

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 865

By: Senator B. Sample  
By: Representative Bragg

## For An Act To Be Entitled

AN ACT TO PROVIDE A RIGHT TO ATTORNEY'S FEES FOR TAXPAYERS SEEKING JUDICIAL RELIEF; TO AMEND THE TAXPAYER BILL OF RIGHTS TO INCLUDE A RIGHT TO REIMBURSEMENT OF FEES AND OTHER COSTS; AND FOR OTHER PURPOSES.

## Subtitle

TO PROVIDE A RIGHT TO ATTORNEY'S FEES FOR TAXPAYERS SEEKING JUDICIAL RELIEF; AND TO AMEND THE TAXPAYER BILL OF RIGHTS TO INCLUDE A RIGHT TO REIMBURSEMENT OF FEES AND OTHER COSTS.

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

SECTION 1. Arkansas Code § 26-18-406(e), concerning the judicial relief available for an appeal of a tax assessment, is amended to read as follows:

(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)~~ (ii) Court finds that the ~~director's revision~~ final assessment or final determination of the hearing officer or the director was without a reasonable basis in law ~~and, fact, or both.~~

(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.

SECTION 2. Arkansas Code Title 26, Chapter 18, Subchapter 8, is amended to add an additional section to read as follows:

26-18-813. Reimbursement of fees and other costs.

(a) As used in this section:

(1) "Administrative proceeding" means a request for taxpayer relief under §§ 26-18-404 and 26-18-405; and

(2) "Reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services but that do not exceed the amount actually spent for:

(A) Expert witnesses;

(B) The cost of any study, analysis, report, test, or project that is found to be necessary to prepare the taxpayer's case; and

(C) Fees for attorneys or other representatives.

(b)(1) A taxpayer that is a prevailing party may be reimbursed for fees and other costs related to seeking relief in an administrative proceeding.

(2) A taxpayer is considered to be a prevailing party under this section only if:

(A) The director's position subject to the action for administrative relief was not substantially justified, as determined by the hearing officer or director; and

(B) The taxpayer prevails as to the predominant issue or set of issues before the hearing officer or director.

(c) Reimbursement of fees and costs under this section may be denied if:

(1) During the course of the proceeding, the taxpayer unreasonably protracted the final resolution of the matter as determined by the hearing officer or director; or

(2) The taxpayer prevailed because of an intervening change in the applicable law.

(d)(1) The taxpayer shall present an itemization of the fees and other costs to the hearing officer within thirty (30) days after the final determination of the hearing officer or the director under § 26-18-405.

(2) The hearing officer shall determine the validity of the fees and other costs within thirty (30) days after receiving the itemization provided under this subsection.

(3) The taxpayer or legal counsel for the director may request that the director revise the hearing officer's decision concerning fees and costs in the manner stated in § 26-18-405(d)(4).

(4) The final determination of the hearing officer or the director is subject to an action for judicial relief in the same manner as a final determination denying a claim for refund under § 26-18-406(b).

(e)(1) The director shall pay the fees and other costs awarded under this section from any funds appropriated to the Revenue Division of the Department of Finance and Administration for that purpose.

(2) The taxpayer may file a claim for the fees and other costs with the Arkansas State Claims Commission if:

(A) The director does not pay the fees and other costs within thirty (30) days after demand by a taxpayer that has received an award under this section; and

(B) No further review or appeals of the award are pending.

(f)(1) Reimbursement to a taxpayer under this section shall not exceed the lesser of twenty thousand dollars (\$20,000) or the actual amount spent.

(2) The reimbursable attorney fees or other representative fees shall not exceed the lesser of two hundred dollars (\$200) per hour or the actual amount spent unless the director or a court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher fee.

(g) The director shall adopt rules to implement this section.

(h) If a taxpayer seeks administrative relief from a proposed

assessment of taxes or from denial of a claim for refund and is denied administrative relief under §§ 26-18-404 and 26-18-405 but is subsequently granted judicial relief under § 26-18-406, the court may award reasonable fees and other costs related to the taxpayer's action for administrative relief on the same basis as stated in subsection (b) of this section subject to the restrictions stated in subsection (f) of this section.