

SENATE AMENDMENT 1 TO sb504.

deleting Sections 1 through 5 and substituting therefor the following:

"Section 1. Arkansas Code 26-18-403(a) (2) is amended to read as follows:

_(2) When no return has been filed and the director determines that there is a tax due for the taxable period or when a return has been filed and the director determines that the tax disclosed by the return is less than the tax disclosed by his examination, the director shall propose the assessment of additional tax plus penalties, as the case may be, and shall give notice of the proposed assessment to the taxpayer. The notice shall explain the basis for the proposed assessment and shall state that a final assessment, as provided by § 26-18-401, will be made if the taxpayer does not protest such proposed assessment as provided by § 26-18-404. The taxpayer does not have to protest the proposed assessment to later be entitled to exercise the right to seek a judicial review of the assessment, pursuant to the provisions of § 26-18-406.

Section 2. Arkansas Code § 26-18-404(a) is amended to read as follows:

(a) Any taxpayer who wishes to seek administrative relief from any proposed assessment of taxes or proposed notice of disallowance of a claim for refund by the director shall follow the procedure provided by this section.

Section 3. Arkansas Code § 26-18-404(c) is amended to read:

_(c) Within thirty (30) days after service of notice of the proposed assessment, ~~or action~~ or proposed notice of claim disallowance, the taxpayer may file with the director a written protest under oath, signed by himself or his authorized agent, setting forth the taxpayer's reasons for opposing the proposed assessment, or the proposed notice of claim disallowance.

Section 4. Arkansas Code § 26-18-405(a) (1) to read as follows:

_(a) (1). The director shall appoint a hearing officer to review all written protests submitted by taxpayers, hold all hearings, and make written findings as to the applicability of the proposed assessment or the proposed notice of claim disallowance.

Section 5. Arkansas Code § 26-18-405(d) (3) and (4) are amended to read as follows:

_(3) After the hearing, the hearing officer shall render his decision in writing and shall serve copies upon both the taxpayer and the section or division of the Department of Finance and Administration which proposed the assessment or the proposed notice of claim of disallowance.

(4) (A) If the proposed assessment or proposed notice of claim disallowance is sustained, in whole or part, the taxpayer may request in writing, within twenty (20) days

of the mailing of the decision, that the director revise the decision of the hearing officer.

(B) If the director refuses to make a revision or if the taxpayer does not make a request for revision, then a final assessment, as provided by § 26-18-401, or a final notice of claim disallowance, as provided by § 26-18-507, shall be made upon the final determination of the hearing officer or the director.

(C) The director may within twenty (20) days of the mailing of the decision revise the decision of the hearing officer regardless of whether the taxpayer has requested a revision. If the director revises the decision of the hearing officer sustaining any portion of an assessment, or allowing any part of a claim for refund, then a notice of final assessment, as provided by § 26-18-401, or a final notice of claim disallowance, as provided by § 26-18-507, shall be made upon the final determination of the director. The taxpayer may not request revision of a decision issued by the director under this subdivision._

Section 6. Arkansas Code § 26-18-405(e) is amended to read as follows:

(e) A taxpayer may seek relief from the final decision of the hearing officer or the director on a final assessment of a tax deficiency or a final notice of claim disallowance by following the procedure set forth in § 26-18-406.

Section 7. Arkansas Code 26-18-406 is amended to read as follows:

26-18-406. Judicial relief.

(a) ~~After Within thirty (30) days of the issuance and service on the taxpayer~~ of the notice and demand for payment of a deficiency in tax established by (1) an audit determination that is not protested by the taxpayer under § 26-18-403, or (2) a final determination of the hearing officer or the director under §26-18-405, a taxpayer may seek judicial relief from the final determination by either:

~~(1) Paying under protest the amount of the deficiency, plus penalty and interest determined by the director to be due, and filing a suit to recover that amount within one (1) year from the date of payment under protest; or~~

(1) Paying of the entire amount of state tax due, for any taxable period or periods covered by the final assessment and filing suit to recover that amount within one (1) year of the date of payment. The director may proceed with collection activities, including the filing of a certificate of indebtedness as authorized under § 26-18-701 for any assessed, but unpaid, state taxes, penalties or interest owed by the taxpayer for other taxable periods covered by the final assessment, while the suit for refund is being pursued by the taxpayer for other taxable periods covered by the final assessment; or

(2) (A) Filing Within thirty (30) days of the issuance and service on the taxpayer of the notice and demand for payment, filing with the director a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter

to stay the effect of the director's determination.

(B) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and shall pay any deficiency found by the court to be due and any court cost assessed against him.

(C) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by this subsection, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs.

(b) After the issuance of the final notice of claim disallowance established by: (1) the director's action under § 26-18-507, or (2) a final determination of the hearing officer or the director under § 26-18-405, a taxpayer may seek judicial relief from the final determination by filing suit to recover the amount claimed within one (1) year of the date of the issuance of the final notice of claim disallowance.

~~_____ (c) (1) All taxes and penalties paid under protest shall be held by the director in a "Tax Protest Fund Account."~~

~~_____ (2) The director shall make refunds of the taxes and penalties found by the court to be overpaid by the taxpayer from the Tax Protest Fund Account.~~

~~_____ (3) If no suit is instituted by a taxpayer within one (1) year of the date of payment, the director shall pay the amount so held into the appropriate account as provided in § 26-18-308.~~

(c) (b) (1) Jurisdiction for a suit to contest a determination of the director under this section shall be in the Pulaski County Chancery Court or the chancery court of the county in which the taxpayer resides or has his principal place of business, where the matter shall be tried de novo.

(2) An appeal will lie from the chancery court to the Supreme Court of Arkansas, as in other cases provided by law.

(d) ~~The method~~ methods provided in this section ~~is the exclusive method~~ shall be the sole alternative methods for seeking relief from a written decision of the director establishing a deficiency in tax or disallowing a claim for refund. No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under any state tax law.

(e) (1) In any court proceeding under this section, the prevailing party may be awarded a judgment for court costs.

(2) A judgment of court costs entered by the court in favor of either party shall be treated, for purposes of this chapter, in the same manner as an overpayment or deficiency of tax, except that no interest or penalty shall be allowed or assessed with respect to any judgment for court costs._

Section 8. Arkansas Code 26-18-507(c) is amended to read as follows:

(c) The director shall determine what amount of refund, if any, is due as soon as

practicable after a claim has been filed, but in no event shall the taxpayer be entitled to file a suit for refund under ~~subsection (e) of this section~~ § 26-18-406, until at least six (6) months have elapsed from the date of the filing of the claim for refund, or the director has issued a final notice of claim disallowance.

Section 9. Arkansas Code 26-18-507(e) is amended to read as follows:

(e) (1) The director shall make a written determination and give notice to the taxpayer concerning whether or not a refund is due. If a refund is due, the director shall certify that the claim is to be paid to the taxpayer as provided by law or credited against taxes due or to become due.

(2) (A) If the director's determination is to disallow the claim for refund, in whole or in part, then the director shall forthwith issue a written decision giving notice to the taxpayer of the proposed disallowance of the claim for refund.

(B) A notice of proposed claim disallowance shall be treated in the same manner as the issuance by the director of a proposed assessment of tax, as provided by § 26-18-403. The taxpayer, at the taxpayer's option, may seek administrative review and relief from the director's notice of proposed claim disallowance by protesting the proposed notice of claim disallowance as provided by § 26-18-404 And § 26-18-405. A final determination of the hearing officer or the director adverse to the taxpayer, shall be deemed sufficient reason for the director to issue a final notice of disallowance of the claim for refund.

(C) If the taxpayer does not seek relief from the director's notice of proposed claim disallowance, as provided by this subsection; then the director shall issue a final notice of claim disallowance to the taxpayer upon the expiration of the thirty (30) day period after the proposed notice of claim disallowance has been issued by the director.

~~(3) (2) (A) The taxpayer may seek judicial relief , under the provisions of §26-18-406, from: (i) A final notice of claim disallowance issued by The written decision of the director which denies the claim in whole or part; or (ii) the director's failure to issue a written decision after the claim for refund has been filed for six (6) months. , by filing any action with the Pulaski County Chancery Court or the chancery court of the county in which the taxpayer resides or has his principal place of business after at least six (6) months have expired from the date of the filing of the claim for refund if the director has not acted on the claim, or within ninety (90) days after issuance of the director's written decision.~~

~~(B) A written decision of the director on a refund becomes final and not subject to suit ninety one (91) days after it is issued to the taxpayer.~~

Section 10. The General Assembly intends, by the passage of this amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its intent that taxpayers

involved in state tax disputes with the Arkansas Department of Finance and Administration shall have, as much as possible, the opportunity to secure an objective review of their dispute by a court at law through: (1) the posting of bond method; (2) the payment after assessment method; or (3) the claim for refund method, after the payment by the taxpayer of all state taxes claimed to be due from the taxpayer for at least one complete taxable period involved in the audit period. It is also intended by the General Assembly that the courts of this state are to recognize the "divisible tax theory" applicable to the review of federal tax dispute by federal courts, as also being applicable to the review of state tax disputes by the courts of this state.

Section 11. This act shall apply, with regard to all tax years or income years that are still open to assessment by the director or to the filing of claims for refund by a taxpayer."

And

by renumbering all of the remaining sections with corresponding numbers.