

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 755 of the Regular Session

As Engrossed: S3/19/09 S3/23/09

A Bill

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

SENATE BILL 769

4
5 By: Senator Teague
6 By: Representative Ingram

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9 **For An Act To Be Entitled**

10 *AN ACT TO CHANGE THE STANDARD OF PROOF CONCERNING*
11 *CLAIMS FOR EXEMPTIONS, DEDUCTIONS, AND CREDITS;*
12 *TO SET THE STANDARD FOR REVIEW OF ADMINISTRATIVE*
13 *TAX DETERMINATIONS ON APPEAL; AND FOR OTHER*
14 *PURPOSES.*

15
16 **Subtitle**

17 *TO CHANGE THE STANDARD OF PROOF*
18 *CONCERNING CLAIMS FOR EXEMPTIONS,*
19 *DEDUCTIONS, AND CREDITS AND TO SET THE*
20 *STANDARD FOR REVIEW ON APPEAL.*

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

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25 SECTION 1. Arkansas Code Title 26, Chapter 18, Subchapter 3 is amended
26 to add an additional section to read as follows:

27 26-18-313. Standard of Proof for Exemptions, Deductions, and Credits.
28 The standard of proof for the taxpayer to establish facts to support a
29 claim for an exemption, deduction, or credit is clear and convincing
30 evidence.

31
32 SECTION 2. Arkansas Code Section 26-18-406 Judicial Relief, Subsection
33 (c) is amended to read as follows:

34 (c)(1) Jurisdiction for a suit to contest a determination of the
35 director under this section shall be in the Pulaski County Circuit Court or



1 the circuit court of the county in which the taxpayer resides or has his or
2 her principal place of business where the matter shall be tried de novo.

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

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

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9 SECTION 3. Emergency Clause. It is found and determined by the General
10 Assembly of the State of Arkansas that many manufacturers and other
11 businesses have found that it is substantially more difficult to prove they
12 are entitled to a tax exemption, deduction, or credit in Arkansas than in
13 most other states based on the court interpretation that the taxpayer must
14 present facts that establish their right to a tax exemption, deduction, or
15 credit "beyond a reasonable doubt" and "to doubt is to deny" exemptions; that
16 the standard of proof for the taxpayer to prove an exemption, deduction, or
17 credit should be changed to clear and convincing evidence, and that in trials
18 de novo or appeals within the judicial system, no presumption of correctness
19 should attach to positions of taxing authorities at the administrative level.
20 Therefore, an emergency is declared to exist and this act being immediately
21 necessary for the preservation of the public peace, health, and safety shall
22 become effective on:

23 (1) The date of its approval by the Governor;

24 (2) If the bill is neither approved nor vetoed by the Governor,
25 the expiration of the period of time during which the Governor may veto the
26 bill; or

27 (3) If the bill is vetoed by the Governor and the veto is
28 overridden, the date the last house overrides the veto.

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30 /s/ Teague

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32 **APPROVED: 4/1/2009**