

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: H3/8/17  
**A Bill**

HOUSE BILL 1772

By: Representatives Jett, E. Armstrong, Ballinger, Baltz, Blake, Boyd, Cavanaugh, Cozart, Davis, D. Douglas, Drown, Eaves, Gazaway, M. Gray, Henderson, Hillman, Jean, Lowery, D. Meeks, Miller, Rushing, Vaught, *Bragg, Dotson, C. Douglas, Eubanks, M. Hodges, Leding, Lemons, Sabin*  
By: Senators Files, *J. English, B. Sample*

### **For An Act To Be Entitled**

AN ACT TO AMEND THE LAW CONCERNING PROPERTY TAX ADMINISTRATION; TO IMPROVE THE FAIRNESS OF PROPERTY TAX ADMINISTRATION BY ESTABLISHING A FAIR AND EQUITABLE BURDEN OF PROOF FOR PROPERTY TAX APPEALS, CLARIFYING THE STANDARD FOR CORRECTION OF ERRORS AND REFUNDS, AND PRESCRIBING TAXPAYER RIGHTS IN HEARINGS BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION; TO IMPROVE THE OPERATION OF COUNTY EQUALIZATION BOARDS BY PRESCRIBING TRAINING COURSES AND PROVIDING FOR UNIFORM HEARING PROCEDURES; AND FOR OTHER PURPOSES.

### **Subtitle**

TO IMPROVE THE FAIRNESS OF PROPERTY TAX ADMINISTRATION AND APPEALS.

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

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The normal burden of proof in civil actions before administrative authorities and in court is a preponderance of the evidence;

(2) The General Assembly has previously clarified the burden of proof on taxpayers in state tax appeals to reduce standards of proof to a preponderance of the evidence;



(3) It is in the best interests of the taxpayers in this state to follow the General Assembly's approach in previous sessions and clarify that the proper burden of proof in state tax appeals is the preponderance of the evidence; and

(4) Prescribing training and education courses for members of county equalization boards and providing for uniform hearing procedures would improve the operation of county equalization boards and their ability to serve the taxpayers of this state.

(b) The General Assembly intends:

(1) For the preponderance of the evidence standard to apply in property tax administration and appeals;

(2) To make additional clarifications to the law as a result of recent judicial decisions affecting the Arkansas Property Taxpayer Bill of Rights, § 26-23-201 et seq., adopted by the General Assembly in 1999;

(3) To extend the limitation period for tax appeals subject to the jurisdiction of the Arkansas Public Service Commission; and

(4) Improve the operation of county equalization boards.

SECTION 2. Arkansas Code § 26-26-1610(b), concerning notice of assessment of property and review and refunds of assessments, is amended to read as follows:

(b)(1)(A) If the owner of the property so assessed is dissatisfied with the assessment made by the division, as approved by the Arkansas Public Service Commission or the ~~Arkansas Transportation Commission [abolished]~~ State Highway Commission, the owner, within ~~ten (10)~~ thirty (30) days from date of notice under subsection (a) of this section, may file with the appropriate commission a written petition for review of the assessment.

(B) The deadline for filing a written petition under subdivision (b)(1)(A) of this section may be extended for fifteen (15) days by order of the appropriate commission for good cause shown.

(C)(i) A written petition under subdivision (b)(1)(A) of this section may be signed and filed by the property owner or an officer, agent, or attorney on the property owner's behalf.

(ii) However, the appropriate commission may require that the property owner be represented by a licensed attorney in any filings or proceedings following the filing of the petition.

(2)(A) All hearings on the petition shall be had before the appropriate commission or its agent on or before November 1 after assessment notice has been given. However, hearings on petitions for review of assessments of bus lines, motor carriers, airlines, water transportation companies, and private car companies, which assessments are certified to the Director of the Department of Finance and Administration for collection of tax, shall be to the appropriate commission or its agent, on or before December 31 of the assessing year.

(B) However, a hearing may be continued by order of the appropriate commission for a period not to exceed ninety (90) days.

SECTION 3. Arkansas Code § 26-27-315(b), concerning equalization of assessments, is amended to read as follows:

(b) For this purpose, the county equalization board shall observe the following rules:

(1)(A) It shall raise or lower the valuation of any property to bring about a complete equalization of property at the proper value under § 26-26-407 or § 26-26-1202 or in accordance with a value otherwise prescribed by law.

(B) It shall not raise or lower the valuation of any property without documenting the reason for raising or lowering the valuation of the property to achieve the proper value under § 26-26-407 or § 26-26-1202 or in accordance with a value otherwise prescribed by law, and the documentation shall be attached to the appropriate property record card or cards.

~~(C) The reasons for lowering or raising the valuation of property shall be limited to:~~

~~(i) The assessment is unfair compared with other properties of the same kind similarly situated, evidenced by the fact that the property is assessed higher than neighborhood properties of the same use, size, materials, and condition;~~

~~(ii) The assessment is clearly erroneous, evidenced by the fact that the appraisal relies on substantially inaccurate or insufficient information concerning the property; or~~

~~(iii) The assessment is manifestly excessive or greatly exceeds what willing and knowledgeable buyers will pay similarly~~

~~motivated sellers for the property, evidenced by selling prices of similarly situated properties.~~

~~(D)(i)~~ (C)(i) It shall not raise or lower the value of any property without reviewing values of similarly situated properties.

(ii) If the same reason for raising or lowering the value of the property exists for those similarly situated properties, the values for those properties shall also be raised or lowered, and the changes shall be documented.

~~(E)~~ (D) It shall not materially change the records of the county assessor's office, but may only direct that the assessed value of property be raised or lowered in keeping with its documented findings;

(2)(A) In each instance in which the county equalization board shall raise the valuation of any property, it shall immediately notify the owner or his or her agent by first class mail of the increase.

(B) However, all persons present before the county equalization board in person or by agent at the time the increase is ordered are there so notified and shall not be entitled to further notice.

(C) The notice shall state the valuation returned by the county assessor and the valuation fixed by the county equalization board and shall advise the owner or his or her agent that he or she may in person, by agent, petition, or letter apply for and receive consideration or hearing by or before the county equalization board if the application shall be made on or before the first Saturday next preceding the third Monday in September if in regular session for equalization or before the first Saturday next preceding the third Monday of November if meeting in special sessions; and

(3) In each instance in which an assessment is raised and the owner or his or her agent has applied for consideration or hearing for an adjustment of his or her assessment, if the county equalization board has failed to take action on his or her application before adjourning its regular session or if it fails to convene in special session to consider the application, then the county equalization board shall reduce all such increases to the assessed levels of the previous year.

SECTION 4. Arkansas Code § 26-27-317(c) and (d), concerning applications for adjustment of property assessments, are amended to read as follows:

(c)(1) The county equalization board shall begin hearing appeals no later than the second Monday in August.

(2) On at least one (1) day each week, appeals shall be heard after normal business hours to accommodate working property owners.

(d)(1)(A) At a hearing before a county equalization board, the county assessor shall first present to the county equalization board any evidence that the county assessor's office or a contracted appraisal company considered when determining the valuation of the property that is the subject of the hearing.

(B) After the county assessor has presented the evidence as required in subdivision (d)(1)(A) of this section, the appealing property owner or his or her agent shall present to the county equalization board any evidence that supports a valuation of the property that is different from the valuation set by the county assessor.

(C)(i) After the appealing property owner or his or her agent presents evidence under subdivision (d)(1)(B) of this section, the county assessor shall have the opportunity to rebut the evidence presented by the appealing property owner or his or her agent in the proceeding.

(ii) If the appealing property owner presents material evidence that has not been provided to the county assessor at least five (5) business days before the hearing, the county equalization board may continue the hearing to a future date in order for the county assessor to review and prepare a response, including without limitation additional evidence.

(D) After the evidence has been presented by both parties under this subsection (d), the county equalization board shall consider all evidence presented at the hearing and make a determination based on evidence presented by the parties to either accept the valuation of the subject property set by the county assessor or raise or lower the valuation of the subject property.

(E)(i) Except as necessary during other hearings of the county equalization board for the purpose of comparison or equalization, or both, ex parte communications between members of the county equalization board or between a member of the county equalization board and other persons concerning property on appeal before the county equalization board are prohibited.

(ii) However, members of the county equalization board may communicate with the attorneys for the county equalization board and with the secretary for the county equalization board for purposes of scheduling.

(e)(1) The county equalization board shall decide the merits of an adjustment of assessment application and notify the property owner of its decision in writing at least ten (10) business days after the hearing.

(2) The county equalization board's notification shall include:

(A) The county equalization board's decision;

(B) The right of the property owner to appeal the county equalization board's decision to the county court; ~~and~~

(C) The deadline for petitioning the county court for a hearing; and

(D) A statement that a petition filed in county court for a hearing on behalf of a corporation, limited liability company, or other business entity shall be signed and filed by an attorney licensed to practice law in Arkansas.

SECTION 5. Arkansas Code § 26-27-318(d), concerning appeals to courts of county equalization board actions, is amended to read as follows:

~~(d)(1) No reduction shall be allowed except on evidence corroborative of that of the property owner.~~ On an appeal from the action of the county equalization board or a subsequent court order affecting the valuation of the property, the petitioner or plaintiff shall have the burden of proving by a preponderance of the evidence the true and correct value of the property for ad valorem tax purposes as prescribed by law.

(2) A presumption of correctness or weight of authority does not attach to the action of the county assessor or the county equalization board, and the petitioner or plaintiff is not required to:

(A) Show that the assessed valuation of property is clearly erroneous, manifestly excessive, or confiscatory; or

(B) Meet a higher standard of proof than preponderance of the evidence.

SECTION 6. Arkansas Code Title 26, Chapter 27, Subchapter 3, is amended to add additional sections to read as follows:

26-27-324. Education and training of members of a county equalization board.

(a)(1) Beginning January 1, 2018, the Director of the Assessment Coordination Department shall:

(A) Approve curricula and provide materials for use in training and educating members of county equalization boards;

(B) Supervise a comprehensive course for training and education of members of county equalization boards and issue certificates indicating course completion;

(C) Make all materials for use in training and educating members of county equalization boards freely available online; and

(D) Provide staff to respond to technical questions relating to the duties and responsibilities of members of county equalization boards and property appraisal issues.

(2) The director may contract with one (1) or more service providers to assist with the requirements of this subsection.

(b) The curricula and materials for the comprehensive course established under this section shall include without limitation information regarding the:

(1) Cost, income, and market data comparison methods of property appraisal;

(2) Appraisal of business personal property;

(3) Duties of the county assessor;

(4) Duties of a county equalization board, including without limitation the independence of a county equalization board from the county assessor and other employees and contractors of the county assessor;

(5) Prohibition against ex parte communications applicable to members of a county equalization board;

(6) Requirements regarding equal and uniform appraisal of property; and

(7) Right of a property owner to protest the appraised value of the property and the procedures for an appeal.

(c)(1) Except as otherwise provided in this subsection, each member of a county equalization board shall complete the comprehensive course established under subsection (a) of this section.

(2)(A) A member of a county equalization board who is required

to attend the comprehensive course shall not participate in a county equalization board hearing unless the member of the county equalization board has been certified as completing the comprehensive course established under subsection (a) of this section.

(B) A member of a county equalization board who is appointed after the date the comprehensive course established under subsection (a) of this section is offered for that year may serve without certification until the next comprehensive course established under subsection (a) of this section is offered.

(3)(A) Until January 1, 2021, no more than one-third (1/3) of the members of a county equalization board, as designated by the chair of the county equalization board serving on January 1 of each year or, if no chair is serving on January 1, then by the county judge, shall be required to attend the comprehensive course established under subsection (a) of this section in a single year.

(B) The director may waive the requirements of this subsection for:

(i) Appraisers who are registered, licensed, or certified to perform appraisals in Arkansas; and

(ii) Attorneys licensed to practice law in Arkansas.

(d)(1) For purposes of continuing education, a member of a county equalization board shall obtain certification of completion of the comprehensive course established in subsection (a) of this section every three (3) years.

(2) If a member of a county equalization board does not become recertified under subdivision (d)(1) of this section three (3) years after the his or her previous certification of the course, the member of a county equalization board shall not participate in a hearing before the county equalization board until the member is recertified.

26-27-325. Uniform hearing procedures.

(a) The Director of the Assessment Coordination Department shall establish uniform hearing procedures for county equalization boards, which shall include without limitation information regarding:

(1) The notice required for a hearing;

(2) Conducting a hearing;

(3) Scheduling, rescheduling, and cancelling a hearing;

(4) The right of the county assessor and property owner to offer evidence and testimony and examine and cross-examine witnesses at a hearing;

(5) A property owner's right to appear by an agent at a hearing;

(6) The prohibitions against ex parte communications and a county equalization board's consideration of information not provided at a hearing; and

(7) Conflicts of interest.

(b)(1) A county equalization board shall adopt at its first meeting of each year and shall follow the uniform hearing procedures established by the director under this section.

(2) Upon request, the secretary of a county equalization board shall provide an owner of property in the county with a copy of the uniform hearing procedures that have been adopted by the county equalization board for that year's hearings.

(3) A copy of the uniform hearing procedures adopted by a county equalization board shall be conspicuously posted in a prominent place in the room in which the county equalization board hearings are held.

(c)(1) At the first meeting of a county equalization board each year, each member of the county equalization board shall sign an affidavit stating that the member of the county equalization board will not knowingly violate any law or procedure regarding the conducting of county equalization board hearings.

(2) If a member of a county equalization board violates a law or procedure regarding the conducting of county equalization board hearings before or during a hearing, the member of the county equalization board shall recuse from further participation in that hearing.

(3)(A) If a member of a county equalization board recuses from a hearing under subdivision (c)(2) of this section or otherwise, the county judge shall appoint an interim member of the county equalization board to serve for the duration of that hearing.

(B) An interim member of a county equalization board appointed under this subdivision (c)(3) shall not be subject to the education and training requirements stated in § 26-27-324.

SECTION 7. Arkansas Code § 26-28-111(c), concerning the correction of

errors in real or personal property tax books, is amended to read as follows:

~~(c)(1) The provisions of this~~ This section shall be applicable applies only to the correction of ~~actual and obvious errors on the tax books and related records, with such errors being restricted to~~ extension errors, erroneous property descriptions, classifications, or listings, ~~and.~~

(2)(A) A correction shall be made under this section regardless of whether the error was caused by the county assessor or the taxpayer or was the result of an erroneous record or report or other circumstance.

(B) However, a correction under this section shall not be utilized to make any change in the valuation of any real or personal property as shown on the tax books and related records other than a change in valuation necessitated by the correction of actual and obvious factual errors as provided in this section.

~~(3) In no case shall any~~ A reduction in the valuation of ~~any~~ real or personal property shall not be made, except such as shall have been ordered by the county equalization board, the county court, the circuit court, or the Supreme Court, or be caused by the correction of actual and obvious errors as provided in this section.

SECTION 8. Arkansas Code § 26-28-111, concerning the correction of errors in real or personal property tax books, is amended to add an additional subsection to read as follows:

(d) When the county assessor discovers or is informed of an error described in subsection (c) of this section in the real or personal property tax books before the tax books have been delivered to the county collector, the county assessor shall correct the error directly on the tax books and shall maintain a record of the correction in the county assessor's records.

SECTION 9. Arkansas Code § 26-35-901(a), concerning taxes erroneously assessed and paid, is amended to add an additional subdivision to read as follows:

(3) If an erroneous assessment claim is for erroneous assessments made in two (2) or more tax years, the county court may order that the property tax refund be made in up to two (2) equal annual installments, by December 31 of each year, beginning with the year in which the order is entered.

*/s/Jett*