

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: S3/3/15 S3/5/15 H3/20/15*
90th General Assembly **A Bill**
Regular Session, 2015

SENATE BILL 490

By: Senators B. Sample, Teague, Hester, Files, Hickey

By: Representatives Bragg, *Ballinger, Bell, Bentley, Davis, Della Rosa, Eads, M. Gray, Jean, Lundstrum, Neal, Pitsch, Rushing, Sullivan, Wallace*

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING THE ADMINISTRATION OF STATE TAXES; TO IMPROVE THE FAIRNESS OF TAX ADMINISTRATION BY ELIMINATING PREPAYMENT CONDITIONS FOR APPEAL, ADJUSTING THE TAXPAYER BURDEN OF PROOF, EQUALIZING THE LIMITATIONS PERIOD FOR REFUNDS, PROMOTING TRANSPARENCY IN TAX ADMINISTRATION, CONFORMING DUE DATES FOR INCOME TAX RETURNS, AND EXTENDING THE REBATE PERIOD FOR LOCAL TAXES; AND FOR OTHER PURPOSES.

Subtitle

TO IMPROVE THE FAIRNESS OF TAX ADMINISTRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-18-306(b)(1)-(3), concerning the time limitations for assessments, collections, and refunds, is amended to read as follows:

(b)(1) Notwithstanding ~~the provisions of~~ subsection (a) of this section, if the amount of taxable income or taxable estate for a taxpayer for ~~any~~ a year, as returned to the United States Department of the Treasury, is changed and corrected by the Commissioner of Internal Revenue or ~~any~~ an officer of the United States of competent authority, the taxpayer, within ~~ninety (90)~~ one hundred eighty (180) days from the receipt of the notice and



demand for payment by the Internal Revenue Service, ~~must~~ shall report to the director the corrected federal tax, taxable income, or taxable estate for the taxable period covered by the change on an amended Arkansas income tax return.

(2)(A) If there is ~~any~~ an additional state tax due from the taxpayer because of the correction by the Internal Revenue Service, ~~any~~ the additional state tax resulting from the issues that are included in the correction ~~must~~ shall be assessed by the director within one (1) year ~~of~~ the filing of the amended Arkansas income tax return by the taxpayer.

(B) However, ~~in the instance of~~ if a taxpayer ~~who~~ fails to notify the director of the correction as required by this subsection, no assessment of additional state tax due from the taxpayer because of the correction by the Internal Revenue Service shall be made by the director after the expiration of ~~eight (8)~~ three (3) years from the date the amended return was required to be filed ~~or the date the return was filed, whichever period expires later.~~

(C) If the taxpayer appeals the assessment made by the Internal Revenue Service ~~is appealed by the taxpayer~~, the director ~~shall have~~ has three (3) years from the date of the final Internal Revenue Service assessment or date of payment of the federal assessment by the taxpayer, whichever of the two (2) periods expires later, in which to make an assessment.

(3)(A) Notwithstanding ~~the provisions of~~ subsection (i) of this section, if the correction by the Internal Revenue Service results in an overpayment of state income tax for the taxable year for which the correction is made, the taxpayer may receive a refund of the overpaid income tax for that year resulting from the issues that are included in the correction upon the filing of the amended return within ~~ninety (90)~~ one hundred eighty (180) days from receipt of the notice from the Internal Revenue Service.

(B) A refund shall not be paid if the amended return is filed on or after the ~~ninety-first~~ one hundred eighty-first day following receipt of the notice from the Internal Revenue Service unless the amended return is filed within three (3) years from the time the original return was filed or two (2) years from the time the income tax due on the original return was paid, whichever of the periods expires later.

SECTION 2. Arkansas Code § 26-18-306, concerning the time limitations for assessments, collections, and refunds, is amended to add an additional subsection to read as follows:

(m)(1) Except in the case of deficiencies that are determined to be due to fraud, if the director assesses a tax or begins an action in court for the collection of a tax under subsection (e) or subsection (f) of this section for a time period in excess of the time periods provided in subsection (a) of this section, the taxpayer may file a verified claim for a credit or refund of an overpayment of state tax for the additional time period open for assessment by the director at any time before the time of collection of the assessment.

(2) However, the taxpayer shall not receive a credit or refund of any amount in excess of the assessment under this subsection.

(3) The taxpayer's ability to file a verified claim under this subsection is in addition to and not in limitation of the other provisions for filing claims in this section.

SECTION 3. Arkansas Code § 26-18-313 is amended to read as follows:

26-18-313. Construction – Standard of proof for exemptions, deductions, and credits.

~~The standard of proof for a taxpayer to establish facts to support a claim for a tax exemption, tax deduction, or tax credit is clear and convincing evidence.~~

(a) When the state seeks to impose a tax under the terms of a state tax law, then the statute imposing the tax shall be strictly construed in limitation of the imposition of the tax.

(b) When a taxpayer claims to be entitled to a tax exemption, deduction, or credit under the terms of a state tax law, then the statute providing the tax exemption, deduction, or credit shall be strictly construed in limitation of the exemption, deduction, or credit.

(c) The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state, in controversies regarding the application of a state tax law shall be by preponderance of the evidence.

(d) When the meaning of a state tax law is in controversy, the burden of establishing the proper construction of the statute shall be on the party claiming application of the tax or benefit of the tax exemption, deduction,

or credit.

(e) Words used in statutes imposing a tax and in statutes providing for a tax exemption, deduction, or credit shall be given their plain and ordinary meaning, not their narrowest possible meaning.

(f)(1) Statutes imposing a tax and statutes providing a tax exemption, deduction, or credit shall be fairly and reasonably construed, taking into consideration the purpose and spirit of the tax, exemption, deduction, or credit and the public policy at the time the statute was passed.

(2) If after taking this section and other applicable rules of statutory construction into account, a well-founded doubt exists with respect to the meaning of a statute imposing a tax or providing a tax exemption, deduction, or credit, the rule of strict construction shall require that the doubt be resolved against the tax, exemption, deduction, or credit.

(g) This section is remedial and procedural and shall apply to all actions on and after the effective date of this section.

SECTION 4. Arkansas Code Title 26, Chapter 18, Subchapter 3, is amended to add an additional section to read as follows:

26-18-314. Transparency.

(a)(1) A written legal opinion issued by the director on or after January 1, 2016, shall be posted on the Arkansas.gov website.

(2) Any identifying facts and information that the director determines to be confidential in nature concerning taxpayers or other individuals or entities shall be redacted from an opinion posted under this section.

(3) The director may post a synopsis that describes the subject matter, facts, and guidance provided in an opinion instead of posting the complete redacted opinion if a copy of the redacted opinion is made available upon request.

(b)(1) A final determination of a hearing officer or the director issued under § 26-18-405 on or after January 1, 2016, shall be posted on the Arkansas.gov website.

(2) Any identifying facts and information that the director determines to be confidential in nature concerning taxpayers or other individuals or entities shall be redacted from a final determination posted under this section.

(3) The director may post a synopsis that fully describes the subject matter, facts, and conclusions reached by the hearing officer or director instead of posting the complete determination.

(4) An administrative appeal that is settled or withdrawn from consideration before a final determination is made shall not be posted under this section.

SECTION 5. Arkansas Code § 26-18-406 is amended to read as follows:
26-18-406. Judicial relief.

(a) After the issuance and service on the taxpayer of the final assessment of a deficiency in tax that is not protested by the taxpayer under § 26-18-403 or a final determination of the hearing officer or the director under § 26-18-405, a taxpayer may seek judicial relief from the final ~~determination or assessment~~ or determination by:

(1)(A) Filing suit for judicial relief from the final assessment or determination within one hundred eighty (180) days of the date of the final assessment or determination.

(B) A taxpayer filing suit under this subdivision (a)(1) shall not be required to pay the state tax, penalties, and interest due before filing suit;

~~(2) Paying the entire amount of state tax due for any taxable period or periods covered by the final assessment within one (1) year of the date of the final assessment or determination and filing suit to recover that amount within one (1) year of the date of payment; or~~

~~(B) The director may proceed with collection activities including the filing of a certificate of indebtedness as authorized under § 26-18-701 within thirty (30) days of the issuance of the final assessment 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;~~

~~(2)(A) Filing with the director a bond in double the amount of the tax deficiency due within thirty (30) days of the issuance and service on the taxpayer of the final assessment 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 conditions that the~~

~~taxpayer shall:~~

~~(i) File suit within thirty (30) days after filing the bond;~~

~~(ii) Faithfully and diligently prosecute the suit to a final determination; and~~

~~(iii) Pay any deficiency found by the court to be due and pay any court cost assessed against him or her.~~

~~(C) A taxpayer's failure to file suit, diligently prosecute the suit, or pay any tax deficiency and court costs, as required by subdivision (a)(2)(B) of this section, shall result in the forfeiture of the bond in the amount of the assessment and assessed court costs; or~~

(3) Filing suit to recover assessed tax, penalty, and interest paid prior to the time for issuance of the final assessment within one (1) year of the date of the final determination of the hearing officer or the director under § 26-18-405.

(b) A taxpayer may seek judicial relief from a final determination denying a claim for refund by filing suit to recover the amount claimed within one (1) year from the mailing of the denial of the director under § 26-18-507, or a final determination of the hearing officer or the director under § 26-18-405, whichever is later.

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

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

(3) A presumption of correctness or weight of authority ~~will~~ shall not attach to a final assessment or determination of the director in a trial de novo or an appeal under this section.

(d)(1) The methods provided in this section 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.

(2) ~~No~~ An injunction shall not issue to stay proceedings for assessment or collection of ~~any~~ taxes levied under ~~any~~ state tax law.

(e)(1) In ~~any~~ a court proceeding under this section, the:

(A) Prevailing party may be awarded a judgment for court costs; and

(B) Taxpayer may be awarded reasonable attorney fees if the:

"(i) Director revised a decision of the hearing officer in favor of the taxpayer under § 26-18-405;

(ii) Taxpayer is the prevailing party in an action for judicial relief from the determination of the director under this section; and

(iii) Court finds that the director's revision was without a reasonable basis in law and fact.

(2) A judgment of court costs entered by the court in favor of either party or of attorney fees awarded in favor of the taxpayer shall be treated, for purposes of this chapter, in the same manner as an overpayment or deficiency of tax, except that interest or penalty shall not be allowed or assessed with respect to ~~any~~ a judgment for court costs or attorney fees.

(f) If a taxpayer pays the tax, penalty, and interest assessed under § 26-18-403 and does not request administrative relief according to § 26-18-404, then:

(1) The taxpayer may seek judicial relief from the assessment only if the taxpayer files suit in circuit court within one (1) year from the date of payment of the assessment; and

(2) The provisions of § 26-18-507 shall not apply to the payments.

(g) The Arkansas Rules of Civil Procedure and § 16-56-126 concerning nonsuit and commencement of new actions apply to appeals under this section..

SECTION 6. Arkansas Code § 26-51-806(a), concerning the filing of income tax returns, is amended to read as follows:

26-51-806. Filing returns – Time and place – Forms.

(a)(1) Returns shall be in ~~such~~ the form ~~as~~ the Director of the Department of Finance and Administration ~~may prescribe from time to time~~ prescribes and shall be filed with the director's office at Little Rock.

(2) Returns for all income taxes other than ~~corporation income tax~~, cooperative associations, and exempt organizations shall be filed as follows:

(A) If covering the preceding calendar year, on or before April 15; or

(B) If covering a fiscal year, on or before the expiration of three and one-half (3 1/2) months after the closing date of the period covered.

~~(3) Returns for corporation income tax shall be filed as follows:~~

~~(A) If covering the preceding calendar year, on or before March 15; or~~

~~(B) If covering a fiscal year, on or before the expiration of two and one-half (2 1/2) months after the closing date of the period covered.~~

~~(4)~~ (3)(A) Returns for cooperative association income tax shall be filed as follows:

(i) If covering the preceding calendar year, on or before September 15; or

(ii) If covering a fiscal year, on or before the expiration of eight and one-half (8 1/2) months after the closing date of the period covered.

(B) As used in this section, "cooperative association" means a cooperative association as described in § 26 U.S.C. § 1381(a) as in effect on January 1, 2003.

~~(5)~~ (4)(A) Returns for an exempt organization that is required to file an income tax return shall be filed as follows:

(i) If covering the preceding calendar year, on or before May 15; or

(ii) If covering a fiscal year, on or before the expiration of four and one-half (4 1/2) months after the closing date of the period covered.

(B) As used in this section, "exempt organization" means an organization as described in § 26-51-303.

SECTION 7. Arkansas Code § 26-52-523(d), concerning credits and rebates of local sales and use taxes, is amended to read as follows:

(d) ~~No~~ A credit or rebate under this section shall not be paid for ~~any~~ a claim filed after six (6) months from more than one (1) year following the

date of the qualifying purchase or ~~after six (6) months from~~ more than one (1) year following the date of payment, if later.

SECTION 8. EFFECTIVE DATES.

(a) Sections 1 through 5, Section 7, and Section 8 of this act are effective on the first day of the calendar quarter following the effective date of this act.

(b) Section 6 of this act is effective for tax years beginning on or after January 1, 2017.

/s/B. Sample