

AN ACT

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Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Employee Non-Liability Act and the Office of Administrative Hearings Establishment Act of 2001 to provide members of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings with protection from liability in the case of a lawsuit filed in connection with the performance of their official duties; to amend the Office of Administrative Hearings Establishment Act of 2001 to clarify the office's jurisdiction over tax assessment protests and to provide that a person who has chosen to challenge a proposed tax assessment by appealing to the office is deemed to have waived a challenge to the proposed tax assessment in any other forum, and to provide that a board or commission may delegate its authority to hear occupational or professional licensing and discipline cases to the office, with the office's final order appealable to the board or commission; and to amend Title 47 of the District of Columbia Official Code to make conforming changes to reflect the Office of Administrative Hearings' jurisdiction for tax assessment protests.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Administrative Hearings Establishment Amendment Act of 2004".

Sec. 2. Section 6 of the District of Columbia Employee Non-Liability Act, approved July 14, 1960 (74 Stat. 520; D.C. Official Code § 2-415), is amended by adding a new subsection (b-1) to read as follows:

Amend
§ 2-415

"(b-1) The District of Columbia shall defend and indemnify members of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings, established by section 9 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.06), from claims and suits in law or equity arising from acts or omissions in the course and scope of their official duties, other than willful or bad faith misconduct."

ENROLLED ORIGINAL

Sec. 3. The Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*), is amended as follows:

(a) Section 6 (D.C. Official Code § 2-1831.03) is amended as follows:

**Amend
§ 2-1831.03**

(1) Subsection (b)(4) is amended to read as follows:

"(4) All adjudicated cases of the Office of Tax and Revenue arising from tax protests filed pursuant to D.C. Official Code § 47-4312."

(2) Subsection (c) is amended by striking the word "agencies" and inserting the phrase "agencies, boards, and commissions" in its place.

(3) New subsections (i) and (j) are added to read as follows:

"(i)(1) A board or commission with authority to issue professional or occupational licenses may delegate to the Office its authority to conduct a hearing and issue an order on the proposed denial, suspension, or revocation of a license or on any proposed disciplinary action against a licensee or applicant for a license. The Office's order shall be appealable to the board or commission pursuant to section 19(b).

"(2) A case that was delegated by a board or commission to an administrative law judge or hearing examiner employed by an agency subject to this act shall be deemed to have been delegated to the Office pursuant to this section as of the date that the agency's adjudicated cases became subject to this act.

"(j) A person who has filed a protest of a proposed assessment under D.C. Official Code § 47-4312 and requested a hearing with the Office shall be deemed to have elected adjudication by the Office as the exclusive means of adjudication of all challenges to the proposed assessment, and to have waived any right to adjudication of a challenge to the proposed assessment in any other forum. Nothing in this subsection limits the right of any person to judicial review of an order of the Office pursuant to section 19."

(b) Section 9 (D.C. Official Code § 2-1831.06) is amended by adding a new subsection (d) to read as follows:

**Amend
§ 2-1831.06**

"(d) Commission members shall have protection from liability as provided in section 6(b-1) of the District of Columbia Employee Non-Liability Act, approved July 14, 1960 (74 Stat. 520; D.C. Official Code § 2-415(b-1))."

(c) Section 19(b) (D.C. Official Code § 2-1831.16(b)) is amended by adding the following sentence at the end of the subsection:

**Amend
§ 2-1831.16**

"A board or commission that delegates a matter pursuant to section 6(i) shall have jurisdiction of any appeal by any party from an order of an Administrative Law Judge issued in that matter."

Sec. 4. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-1528 is amended to read as follows:

**Amend
§ 47-1528**

"§ 47-1528. Deficiency; request for hearing.

"Assessments of any deficiencies in the tax due under this chapter, or any interest and

penalties thereon, shall be governed by § 47-4312.”.

(b) Section 47-1812.05 is amended by striking the first 2 sentences, and inserting the following in their place:

Amend
§ 47-1812.05

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”.

(c) Section 47-2019 is amended by striking everything after the first sentence and inserting the following in its place:

Amend
§ 47-2019

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”.

(d) Section 47-2316 is amended by striking everything after the first 2 sentences and inserting the following in their place:

Amend
§ 47-2316

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”.

(e) Section 47-2410 is amended as follows:

Amend
§ 47-2410

(1) Subsection (a) is amended by striking everything after the first sentence and inserting the following in its place:

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”.

(2) Subsection (b) is amended to read as follows:

“(b) Any assessment of tax, penalties, and interest that has become final pursuant to § 47- 4312 shall be due and payable within 10 days after service of a final assessment by the Mayor or service of a final order by the Office of Administrative Hearings, as applicable.”.

(f) Section 47-2412 is amended as follows:

Amend
§ 47-2412

(1) Strike the word “Mayor” everywhere it appears, except for its first appearance, and insert the phrase “Office of Administrative Hearings” in its place.

(2) Add a sentence at the end to read as follows:

“This section does not authorize the filing of a request for a hearing with respect to any tax, penalty, or interest that was, or could have been, at issue in any prior proceeding that was conducted by the Superior Court of the District of Columbia or the Office of Administrative Hearings.”.

(g) Section 47-2413 is amended by striking the word “Any” and inserting the phrase “Except as provided in § 47-4312, any” in its place.

Amend
§ 47-2413

(h) Section 47-3717 is amended as follows:

Amend
§ 47-3717

(1) Subsection (a) is amended by striking everything after the first sentence and inserting the following in its place:

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”.

(2) Subsection (b) is amended to read as follows:

“(b) Any assessment of tax, penalties, and interest that has become final pursuant to § 47-4312 shall be due and payable within 10 days after service of a final assessment by the

Mayor or service of a final order by the Office of Administrative Hearings, as applicable.”

(3) Subsection (c) is amended by striking the phrase “Any person aggrieved by an assessment of a deficiency in tax finally determined by the Mayor” and inserting the phrase “Except as provided in § 47-4312, any person aggrieved by an assessment of a deficiency in tax” in its place.

(i) Section 47-3908 is amended as follows:

Amend
§ 47-3908

(1) Subsection (a) is amended by striking everything after the first sentence and inserting the following in its place:

“Assessments of any deficiencies in the tax due under this chapter, or any interest and penalties thereon, shall be governed by § 47-4312.”

(2) Subsection (b) is amended to read as follows:

“(b) Any assessment of tax, penalties, and interest that has become final pursuant to § 47-4312 shall be due and payable within 10 days after service of a final assessment by the Mayor or service of a final order by the Office of Administrative Hearings, as applicable.”

(3) Subsection (c) is amended by striking the phrase “Any person aggrieved by an assessment of a deficiency in tax finally determined by the Mayor” and inserting the phrase “Except as provided in § 47-4312, any person aggrieved by an assessment of a deficiency in tax” in its place.

(j) Section 47-4217 is amended as follows:

Amend
§ 47-4217

(1) Subsection (f) is amended to read as follows:

“(f)(1) Assessment of any penalty under this section shall be governed by § 47-4312.

“(2) Any assessment of a penalty that has become final pursuant to § 47-4312 shall be due and payable within 30 days after service of a final assessment by the Mayor or service of a final order by the Office of Administrative Hearings, as applicable.”

(2) Subsection (g) is repealed.

(k) Section 47-4303 is amended by striking the phrase “court,” and inserting the phrase “court, and for the period between the filing of a protest in the Office of Administrative Hearings pursuant to § 47-4312 and the issuance of a final order by the Office of Administrative Hearings,” in its place.

Amend
§ 47-4303

(l) Section 47-4312 is amended to read as follows:
“§ 47-4312. Protest of assessment.

Amend
§ 47-4312

“(a) Unless otherwise provided in this title, before a final assessment of a deficiency, interest, or penalties against a person, the Mayor shall send the person a proposed assessment. No later than 30 days after the proposed assessment is sent, the person may file a protest with the Office of Administrative Hearings, and shall serve a copy on the Mayor. The protest shall explain why the deficiency, interest, and penalties should not be assessed.

“(b) If the person fails to file a protest in a timely manner under subsection (a) of this section, the Mayor shall send the person a final assessment of the deficiency, interest, or penalties.

“(c) If a protest is filed in a timely manner under subsection (a) of this section, the

Mayor may not issue a final assessment of the deficiency, interest, or penalties, and the Office of Administrative Hearings shall decide, after providing an opportunity for a hearing, whether the deficiency, interest, or penalties are proper. Filing a protest shall be deemed to be an election that the Office of Administrative Hearings shall be the exclusive forum to adjudicate all challenges to the proposed assessment, and shall be deemed to be an irrevocable waiver of any right to adjudication of all such challenges in any other forum. Nothing in this subsection limits the right of any person to judicial review pursuant to § 2-1831.16.

“(d) Nothing in this section or in § 2-1831.03(b)(4) shall limit or preclude any person from appealing any assessment to the Superior Court of the District of Columbia pursuant to § 47-3303, or other applicable law, as an alternative to filing a protest with the Office of Administrative Hearings.

“(e) Except with respect to the election of remedy and the waiver of rights required by subsection (c) of this section and by § 2-1831.03(j), a final order of the Office of Administrative Hearings in any matter in which a protest has been filed shall have the same effect as a final assessment of a deficiency, interest, or penalties, and the Mayor may undertake any lawful collection efforts for any amount that such final order determines is due from any person.

“(f) By October 7, 2004, the Office of Tax and Revenue shall notify in writing any person who filed a timely protest of a proposed assessment with the Office of Tax and Revenue on or before September 30, 2004, of his or her right to file a request for a hearing with the Office of Administrative Hearings on or before November 1, 2004. If any such person does not file a timely request for a hearing pursuant to this subsection, the Mayor shall send the person a final assessment of any deficiency, interest, or penalties.”.

(m) Section 47-4406(b) is amended by striking the word “Mayor” and inserting the phrase “Mayor, the Office of Administrative Hearings,” in its place.

Amend
§ 47-4406

(n) Section 47-4433 is amended as follows:

(1) The second sentence of subsection (a) is amended by striking the phrase “and provide a period of at least 30 days after the notice is sent to the taxpayer to file a protest.” and inserting the phrase “that he or she may file a protest with the Office of Administrative Hearings to challenge the proposed refund offset within 30 days of service of the notice.” in its place.

Amend
§ 47-4433

(2) Subsection (b) is amended to read as follows:

“(b) Any notice of refund offset described in subsection (a) of this section shall be governed by the procedures set forth in § 47-4312 for assessments of deficiencies.”.

(3) Subsection (c) is amended by striking the word “Mayor” and inserting the phrase “Office of Administrative Hearings” in its place.

(o) Section 47-4451(b) is amended to read as follows:

“(b) If a jeopardy assessment has been made, the taxpayer shall have the right to file, within 5 business days, a protest of the assessment of tax, the seizure of property, or both. The protest shall be governed by the procedures set forth in § 47-4312, except that the 30-day filing

Amend
§ 47-4451

deadline established in § 47-4312(a) shall not apply. If a timely protest is filed, the property seized for the collection of the tax shall not be sold until completion of the proceedings in the Office of Administrative Hearings.”.

(p) Section 47-4452(b) is repealed.

Amend
§ 47-4452

Sec. 5. Applicability.

Section 4 shall apply as of October 1, 2004.

Note,
§ 47-4312

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia