

*State of Mississippi*  
BOARD OF  
**TAX APPEALS**

**What to Expect at a BTA Hearing  
For a  
Non-Record Hearing  
Before the Mississippi Board of Tax Appeals**

**What is the purpose of this short memorandum?**

Many who appear before the Board of Tax Appeals (“BTA”) are self-represented. Others are represented by someone who is not a lawyer. Still others are represented by lawyers who routinely appear in the courts of our state and nation, but who have not previously appeared before the BTA. The purpose of this memorandum is to assist these persons in knowing what to expect when appearing before the BTA.

**What is the BTA?**

The BTA is a quasi-judicial agency created by the legislature to hear appeals from actions taken by the Mississippi Department of Revenue (“DOR”). The term “quasi-judicial” means that the BTA is similar to a court of law but not quite as rigid with the procedure and presentation protocols. The BTA is comprised of three individuals who were appointed by the governor to the board because of their special knowledge of taxation. The board members are not employed by or otherwise associated with the DOR. The BTA is a neutral, unbiased tribunal that will hear your appeal objectively.

**When and where will my case be heard?**

Within two weeks of the date the BTA receives your notice of appeal, you will receive a written notice by mail from the BTA informing you of the date, time and location your appeal will be heard. If you are appealing from an order of the DOR’s Board of Review, your Review Board hearing was probably conducted at the DOR’s offices in Clinton, Mississippi. The BTA is separate from the DOR and conducts its hearings in Jackson. Please don’t go back to Clinton. All appeals are set on a morning or afternoon docket on a specific date. The docket for a particular day is a list of appeals scheduled to be heard on that day. Other taxpayers will be on the docket that same day. The cases are set in a predetermined order based on the type of case and when it was filed. If your case is first on the docket, you will be called first. If your case is not first, you will be called shortly after the conclusion of the case before yours. We try to conduct each hearing in 45 minutes. While we make every effort to be efficient, you may have to wait several hours if the cases in front of you take all of their allotted time. However, if the cases set ahead of yours are settled prior to or on the hearing date, then you may be the first one called even if you were not the first one on the docket for that day. That means that you should arrive a few minutes ahead of the scheduled time unless specifically instructed otherwise.

The notice setting the date and time of your hearing will also instruct you to mail a summary of your argument, along with any documents that you plan to discuss at the hearing, to the BTA at least 30 days before your hearing date. This allows us to read your arguments and look at your documents before you arrive. The more prepared we are, the better we can determine the best result.

**What do I do when I arrive for my hearing?**

When you arrive, you will sign in, pass through security including a metal detector, and wait in the lobby until your case is called.

**What happens when my case is called?**

You will enter the hearing room and be seated as directed. Your representative and witnesses, if you have any, will enter with you. Everyone who is not a lawyer (including you) will be sworn in at the beginning of the hearing.

**Who are the parties in my case?** You have filed this appeal; therefore, you are the appellant. We will often call you the taxpayer. The other party is the Mississippi Department of Revenue.

**Who represents the parties?**

You may represent yourself, or you may select someone else to represent you. A court of law would require your representative to be an attorney. The BTA has no such requirement. Your representative can be a licensed attorney in good standing to practice law in Mississippi, an accountant certified by the Mississippi Board of Public Accountancy as a CPA, an accountant who is entitled to practice as an enrolled agent before the IRS, CPAs duly admitted to practice in other states, attorneys licensed to practice law and in good standing in other states but who must meet state bar requirements for the practice of law in Mississippi, an employee of a party where such employee has been duly appointed by the party to undertake the representation and it is within the scope of the employee's employment with the party, a party's spouse, a person representing a corporation of which he is an officer or, subject to the approval of the BTA, any other person that you believe can explain your side of the appeal to the BTA.

The DOR will be represented by one of its attorneys.

**What is the order of the proceeding before the BTA?**

You (or your representative) will present your case first. You will be able to present your case in a narrative form. That means we want you to tell us your side of the story in a clear and concise manner. We will listen to your testimony, and we may ask you questions. Our questions are not meant to intimidate you. We are trying to get all of the facts we need to accurately apply the law to your case and to make the best decision possible. You may offer the testimony of witnesses if you prefer, but you do not have to do so. There is no specific format for asking questions of your witnesses. A conversational style is acceptable.

When you finish your presentation, the DOR will be given an opportunity to present its case. In the DOR's presentation, the DOR lawyer will explain why the DOR's actions are appropriate. The DOR will probably bring someone from the audit staff that worked on your case, and the auditor may testify if asked. We will listen to the attorney for the DOR, and any witnesses, and

we may ask questions of them if we do not understand their testimony or if we need further clarification.

The DOR may ask questions of your witnesses, and you may ask questions of the DOR witnesses. It is not to your advantage to badger or argue with the witnesses. You must maintain a respectful tone and non-argumentative demeanor when questioning the DOR witnesses, and we will require the same of the DOR if their attorney questions you or your witnesses.

After the DOR's presentation, you will be given a brief opportunity to rebut the statements made by the DOR. A rebuttal is your chance to disagree with or clarify anything that the DOR presented to us.

### **What is the role of the Board of Tax Appeals in my hearing?**

We are an independent board created by the Legislature for the purpose of hearing disputes between taxpayers and the DOR. We are not part of the Department of Revenue. It is our job to decide if the DOR properly applied **the law** to your case. In Mississippi, the laws are written by your elected officials, that is, the Legislature. This board does not decide if the law is fair or reasonable. We decide if the DOR properly applied the law to the facts of your case.

### **Can my appeal be heard by telephone or video conferencing?**

The Board does not conduct hearings telephonically or by video conferencing, but you may request to submit your position to the BTA in writing or by electronic transmission in lieu of appearing at a hearing on the appeal. For more information please see BTA Rule 5.6.

### **Who has the burden of proof?**

Who has the burden of proving who is right? You do.

If you are appearing before the BTA, then you disagree with the DOR's determination of your tax liability. You can't win simply by telling us that the DOR is wrong. You must show us why the DOR is wrong. That means you should be able to tell us what the correct amount of your tax should be, and you must be able to support your contention with documents and records.

### **What is an example of how to prove my argument?**

Although providing an example of every type of case that comes before the BTA is impossible, we will offer one such example in hopes of helping you prepare your argument.

In most situations, the law presumes that the assessments of the DOR are correct. It is your task to overcome this assumption. That means you must show that your records were, in fact, adequate for accurately determining your tax liability. You can't do this by merely stating that your records are adequate. You must offer proof in the form of documents and testimony. For example, if you sold a product to a wholesaler and did not charge sales tax, and if the DOR claimed that you should have charged sales tax, then you should show us that you have an exemption certificate from that wholesaler which justifies your decision not to charge sales tax. Or, if the DOR has estimated your cost of goods sold, you could bring records (cancelled checks, invoices, receipts) showing what you paid for the goods you purchased for resale.

In an income tax audit, if the DOR disallowed a deduction you claimed for an advertising expense, you could prove that the DOR was wrong by producing the invoice or cancelled check from the payment for that advertising expense and showing that it was for your business.

**Will an official “record” be made?**

In a court of law, a court reporter attends and transcribes the proceedings verbatim. At the Board of Tax Appeals, a transcribed record will not be made. We make an audio recording of all hearings so that we can refer to the recordings later for our minutes or our orders, but these are not typed up or sent to the parties. Copies of our recordings are available to authorized persons for a nominal fee upon request.

**When will I know the result of my hearing?**

The Board is required to issue a written order in each case, and it is our goal to issue a written order in each case within sixty (60) days of the hearing date. We usually take the matter under advisement for decision at a later time and rarely make a verbal ruling on the date of the hearing.

**Are reasonable accommodations offered?**

Any party requesting a reasonable accommodation under the Americans with Disabilities Act in regard to attendance and/or participation at a BTA hearing must file a written request for an accommodation with the BTA’s Executive Director at least five (5) days before the date of the hearing.

**Are BTA Hearings Open to the Public?**

BTA hearings are generally not open to the public because they usually involve confidential tax matters. For more information please see BTA Rule 3.4.