

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

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 490

5 By: Senator B. Sample
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAWS CONCERNING THE
9 ADMINISTRATION OF STATE TAXES; TO IMPROVE THE
10 FAIRNESS OF TAX ADMINISTRATION BY ELIMINATING
11 PREPAYMENT CONDITIONS FOR APPEAL, ADJUSTING THE
12 TAXPAYER BURDEN OF PROOF, EQUALIZING THE LIMITATIONS
13 PERIOD FOR REFUNDS, ADOPTING MARKET INTEREST RATES,
14 PROMOTING TRANSPARENCY IN TAX ADMINISTRATION,
15 CONFORMING DUE DATES FOR INCOME TAX RETURNS,
16 EXTENDING TAXPAYER RIGHTS TO ATTORNEY'S FEES, AND
17 EXTENDING THE REBATE PERIOD FOR LOCAL TAXES; AND FOR
18 OTHER PURPOSES.
19

Subtitle

20
21 TO IMPROVE THE FAIRNESS OF TAX
22 ADMINISTRATION.
23
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

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



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

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

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

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

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

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

36

1 SECTION 2. Arkansas Code § 26-18-306(i), concerning the time
2 limitations for assessments, collections, and refunds, is amended to read as
3 follows:

4 (i)(1)(A) An amended return or verified claim for credit or refund of
5 an overpayment of ~~any a~~ state tax shall be filed by the taxpayer within ~~three~~
6 the later of:

7 (i) Three (3) years from the time the return was
8 filed ~~or two;~~

9 (ii) Two (2) years from the time the tax was paid,
10 whichever of the periods expires later; or

11 (iii) The statute of limitations period for
12 assessment by the director.

13 (B) ~~The provisions of subdivision~~ Subdivision (i)(1)(A) of
14 this section ~~shall~~ does not apply to a tax paid as a result of an audit or
15 proposed assessment.

16 (2) ~~Any A~~ taxpayer who fails to file ~~a~~ an income tax return,
17 underreports his or her income by twenty-five percent (25%) or more, or fails
18 to notify the director of ~~any a~~ change or correction by the Internal Revenue
19 Service in the taxpayer's taxable income ~~shall is~~ not be entitled to file an
20 amended return or verified claim for credit or refund after the expiration of
21 three (3) years from the date the original return or notification of change
22 was originally due.

23
24 SECTION 3. Arkansas Code § 26-18-313 is amended to read as follows:

25 26-18-313. Standard of proof for exemptions, deductions, and credits.

26 (a) The standard of proof for a taxpayer to establish facts to support
27 a claim for a tax exemption, tax deduction, or tax credit is ~~clear and~~
28 convincing by a preponderance of the evidence.

29 (b) When a taxpayer has established facts to support a claim for a tax
30 exemption, tax deduction, or tax credit based on a preponderance of the
31 evidence, the claim shall be denied only if there is substantial doubt that
32 the exemption, deduction, or credit lawfully applies.

33
34 SECTION 4. Arkansas Code Title 26, Chapter 18, Subchapter 3, is
35 amended to add an additional section to read as follows:

36 26-18-314. Transparency.

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

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

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

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

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

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

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

24
25 SECTION 5. Arkansas Code § 26-18-406 is amended to read as follows:
26 26-18-406. Judicial relief.

27 (a) After the issuance and service on the taxpayer of the final
28 assessment of a deficiency in tax that is not protested by the taxpayer under
29 § 26-18-403 or a final determination of the hearing officer or the director
30 under § 26-18-405, a taxpayer may seek judicial relief from the final
31 ~~determination or assessment or determination~~ by:

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

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

1 before filing suit;

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

6 ~~(B) The director may proceed with collection activities~~
 7 ~~including the filing of a certificate of indebtedness as authorized under §~~
 8 ~~26-18-701 within thirty (30) days of the issuance of the final assessment for~~
 9 ~~any assessed but unpaid state taxes, penalties, or interest owed by the~~
 10 ~~taxpayer for other taxable periods covered by the final assessment while the~~
 11 ~~suit for refund is being pursued by the taxpayer for other taxable periods~~
 12 ~~covered by the final assessment;~~

13 ~~(2)(A) Filing with the director a bond in double the amount of~~
 14 ~~the tax deficiency due within thirty (30) days of the issuance and service on~~
 15 ~~the taxpayer of the final assessment and by filing suit within thirty (30)~~
 16 ~~days thereafter to stay the effect of the director's determination.~~

17 ~~(B) The bond shall be subject to the conditions that the~~
 18 ~~taxpayer shall:~~

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

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

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

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

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

33 (b) A taxpayer may seek judicial relief from a final determination
 34 denying a claim for refund by filing suit to recover the amount claimed
 35 within one (1) year from the mailing of the denial of the director under §
 36 26-18-507, or a final determination of the hearing officer or the director

1 under § 26-18-405, whichever is later.

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

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

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

12 (d)(1) The methods provided in this section shall be the sole
13 alternative methods for seeking relief from a written decision of the
14 director establishing a deficiency in tax or disallowing a claim for refund.

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

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

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

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

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

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

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

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

35 (f) If a taxpayer pays the tax, penalty, and interest assessed under §
36 26-18-403 and does not request administrative relief according to § 26-18-

1 404, then:

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

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

7 (g)(1)(A)(i) Collection activities for taxes subject to judicial
8 appeal shall be stayed for the first twenty-four (24) months that a judicial
9 appeal is pending.

10 (ii) A court may extend a stay under this subsection
11 for good cause shown.

12 (B) However, after the stay under subdivision (g)(1)(A) of
13 this section expires, the director may proceed with collection activities
14 including without limitation the filing of a certificate of indebtedness as
15 authorized under § 26-18-701 for any assessed but unpaid state taxes,
16 penalties, or interest owed by the taxpayer while the suit is pending.

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

20 (B) However, nonsuit and commencement of a new action
21 shall not extend a stay of collection beyond the date the stay would expire
22 following the filing of the original action.

23
24 SECTION 6. Arkansas Code § 26-18-508 is amended to read as follows:
25 26-18-508. Interest on deficiencies and overpayments.

26 (a) Interest shall be collected on tax deficiencies and paid on
27 overpayments as follows:

28 (1)(A) A tax levied under any state tax law which that is not
29 paid when due is delinquent.

30 (B) Interest at the rate of ten percent (10%) per annum
31 shall be collected on the total tax deficiency from the date the return for
32 the tax was due to be filed until the date of payment at the rate stated in
33 subsection (b) of this section;

34 (2)(A) Interest on a tax deficiency shall be assessed at the
35 same time as the tax deficiency.

36 (B) The tax deficiency together with the interest shall be

1 paid upon notice and demand by the director;

2 (3) When ~~any~~ an overpayment has been made by a taxpayer, the
3 overpayment shall be refunded together with interest at the rate ~~of ten~~
4 ~~percent (10%) per annum~~ stated in subsection (b) of this section;

5 (4) Interest on ~~overpayments~~ an overpayment shall be paid from
6 the date the return for the tax was due to be filed or the date the return is
7 filed, whichever occurs later, until a date, to be determined by the
8 director, preceding the date of the refund warrant by not more than thirty
9 (30) days, whether or not the warrant is accepted by the taxpayer; and

10 (5) ~~No interest~~ Interest shall not be allowed on an overpayment
11 of tax that is refunded by the director within ninety (90) days after the
12 last date provided for filing the return for the tax including any extension
13 of time for filing the return, or ninety (90) days after the date the return
14 is filed, whichever occurs later; and.

15 ~~(6)(A) In lieu of the amount of interest otherwise provided by~~
16 ~~this section, when an election to defer the payment of estate tax is made~~
17 ~~pursuant to the provisions of § 26-59-113(e), then the amount of interest on~~
18 ~~the deferred portion of the estate tax qualifying for the election shall be~~
19 ~~at the rate of four percent (4%) per annum on the balance of the payments due~~
20 ~~under the installment deferral election.~~

21 ~~(B) However, the four percent (4%) interest rate shall~~
22 ~~only apply to the "4 percent portion" as that term is defined in 26 U.S.C. §~~
23 ~~6601(j)(2), as it existed on January 1, 1989.~~

24 ~~(C) The interest rate on the estate tax exceeding the "4-~~
25 ~~percent portion" shall be at the rate specified in subdivision (1) of this~~
26 ~~section.~~

27 (b) The interest rate for deficiencies and overpayments is as follows:

28 (1) Until December 31, 2015, ten percent (10%) per annum; and

29 (2)(A) Beginning January 1, 2016, the interest rate for each
30 calendar year shall be the rate the director determines to be the average
31 market yield on outstanding marketable obligations of the United States with
32 remaining periods to maturity of three (3) years or less during the previous
33 state fiscal year, plus three (3) percentage points, up to a maximum interest
34 rate of ten percent (10%) per annum.

35 (B)(i) The rate determined under subdivision (b)(2)(A) of
36 this section shall be rounded to the nearest full percent.

1 (ii) If the rate is a percent plus exactly one-half
2 of one percent (.5%), then the rate shall be rounded up to the nearest full
3 percent.

4
5 SECTION 7. Arkansas Code Title 26, Chapter 18, Subchapter 8, is
6 amended to add an additional section to read as follows:

7 26-18-813. Reimbursement of fees and other costs.

8 (a) As used in this section:

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

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

14 (A) Expert witnesses;

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

17 (C) Fees for attorneys or other representatives.

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

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

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

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

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

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

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

35 (d)(1) The taxpayer shall present an itemization of the fees and other
36 costs to the hearing officer within thirty (30) days after the final

1 determination of the hearing officer or the director under § 26-18-405.

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

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

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

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

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

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

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

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

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

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

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

36

1 SECTION 8. Arkansas Code § 26-51-806(a), concerning the filing of
2 income tax returns, is amended to read as follows:

3 26-51-806. Filing returns - Time and place - Forms.

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

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

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

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

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

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

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

22 ~~(4)~~ (3)(A) Returns for cooperative association income tax shall
23 be filed as follows:

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

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

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

32 ~~(5)~~ (4)(A) Returns for an exempt organization that is required
33 to file an income tax return shall be filed as follows:

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

36 (ii) If covering a fiscal year, on or before the

1 expiration of four and one-half (4 1/2) months after the closing date of the
2 period covered.

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

5
6 SECTION 9. Arkansas Code § 26-52-523(d), concerning credits and
7 rebates of local sales and use taxes, is amended to read as follows:

8 (d) ~~No~~ A credit or rebate under this section shall not be paid for ~~any~~
9 a claim filed after six (6) months from more than three (3) years following
10 the date of the qualifying purchase or after six (6) months from more than
11 two (2) years following the date of payment, if later.

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