

2022 -- S 2805

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO TAXATION - STATE TAX OFFICIALS

Introduced By: Senator F Lombardi

Date Introduced: March 24, 2022

Referred To: Senate Judiciary

(Dept. of Revenue)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-1 of the General Laws entitled "State Tax Officials" is hereby
2 amended by adding thereto the following sections:

3 **44-1-41. Jurisdiction of superior court to hear tax matters - Scope of judicial review.**

4 (a) Effective January 1, 2023, each appeal of a final decision of the tax administrator
5 concerning an assessment, deficiency, refund claim, license, permit, or otherwise shall be heard by
6 the superior court in and for the counties of Providence and Bristol. The superior court in and for
7 the counties of Providence and Bristol shall have exclusive jurisdiction to hear all state tax matters,
8 including, but not limited to, refunds, declaratory judgment, and equitable relief.

9 (b) Any taxpayer aggrieved by a final decision of the tax administrator concerning an
10 assessment, deficiency, refund claim, license, permit, or otherwise may file a complaint for
11 redetermination of the assessment, deficiency, or otherwise in the court as provided by statute. The
12 complaint shall be filed within thirty (30) days after the mailing of notice of the final decision and
13 shall set forth the reasons why the final decision is alleged to be erroneous and praying relief
14 therefrom.

15 (c) All existing references in title 31, title 39, title 44, or title 46 to appeals of any final
16 decision of the tax administrator to, or to any action commenced by the tax administrator in, the
17 sixth division district court, shall be stricken and replaced with references to the superior court in
18 and for the counties of Providence and Bristol.

19 (d) Venue for appeals of any final decision of the tax administrator shall be in the superior

1 court in and for the counties of Providence and Bristol provided that: for an action commenced by
2 the tax administrator for injunctive relief pursuant to § 44-19-5.1 or for a writ of execution pursuant
3 to § 44-1-29 or § 44-30-92(c), venue shall be in the superior court of the county wherein the cause
4 of action arose or the defendant resides.

5 (e) Judicial review of appeals of any final decision of the tax administrator shall be
6 conducted pursuant to § 42-35-15.

7 (f) Section 8-8-24 through to and including § 8-8-32 shall be repealed effective January 1,
8 2023.

9 (g) A taxpayer's right to file a complaint pursuant to this section for review of a final
10 decision of the tax administrator concerning an assessment, deficiency, refund claim, license,
11 permit, or otherwise shall be conditional upon prepayment of all taxes, interest, and penalties set
12 forth in the assessment, deficiency, or otherwise.

13 (h) All contested matters wherein the requests for administrative hearings received by the
14 tax administrator on or after January 1, 2023, shall be subject to judicial review only pursuant to §
15 42-35-15 and this section.

16 **44-1-42. Prepayment as condition precedent to review of tax case - Exemption**
17 **therefrom.**

18 A taxpayer's right to file a complaint pursuant to § 44-1-41 for review of a final decision
19 of the tax administrator ordering an assessment, deficiency, or otherwise shall be conditional upon
20 prepayment of all taxes, interest, and penalties set forth in the assessment, deficiency, or otherwise;
21 provided, however, that in lieu of the prepayment, the taxpayer may file together with his or her
22 complaint a motion for an exemption from the prepayment requirement. The taxpayer shall set the
23 motion down for hearing within twenty (20) days after the answer to the complaint is filed;
24 otherwise, the motion shall be deemed to be denied. The court shall grant the motion if it determines
25 both:

26 (1) That the taxpayer has a reasonable probability of success on the merits; and

27 (2) That the taxpayer is unable to prepay all taxes, interest, and penalties set forth in the
28 assessment, deficiency, or otherwise. In making its determination on the issue of ability to prepay,
29 the court shall consider not only the taxpayer's own financial resources but also the ability of the
30 taxpayer to borrow the required funds. If the motion is denied, the taxpayer shall make prepayment
31 within thirty (30) days of the entry of the court's order denying the motion; otherwise, the complaint
32 shall be dismissed upon motion of the tax administrator.

33 SECTION 2. Sections 8-8-24, 8-8-25, 8-8-26, 8-8-27, 8-8-28, 8-8-29, 8-8-30, 8-8-31 and
34 8-8-32 of the General Laws in Chapter 8-8 entitled "District Court" are hereby repealed.

1 ~~**8-8-24. Tax proceedings to be without jury and de novo -- Precedence on calendar.**~~

2 ~~Each appeal of a final decision of the tax administrator concerning an assessment,~~
3 ~~deficiency, or otherwise shall be an original, independent proceeding in the nature of a suit in equity~~
4 ~~to set aside the final decision and shall be tried de novo and without a jury. Every such matter shall~~
5 ~~have precedence over all other civil cases on the calendar on the date to which it is assigned for~~
6 ~~trial and shall continue to have precedence on the calendar on a day to day basis until it is heard.~~

7 ~~**8-8-25. Time for commencement of proceeding against the division of taxation.**~~

8 ~~(a) Any taxpayer aggrieved by a final decision of the tax administrator concerning an~~
9 ~~assessment, deficiency, or otherwise may file a complaint for redetermination of the assessment,~~
10 ~~deficiency, or otherwise in the court as provided by statute under title 44.~~

11 ~~(b) The complaint shall be filed within thirty (30) days after the mailing of notice of the~~
12 ~~final decision and shall set forth the reasons why the final decision is alleged to be erroneous and~~
13 ~~praying relief therefrom. The clerk of the court shall thereupon summon the division of taxation to~~
14 ~~answer the complaint.~~

15 ~~**8-8-26. Prepayment as condition precedent to review of tax case.**~~

16 ~~A taxpayer's right to file a complaint pursuant to § 8-8-25 for review of a final decision of~~
17 ~~the tax administrator ordering an assessment, deficiency, or otherwise shall be conditional upon~~
18 ~~prepayment of all taxes, interest, and penalties set forth in the assessment, deficiency, or otherwise;~~
19 ~~provided, however, that in lieu of the prepayment, the taxpayer may file together with his or her~~
20 ~~complaint a motion for an exemption from the prepayment requirement. The taxpayer shall set the~~
21 ~~motion down for hearing within twenty (20) days after the answer to the complaint is filed;~~
22 ~~otherwise, the motion shall be deemed to be denied. The court shall grant the motion if it determines~~
23 ~~both: (1) that the taxpayer has a reasonable probability of success on the merits; and (2) that the~~
24 ~~taxpayer is unable to prepay all taxes, interest, and penalties set forth in the assessment, deficiency,~~
25 ~~or otherwise. In making its determination on the issue of ability to prepay, the court shall consider~~
26 ~~not only the taxpayer's own financial resources but also the ability of the taxpayer to borrow the~~
27 ~~required funds. If the motion is denied, the taxpayer shall make prepayment within thirty (30) days~~
28 ~~of the entry of the court's order denying the motion; otherwise, the complaint shall be dismissed~~
29 ~~upon motion of the tax administrator.~~

30 ~~**8-8-27. Refund suits.**~~

31 ~~(a) Any taxpayer may bring an action for a refund of taxes previously overpaid. The suit~~
32 ~~for refund may not be brought prior to the date of a final determination by the tax administrator~~
33 ~~denying the claim for refund. No action for a refund of tax shall be brought after the expiration of~~
34 ~~thirty (30) days from a notice of final determination of the tax administrator denying the claimed~~

1 ~~refund.~~

2 ~~(b) As used in this section and § 8-8-28, "tax" includes any surcharge imposed under § 1-~~
3 ~~6-2, and "taxpayer" includes an operator as defined in § 1-6-1.~~

4 ~~**8-8-28. Burden of proof in tax cases.**~~

5 ~~In all tax cases before the court, and upon appeal therefrom, a preponderance of the~~
6 ~~evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party~~
7 ~~seeking affirmative relief and the burden of going forward with the evidence shall shift as in other~~
8 ~~civil litigation. In any proceedings in which the division of taxation alleges fraud or an exception~~
9 ~~to the normal statute of limitations on assessment, the burden of proof in respect of that issue shall~~
10 ~~be upon the division of taxation. To be sustained on the issue of fraud, the division of taxation must~~
11 ~~sustain a burden of clear and convincing proof.~~

12 ~~**8-8-29. Court stenographer in tax cases.**~~

13 ~~Any party may obtain the services of a court stenographer in the district court in a tax case,~~
14 ~~and that party shall pay all costs of the court stenographer.~~

15 ~~**8-8-30. Decision of the court -- Form and contents.**~~

16 ~~The court shall render its decision in writing, including therein a concise statement of the~~
17 ~~facts found by the court and the conclusions of law reached by the court. The court may affirm,~~
18 ~~reverse, modify, or remand any determination or shall grant such relief, invoke such other remedies,~~
19 ~~and issue such orders in accordance with its decision as shall be appropriate in a court of general~~
20 ~~jurisdiction.~~

21 ~~**8-8-31. Frivolous appeals.**~~

22 ~~Whenever it appears to the court that proceedings before it have been instituted by the~~
23 ~~taxpayer solely for delay and that the taxpayer's complaint is frivolous and groundless, damages in~~
24 ~~an amount not in excess of five thousand dollars (\$5,000) plus costs may be assessed against the~~
25 ~~taxpayer by the court.~~

26 ~~**8-8-32. Review by supreme court.**~~

27 ~~Any party in interest, if aggrieved by a final judgment rendered in proceedings brought~~
28 ~~under this chapter, may within twenty (20) days from the date of entry of the judgment petition the~~
29 ~~supreme court of the state of Rhode Island for a writ of certiorari to review any questions of law~~
30 ~~involved. The petition for writ of certiorari shall set forth the errors claimed. Upon the filing of~~
31 ~~such a petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its~~
32 ~~writ of certiorari to the district court to certify to the supreme court the record of the proceeding~~
33 ~~under review.~~

1 SECTION 3. This act shall take effect on January 1, 2023.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION - STATE TAX OFFICIALS

1 This act would, effective January 1, 2023, create superior court jurisdiction over all appeals
2 of tax administrators concerning assessment, deficiency, refund claim, license or permit. This act
3 would also create an exemption for the taxpayer from prepayment as a condition precedent.

4 This act would take effect on January 1, 2023.

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