

1 H.606

2 Introduced by Representative Branagan of Georgia

3 Referred to Committee on

4 Date:

5 Subject: Taxation; administration; appeals

6 Statement of purpose: This bill proposes to create an independent office to  
7 hear taxpayer appeals.

8 An act relating to the creation of an independent office of taxpayer appeals

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 32 V.S.A. chapter 103, subchapter 3 is added to read:

11 Subchapter 3. Appeals

12 § 3211. TAX HEARING OFFICER

13 (a) The position of tax hearing officer is hereby established in the executive  
14 branch of government. The tax hearing officer shall be separate from and  
15 independent of the authority of the commissioner of taxes and the department  
16 of taxes.

17 (b) The position of tax hearing officer shall be created and exist on and  
18 after January 1, 2013, but the tax hearing officer may be appointed prior  
19 thereto and may then take any action that is necessary to enable the tax hearing

1 officer properly to exercise after that date the duties, functions, and powers  
2 given under this subchapter.

3 § 3212. TERMS OF OFFICE

4 (a) There shall be at least one full-time tax hearing officer. If more than  
5 one tax hearing officer is appointed, each shall exercise the powers of the tax  
6 hearing officer.

7 (b) The tax hearing officer shall be appointed by the governor for a term of  
8 six years. If more than one tax hearing officer is appointed, the governor may  
9 appoint tax hearing officers for different terms not exceeding six years, so that  
10 all tax hearing officers' terms do not expire in the same year.

11 (c) Once appointed, each tax hearing officer shall continue in office until  
12 his or her term expires and until a successor has been appointed and confirmed.

13 (d) A vacancy occurring otherwise than by expiration of the tax hearing  
14 officer's term shall be filled for the unexpired term in the same manner as an  
15 original appointment.

16 (e) If more than one tax hearing officer is appointed, the governor shall  
17 designate one tax hearing officer as the chief tax hearing officer who shall  
18 apportion among the tax hearing officers all causes, matters, and proceedings  
19 coming before the tax hearing officers. The governor may change the  
20 designation at any time and for any reason.

1       (f) The governor may remove a tax hearing officer, after notice and an  
2       opportunity to be heard, for neglect of duty, inability to perform duties,  
3       malfeasance in office, or other good cause.

4       (g) Whenever the number of cases before the tax hearing officers justifies,  
5       or when a tax hearing officer is absent, is disqualified, or for any other reason  
6       is unable to perform his or her duties, and it appears to the governor that it is  
7       advisable that the services of an additional tax hearing officer be provided, the  
8       governor may appoint a tax hearing officer, pro tempore. Any person  
9       appointed tax hearing officer pro tempore shall have the qualifications set forth  
10       in subsections 3213(a) and (b) of this title and shall be entitled to serve for a  
11       period no longer than six months.

12       (h) A tax hearing officer may disqualify himself or herself on his or her  
13       own motion in any matter, and may be disqualified for any of the causes  
14       specified in Canon 3 E. of the Vermont Code of Judicial Conduct.

15       § 3213. REQUIREMENTS FOR OFFICE

16       (a) Each tax hearing officer shall be a citizen of the United States and,  
17       during the period of his or her service, a resident of this state, and an attorney  
18       admitted to practice in this state. No person shall be appointed as a tax hearing  
19       officer unless at the time of appointment the individual has substantial  
20       knowledge of the tax law and experience making the record in the appeal of a

1 tax case as an advocate, judge, or hearing officer that is suitable for judicial  
2 review.

3 (b) Before entering upon the duties of office, each tax hearing officer shall  
4 take and subscribe to an oath or affirmation that he or she will faithfully  
5 discharge the duties of the office, and such oath shall be filed in the office of  
6 the secretary of state.

7 (c) Each tax hearing officer shall devote his or her full time during business  
8 hours to the duties of his or her office. A tax hearing officer shall not engage  
9 in any other gainful employment or business, nor hold another office or  
10 position of profit in a government of this state, any other state, or the United  
11 States. Notwithstanding the foregoing provisions, a tax hearing officer may  
12 own passive interests in business entities and earn income from incidental  
13 teaching or scholarly activities.

14 § 3214. PRINCIPAL OFFICE

15 (a) The tax hearing officer's principal office shall be located in Montpelier.

16 (b) The tax hearing officer shall conduct hearings and conferences at the  
17 tax hearing officer's principal office. The tax hearing officer may also hold  
18 hearings and conferences at any place within the state, with a view toward  
19 securing to taxpayers a reasonable opportunity to appear before the tax hearing  
20 officer with as little inconvenience and expense as practicable. The tax hearing

1 officer may allow testimony or appearance via teleconference,  
2 video-conference, or other electronic means.

3 (c) The principal office of the tax hearing officer shall be located in a  
4 building that is separate and apart from the building in which the department of  
5 taxes is located.

6 (d) The state shall provide hearing rooms and offices for the tax hearing  
7 officer at the principal office of the tax hearing officer and shall arrange for  
8 hearing rooms, chambers, and offices or other appropriate facilities when  
9 hearings are held elsewhere.

10 (e) The tax hearing officer shall appoint a clerk and may appoint such other  
11 employees and make such other expenditures, including expenditures for a  
12 library and equipment, as are necessary to permit the tax hearing officer to  
13 effectively execute his or her functions.

14 § 3215. JURISDICTION

15 (a) Unless otherwise specified in law, the tax hearing official has  
16 jurisdiction to hear appeals from a determination imposing a liability for tax,  
17 penalty, or interest; denying a refund or credit application; canceling, revoking,  
18 suspending, or denying an application for a license, permit, or registration;  
19 asserting residency or domicile of the taxpayer in Vermont or taking any other  
20 action that gives a person the right to a hearing under the law.

1       (b) The taxpayer shall have the right to have his or her case heard by the  
2       tax hearing officer prior to the payment of any of the amounts asserted as due  
3       by the department of taxes and prior to the posting of any bond unless the  
4       commissioner has demanded immediate payment based on a determination that  
5       collection is in jeopardy.

6       (c) If the taxpayer pays all or part of the tax or other amount in issue  
7       before the tax hearing officer has rendered a decision (whether paid with or  
8       after the filing of a timely petition), the tax hearing officer shall treat the  
9       taxpayer's petition as a protest of a denial of a claim for the refund of the  
10       amount so paid.

11       (d) The tax hearing officer shall decide questions regarding the  
12       constitutionality of the application of statutes to the taxpayer and the  
13       constitutionality of regulations promulgated by the department of taxes, but  
14       shall not have the power to declare a statute unconstitutional on its face. A  
15       taxpayer desiring to challenge the constitutionality of a statute on its face may,  
16       at the taxpayer's election, do so by one of the following methods:

17               (1) commence a declaratory action in the civil division of the  
18       Washington unit of superior court, with respect to the constitutional challenge,  
19       and file a petition with the tax hearing officer with respect to the remainder of  
20       the matter, which proceeding shall be stayed by the tax hearing officer pending  
21       final resolution of the constitutional challenge;

1           (2) file a petition with the tax hearing officer with respect to issues other  
2 than the constitutional challenge, in which the taxpayer preserves the  
3 constitutional challenge until the entire matter, including the constitutional  
4 challenge and the facts related to the constitutional challenge, is presented to  
5 the appellate court; or

6           (3) bifurcate the matter by commencing a declaratory action in the civil  
7 division of the Washington unit of superior court, with respect to the facial  
8 constitutional challenge and by filing a petition with the tax hearing officer  
9 with respect to the remainder of the issues.

10 § 3216. INFORMAL RESOLUTION

11           (a) Before the department of taxes finalizes a determination that triggers a  
12 taxpayer's right to commence a proceeding before the tax hearing officer under  
13 section 3217 of this title, the department of taxes shall provide to the taxpayer,  
14 including for purposes of this section any person asserted by the department of  
15 taxes to be a taxpayer, the option to obtain review of the proposed  
16 determination by an administrative conference function. An administrative  
17 conference function means a program of holding conferences and negotiating  
18 settlements that is designed to resolve the vast majority of tax controversies  
19 without litigation on a basis that is fair and impartial to the state and the  
20 taxpayer and that enhances voluntary compliance and public confidence in the  
21 integrity and efficiency of the department of taxes.

1       (b) The administrative conference function to be maintained or established  
2       by the department of taxes shall have all of the following characteristics:

3           (1) Conferences shall be conducted by such personnel as the department  
4           of taxes shall from time to time assign, but no conference may be conducted by  
5           any person who directly participated in the department of taxes' decision that  
6           is being disputed, nor by any person who will represent the state before the tax  
7           hearing officer in the event that the dispute is not settled.

8           (2) Conference personnel shall exercise independent judgment with the  
9           objective of settling as many disputed issues as possible without litigation;

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

14          (4) Conferences shall be conducted in an informal manner;

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

17          (6) Conference personnel shall consider argument as to the applicability  
18          of the tax laws; settlement proposals and counterproposals; and new evidence  
19          in support of the taxpayer's position, provided that, if the new evidence is  
20          substantial and should have been presented at the time of the audit, conference



1 personnel may request the audit function to examine the evidence and to make  
2 a recommendation as to the effect of the evidence on the related issue;

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

5 (8) The taxpayer may participate in administrative conferences without  
6 representation and may be represented by an officer, employee, partner,  
7 manager, or member of the taxpayer, or other authorized representative;

8 (9) Conference personnel shall not engage in ex parte communications  
9 with any person who directly participated in the determination that is being  
10 disputed, to the extent that such communications appear to compromise the  
11 independence of the conference function. Consistent with this rule, conference  
12 personnel may on an ex parte basis ask questions that involve ministerial,  
13 administrative, or procedural matters and that do not address the substance of  
14 the issues or positions taken in the case, and seek legal advice on an issue from  
15 a department of taxes attorney who was not involved in providing advice on  
16 that issue to the employees who made the determination being reviewed.  
17 In all other cases, conference personnel shall allow the taxpayer to participate  
18 in any communications with department of taxes employees;

19 (10) Conference decisions and agreements shall not be considered as  
20 precedent;

1           (11) A taxpayer’s decision to request an administrative conference with  
2           respect to a determination shall not preclude the taxpayer from commencing a  
3           proceeding before the tax hearing officer with respect to any issue not resolved  
4           by settlement or concession; and

5           (12) The department of taxes may promulgate emergency and other  
6           rules governing the operation of the administrative conference function,  
7           including, without limitation, a rule allowing the department of taxes to  
8           finalize its determination if the taxpayer fails to timely request or pursue  
9           conference consideration or a rule allowing the department of taxes to publicly  
10          designate specific issues that conference personnel may not compromise.

11          § 3217. INITIATION OF ACTION; PLEADINGS

12          (a) A taxpayer may commence a proceeding before the tax hearing officer  
13          by filing a petition protesting the department of taxes determination imposing a  
14          liability for tax, penalty, or interest; denying a refund or credit application;  
15          canceling, revoking, suspending, or denying an application for a license,  
16          permit, or registration; or asserting residency or domicile of the taxpayer in  
17          Vermont or taking any other action that gives a person the right to a hearing  
18          under the law. The petition shall be filed with the tax hearing officer no later  
19          than 90 days after the date for mailing the department of taxes written notice of  
20          such determination. For purposes of this subchapter, the term “taxpayer”

1 includes a person who is challenging the state's jurisdiction over the person,  
2 and who has standing to challenge the validity or applicability of the tax.

3 (b) The department of taxes shall file its answer with the tax hearing officer  
4 no later than 75 days after its receipt of the tax hearing officer's notification  
5 that the taxpayer has filed a petition in proper form. Upon written request, the  
6 tax hearing officer may grant up to 15 additional days to file an answer. The  
7 department of taxes shall serve a copy on the taxpayer's representative or, if  
8 the taxpayer is not represented, on the taxpayer, and shall file proof of such  
9 service with the answer. Material facts alleged in the petition, if not expressly  
10 admitted or denied in the answer, shall be deemed admitted. If the department  
11 of taxes fails to answer within the prescribed time, all material facts alleged in  
12 the petition shall be deemed admitted.

13 (c) The taxpayer may file a reply with the tax hearing officer within 30  
14 days after receipt of the answer. The taxpayer shall serve a copy on the  
15 authorized representative of the department of taxes and shall file proof of such  
16 service with the reply. If the taxpayer fails to reply within the prescribed time,  
17 all material facts alleged in the answer shall be deemed denied. When a reply  
18 has been filed, or, if no reply has been filed, then 30 days after the filing of the  
19 answer, the controversy shall be deemed at issue and will be scheduled for  
20 hearing.

1        (d) Either party may amend a pleading once without leave at any time  
2        before the period for responding to it expires. After such time, a pleading may  
3        be amended only with the written consent of the adverse party or with the  
4        permission of the tax hearing officer. The tax hearing officer shall freely grant  
5        consent to amend upon such terms as may be just. Except as otherwise ordered  
6        by the tax hearing officer, there shall be an answer or reply to an amended  
7        pleading if an answer or reply is required to the pleading being amended.  
8        Filing of the answer or, if the answer has already been filed, the amended  
9        answer, shall be made no later than 75 days after filing of the amended  
10       petition. Filing of the reply or, if the reply has already been filed, the amended  
11       reply, shall be made within 30 days after filing of the amended answer. The  
12       taxpayer may not amend a petition after expiration of the time for filing a  
13       petition, if such amendment would have the effect of conferring jurisdiction on  
14       the tax hearing officer over a matter that would otherwise not come within its  
15       jurisdiction. An amendment of a pleading shall relate back to the time of filing  
16       of the original pleading, unless the tax hearing officer shall order otherwise  
17       either on motion of a party or on the tax hearing officer's own initiative.

18       § 3218. FEES

19       The tax hearing officer may fix a fee, not in excess of the fees charged and  
20       collected by the clerks of the superior courts, for comparing, or for preparing

1 and comparing, a transcript of the record, or for copying any record, entry, or  
2 other paper and the comparison and certification thereof.

3 § 3219. DISCOVERY

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

7 (b) The parties to a proceeding shall stipulate all relevant and nonprivileged  
8 matters to the fullest extent to which complete or qualified agreement can or  
9 fairly should be reached. Neither the existence nor the use of the discovery  
10 mechanisms authorized by this section shall excuse failure to comply with this  
11 provision.

12 (c) Subject to reasonable limitations prescribed by the tax hearing officer, a  
13 party may obtain discovery by written interrogatories; requests for the  
14 production of returns, books, papers, documents, correspondence, or other  
15 evidence; depositions of parties, nonparty witnesses, and experts; and requests  
16 for admissions. The tax hearing officer may provide for other forms of  
17 discovery.

18 (d) The tax hearing officer, on the request of any party to the proceeding,  
19 shall issue subpoenas requiring the attendance of witnesses and giving of  
20 testimony and subpoenas duces tecum requiring the production of evidence or  
21 things.

1       (e) The clerk or any employee of the tax hearing officer designated in  
2       writing for the purpose by tax hearing officer may administer oaths.

3       (f) Any witness subpoenaed or whose deposition is taken shall receive the  
4       same fees and mileage as a witness in superior court of this state.

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

8       § 3220. HEARINGS

9       (a) Proceedings before the tax hearing officer shall be tried de novo and  
10       without a jury.

11       (b) Except as set forth in this subchapter or otherwise precluded by law, the  
12       tax hearing officer shall take evidence, conduct hearings, and issue final and  
13       interlocutory decisions.

14       (c) Hearings shall not be open to the public and shall be conducted in  
15       accordance with such rules of practice and procedure as the tax hearing officer  
16       may promulgate.

17       (d) The tax hearing officer shall not be bound by the rules of evidence  
18       applicable to the civil division of superior court. The tax hearing officer shall  
19       admit relevant evidence, including hearsay, if it is probative of a material fact  
20       in controversy. The tax hearing officer shall exclude irrelevant and unduly

1 repetitious evidence. Notwithstanding the foregoing, the rules of privilege  
2 recognized by law shall apply.

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

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

10 (g) In the case of an issue of fact for which the department of taxes has  
11 established a rational basis for its assertion, the taxpayer shall have the burden  
12 of persuasion by a preponderance of the evidence in the record, except that the  
13 department of taxes shall have the burden of persuasion in the case of an  
14 assertion of fraud and in other cases provided by law.

15 § 3221. DECISIONS

16 (a) The tax hearing officer shall render its decision in writing, including  
17 therein a concise statement of the facts found and the conclusions of law  
18 reached. The tax hearing officer's decision shall, subject to law, grant such  
19 relief, invoke such remedies, and issue such orders as it deems appropriate to  
20 carry out its decision. The decisions of the tax hearing officer shall be  
21 officially reported as provided for in section 3224 of this title.

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

6       (c) If the tax hearing officer fails to render a decision within the prescribed  
7       period, either party may institute a proceeding in the civil division of the  
8       Washington unit of superior court to compel the issuance of such decision.

9       (d) The tax hearing officer's decision shall finally decide the matters in  
10       controversy, unless any party to the matter timely appeals the decision as  
11       provided in section 3222 of this subchapter.

12       (e) The tax hearing officer's decision shall have the same effect, and shall  
13       be enforced in the same manner, as a judgment of the civil division of superior  
14       court.

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



1     § 3222. APPEALS

2           (a) The taxpayer or the department of taxes may, within 30 days of a final  
3     decision of the tax hearing officer, appeal that decision to the civil division of  
4     the Washington unit of superior court, or in the case of an appeal by the  
5     taxpayer, to the civil division of the unit of superior court for the county in  
6     which the taxpayer resides or has a place of business.

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

10    § 3223. REPRESENTATION

11           (a) Appearances in proceedings conducted by the tax hearing officer may  
12    be by the taxpayer, by an attorney admitted to practice in this state (including  
13    an attorney who is a partner or member of, or is employed by, an accounting or  
14    other professional services firm), by an accountant licensed in this state, or by  
15    an enrolled agent authorized to practice before the Internal Revenue Service.  
16    The tax hearing officer shall allow any attorney or accountant authorized to  
17    practice or licensed in any other jurisdiction of the United States to appear and  
18    represent a taxpayer in proceedings before the tax hearing officer for a  
19    particular matter. In addition, the tax hearing officer shall permit a taxpayer to  
20    be represented by an officer, employee, partner, manager, member, or other  
21    authorized representative.

1        (b) The department of taxes shall be represented by an authorized  
2        representative in all proceedings before the tax hearing officer.

3        § 3224. PUBLICATION OF DECISIONS

4        The tax hearing officer shall index and publish its final decisions in such  
5        print or electronic form as it deems best adapted for public convenience. Such  
6        publications shall be made permanently available and constitute the official  
7        reports of the tax hearing officer. Before publishing any final decision, the  
8        commissioner shall delete the following information:

9                (1) the names, addresses, date of birth, Social Security, federal  
10               identification number or other identifying number, and other identifying details  
11               of the taxpayer and any other person;

12               (2) information specifically exempted from disclosure by any state or  
13               federal statute;

14               (3) trade secrets and commercial or financial information of the taxpayer  
15               and any other person;

16               (4) information the disclosure of which would constitute a clearly  
17               unwarranted invasion of personal privacy;

18               (5) information contained in or related to examination, operating, or  
19               condition reports prepared by, or on behalf of, or for use of an agency  
20               responsible for the regulation or supervision of financial institutions; and

1           (6) for good cause shown, any other information requested by the  
2 taxpayer.

3 § 3225. SERVICE OF PROCESS

4           (a) Mailing by first class or certified or registered mail, postage prepaid, to  
5 the address of the taxpayer given on the taxpayer's petition, or to the address of  
6 the taxpayer's representative of record, if any, or to the usual place of business  
7 of the department of taxes, shall constitute personal service on the other party.  
8 The tax hearing officer may by rule prescribe that notice by other means shall  
9 constitute personal service and may in a particular case order that notice be  
10 given to additional persons or by other means.

11           (b) Mailing by United States mail or delivery by an acceptable private  
12 delivery service shall be deemed to have occurred, respectively, on the date of  
13 the United States postmark stamped on the cover of such mailing or on the date  
14 of submission to the private delivery service, as evidenced by the records of  
15 such private delivery service maintained in the ordinary course of business. If  
16 any mailing is made by United States registered or certified mail, the receipt  
17 for such registration or certification shall be prima facie evidence that the  
18 mailing was delivered to the other party, and the date of such registration or  
19 certification shall be deemed to be the postmark date. An acceptable private  
20 delivery service is one that is available to the general public and at least as  
21 timely and reliable on a regular basis as the United States mail.

1     § 3226. RULES AND FORMS

2         The tax hearing officer is authorized to promulgate and adopt all reasonable  
3     rules and forms as may be necessary or appropriate to carry out the intent and  
4     purposes of this subchapter.

5     Sec. 2. REPEAL

6         32 V.S.A. §§ 5883 (determination of deficiency) and 5885 (procedures for  
7     hearings) are repealed.

8     Sec. 3. 32 V.S.A. § 5884(a) is amended to read:

9         (a) At any time within three years after the date a return is required to be  
10     filed under this chapter, or six months after a refund was received from the  
11     United States with respect to an income tax liability, or an amount of taxable  
12     income, under the laws of the United States, reported in a return filed under the  
13     laws of the United States for the taxable year, with respect to which that return  
14     was filed under this chapter, whichever is later, a taxpayer may petition the  
15     commissioner for the refund of all or any part of the amount of tax paid with  
16     respect to the return. ~~Unless the period is extended by agreement of the~~  
17     ~~commissioner and the taxpayer, the commissioner shall thereafter, upon notice~~  
18     ~~to the taxpayer, hold a hearing on the claim and shall notify the taxpayer of his~~  
19     ~~or her determination of the claim within 30 days of the hearing.~~ The failure of  
20     the commissioner to refund the amount claimed by a taxpayer within six  
21     months of the date of the petition for the refund, under this subsection, shall be

1 considered to be a notification to the taxpayer of the commissioner's  
2 determination concerning the claim. The notification shall be considered to  
3 have been given on the date of the expiration of the six-month period.

4 Sec. 4. 32 V.S.A. § 5886 is amended to read:

5 § 5886. PAYMENT AND COLLECTION OF DEFICIENCIES AND  
6 ASSESSMENTS; JEOPARDY NOTICES

7 (a) Upon notification to a taxpayer of any deficiency, and upon assessment  
8 against the taxpayer of any penalty or interest, under section 5881 of this title,  
9 the amount of the assessment shall be payable forthwith and the amount of the  
10 deficiency and assessment shall be collectible by the commissioner 60 days  
11 after the date of the notification or assessment. The collection by the  
12 commissioner of the deficiency, penalty or interest shall be stayed.

13 (1) If the taxpayer files a petition for determination by the ~~commissioner~~  
14 ~~in accordance with section 5883~~ tax hearing officer under section 3217 of this  
15 title, collection shall be stayed until 30 days after the notification of the  
16 taxpayer of the determination; and

17 (2) If within 30 days of the notification of determination the taxpayer  
18 files a notice of appeal, collection shall be stayed pending judgment of the  
19 court upon the appeal; and

20 (3) Under such further circumstances and upon such terms as the  
21 commissioner prescribes.

1 (b) Notwithstanding subsection (a) of this section, the commissioner, if he  
2 or she believes the collection from a taxpayer of any deficiency, penalty<sub>2</sub> or  
3 interest to be in jeopardy, may demand, in writing, that the taxpayer pay the  
4 deficiency, penalty<sub>2</sub> or interest forthwith. The demand may be made  
5 concurrently with, or after, the notice of deficiency or the assessment of  
6 penalty or interest given to the taxpayer under section 5881 of this title. The  
7 amount of deficiency, penalty<sub>2</sub> or interest shall be collectible by the  
8 commissioner on the date of the demand, unless the taxpayer files with the  
9 commissioner a bond in an amount equal to the deficiency, penalty<sub>2</sub> or interest  
10 sought to be collected as security for such amount as finally may be  
11 determined. In the event that it is finally determined that the taxpayer was not  
12 liable for the amount of the deficiency, penalty<sub>2</sub> or interest referred to in any  
13 demand under this subsection, the commissioner shall reimburse the taxpayer,  
14 promptly upon such determination, for the reasonable cost to the taxpayer of  
15 any bond obtained by him or her for the purposes of this subsection.

16 Sec. 5. LEGISLATIVE COUNCIL

17 Upon passage of this act, the office of legislative council is authorized to  
18 alter the appeal provisions in any chapter of Title 32 in order to reflect the  
19 changes made by this act, including the appeal provisions in the following  
20 sections: 3102 (confidentiality), 3113a (abandoned property offset hearing),  
21 3114 (bonding), 3201(3) (hearings), 5864 (order to file return), 5887 (exclusive

1 remedy), 5930ll(f)(5) (credit recapture hearing), 5935 (setoff) 5940 (setoff  
2 hearing rules), 6072 (property tax adjustment appeals), 7487 (estate tax  
3 appeals), 7488 (hearings on refund claims), 7489 (hearing procedure), 7491  
4 (exclusive remedy), 7736 (tobacco license hearing), 7737 (bond hearing), 7780  
5 (hearing), 7781 (powers), 7782 (hearing), 7783 (appeals), 9272 (license  
6 appeal), 9274 (petition), 9275 (appeals), 9276 (hearings), 9617 (property  
7 transfer tax appeals), 9777 (sales and use tax hearings), 9781 (refunds), 9816  
8 (appeal of license suspension), 9817 (court appeal), 10009 (land gains tax  
9 appeals), 10106 (hazardous waste petition), 10109 (appeals), 10110 (hearing  
10 process), 10111 (jeopardy assessments), and 10208 (games of chance appeals).

11 Sec. 6. EFFECTIVE DATE

12 This act shall take effect January 1, 2013. This act shall apply to all  
13 proceedings commenced before the tax hearing officer on or after January 1,  
14 2013, and all administrative proceedings commenced prior to such date that  
15 have not been the subject of a final and irrevocable administrative action as of  
16 such effective date, to the extent this act can be made applicable thereto. Any  
17 administrative proceeding in which a hearing has commenced prior to the  
18 effective date of this act shall be transferred to the tax hearing officer, who  
19 shall render the decision in such proceeding unless there is a prior settlement.  
20 This act shall not affect any proceeding, prosecution, action, suit, or appeal  
21 commenced in the judicial branch before its effective date.