4/4/16 2:23 P.M.

Chapter No. 323
16/HR26/R899
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HOUSE BILL NO. 460

Originated in House _____ Clerk

HOUSE BILL NO. 460

AN ACT TO AMEND SECTION 27-77-9, MISSISSIPPI CODE OF 1972, TO REVISE THE DATE UPON WHICH THE TIME PERIOD BEGINS TO RUN TO FILE A WRITTEN REQUEST WITH THE BOARD OF REVIEW OF THE DEPARTMENT OF REVENUE FOR A HEARING ON THE SUSPENSION, SURRENDER, SEIZURE OR REVOCATION OF A PERMIT, TAG OR TITLE ISSUED OR APPROVED BY THE DEPARTMENT OF REVENUE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 27-77-9, Mississippi Code of 1972, is amended as follows:

27-77-9. (1) If the agency determines that there is a basis for suspension, surrender, seizure or revocation of a permit, tag or title issued or approved by the agency, the agency shall give the permittee, tag holder, title interest holder in the permit, tag or title, written notice of its intent to suspend, revoke or to order the surrender and/or seizure of the permit, tag or title. The notice of intent shall be mailed or hand delivered to the permittee, tag holder or title interest holder involved, shall set forth the facts and conduct that provide the basis for the intended action and shall advise the permittee, tag holder or

title interest holder involved that he has thirty (30) days from the date * * * the agency mailed or delivered the notice of the action to file with the board of review a written request for a hearing on the intended action. If the permittee, tag holder or title interest holder involved fails to file a written request with the board of review for a hearing on the intended action within the thirty-day period, the intended action shall automatically go into effect on the thirty-first day after the date of the notice of intent without any further action by the agency. The agency retains jurisdiction to reinstate, reduce or remove a suspension and/or return the permit, tag or title suspended, revoked, surrendered or seized under this provision.

(2) Upon receipt of a timely filed written request for a hearing on the intended suspension, surrender, seizure or revocation of the permit, tag or title in issue, the person filing the request shall be advised of the date, time and location of a show cause hearing that will be held a minimum of thirty (30) days from the date of the notice. In the case of a request for hearing involving an intended action regarding a title, the notice of hearing shall also be mailed to any other title interest holders in the motor vehicle or manufactured housing in issue. At the hearing, the person requesting the hearing shall show cause why the proposed action should not be taken. The show cause hearing shall be informal and the rules of evidence shall be relaxed. The hearing shall be conducted by the board of review or by a single

hearing officer selected by the chairman of the board of review from a pool of qualified individuals designated by the commissioner to serve as administrative hearing officers. The person that requested the hearing or his designated representative shall attend the hearing unless a request is made to, and granted by, the board of review or the designated hearing officer to allow the person to submit his position in writing or by electronic transmission in lieu of attending the hearing. Failure of the person requesting the hearing or his designated representative to attend a hearing or submit his position in writing or by electronic transmission in lieu of attendance by the date specified by the board of review or designated hearing officer or by the hearing date, if no date is specified, shall constitute an involuntary withdrawal of the appeal. As soon as practical after the show cause hearing, the hearing officer or the members of the board of review that conducted the hearing shall make a determination as to whether the intended action or any other action should be taken in regard to the permit, tag or title in issue. The hearing officer or board of review shall enter an order based on this determination and a copy of this order shall be mailed to the permittee, tag holder or title interest holder involved notifying same of the decision and the action taken.

(3) The order of the hearing officer or the board of review in regard to a show cause hearing shall be final unless, within thirty (30) days from the date * * * <u>the hearing officer or board</u>

of review mailed the order, the permittee, tag holder or title interest holder appeals the order to the Board of Tax Appeals. The appeal shall be in writing and request a hearing and reversal or modification of the order of the hearing officer or board of review, specify in detail the relief requested, contain any other information that might be required by regulation and be filed with the executive director. The person filing the appeal with the executive director shall also file a copy of his written appeal with the board of review. Even after an appeal is filed with the executive director, the board of review or hearing officer who entered the order appealed retains the authority to amend and/or correct this order at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely file a written appeal with the executive director within the thirty-day period shall make the order of the hearing officer or the board of review being appealed final and not subject to further review by the Board of Tax Appeals or a court other than as to the issue of whether a written appeal from the order of the hearing officer or board of review was timely filed with the executive director.

(4) Upon receipt of a written appeal from an order of a hearing officer or the board of review regarding a show cause hearing on a permit, tag or title, the executive director shall schedule a hearing before the Board of Tax Appeals on this appeal. A notice of the hearing shall be mailed to the person who filed the appeal and the agency to advise them of the date, time and

location of hearing. In the case of an appeal from a show cause hearing on a title, the notice of hearing shall also be mailed to any other title interest holders in the motor vehicle or manufactured housing in issue. The person who filed the appeal or his designated representative shall attend the hearing. Failure of this person or his designated representative to attend a hearing shall constitute an involuntary withdrawal of the appeal.

(5) At any hearing before the Board of Tax Appeals on an appeal of an order regarding a show cause hearing on a permit, tag or title, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing the Board of Tax Appeals shall try the issues presented according to law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing and the hearing shall be taken down by a court reporter. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter an order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the person who filed the appeal and the agency to notify them of the findings and decision of the Board of Tax Appeals. In the case of an appeal involving a title, a copy of the order of the Board of Tax Appeals shall also be mailed to any other title interest holder in the motor vehicle or manufactured housing in issue.

(6) At any time after the filing of an appeal with the board of review under this section, an appeal may be withdrawn. A withdrawal of an appeal can be made voluntarily by the person appealing or may occur involuntarily as the result of his failure to appear at a scheduled hearing, or by any other act or failure that the hearing officer or the board of review determines represents a failure on the part of that person to prosecute his appeal. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person appealing or his designated representative to the chairman of the board of review or to the hearing officer designated to hear the matter. If the withdrawal of appeal is involuntary, the board of review or the hearing officer designated to hear the matter shall note on its minutes or by order the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal to the board of review under subsection (1) of this section is withdrawn, whether voluntary or involuntary, the intended suspension, surrender, seizure or revocation from which the appeal was taken shall become final and not subject to further review by the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on such final action.

(7) At any time after the filing of an appeal with the Board of Tax Appeals under this section, the appeal may be withdrawn. A withdrawal of an appeal can be made voluntarily by the person appealing or may occur involuntarily as the result of the failure

to appear at a scheduled hearing, or by any other act or failure that the Board of Tax Appeals determines to represent a failure on the part of that person to prosecute his appeal. A voluntary withdrawal shall be in writing or by electronic transmission and sent from the person appealing or his designated representative to the executive director. If the withdrawal of the appeal is involuntary, the Board of Tax Appeals shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn under this section, whether voluntary or involuntary, the order from the show cause hearing from which the appeal was taken shall become final and not subject to further review by the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on the final order.

(8) Any appeal or other filing with the board of review or Board of Tax Appeals pursuant to this section shall be considered timely if it is hand delivered during the regular office hours of the recipient by the due date of such filing, or if it is mailed, postmarked or shipped by such due date. Any appeal or other filing with the board of review or Board of Tax Appeals pursuant to this section shall also be considered timely if electronically transmitted via electronic mail, electronic filing or facsimile by midnight of the due date for such filing. The timeliness of such electronic filing shall be determined in all instances based on the local time zone of the recipient. If the due date for any

appeal or other filing with the board of review or Board of Tax Appeals should fall on a Saturday, Sunday or official state holiday, or other day on which the Department of Revenue or Board of Tax Appeals is closed, the due date for the filing shall be the next business day in which the Department of Revenue or Board of Tax Appeals is open.

SECTION 2. Nothing in this act shall affect or defeat any notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title or the administrative appeal or judicial appeal thereof where the initial date of the notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any notice of intent of suspension, surrender, seizure or revocation of a permit, tag or title where the initial date of said notice is before the date on which this act becomes effective.

SECTION 3. This act shall take effect and be in force from and after July 1, 2016.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 16, 2016

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 24, 2016

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

April 4, 2016
2:23pm