the tax and file a claim for refund of the tax and proceed as provided in this part; or

(2) The taxpayer may file a petition against the commissioner in the tax tribunal in accordance with part 19 of this chapter challenging all or any portion of the assessment of such tax, including any interest and penalty associated with the tax. Upon assessing a tax, the commissioner shall give prompt written notice of the assessment to the taxpayer, together with notice that the taxpayer has the right to file a petition in the tax tribunal in accordance with part 19 of this chapter

to challenge the assessment and collection of such tax within ninety (90) days from the receipt of such notice. Until the earlier of the expiration of ninety (90) days following the mailing of a notice of assessment to the taxpayer, or the filing of a petition by the taxpayer as provided in this part, no levy as defined in § 67-1-1404 shall be made, begun or prosecuted by the commissioner. The commissioner may, however, initiate and pursue any other action to collect an assessed deficiency under the Tax Enforcement Procedure Act, compiled in part 14 of this chapter or otherwise, including, but not limited to, the filing of a notice of lien as provided in § 67-1-1403 and the collection of a jeopardy assessment.

(b) A petition filed by a taxpayer under part 19 of this chapter shall operate to continue the stay of collection of the tax, or portion of the tax challenged, as provided in subdivision (a)(2), until dismissal or final determination of the tax by the tax tribunal.

(c)

(1) This subsection (c) shall only apply to an action to enforce the lien in favor of the commissioner or to commence a jeopardy proceeding under the Tax Enforcement Procedures Act.

(2) In any action or proceeding to which this subsection (c) applies, if the taxpayer has filed a qualified corporate surety bond or bank irrevocable letter of credit in the amount equal to one hundred fifty percent (150%) of the amount of the assessment, or has entered into a pledge or collateral assignment of assets in an amount and form satisfactory with the commissioner as evidenced by the commissioner's written consent to the pledge or collateral assignment, or has filed certified copies of notices of liens on all of the taxpayer's property, or on unencumbered property of the taxpayer located in this state equal in value to at least one hundred fifty percent (150%) of the amount of the assessment, any

proceedings or actions for the collection of the assessed tax shall be stayed pending final determination of the action or proceeding. Unless the taxpayer has filed the forms of security prescribed in this subsection, the commissioner shall not be prohibited or stayed from taking action to enforce or collect a jeopardy assessment as provided in §§ 67-1-1406 and 67-1-1431. In the event a final judgment in the action or proceeding is rendered in favor of the commissioner as to all or any portion of the challenged assessment, the commissioner shall be entitled to collect the amount of the assessment, interest accrued on the assessment, and any penalty assessed against the taxpayer, by enforcement of the bond, the letter of credit, the pledge or collateral assignment of assets, or the lien.

(3) Any taxpayer filing certified copies of notices of liens shall submit an affidavit executed by or on behalf of the taxpayer, which lists and describes with particularity:

(A) All of the taxpayer's assets, the respective fair market values and present location of those assets, all of the liabilities and the amount of the liabilities, and the person's or persons' address to whom such liability is owing, that are an encumbrance or lien against such assets;

(B) All transfers and assignments of the taxpayer's assets, whether such transfer was by gift, as collateral security, or otherwise, within the one-year period preceding the date of the assessment, together with a description of the asset, its value, and the name and address of the transferee or assignee of the asset, except those transfers or assignments that were bona fide, arm's length sales, or pledges of noninventory assets of a value of less than one thousand dollars

(\$1,000), or sales from inventory occurring in the ordinary course of a taxpayer's trade or business, and for which the taxpayer received full and adequate consideration in money or money's worth; and

(C) A certified copy of each notice of lien, in the form prescribed by regulations issued by the commissioner, required to be filed herein. A notice of lien in favor of the commissioner on all of the taxpayer's real property, wherever situated, shall be filed in the office of the secretary of state and in the office of the register of deeds in the county of the taxpayer's domicile or principal place of business in this state. A notice of lien in favor of the commissioner shall also be filed in other states, in the county in which the taxpayer's real estate is situated.

(4) For purposes of this subsection (c):

(A) In the case of a corporate taxpayer, no distribution to a shareholder of the corporation by way of a dividend, redemption, liquidation or partial liquidation, nor principal repayment of a debt by the corporate taxpayer to the shareholder shall be deemed as having been made for full and adequate consideration;

(B) A corporate surety company shall be qualified to issue a surety bond, if it is authorized by the commissioner of commerce and insurance to engage in the surety insurance business in this state, and a bank shall be qualified to issue its irrevocable letter of credit if it has been designated by the state treasurer as an authorized depository bank for the deposit of state funds, unless it has been determined by the commissioner to be not qualified for this purpose, based on reasonable standards uniformly applied;

(C) An asset of a taxpayer may include property assigned to the taxpayer for the limited purpose of having such asset pledged, collaterally assigned, or subjected to the lien in favor of the commissioner;

(D) A notice of lien filed as provided in this subsection (c) constitutes a lien against taxpayer's property, including after-acquired property and replacement property, to the extent of the amount of the assessment or portion of the assessment, including all penalties and interest associated with the assessment or imposed by the court, and shall have priority over all subsequent liens filed and perfected against the taxpayer's property, and may be collected and enforced by the commissioner in the same manner as a judicial lien or judgment, or in accordance with the Tax Enforcement Procedures Act; and

(E) A notice of lien, whether filed by the commissioner under § 67-1-1403 or filed by the taxpayer under this subsection (c), against any inventory, stock in trade, or trade receivables of the taxpayer shall not operate to or be construed so as to preclude the sale of such inventory or stock in trade by the taxpayer to customers in the ordinary course of the taxpayer's trade or business, nor to prevent the taxpayer from using the proceeds from the sale of inventory or stock in trade to customers in the ordinary course of the taxpayer's trade or business, and the proceeds from collection of trade receivables for the ordinary and necessary conduct and continuation of the taxpayer's trade or business.

(d)

(1) In any action to enforce a lien in favor of the commissioner or in any jeopardy proceeding commenced by the commissioner pursuant to the Tax

Enforcement Procedures Act, the court shall not have jurisdiction to issue an ex parte stay or temporary restraining order. A stay or temporary order restraining such action or proceeding may be issued by the court only after a hearing held upon not less than fifteen (15) nor more than thirty (30) days prior notice to the commissioner. At a hearing for stay or temporary order restraining jeopardy proceedings, the commissioner's basis for such proceeding shall be presumed to be correct, and the burden of proof shall be on the taxpayer to establish by clear and convincing evidence that the commissioner does not have a reasonable basis in fact for finding that collection of the tax is in jeopardy.

(2) The commissioner may at any time file a motion with the court challenging the qualification, sufficiency, or validity and accuracy of any bond, letter of credit, affidavit, or notice of lien filed by a taxpayer. Such motion may also seek to increase the amount of any bond, letter of credit, pledge or collateral assignment of assets, or notice of lien, which shall be granted, if it reasonably appears to the court that the amount is not sufficient to protect the state adequately. The commissioner shall be entitled to discover any and all matters, not privileged, pursuant to the Tennessee Rules of Civil Procedure. If a bond, letter of credit, or notice of lien is determined, after hearing, to be disqualified or insufficient to stay a levy or action to collect the assessment, or portion of the assessment, such stay shall be lifted, unless made qualified or sufficient within the time, not to exceed ten (10) days, prescribed by the court. If the court, after hearing, determines that an affidavit filed by the taxpayer contains material omissions, misrepresentations, overvaluation of assets or understatement of liabilities, the court shall dismiss the taxpayer's suit with prejudice, unless the court also finds, from the preponderance of the evidence, that such omission,



misrepresentation, overvaluation or understatement was not intentional and was not made for the purpose of misleading the commissioner or the court, or of concealing or disguising assets, transfer of assets, or the value of those assets.

(e) The commissioner shall be entitled, upon motion with notice to the transferee or assignee of a taxpayer's assets, to have the tax tribunal under part 19 of this chapter, or any court in which an action to enforce a lien in favor of the commissioner or jeopardy proceeding brought pursuant to part Tax Enforcement Procedures Act, set aside and order restored to the taxpayer for the benefit of the commissioner all transfers and assignments of the taxpayer's assets occurring subsequent to or within one (1) year preceding the filing of a petition by the taxpayer challenging an assessment of taxes, fines, penalties or interest by the commissioner, except those transfers or assignments that were bona fide, arm's length sales or pledges of noninventory assets of a value of less than one thousand dollars (\$1,000), or sales from inventory occurring in the ordinary course of the taxpayer's trade or business, and for which the taxpayer received full and adequate consideration in money or money's worth. The tax tribunal or court, as applicable, may order the restored assets sold and liquidated under the procedures established in Tax Enforcement Procedures Act, and shall apply the net proceeds of the sale to the payment of all amounts assessed by the commissioner against the taxpayer, and shall return the balance of the proceeds, pro rata, to the person or persons from whom the assignment or transfer of such assets was set aside.

SECTION 27. Tennessee Code Annotated, Section 67-1-1802(a)(7), is amended by deleting the language "final court adjudication" and by substituting instead the language "decision or order by the tax tribunal pursuant to part 19 of this chapter or final judgment of an appellate court".

SECTION 28. Tennessee Code Annotated, Section 67-1-1802, is amended by deleting subsections (b) and (c) in their entirety and by substituting instead the following:

(b)

(1) All claims for refund filed pursuant to this section shall be finally determined within six (6) months following receipt of the claim. If the claim for refund is denied, the commissioner shall promptly notify the claimant of the denial and the claimant's right to file a petition for recovery of the tax tribunal in accordance with part 19 of this chapter within ninety (90) days from receipt of the notice of denial of the claim for refund was denied by the commissioner.

(2) If a claim is not determined within the six-month period following receipt by the commissioner of such claim, the claim shall be deemed to be denied for the purpose of filing a petition in the tax tribunal; provided, that the ninety-day period for filing a petition with the tax tribunal shall begin to run from the date of the denial.

(c)

(1) A petition challenging the denial or deemed denial of a claim for refund shall be filed in the tax tribunal within ninety (90) days of the receipt of the notice denying the claim or the date the claim was deemed denied.

(2) In a proceeding under part 19 of this chapter challenging the denial or deemed denial of a claim for refund, the tax tribunal shall conduct a hearing in accordance with the provisions of part 19 of this chapter, and in those cases protesting an offset of a refund pursuant to § 67-1-1808, the tax tribunal shall only consider the petition if the issue is the existence, continued existence, or amount of a debt set off against a tax refund.

(3) The commissioner, by written notice promptly delivered to the taxpayer, may waive the requirement that the taxpayer file a claim for refund, in which case the taxpayer may file a petition in the tax tribunal pursuant to part 19 of this chapter for a refund within ninety (90) days following the date of receipt of notice of the waiver by the commissioner, and such petition shall proceed in all respects, including for the purpose of determining the date from which interest thereon should be calculated, as if a proper and timely claim for refund had been filed by the taxpayer, and either denied or not acted upon by the commissioner within the period specified in this section.

SECTION 29. Tennessee Code Annotated, Section 67-1-1803, is amended by deleting the section in its entirety and by substituting instead the following:

**67-1-1803.** If it is determined that the taxes for which a claim for refund was made pursuant to § 67-1-1802, or as to which a petition filed with the tax tribunal pursuant to part 19 of this chapter proceeded as a timely petition for refund were not due from the taxpayer to the commissioner for any reason going to the merits of the tax, then the tax tribunal shall certify of record that the tax was wrongfully paid and ought to be refunded, together with interest on the tax calculated forty-five (45) days from the date of filing a claim for refund or date of waiver by the commissioner, or on the date of payment in the case of any tax collected after the petition was filed pursuant to part 19 of this chapter. Thereupon, the commissioner of finance and administration shall issue such commissioner's warrant for the refund, which shall be paid in preference to all other claims on the state treasury.

SECTION 30. Tennessee Code Annotated, Section 67-1-1804, is amended by deleting the section in its entirety.

SECTION 31. Tennessee Code Annotated, Section 67-1-1807, is amended by deleting the section in its entirety and by substituting instead the following:

**67-1-1807.** All taxes paid shall be governed by the laws regarding refunds as set out in this part and petitions for the recovery of taxes as set out in part 19 of this chapter.

SECTION 32. Tennessee Code Annotated, Section 67-1-1808, is amended by deleting subsections (g) and (h) in their entirety and by substituting instead the following:

(g)

(1) If any debt has been previously determined to exist and to be due and owing as a result of a final order issued pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or a judgment entered by any court of record, then a debtor shall be afforded an opportunity for a hearing before the tax tribunal pursuant to part 19 of this chapter to determine the continued existence of the debt and whether it remains outstanding. No hearing shall be conducted as provided in part 19 of this chapter unless the time limits for appealing any prior final order or judgment have expired as provided by law.

(2)

(A) If any debt has not been determined to exist, or to be due and owing as a result of a prior final order or judgment, as provided in subdivision (g)(1), then a debtor shall be afforded an opportunity for a hearing, in accordance with subdivision (g)(2)(B), to determine the existence of the debt, and if so, whether the claimed debt asserted as due and owing is correct.

(B) Any debtor who desires a hearing shall submit to the claimant a written request for a hearing within twenty (20) days of receipt of the notice provided in subdivision (f)(3). The claimant shall notify the department of revenue as to whether the taxpayer filed a timely request for hearing upon the expiration of the twenty-day period for filing such

request or receipt of a request for a hearing. If a hearing is requested, then it shall be held by the claimant or the claimant's designee as provided in the Uniform Administrative Procedures Act. If the amount due is incorrect, a proper adjustment shall be made. After entry of a final order following any hearing, the claimant shall send a copy of the final order to the commissioner of revenue.

(3) All final orders issued as provided in subdivision (g)(1) or (g)(2), shall set forth the amount owed by the taxpayer to the claimant that is subject to set off.

(h)

(1) The commissioner of revenue shall set off the appropriate amount of a debt against the tax refund if a taxpayer fails to file a timely request for a hearing, or upon receipt of a final order, or as soon thereafter as practicable. Any portion of a tax refund remaining after the offset shall be refunded or credited to a taxpayer, as requested in the claim for refund. The commissioner shall ensure that the appropriate amount of the refund subject to set off is used to satisfy any debts owed by the taxpayer.

(2) The commissioner of revenue shall notify the taxpayer in writing and provide an accounting of the action taken on any refund whenever the commissioner sets off a taxpayer's refund pursuant to this section.

(3) The commissioner of revenue may require a claimant to pay a fee to reimburse the department of revenue's costs of collecting the debt on behalf of a claimant; provided, that the fee shall not exceed five dollars (\$5.00) per offset action.

SECTION 33. Tennessee Code Annotated, Section 67-1-110(c), is amended by deleting subdivision (16) in its entirety.

SECTION 34. The provisions of the act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to the act unless such funds are specifically appropriated by the general appropriations act.

SECTION 35. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 36. This act shall take effect January 1, 2014, the public welfare requiring it, except that Section 5 for the appointment by the governor of the first judge to the tax tribunal shall take effect on October 1, 2013. This act shall apply to all proceedings commenced in the tax tribunal on or after January 1, 2014, and shall apply to all administrative proceedings commenced prior to January 1, 2014, that have not been the subject of a final and irrevocable administrative action as of January 1, 2014, to the extent this act can be made applicable thereto. Any administrative proceeding in which a hearing has commenced prior to January 1, 2014 shall be transferred to the tax tribunal, which shall render the decision in such proceeding unless there is a prior settlement. This act shall not affect any proceeding, prosecution, action, suit or appeal commenced in the judicial branch before January 1, 2014.