

## **Title 26. Taxation**

### **Chapter I. Generally, Department of Finance and Administration**

#### **Subchapter A. General, Procedural, or Legal**

#### **Part 8. Surety Bond**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Pursuant to authority given the Commissioner of Revenues by sections 4 and 32 of Act 401 of 1979 (Ark. Stat. Ann. §§84-4704 and 4732), after the effective date of this rule, only corporate surety bonds, certificates of deposit with assignment and irrevocable letters of credit which meet the requirements of this rule shall be accepted where a bond is required for the purpose of any state tax law.

Arkansas Code Ann. §25-15-301 (1987) provides that the Commissioner of Revenues shall administer and enforce the provisions of every State tax law, including the Arkansas Gross Receipts Tax and the Arkansas Compensating Use Tax, and shall promulgate rules necessary for the enforcement thereof."

"Arkansas Code Ann. §26-18-301 and §26-18-304 grants the Commissioner of Revenues the authority to promulgate this rule. This rule shall supercede Section (4)(c) (viii) of the Revenue Division Surety Bond Rule, which was signed by the Director of the Department of Finance and Administration and the Commissioner of Revenue on June 25, 1987."

"Witness our hands this 29th day of June 1987"

"Executed this 20th day of May, 1991."

#### **Subpart 1. Generally**

**26 CAR § 8-101. Definitions.**

As used in this part:

- (1) Terms shall have the meaning set out in the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.;
- (2) "Bond" means any corporate surety bond, certificate of deposit, or letter of credit given for the purpose of guaranteeing payment;
- (3) "Excise tax" means any state tax except the:
  - (A) Tax levied on the income of corporations and individuals by Acts 1929, No. 118, as amended;
  - (B) Arkansas corporate franchise tax levied by Acts 1979, No. 889, as amended; and
  - (C) Arkansas real property transfer tax levied by Acts 1971, No. 2785, as amended; and
- (4) "Insurer" means any person with a valid certificate of authority, issued by the Insurance Commissioner, which certificate grants the authority to become surety on contracts in the State of Arkansas, or any other guarantor approved by the Commissioner of Revenues.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 8-102. Bonds seeking judicial relief from tax deficiency.**

- (a) After the effective date of this part, bonds required by state tax laws, except bonds filed under Arkansas Statutes § 84-4721 for the purpose of seeking judicial relief from the decision establishing a tax deficiency, will not be accepted unless the bond guarantees payment of all state, county, and municipal excise taxes required to be collected by the commissioner that are levied on or arise out of the same transaction as the tax for which the bond is required during the period covered by the bond.
- (b) Provided that no audit shall be required for any tax except the specific tax for which the bond is obtained.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 8-103. Releasing a bond.**

(a) The obligation for payment of a state tax by any person on account of any bond shall not be released until the commissioner is satisfied, either by audit or otherwise, that all tax liability of the person on account of the bond has been paid.

(b)(1) Because an audit will be necessary before most bonds are released, a bond shall be effective for at least one (1) year from the date of issuance before it may be released (except in the case of a business that closes) or before any other bond may be substituted in its place.

(2) It is not the intent of this section to increase the liability of the surety in excess of the face amount of the bond regardless of the period of time the bond remains in force, nor is it the intent to affect the right of any surety on a corporate surety bond to terminate the bond at any time.

**Authority.** Arkansas Code § 26-18-301.

**26 CAR § 8-104. Bonds required by state law.**

(a) A bond required by state tax law shall not be accepted unless it:

(1) Is:

(A) A corporate surety bond;

(B) A certificate of deposit with assignment; or

(C) An irrevocable letter of credit; and

(2) Meets the following requirements.

(b) **Corporate surety bond.** A corporate surety bond shall:

(1) Be on forms approved by the commissioner;

(2) Be issued by an insurer;

(3) Be signed by the individual owner, a partner, or a corporate officer showing his or her authority, and payable to the State of Arkansas;

(4) Be signed by the insurer or its licensed agent or broker with power of attorney to act on behalf of the insurer and countersigned as otherwise required by law;

(5) Be accompanied by:

(A) An application for permit signed by the taxpayer;

(B) The taxpayer's written consent to an audit of his or her records prior to release or cancellation of the bond; and

(C) Power of attorney of the person executing on behalf of the insurer;

(6) Contain a provision that requires the insurer to give sixty (60) days' notice to the commissioner prior to cancellation of the bond; and

(7) In all other respects comply with specific statutory requirements applicable under the state tax laws.

**(c) Certificate of deposit with assignment.**

(1) A certificate of deposit and assignment shall:

(A) Be on forms approved by the commissioner;

(B) In the case of the certificate of deposit:

(i) Be signed by the assignor;

(ii) Be issued by a bank or savings and loan;

(iii) Be delivered to the commissioner;

(iv) Contain a provision for the automatic renewal of the certificate;

and

(v) In all other respects comply with statutory requirements of the laws of the State of Arkansas; and

(C) In the case of the assignment that shall accompany the certificate of deposit:

(i) Be signed by assignor;

(ii) Be acknowledged by the financial institution;

(iii) Contain an irrevocable appointment of the commissioner that allows him or her to endorse the certificate of deposit and apply the proceeds to any and all state and local tax liability of the taxpayer;

(iv) Contain or be accompanied by a written consent to an audit of the taxpayer's records prior to the release or cancellation of the certificate of deposit; and

(v) Provide that the certificate of deposit is to be held by the commissioner for a period of not less than one (1) year from the date of delivery to the commissioner.

(2) No certificate of deposit will be accepted or approved by the commissioner for the purpose of security in lieu of a contractor's surety bond.

**(d) Irrevocable letter of credit.**

(1) An irrevocable letter of credit shall:

(A) Be on forms supplied by the issuer and approved by the commissioner;

(B) Be issued by an Arkansas bank;

(C) Be an irrevocable letter of credit;

(D) Be titled or conspicuously state that it is an irrevocable letter of credit;

(E) State that any draft drawn against the letter of credit is payable on presentment of a notice of proposed assessment;

(F) Contain or be accompanied by a written consent to an audit of the taxpayer's records prior to termination; and

(G) State that it may be drawn against for any state excise tax liability of the business for the year during which the letter is effective plus the preceding three (3) years.

(2) **Notice of termination.** A letter of credit given, in lieu of a bond, to secure the payment of any state tax may state that it may be terminated on a certain day, provided that a written notice of termination is received by the commissioner from the taxpayer or the issuer sixty (60) days prior to the date of termination.

(3) **Length of notice.** The notice of termination shall be acknowledged in writing by the manager of the Tax Section of the Department of Finance and Administration for the notice of termination to be effective and for the sixty-day period to begin.

(4) Where a letter of credit expires or is terminated the commissioner shall conduct an audit prior to the date of expiration unless, prior to the beginning of the audit, a new letter of credit is provided that can be drawn against for any state excise tax liability of the business for the time immediately after the time the present letter of credit ends plus the preceding three (3) years.

**Authority.** Arkansas Code § 26-18-301.