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2 93rd General Assembly
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4

As Engrossed: H3/17/21

A Bill

HOUSE BILL 1705

5 By: Representative Jett
6 By: Senators J. Dismang, B. Johnson
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW RELATING TO THE
10 ADMINISTRATION OF STATE TAXES; TO AMEND THE LAW
11 CONCERNING THE HEARING AND APPEAL OF STATE TAX
12 DISPUTES; TO PROVIDE CONFORMING CHANGES RELATED TO
13 THE CREATION OF THE INDEPENDENT TAX APPEALS
14 COMMISSION ACT; AND FOR OTHER PURPOSES.
15

Subtitle

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17
18 TO AMEND THE LAW CONCERNING THE HEARING
19 AND APPEAL OF STATE TAX DISPUTES; AND TO
20 PROVIDE CONFORMING CHANGES RELATED TO THE
21 CREATION OF THE INDEPENDENT TAX APPEALS
22 COMMISSION ACT.
23

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 15-4-2711(a) and (b), concerning the
28 administration of the Consolidated Incentive Act of 2003, are amended to read
29 as follows:

30 (a) A person claiming ~~credit~~ an incentive under ~~§ 15-4-2706(e)~~ this
31 subchapter is a “taxpayer” within the meaning of § 26-18-104~~(16)~~ and is
32 subject to all applicable provisions of that section.

33 (b) Administration of § 15-4-2706(c) shall be under the Arkansas Tax
34 Procedure Act, § 26-18-101 et seq., and the Independent Tax Appeals
35 Commission Act, § 26-18-1101 et seq.
36



1 SECTION 2. Arkansas Code § 15-4-3501(f), concerning the increased tax
2 refund for major maintenance and improvement projects, is amended to read as
3 follows:

4 (f) Except as otherwise provided in this section, a refund under this
5 section is subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.,
6 and the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., in the
7 same manner as other refunds permitted under § 26-18-507.

8
9 SECTION 3. Arkansas Code § 23-114-305 is amended to read as follows:
10 23-114-305. Denial, suspension, or revocation of licenses.

11 ~~(a)(1) All proceedings for the suspension and revocation of the~~
12 ~~license issued to a manufacturer, a distributor, or an authorized~~
13 ~~organization under this chapter shall be before the Department of Finance and~~
14 ~~Administration. The Secretary of the Department of Finance and Administration~~
15 ~~may suspend or revoke a license issued under this chapter if the secretary~~
16 ~~determines that issuing the license would violate this chapter.~~

17 ~~(b)(2) The department secretary may deny an application for a~~
18 ~~license, or for the renewal of a license issued under this chapter if ~~the~~~~
19 ~~secretary determines that issuing the license would violate any provisions of~~
20 ~~this chapter.~~

21 ~~(c)(b) The proceedings shall be conducted in accordance with A license~~
22 ~~holder or applicant may seek administrative relief from a decision of the~~
23 ~~secretary under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or under~~
24 ~~the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.~~

25 ~~(c) Judicial relief is available to a license holder, an applicant,~~
26 ~~and the secretary under §§ 26-18-602 and 26-18-1117.~~

27
28 SECTION 4. Arkansas Code § 26-18-303(b)(8), concerning exceptions to
29 the prohibition against disclosure of tax records, is amended to read as
30 follows:

31 (8) Disclosure of information ~~other than income tax information~~
32 ~~at an administrative hearing held regarding the issuance, cancellation,~~
33 ~~revocation, or suspension of licenses or permits issued by the Secretary of~~
34 ~~the Department of Finance and Administration or any other state agency or~~
35 ~~department under the Arkansas Tax Procedure Act, § 26-18-101 et seq., under~~
36 ~~the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and in any~~

1 judicial proceeding in which the Secretary of the Department of Finance and
2 Administration is a party;

3
4 SECTION 5. Arkansas Code § 26-18-303(b), concerning exceptions to the
5 prohibition against disclosure of tax records, is amended to add an
6 additional subdivision to read as follows:

7 (26)(A) Disclosure of information related to a petition filed
8 with the Tax Appeals Commission under the Independent Tax Appeals Commission
9 Act, § 26-18-1101 et seq.

10 (B) Information received by the Tax Appeals Commission
11 under subdivision (b)(26)(A) of this section is confidential and is not
12 subject to disclosure except in accordance with this section.

13
14 SECTION 6. Arkansas Code § 26-18-307 is amended to read as follows:

15 26-18-307. Notice requirements.

16 (a)(1) ~~The~~ Except as otherwise provided in this section, the Secretary
17 of the Department of Finance and Administration shall give a taxpayer notice
18 of any assessment, demand, decision, or hearing before the secretary ~~which~~
19 that directly involves that taxpayer.

20 (2)(A) All notices required to be given by the secretary to a
21 taxpayer shall be either served by personal service or sent by regular mail
22 to the taxpayer's last address on record with the particular tax section of
23 the Revenue Division of the Department of Finance and Administration in
24 question.

25 (B) Service of the notice by mail is presumptively
26 complete upon mailing, and the secretary may take any action permitted by any
27 state tax law.

28 (3) All notices of final assessment under § 26-18-401 shall be
29 sent by regular mail.

30 (b)(1) When giving notice to the secretary, the taxpayer shall give
31 notice either by mail or by personal service on the secretary.

32 (2) The notice the taxpayer gives shall be effective when
33 postmarked or, in case of personal service, when so served.

34 (c) By written agreement, the secretary and any taxpayer may provide
35 for any other reasonable means of giving notice.

36 (d) All notices shall be in writing.

1 (e) For a petition filed with the Tax Appeals Commission, the notice
2 of hearing and the administrative decision required under this section shall
3 be issued by the commission under the Independent Tax Appeals Commission Act,
4 § 26-18-1101 et seq.

5
6 SECTION 7. Arkansas Code § 26-18-314, concerning transparency under
7 the Arkansas Tax Procedure Act, is amended to add an additional subsection to
8 read as follows:

9 (c)(1) A final decision of the Tax Appeals Commission under the
10 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., shall be posted
11 on the Arkansas.gov website.

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

16 (3) The commission may post a synopsis that fully describes the
17 subject matter, facts, and conclusions reached by the commission instead of
18 posting the complete decision.

19 (4) An administrative appeal that is settled or withdrawn from
20 consideration before a final decision is made by the commission shall not be
21 posted under this section.

22
23 SECTION 8. Arkansas Code § 26-18-401(b)(2)(A) and (B), concerning the
24 assessment and collection of taxes, are amended to read as follows:

25 (2)(A)(i) The secretary shall issue a final assessment to each
26 taxpayer liable for the unpaid tax.

27 (ii) The final assessment shall state the amount of
28 the assessment and demand payment within ten (10) days of the assessment.

29 (iii) The final assessment shall not be issued
30 before the expiration of time for the taxpayer to request an administrative
31 hearing under § 26-18-404 or under the Independent Tax Appeals Commission
32 Act, § 26-18-1101 et seq.

33 (B) If the taxpayer has requested administrative relief
34 under § 26-18-404 or under the Independent Tax Appeals Commission Act, § 26-
35 18-1101 et seq., the final assessment shall be issued according to § 26-18-
36 405 or the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., as

1 applicable.

2

3 SECTION 9. Arkansas Code § 26-18-402(b) and (c), concerning jeopardy
4 assessments, are amended to read as follows:

5 (b)(1) Within five (5) days after the date on which a notice and
6 demand for payment is made under subsection (a) of this section, the
7 secretary shall provide the taxpayer with a written statement of the
8 information upon which the secretary relies in making such assessment.

9 ~~(2) If the taxpayer fails or refuses to pay the tax upon demand~~
10 ~~of the secretary or requests a hearing before the secretary within five (5)~~
11 ~~business days after the day the taxpayer is furnished the written statement~~
12 ~~described in subdivision (b)(1) of this subsection, the tax shall become~~
13 ~~delinquent and the secretary shall proceed to issue a certificate of~~
14 ~~indebtedness~~ A taxpayer may seek relief from a jeopardy assessment issued by
15 the secretary under this section by filing an administrative protest of the
16 assessment under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by
17 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-
18 1101 et seq., within five (5) business days of the issuance of a statement
19 under subdivision (b)(1) of this section.

20 (c)(1)(A) When the taxpayer requests a hearing, the secretary or the
21 Tax Appeals Commission, as applicable, shall hold the hearing within five (5)
22 business days of receipt of the request.

23 (B) After a hearing, the secretary or the commission shall
24 determine whether the making of the assessment under subsection (a) of this
25 section is reasonable under the circumstances and shall render ~~his or her~~ a
26 written decision.

27 (2) The taxpayer has three (3) days after the receipt of the
28 ~~secretary's~~ written decision by the secretary or the commission under this
29 section either to pay the tax and applicable penalty and interest due or to
30 ~~protest the decision of the secretary as provided by § 26-18-406(a)~~ seek
31 judicial relief from the decision under § 26-18-406 prior to the secretary's
32 issuing a certificate of indebtedness.

33 (3) The secretary may seek judicial relief from a decision of
34 the commission under § 26-18-406(c) or § 26-18-1117 by filing suit in the
35 Pulaski County Circuit Court or in the circuit court of the county in which
36 the taxpayer resides or has its principal place of business in the state

1 within three (3) days after the date of the written decision.

2
3 SECTION 10. Arkansas Code § 26-18-403(a)(2)(B), concerning proposed
4 assessments under the Arkansas Tax Procedure Act, is amended to read as
5 follows:

6 (B) The notice required under subdivision (a)(2)(A) of
7 this section shall:

8 (i) Explain the basis for the proposed assessment;

9 (ii)(a) State that a final assessment, as provided
10 by § 26-18-401, will be made if the taxpayer does not protest the proposed
11 assessment as provided by § 26-18-404 or file a petition under the
12 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., as applicable.

13 (b) The taxpayer does not have to protest the
14 proposed assessment to later be entitled to exercise the right to seek a
15 judicial review of the assessment under § 26-18-406; and

16 (iii) Provide contact information for the taxpayer
17 to use if the taxpayer wants to obtain his or her tax records, including
18 without limitation the facts and evidence supporting the proposed assessment,
19 from the Department of Finance and Administration.

20
21 SECTION 11. Arkansas Code § 26-18-403(c)(2)(B), concerning proposed
22 assessments under the Arkansas Tax Procedure Act, is amended to read as
23 follows:

24 (B) The notice of proposed assessment to recover an
25 erroneously paid refund shall explain the basis for the proposed assessment
26 and shall inform the taxpayer that a final assessment under § 26-18-401 shall
27 be made if the taxpayer fails to protest the assessment under § 26-18-404 or
28 fails to file a petition under the Independent Tax Appeals Commission Act, §
29 26-18-1101 et seq.

30
31 SECTION 12. Arkansas Code § 26-18-403(c)(3), concerning proposed
32 assessments under the Arkansas Tax Procedure Act, is amended to read as
33 follows:

34 (3) Sections 26-18-404 – 26-18-406 and 26-18-701 and the
35 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., apply to
36 assessments of erroneously paid refunds.

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SECTION 13. Arkansas Code § 26-18-404, concerning taxpayer relief under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(e) Administrative relief is not available to a taxpayer under this section for a proposed assessment or a refund claim denial issued by the secretary on or after January 1, 2023.

SECTION 14. Arkansas Code § 26-18-405, concerning hearings on proposed assessments under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(g) Administrative relief is not available to a taxpayer under this section for a proposed assessment or a refund claim denial issued by the secretary on or after January 1, 2023.

SECTION 15. Arkansas Code § 26-18-406 is amended to read as follows:
26-18-406. Judicial relief.

~~(a) After the issuance and service on the taxpayer of the final assessment of a deficiency in tax that is not protested by the taxpayer under § 26-18-403 or a final determination of the hearing officer or the Secretary of the Department of Finance and Administration under § 26-18-405, a taxpayer may seek judicial relief from the final assessment or determination~~ A taxpayer may seek judicial relief from a final assessment not protested by the taxpayer under § 26-18-404 or under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., or from a final decision by the Secretary of the Department of Finance and Administration under § 26-18-405 or by the Tax Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., by:

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

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

(2) Paying the entire amount of state tax due within one (1) year of the date of the final assessment or ~~determination~~ decision and filing

1 suit to recover that amount within one (1) year of the date of payment; or

2 (3) Filing suit to recover assessed tax, penalty, and interest
3 paid prior to the time for issuance of the final assessment within one (1)
4 year of the date of the final ~~determination of the hearing officer or the~~
5 ~~secretary under § 26-18-405~~ decision of the secretary under § 26-18-405 or
6 the commission under the Independent Tax Appeals Commission Act, § 26-18-1101
7 et seq.

8 (b)(1) A taxpayer may seek judicial relief from a final ~~determination~~
9 decision denying a claim for refund by filing suit to recover the amount
10 claimed within one (1) year from the mailing of the denial of the secretary
11 under § 26-18-507, or a final ~~determination~~ decision of ~~the hearing officer~~
12 ~~or~~ the secretary under § 26-18-405 or the commission under the Independent
13 Tax Appeals Commission Act, § 26-18-1101 et seq., whichever is later.

14 (2) The secretary may seek judicial relief under § 26-18-1117
15 from a decision of the commission concerning the assessment of a tax
16 deficiency or the denial of a claim for refund by filing suit within (30)
17 days of the date of the decision of the commission.

18 (c)(1)(A) Jurisdiction for a suit by a taxpayer to contest a ~~final~~
19 ~~assessment or determination~~ decision of the secretary or the commission under
20 this section ~~shall be~~ is in the Pulaski County Circuit Court or the circuit
21 court of the county in which the taxpayer resides or has his or her principal
22 place of business, where the matter shall be tried de novo.

23 (B) Jurisdiction for a suit by the secretary to contest a
24 decision of the commission under this section is in the Pulaski County
25 Circuit Court or in the circuit court of the county in which the taxpayer
26 resides or has its principal place of business in the state, where the matter
27 shall be tried de novo.

28 (2) An appeal of a circuit court decision under this section
29 will lie from the circuit court to the Supreme Court, as in other cases
30 provided by law.

31 (3) A presumption of correctness or weight of authority shall
32 not attach to a final assessment or ~~determination~~ decision of the secretary
33 or the commission in a trial de novo or an appeal under this section.

34 (d)(1) The methods provided in this section shall be the sole
35 alternative methods for seeking relief from a written decision of the
36 secretary ~~establishing a deficiency in tax or disallowing a claim for refund~~

1 or the commission.

2 (2) An injunction shall not issue to stay proceedings for
3 assessment or collection of taxes levied under state tax law.

4 (e)(1) In a court proceeding under this section, the:

5 (A) Prevailing party may be awarded a judgment for court
6 costs; and

7 (B) Taxpayer may be awarded reasonable attorney's fees if
8 the:

9 (i) Secretary revised a decision of the hearing
10 officer in favor of the taxpayer under § 26-18-405;

11 (ii) Taxpayer is the prevailing party in an action
12 for judicial relief from the ~~determination~~ decision of the secretary under
13 this section; and

14 (iii) Court finds that the secretary's revision was
15 without a reasonable basis in law and fact.

16 (2) A judgment of court costs entered by the court in favor of
17 either party or of attorney's fees awarded in favor of the taxpayer shall be
18 treated, for purposes of this chapter, in the same manner as an overpayment
19 or deficiency of tax, except that interest or penalty shall not be allowed or
20 assessed with respect to a judgment for court costs or attorney's fees.

21 (f) If a taxpayer pays the tax, penalty, and interest assessed under §
22 26-18-403 and does not request administrative relief according to § 26-18-404
23 or the Independent Tax Appeals Commission Act, § 26-18-1101 et seq., then:

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

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

29 (g) The Arkansas Rules of Civil Procedure and § 16-56-126 concerning
30 nonsuit and commencement of new actions apply to appeals under this section.

31

32 SECTION 16. Arkansas Code § 26-18-507(e)(1)(B)(ii)(c) and (d),
33 concerning claims for refunds of overpayments under the Arkansas Tax
34 Procedure Act, are amended to read as follows:

35 (c) A taxpayer who claims that only the
36 taxpayer's spouse owes the delinquent state tax debt may seek administrative

1 relief by filing a written protest under ~~oath~~ § 26-18-404 or by filing a
2 petition under the Independent Tax Appeals Commission Act, § 26-18-1101 et
3 seq., within thirty (30) days after the notice under subdivision
4 (e)(1)(B)(ii)(b) of this section is received that includes information
5 regarding why the taxpayer does not owe the delinquent state tax debt and
6 either requests a hearing in person or based upon the information submitted
7 with the protest or petition.

8 (d) A hearing on a written protest or petition
9 made under this subdivision (e)(1)(B)(ii) and any judicial relief requested
10 following the administrative hearing process shall be provided in accordance
11 with the applicable provisions of §§ 26-18-405 and 26-18-406 and the
12 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

13
14 SECTION 17. Arkansas Code § 26-18-507(e)(2)(B), concerning claims for
15 refunds of overpayments under the Arkansas Tax Procedure Act, is amended to
16 read as follows:

17 (B) The taxpayer may seek administrative review and relief
18 from the secretary's decision to deny a claim for refund by protesting as
19 provided in §§ 26-18-404 and 26-18-405 or by filing a petition under the
20 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

21
22 SECTION 18. Arkansas Code §§ 26-18-601 and 26-18-602 are amended to
23 read as follows:

24 26-18-601. Cancellation or refusal of license or permit.

25 (a)(1) The Secretary of the Department of Finance and Administration
26 may cancel or refuse to issue, extend, or reinstate a license, permit, or
27 registration under any state tax law to ~~any~~ a person or taxpayer who has
28 within the last three (3) years failed to comply with a state law concerning
29 the timely reporting and payment of a state tax administered by the secretary
30 or failed to observe or fulfill the conditions upon which the license or
31 permit was issued.

32 (2) A failure to pay assessed interest and penalties on a
33 delinquent state tax is grounds for a decision to cancel or refuse to issue,
34 extend, or reinstate a license, permit, or registration under this
35 subsection.

36 (b)(1) When the secretary determines, in his or her sole discretion,

1 that an emergency situation exists and that the public welfare and safety are
2 endangered, he or she may issue an order temporarily suspending a license,
3 permit, or registration pending a hearing before him or her or the Tax
4 Appeals Commission under the Independent Tax Appeals Commission Act, § 26-18-
5 1101 et seq., on the subject of the cancellation of the license, permit, or
6 registration.

7 (2) The secretary shall give notice of the temporary suspension
8 at the same time that he or she gives notice of his or her intention to
9 cancel or to refuse to issue, extend, or reinstate any license, permit, or
10 duplicate copy ~~thereof~~ of a license or permit, as provided by this section.

11 ~~(3) The secretary shall as soon as practicable, but in any event~~
12 ~~within three (3) days after the request of the taxpayer, hold a hearing on~~
13 ~~whether the temporary suspension should be made permanent.~~

14 ~~(4) The temporary suspension shall be made permanent without a~~
15 ~~hearing unless the taxpayer requests a hearing within twenty (20) days of~~
16 ~~receipt of notice of the temporary suspension~~ seeks administrative review and
17 relief from the order of temporary suspension by filing a protest under § 26-
18 18-404 or by filing a petition under the Independent Tax Appeals Commission
19 Act, § 26-18-1101 et seq.

20 (4) If a taxpayer seeks administrative review and relief under
21 subdivision (b)(3) of this section, a hearing shall be held within three (3)
22 days after the request for review and relief, and a decision shall be issued
23 within three (3) business days after the conclusion of the hearing.

24 (c)(1) Except as set out in subsection (b) of this section, before the
25 secretary may cancel or refuse to issue, extend, or reinstate any license,
26 permit, or registration, he or she shall give notice of his or her proposed
27 action, and the owner or applicant shall have twenty (20) days after receipt
28 of the secretary's decision to request a hearing under § 26-18-405 or under
29 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

30 (2) A decision of the secretary or the Tax Appeals Commission
31 shall be issued within twenty (20) days after the conclusion of the hearing
32 authorized in subdivision (c)(1) of this section.

33 (3)(A) The taxpayer may request a revision of an adverse
34 decision of a hearing officer appointed under § 26-18-405 by submitting the
35 request in writing within twenty (20) calendar days of the date of the
36 decision.

1 (B) If the secretary refuses to make a revision under
2 subdivision (c)(3)(A) of this section or if the taxpayer does not request a
3 revision, the affected taxpayer may seek relief from the hearing officer's
4 decision by following the method provided in § 26-18-602.

5 (d)(1) When a license, permit, or registration is cancelled by the
6 secretary, all accrued fees, taxes, and penalties, even though not due and
7 payable at the time of cancellation under the state tax law imposing and
8 levying the tax, shall become due concurrently with the cancellation of the
9 license, permit, or registration.

10 (2) The licensee or permittee shall within five (5) business
11 days of cancellation make a report to the secretary covering the period not
12 previously covered by reports filed by that person and ending with the date
13 of the cancellation and shall pay all accrued fees, taxes, and penalties at
14 the time the report is made.

15 (3) Violation of this subsection is a Class C misdemeanor.

16 ~~(e)(1) The affected taxpayer may seek relief from the decision of the~~
17 ~~secretary cancelling a license, permit, or registration by requesting a~~
18 ~~hearing, pursuant to subsections (b) and (c) of this section, by filing a~~
19 ~~written protest of the action with the hearing officer appointed by the~~
20 ~~secretary, pursuant to § 26-18-405, and the hearing officer shall hold all~~
21 ~~hearings requested pursuant to this section.~~

22 ~~(2) The hearing officer shall issue a written decision on all~~
23 ~~hearings which shall be final unless revised by the secretary.~~

24 ~~(3) The hearings and determinations~~ decisions of the hearing
25 ~~officer~~ secretary and the commission under this section shall not be subject
26 to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201
27 et seq.

28 ~~(4)(A) A taxpayer may request a revision by the secretary of the~~
29 ~~hearing officer's determination which is adverse to him or her within twenty~~
30 ~~(20) days of the date of the mailing of the hearing officer's decision.~~

31 ~~(B) If the secretary refuses to make a revision, or if the~~
32 ~~taxpayer does not request a revision, then the affected taxpayer may seek~~
33 ~~relief from the hearing officer's decision or the final revision~~
34 ~~determination by the secretary by following the method provided in § 26-18-~~
35 ~~602.~~

36 (f)(1) Violations of this section shall be punished as provided in §

1 26-18-206.

2 (2) The secretary may seek to enjoin any violation of any state
3 tax law the secretary is charged to enforce.

4 (g) Administrative relief from a decision of the secretary to
5 temporarily suspend, cancel, or refuse to issue, extend, or reinstate a
6 license, permit, or registration made on or after January 1, 2023, is
7 available only to a taxpayer under the Independent Tax Appeals Commission
8 Act, § 26-18-1101 et seq.

9

10 26-18-602. Judicial review of cancellation decision.

11 ~~(a)(1) The affected taxpayer may seek relief from the decision of the~~
12 ~~Secretary of the Department of Finance and Administration, rendered after a~~
13 ~~hearing, cancelling a license, permit, or registration.~~

14 ~~(2) The taxpayer's petition seeking an order to stay the effect~~
15 ~~of the secretary's decision shall be filed within thirty (30) days after~~
16 ~~receipt of notice of that decision by the taxpayer with the Pulaski County~~
17 ~~Circuit Court or the circuit court of the county in which the taxpayer~~
18 ~~resides or has his or her principal place of business, where the matter shall~~
19 ~~be tried de novo.~~

20 ~~(b)(1) Relief from the decision of the secretary cancelling a license,~~
21 ~~permit, or registration may be taken only as provided in this section.~~

22 ~~(2)(A) To stay the effect of the secretary's decision, the~~
23 ~~person or taxpayer shall file a bond not to exceed twenty five thousand~~
24 ~~dollars (\$25,000) with and in an amount fixed by the secretary, payable to~~
25 ~~the State of Arkansas.~~

26 ~~(B) The bond shall be conditioned upon:~~

27 ~~(i) The faithful and diligent prosecution of the~~
28 ~~appeal by the taxpayer to a final determination; and~~

29 ~~(ii) The immediate compliance of the taxpayer with~~
30 ~~the secretary's decision if the secretary's decision is not enjoined by the~~
31 ~~circuit court or upon appeal is upheld by the Supreme Court.~~

32 ~~(3) The secretary may, in his or her discretion, refuse to stay~~
33 ~~the effect of his or her decision and permit a bond to be posted when he or~~
34 ~~she determines in his or her sole discretion that the public safety and~~
35 ~~welfare would be endangered by the stay.~~

36 ~~(c) The venue for all actions seeking relief from a decision of the~~

1 ~~secretary concerning the cancellation of or refusal of the issuance of a~~
2 ~~license or permit shall be the Pulaski County Circuit Court or the circuit~~
3 ~~court of the county in which the taxpayer resides or has his or her principal~~
4 ~~place of business.~~

5 (a)(1) A taxpayer may seek judicial relief from an administrative
6 decision rendered after a hearing cancelling a license, permit, or
7 registration by filing suit within thirty (30) days of the date of the
8 administrative decision.

9 (2) Jurisdiction for suit under subdivision (a)(1) of this
10 section is in the Pulaski County Circuit Court or the Arkansas circuit court
11 of the county in which the taxpayer resides or has his or her principal place
12 of business, where the matter shall be tried de novo.

13 (3)(A) A taxpayer shall not operate a business after thirty (30)
14 calendar days from the issuance of an administrative decision cancelling a
15 license, permit, or registration unless the taxpayer obtains an order from
16 the circuit court staying the effect of the administrative decision.

17 (B) An order of a circuit court to stay the effect of an
18 administrative decision may be revoked if the Secretary of the Department of
19 Finance and Administration provides proof that the taxpayer has failed to
20 timely file returns for taxes administered by the secretary or has failed to
21 timely pay taxes administered by the secretary after the date suit is filed
22 under this section.

23 (b) The secretary may seek judicial relief from an adverse decision of
24 the Tax Appeals Commission under § 26-18-1117 by filing suit in circuit court
25 within thirty (30) calendar days of the date of the decision.

26
27 SECTION 19. Arkansas Code § 26-18-701(a)(1)(A)(i), concerning the
28 issuance of certificates of indebtedness and execution under the Arkansas Tax
29 Procedure Act, is amended to read as follows:

30 ~~(a)(1)(A)(i) If a taxpayer does not timely and properly pursue his or~~
31 ~~her remedies seeking relief from a decision of the Secretary of the~~
32 ~~Department of Finance and Administration and a final assessment is made~~
33 ~~against the taxpayer, or if the taxpayer fails to pay the deficiency assessed~~
34 ~~upon notice and demand, then the secretary shall, as soon as practicable~~
35 ~~thereafter, issue to the circuit clerk of any county of the state a~~
36 ~~certificate of indebtedness certifying that the person named in the~~

1 ~~certificate of indebtedness is indebted to the state for the amount of the~~
2 ~~tax established by the secretary as due. The Secretary of the Department of~~
3 ~~Finance and Administration shall, as soon as practicable, issue to the~~
4 ~~circuit clerk of any county of the state a certificate of indebtedness~~
5 ~~certifying that the taxpayer named in the certificate of indebtedness is~~
6 ~~indebted to the state for the amount of a tax deficiency assessed by the~~
7 ~~secretary if:~~

8 (a) The taxpayer fails to timely and properly
9 protest the assessment under § 26-18-404 or file a petition under the
10 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and fails to
11 pay the assessed tax upon notice and demand for payment; or

12 (b) The assessment is sustained by the
13 secretary under § 26-18-405 or by the Tax Appeals Commission under the
14 Independent Tax Appeals Commission Act, § 26-18-1101 et seq., and the
15 taxpayer fails to pay the assessed deficiency upon notice and demand for
16 payment.

17
18 SECTION 20. Arkansas Code § 26-18-705(c)(2), concerning the settlement
19 or compromise of liability controversies under the Arkansas Tax Procedure
20 Act, is amended to read as follows:

21 (2) When the closing agreement is signed by the secretary, it
22 shall be final and conclusive, and except upon a showing of fraud or
23 misrepresentation of a material fact, no additional assessment or collection
24 shall be made by the secretary, and the taxpayer shall not file a protest of
25 the assessment under § 26-18-404, file a petition under the Independent Tax
26 Appeals Commission Act, § 26-18-1101 et seq., or institute any a judicial
27 proceeding to recover such liabilities as agreed to in the closing agreement.
28

29 SECTION 21. Arkansas Code § 26-18-1002 is amended to read as follows:
30 26-18-1002. Administrative hearing.

31 (a) A noncompliant taxpayer may request an administrative hearing
32 concerning the decision of the Secretary of the Department of Finance and
33 Administration to close the noncompliant taxpayer's business by following the
34 procedures in this section.

35 (b) Within five (5) business days after the delivery or attempted
36 delivery of the notice required by § 26-18-1001(c), the noncompliant taxpayer

1 may file a written protest or a petition, signed by the noncompliant taxpayer
2 or his or her authorized agent, stating the reasons for opposing the closure
3 of the business and requesting an administrative hearing before a hearing
4 officer or the Tax Appeals Commission, as applicable.

5 (c)(1) A noncompliant taxpayer may request that an administrative
6 hearing be held in person, by ~~telephone, upon written documents furnished by~~
7 ~~the noncompliant taxpayer, or upon written documents and any evidence~~
8 ~~produced by the noncompliant taxpayer at an administrative hearing~~
9 teleconference, by video conference, or by other electronic means.

10 (2)(A) The secretary ~~has~~ and the commission have the discretion
11 to determine whether an administrative hearing at which testimony is to be
12 presented will be conducted in person, ~~or by telephone~~ by teleconference, by
13 videoconference, or by other electronic means.

14 (B) An in-person hearing under this section shall be held
15 in Little Rock, Arkansas.

16 ~~(3) A noncompliant taxpayer who requests an administrative~~
17 ~~hearing based upon written documents is not entitled to any other~~
18 ~~administrative hearing prior to the hearing officer's rendering a decision.~~

19 (d) ~~The~~ An administrative hearing ~~will~~ under this section shall be
20 conducted by a hearing officer appointed by the secretary under § 26-18-405
21 or by the commission.

22 (e)(1) The hearing officer ~~will~~ or the commission shall set the time
23 and place for a hearing and ~~will~~ shall give the noncompliant taxpayer and the
24 secretary notice of the hearing.

25 (2) At the administrative hearing, the noncompliant taxpayer may
26 be represented by an authorized representative and may present evidence in
27 support of his or her position.

28 (f)(1) ~~The hearing may be held in any city in which the Revenue~~
29 ~~Division of the Department of Finance and Administration maintains a field~~
30 ~~audit district office or in such other city as the secretary may designate.~~

31 ~~(2) The~~ An administrative hearing ~~will~~ under this section shall
32 be held within fourteen (14) calendar days of receipt ~~by the secretary~~ of the
33 request for hearing.

34 (2)(A) A written administrative decision under this section
35 shall be issued within five (5) business days of the date of the hearing and
36 shall be served by first class mail on the noncompliant taxpayer and the

1 secretary.

2 (B) A decision issued under subdivision (f)(2)(A) of this
3 section:

4 (i) Is effective twenty (20) days after the date of
5 the decision; and

6 (ii) Except as provided under § 26-18-1003, acts as
7 an injunction prohibiting further operation of the business.

8 (g) The administrative hearing and ~~determinations~~ decision made by the
9 ~~hearing officer under this subchapter~~ under this section are not subject to
10 the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et
11 seq.

12 (h) The defense or defenses to the closure of a business under this
13 subchapter are:

14 (1) Written proof that the noncompliant taxpayer filed all
15 delinquent returns and paid the delinquent tax due including interest and
16 penalty; or

17 (2) That the noncompliant taxpayer has entered into a written
18 payment agreement, approved by the secretary, to satisfy the tax delinquency.

19 ~~(i) The decision of the hearing officer must be in writing with copies~~
20 ~~delivered to the noncompliant taxpayer and the Department of Finance and~~
21 ~~Administration by the United States Postal Service or by hand delivery. For a~~
22 notice issued under § 26-18-1001 on or after January 1, 2023, administrative
23 relief is available to a taxpayer only under the Independent Tax Appeals
24 Commission Act, § 26-18-1101 et seq.

25 ~~(j) A decision of the hearing officer to sustain the secretary's~~
26 ~~decision to close the business of the noncompliant taxpayer is effective~~
27 ~~twenty (20) days after the date of the decision and, except as provided under~~
28 ~~§ 26-18-1003, acts as an injunction prohibiting further operation of the~~
29 ~~business.~~

30

31 SECTION 22. Arkansas Code § 26-18-1003(b), concerning judicial relief
32 related to a business closure under the Arkansas Tax Procedure Act, is
33 amended to read as follows:

34 (b)(1) A noncompliant taxpayer may seek judicial relief from an
35 adverse administrative decision under this subchapter by filing suit within
36 twenty (20) calendar days of the date of the administrative decision.

1 (2) Jurisdiction for a suit under subdivision (b)(1) of this
2 ~~section shall be~~ is in the Pulaski County Circuit Court or the circuit court
3 of the county ~~where~~ in which the noncompliant taxpayer resides or has his or
4 her principal place of business, where the matter shall be tried de novo.

5 (3) The secretary may seek judicial relief under § 26-18-1117
6 from an adverse administrative decision issued by the Tax Appeals Commission
7 by filing suit in the Pulaski County Circuit Court or in the circuit court of
8 the county in which the noncompliant taxpayer resides or has its principal
9 place of business in the state within twenty (20) days of the date of the
10 administrative decision, where the matter shall be tried de novo.

11
12 SECTION 23. Arkansas Code § 26-36-315(c)-(i), concerning joint tax
13 refunds, are amended to read as follows:

14 (c)(1)(A) A taxpayer who claims that he or she is not a debtor of a
15 claimant agency may seek administrative relief by filing a written protest or
16 petition under oath within thirty (30) days after the notice under
17 subdivision (b)(1) of this section is received.

18 (B) The written protest or petition shall be signed by the
19 nondebtor taxpayer or the nondebtor taxpayer's authorized agent and include
20 ~~the nondebtor taxpayer's reasons for opposing the proposed setoff~~
21 documentation:

22 (i) Certified by the claimant agency verifying that
23 the nondebtor taxpayer is not a debtor of the claimant agency; and

24 (ii) Supporting the proportionate share of the
25 nondebtor taxpayer's payment of tax and the resulting amount of the joint
26 refund that the nondebtor taxpayer claims is not subject to setoff.

27 (C) Administrative relief is not available to a nondebtor
28 taxpayer who fails to:

29 (i) Timely submit a protest or a petition regarding
30 a proposed setoff after the notice under subdivision (b)(1) of this section
31 is received; or

32 (ii) Provide the documentation required under
33 subdivision (c)(1)(B) of this section.

34 (2) The nondebtor taxpayer may request the secretary or the Tax
35 Appeals Commission to consider his or her request for relief upon written
36 documents furnished by the nondebtor taxpayer or upon the written ~~document~~

1 documents and the evidence produced by the nondebtor taxpayer at a hearing
2 conducted under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or the
3 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

4 ~~(3)(A) The nondebtor taxpayer's protest shall include~~
5 ~~documentation supporting the proportionate share of the nondebtor taxpayer's~~
6 ~~payment of tax and the resulting amount of the joint refund that the~~
7 ~~nondebtor taxpayer claims is not subject to setoff~~ The secretary or the
8 commission, as applicable, shall:

9 (i) Set the time and place of the hearing; and

10 (ii) Provide written notice of the hearing at least
11 thirty (30) days before the scheduled hearing.

12 (B) At the hearing scheduled under subdivision (c)(3)(A)
13 of this section, the nondebtor taxpayer may:

14 (i) Be represented by an authorized representative;
15 and

16 (ii) Present evidence in support of his or her
17 position.

18 ~~(d) A nondebtor taxpayer who requests the secretary to render his or~~
19 ~~her decision based on written documents is not entitled by law to any other~~
20 ~~administrative hearing before the secretary's rendering of his or her~~
21 ~~decision.~~

22 ~~(e) Administrative relief shall not be available to a nondebtor~~
23 ~~taxpayer who fails to protest a proposed setoff within the thirty (30) days~~
24 ~~after the notice under subdivision (b)(1) of this section is received.~~

25 ~~(f)(1) If a taxpayer requests a hearing in person rather than on~~
26 ~~written documents, a hearing officer shall set the time and place for hearing~~
27 ~~on the written protest and shall give the nondebtor taxpayer reasonable~~
28 ~~notice of the hearing.~~

29 ~~(2) At the hearing, the nondebtor taxpayer may be represented by~~
30 ~~an authorized representative and may present evidence in support of his or~~
31 ~~her position.~~

32 ~~(3)~~ After the hearing scheduled under subdivision (c)(3)(A) of
33 this section, the hearing officer or the commission, as applicable, shall
34 render his or her a decision in writing and shall serve copies upon both on
35 the nondebtor taxpayer, the secretary, and the claimant agency by first class
36 mail.

1 ~~(g)~~(e) The hearings on written protests and ~~determinations~~ decisions
2 made by the hearing officer or the commission are not subject to the Arkansas
3 Administrative Procedure Act, § 25-15-201 et seq.

4 ~~(h)(1)~~(f)(1) After the issuance and service ~~on the taxpayer~~ of a
5 decision of the hearing officer or the commission to sustain the setoff of
6 the joint refund, a nondebtor taxpayer may seek judicial relief from the
7 decision by filing suit within thirty (30) days after the date of the final
8 ~~determination~~ decision of the hearing officer or the commission.

9 (2) Jurisdiction for a suit to contest a ~~determination~~ decision
10 of the hearing officer or the commission under this section shall be in the
11 Pulaski County Circuit Court or the circuit court of the county where the
12 nondebtor taxpayer resides, and the matter shall be tried de novo.

13 ~~(i)~~(g) This section is the sole means by which a nondebtor taxpayer
14 may challenge a proposed setoff for the benefit of a claimant agency.

15
16 SECTION 24. Arkansas Code § 26-52-209 is amended to read as follows:
17 26-52-209. Applicability of tax procedure provisions.

18 All proceedings relative to the issuance, revocation, or suspension of
19 a permit under this subchapter shall be governed by the provisions of the
20 Arkansas Tax Procedure Act, § 26-18-101 et seq., and the Independent Tax
21 Appeals Commission Act, § 26-18-1101 et seq.

22
23 SECTION 25. Arkansas Code § 26-52-515(b), concerning the refund of
24 sales tax on vehicles returned as defective, is amended to read as follows:

25 (b)(1) Claims for refund of sales or use tax under this section shall
26 be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., and the
27 Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

28 (2) Any claim ~~must~~ under subdivision (b)(1) of this section
29 shall be made in writing and filed within three (3) years from the date the
30 vehicle was first registered.

31
32 SECTION 26. Arkansas Code § 26-52-519(b), concerning the credit
33 voucher for sales tax on motor vehicles destroyed by catastrophic events, is
34 amended to read as follows:

35 (b) Claims for credit vouchers of sales or use tax under this section
36 shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq., and

1 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq. Any claim
2 must be made in writing and filed within one (1) year from the date the
3 vehicle was first registered.

4
5 SECTION 27. Arkansas Code § 26-55-219 is amended to read as follows:
6 26-55-219. Distributor's license – Refusal.

7 ~~(a) In the event that any application for a license to transact~~
8 ~~business as a distributor in the State of Arkansas shall be filed by any~~
9 ~~person whose license shall at any time have been cancelled for cause by the~~
10 ~~Secretary of the Department of Finance and Administration, or in case the~~
11 ~~secretary shall be of the opinion that the application is not filed in good~~
12 ~~faith or in the event that the application is filed by some person as a~~
13 ~~subterfuge for the real person in interest whose license or registration~~
14 ~~shall theretofore have been cancelled for cause by the secretary, or for any~~
15 ~~other valid reason, then and in any of said events the secretary, after a~~
16 ~~hearing of which the applicant shall have been given five (5) days' notice in~~
17 ~~writing and at which the applicant shall have the right to appear in person~~
18 ~~or by counsel and present testimony, shall have and is given the right and~~
19 ~~authority to refuse to issue to the person a license certificate to transact~~
20 ~~business as a distributor in the State of Arkansas.~~

21 ~~(b) Any distributor who is aggrieved by the action of the secretary in~~
22 ~~refusing to issue the license applied for, within thirty (30) days from the~~
23 ~~time of the refusal, may appeal to the circuit court of the county of the~~
24 ~~distributor's residence where the distributor shall be entitled to a hearing~~
25 ~~de novo. An appeal shall lie from the circuit court to the Supreme Court as~~
26 ~~in other cases now provided by law.~~

27 (a) The Secretary of the Department of Finance and Administration may
28 refuse to issue a distributor's license to a person if:

29 (1) The applicant has previously held a license that was
30 cancelled for cause by the secretary;

31 (2) The secretary determines the application was not filed in
32 good faith;

33 (3) The secretary determines the application was filed by a
34 person as a subterfuge for the real person in interest whose license has been
35 cancelled for cause; or

36 (4) The secretary determines there is other cause to refuse the

1 application for license.

2 (b) The secretary shall give the applicant written notice of his or
3 her decision to refuse issuance of the license.

4 (c) An applicant may seek administrative relief from the decision of
5 the secretary under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or
6 the Independent Tax Appeals Commission Act, § 26-18-1101 et seq.

7 (d) Judicial relief is available to the parties under §§ 26-18-602 and
8 26-18-1117.

9
10 SECTION 28. Arkansas Code § 26-55-224 is amended to read as follows:

11 26-55-224. Bonds – Additional bonds – Conditions for requirement.

12 ~~(a) In the event that upon a hearing, of which the distributor shall~~
13 ~~be given five (5) days' notice in writing, the Secretary of the Department of~~
14 ~~Finance and Administration shall decide that the amount of the existing bond~~
15 ~~is insufficient to ensure payment to the State of Arkansas of the amount of~~
16 ~~the tax and any penalties and interest for which the distributor is or may at~~
17 ~~any time become liable, then the distributor upon the written demand of the~~
18 ~~secretary shall immediately file an additional bond in the same manner and~~
19 ~~form with a surety company thereon approved by the secretary in any amount~~
20 ~~determined by the secretary to be necessary to secure at all times the~~
21 ~~payment by the distributor to the State of Arkansas of all taxes, penalties,~~
22 ~~and interest due under the provisions of this subchapter.~~

23 ~~(b) If the distributor fails to do so, the secretary shall immediately~~
24 ~~cancel the license certificate of the distributor.~~

25 (a) If the Secretary of the Department of *Finance and Administration*
26 determines the amount of the existing bond is insufficient to ensure payment
27 of the tax, interest, and penalty the distributor currently owes or may owe,
28 the secretary may issue a written demand that the distributor file an
29 additional bond in the same manner and form with a surety company approved by
30 the secretary.

31 (b) A distributor may seek administrative relief from a decision of
32 the secretary under subsection (a) of this section by filing a written
33 protest under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by
34 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-
35 1101 et seq.

36 (c) A hearing on the distributor's protest or petition under

1 subsection (b) of this section shall be held within twenty (20) days of the
2 date of the protest or petition, and a decision shall be issued within twenty
3 (20) calendar days of the date of the hearing.

4 (d)(1) A distributor may seek judicial relief from an adverse decision
5 of the secretary or the Tax Appeals Commission by filing suit in the Pulaski
6 County Circuit Court or in the circuit court of the county in which the
7 distributor resides or has his or her principal place of business, where the
8 matter shall be tried de novo.

9 (2) The secretary may seek judicial relief under § 26-18-1117
10 from an adverse decision of the commission by filing suit in the Pulaski
11 County Circuit Court or in the circuit court of the county in which the
12 distributor resides or has its principal place of business in the state,
13 where the matter shall be tried de novo.

14 (3) A complaint for judicial relief under this subsection shall
15 be filed within thirty (30) days of the date of the hearing decision issued
16 by the secretary or the commission under subsection (c) of this section.

17 (e) If a distributor fails to timely request a hearing to challenge
18 the secretary's demand for additional bond under this section, the secretary
19 shall cancel the license certificate of the distributor immediately.

20
21 SECTION 29. Arkansas Code § 26-55-231(a), concerning the failure to
22 report or pay tax and the resulting revocation or cancellation of a license,
23 is amended to read as follows:

24 (a)(1) If a distributor at any time files a false monthly report of
25 the data or information required by this subchapter or fails, refuses, or
26 neglects to file the monthly report required by this subchapter, or to pay
27 the full amount of the tax as required by this subchapter, the Secretary of
28 the Department of Finance and Administration may give notice to the
29 distributor of an intention to revoke the license of the distributor.

30 (2)(A) The distributor ~~shall be~~ is entitled to a period of five
31 (5) days after receipt of the notice from the secretary, within which to
32 apply for a hearing ~~before the secretary~~ on the question of having the
33 distributor's license revoked. ~~The secretary shall grant a hearing at such~~
34 ~~time and place as the secretary may designate of which the distributor shall~~
35 ~~have five (5) days' advance notice in writing.~~

36 (B) A hearing conducted under this section shall be held

1 under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent
2 Tax Appeals Commission Act, § 26-18-1101 et seq.

3 (3) After the hearing, at which time the distributor ~~shall be~~ is
4 entitled to present evidence and argument of counsel, the secretary or the
5 Tax Appeals Commission, as applicable, shall decide whether the distributor's
6 license shall be revoked.

7 (4)(A) ~~Upon the issuance of an order revoking the license, the~~
8 ~~distributor shall be entitled to an appeal to the circuit court in the county~~
9 ~~where the distributor may do business where the question shall be tried de~~
10 ~~nov.~~

11 (B) ~~An appeal shall lie from the circuit court of that~~
12 ~~county as in other cases provided by law. The distributor or the secretary~~
13 ~~may seek judicial relief from an adverse decision by filing suit under §§ 26-~~
14 ~~18-602 and 26-18-1117.~~

15 (5) If the distributor fails to apply for a hearing within the
16 time set out in subdivision (a)(2)(A) of this section, the secretary: may
17 ~~forthwith~~

18 (A) May cancel the license of the distributor and notify
19 the distributor of the cancellation by registered mail to the last known
20 address of the distributor appearing on the files of the secretary; and

21 (B) ~~The secretary shall also~~ Shall notify the surety
22 company on the distributor's bond in like manner.

23
24 SECTION 30. Arkansas Code § 26-55-247(b), concerning confiscation and
25 sale of equipment of persons transporting motor fuel unlawfully, is amended
26 to read as follows:

27 (b)(1) ~~Unless the operator or owner of the tank truck or vehicle can~~
28 ~~prove to the satisfaction of the secretary at a hearing for that purpose~~
29 ~~within ten (10) days that the motor fuel was being transported, transferred,~~
30 ~~or delivered in accordance with this subchapter or any other act affecting~~
31 ~~the transportation of motor fuel, and in accordance with any rules issued~~
32 ~~pursuant to this subchapter or any other act, the tank truck or vehicle and~~
33 ~~the contents therein shall be sold by the secretary at auction without any~~
34 ~~recourse or liability on the secretary or any of the secretary's agents or~~
35 ~~the State of Arkansas. The owner or operator of a confiscated tank truck or~~
36 vehicle may request a hearing under the Arkansas Tax Procedure Act, § 26-18-

1 101 et seq., or the Independent Tax Appeals Commission Act, § 26-18-1101 et
2 seq., to challenge the confiscation.

3 (2) A request for a hearing under this section shall be made
4 within five (5) business days of the date of the confiscation of the tank
5 truck or vehicle.

6 (3) A hearing under this section shall be held within five (5)
7 business days of the date of the request for hearing, and a decision on the
8 confiscation shall be issued within five (5) business days of the hearing.

9
10 SECTION 31. Arkansas Code § 26-55-247, concerning confiscation and
11 sale of equipment of persons transporting motor fuel unlawfully, is amended
12 to add an additional subsection to read as follows:

13
14 (c) Unless the operator or owner of a confiscated tank truck or
15 vehicle proves at a hearing held under this section that the motor fuel was
16 being transported, transferred, or delivered in accordance with this
17 subchapter or any other law affecting the transportation of motor fuel,
18 including without limitation any rules issued under this subchapter or any
19 other relevant statute, the secretary shall sell the confiscated tank truck
20 or vehicle and the contents of the confiscated tank truck or vehicle at
21 auction without any recourse or liability on the secretary, the secretary's
22 agents, or the state.

23
24 SECTION 32. Arkansas Code § 26-56-204(g), concerning licenses and
25 bonds for suppliers and users, is amended to read as follows:

26 ~~(g)(1)(A) In the event that upon a hearing of which the supplier or~~
27 ~~interstate user shall be given five (5) days' notice in writing, the~~
28 ~~secretary shall decide that the amount of the existing bond is insufficient~~
29 ~~to ensure payment to the State of Arkansas of the amount of the tax and any~~
30 ~~penalties and interest for which said supplier or interstate user is or may~~
31 ~~at any time become liable, then the supplier or interstate user upon written~~
32 ~~demand of the secretary shall immediately file an additional bond in the same~~
33 ~~manner and form and with a surety company thereon approved by the secretary~~
34 ~~in any amount determined by the secretary to be necessary to secure at all~~
35 ~~times the payment to the State of Arkansas of all taxes, penalties, and~~
36 ~~interest due under the provisions of this section, failing which, the~~

1 ~~secretary shall immediately cancel the license of the supplier or interstate~~
2 ~~user. If the secretary determines the amount of the existing bond is~~
3 ~~insufficient to ensure payment of the tax, interest, and penalty the supplier~~
4 ~~or interstate user currently owes or may owe, the secretary may issue a~~
5 ~~written demand that the supplier or interstate user file an additional bond~~
6 ~~in the same manner and form with a surety company approved by the secretary.~~

7 (B) The supplier or interstate user may seek
8 administrative relief from the decision of the secretary by filing a written
9 protest under the Arkansas Tax Procedure Act, § 26-18-101 et seq., or by
10 filing a petition under the Independent Tax Appeals Commission Act, § 26-18-
11 1101 et seq.

12 (C) A hearing on the distributor's protest or petition
13 shall be held within twenty (20) days of the date of the filing of the
14 protest or petition, and a decision shall be issued within fifteen (15) days
15 of the date of the hearing.

16 (2) If the supplier or interstate user fails to timely seek
17 administrative relief from the decision of the secretary, the secretary shall
18 cancel the license of the supplier or the interstate user immediately.

19
20 SECTION 33. Arkansas Code § 26-56-311(b)-(d), concerning the
21 revocation of a supplier's or dealer's license under the Special Motor Fuels
22 Tax Law, are amended to read as follows:

23 (b)(1) The licensee shall be entitled to a period of ~~ten (10)~~ twenty
24 (20) days after the mailing of the notice within which to apply for a hearing
25 on the question of having his or her license revoked, and the secretary shall
26 designate a time and place for the hearing, giving the licensee five (5)
27 days' notice thereof.

28 (2) A hearing under this section shall be held under the
29 Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax
30 Appeals Commission Act, § 26-18-1101 et seq.

31 (c) After the hearing at which the licensee ~~shall be~~ is entitled to
32 present evidence and be represented by counsel, the secretary or the Tax
33 Appeals Commission, as applicable, shall determine whether the licensee's
34 license shall be revoked.

35 (d)(1) ~~Upon the issuance of an order revoking the license, the~~
36 ~~licensee shall be entitled to appeal to the circuit court in any county in~~

1 ~~which the licensee may do business, where the question shall be tried de~~
2 ~~novo, but the secretary's order shall be affirmed if supported by substantial~~
3 ~~evidence. The secretary or the licensee may seek judicial relief from an~~
4 ~~adverse decision under this section by filing suit under §§ 26-8-602 and 26-~~
5 ~~18-1117.~~

6 (2) An appeal may be had from the judgment of the circuit court
7 as in other cases as provided by law.

8
9 SECTION 34. Arkansas Code § 26-57-413(c) and (d), concerning the
10 revocation or suspension of a license related to coin-operated amusement
11 devices, are amended to read as follows:

12 (c)~~(1)~~ The licensee shall have fifteen (15) days in which to ~~notify~~
13 ~~the secretary that a hearing is desired~~ request a hearing, after which time a
14 hearing shall be had not less than ~~fifteen (15)~~ twenty (20) days subsequent
15 to the expiration of the fifteen-day period of notice.

16 (2) A hearing under this subsection shall be held under the
17 Arkansas Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax
18 Appeals Commission Act, § 26-18-1101 et seq.

19 ~~(d)(1) Any licensee whose license has been revoked or suspended may~~
20 ~~appeal to the Pulaski County Circuit Court within twenty (20) days after~~
21 ~~revocation or suspension by filing a copy of the notice of the revocation or~~
22 ~~suspension with the clerk of the circuit court and causing a summons to be~~
23 ~~served on the secretary.~~

24 ~~(2) The case shall be tried de novo in the circuit court.~~

25 ~~(3) Either party may prosecute an appeal to the Supreme Court as~~
26 ~~in other cases. The licensee or the secretary may seek judicial relief from~~
27 ~~an adverse decision under this section by filing suit under § 26-18-602.~~

28
29 SECTION 35. Arkansas Code § 26-57-419(f), concerning licenses to sell
30 coin-operated amusement devices, is amended to read as follows:

31 (f)(1) The secretary may revoke or suspend the licenses for cause.

32 (2) ~~Any~~ A licensee shall be notified in writing that the
33 revocation or suspension of its license is being considered and the reason
34 ~~therefor~~ for the revocation or suspension.

35 (3) The licensee shall have fifteen (15) days in which to ~~notify~~
36 ~~the secretary that a hearing is desired~~ request a hearing, after which time a

1 hearing shall be held not less than ~~fifteen (15)~~ twenty (20) days subsequent
2 to the expiration of the fifteen-day period of notice.

3 ~~(4)(A) Any licensee whose license has been revoked or suspended~~
4 ~~may appeal to the Pulaski County Circuit Court by filing a copy of the notice~~
5 ~~of revocation or suspension with the clerk of the court within twenty (20)~~
6 ~~days of receipt thereof and causing the issuance of a summons to be served on~~
7 ~~the secretary. The hearing shall be de novo in the Pulaski County Circuit~~
8 ~~Court.~~

9 ~~(B) Either party may appeal to the Supreme Court as in~~
10 ~~other cases. A hearing under this section shall be held under the Arkansas~~
11 ~~Tax Procedure Act, § 26-18-101 et seq., or the Independent Tax Appeals~~
12 ~~Commission Act, § 26-18-1101 et seq.~~

13 (5) The licensee or the secretary may seek relief from an
14 adverse decision under this section by filing suit under § 26-18-602.
15

16 SECTION 36. Arkansas Code § 26-57-419, concerning licenses to sell
17 coin-operated amusement devices, is amended to add an additional subsection
18 to read as follows:

19 (g)(1) If a licensee fails to timely seek administrative relief from a
20 decision of the secretary under subsection (f) of this section, the secretary
21 may revoke the licensee's license immediately.

22 (2) The secretary shall provide notice of the revocation to the
23 licensee by mailing the notice to the licensee via first class mail using the
24 last known address of the licensee on file with the secretary.
25

26 SECTION 37. Arkansas Code § 26-57-1202 is amended to read as follows:

27 26-57-1202. Administration of law.

28 The provisions of this subchapter will be subject to the provisions of
29 the Arkansas Tax Procedure Act, § 26-18-101 et seq., ~~as those provisions~~
30 ~~shall apply to the administration of this subchapter by the Secretary of the~~
31 ~~Department of Finance and Administration and the Independent Tax Appeals~~
32 Commission Act, § 26-18-1101 et seq.
33

34 SECTION 38. Arkansas Code § 26-57-1212 is amended to read as follows:

35 26-57-1212. Procedure upon forfeiture.

36 (a) Upon the seizure of ~~the~~ a vending device, the vending device shall

1 ~~forthwith~~ be delivered, together with the cash, if any, contained in the
2 receptacle of the vending device, to the Secretary of the Department of
3 Finance and Administration.

4 ~~(b) The secretary or his or her authorized agent shall then proceed to~~
5 ~~make an administrative determination of whether or not the vending device and~~
6 ~~cash, if any, that have been seized should in fact be forfeited to the State~~
7 ~~of Arkansas. The owner of a seized vending device may seek administrative~~
8 ~~relief from the seizure under the Arkansas Tax Procedure Act, § 26-18-101 et~~
9 ~~seq., or under the Independent Tax Appeals Commission Act, § 26-18-1101 et~~
10 ~~seq., by filing a written protest of the seizure and proposed forfeiture with~~
11 ~~the secretary under § 26-18-404 or by filing a petition with the Tax Appeals~~
12 ~~Commission under the Independent Tax Appeals Commission Act, § 26-18-1101 et~~
13 ~~seq., as applicable, within ten (10) business days of the date of the~~
14 ~~seizure.~~

15 (c)(1) The owner of the vending device shall be given at least ~~thirty~~
16 ~~(30)~~ five (5) business days' written notice of the date of the hearing on the
17 seizure and proposed forfeiture of the vending device. ~~The notice shall be~~
18 ~~considered a notice of proposed assessment under § 26-18-403, and the owner~~
19 ~~shall be entitled to an administrative hearing pursuant to § 26-18-405.~~

20 (2) An administrative decision on the seizure and proposed
21 forfeiture of the vending device shall be issued within five (5) business
22 days after the date of the administrative hearing.

23 (d)(1) The owner of a seized vending device may seek relief from an
24 adverse decision of the secretary or the commission by filing suit in the
25 Pulaski County Circuit Court or in the circuit court of the owner's residence
26 or principal place of business, where the matter shall be tried de novo.

27 (2) The secretary may seek relief under § 26-18-1117 from an
28 adverse decision of the commission by filing suit in the Pulaski County
29 Circuit Court or in the circuit court of the county in which the owner of a
30 seized vending device resides or has its principal place of business in the
31 state, where the matter shall be tried de novo.

32 (3) An action for relief under this subsection shall be filed
33 within thirty (30) days of the date of service of the decision of the
34 secretary or the commission.

35 (4) An appeal may be had from the judgment of the circuit court
36 as in other cases as provided by law.

1
2 SECTION 39. Arkansas Code § 26-57-1216 is repealed.

3 ~~26-57-1216. Forfeiture determination—Appeal.~~

4 ~~(a) The written determination of the Secretary of the Department of~~
5 ~~Finance and Administration or his or her authorized agent declaring a~~
6 ~~forfeiture of the vending device, including the cash contents thereof, if~~
7 ~~any, and directing the sale of the vending device shall be a final~~
8 ~~determination of the secretary and shall be treated for purposes of the~~
9 ~~owner's or operator's appeal of the secretary's determination as a final~~
10 ~~assessment, subject to the provisions of the Arkansas Tax Procedure Act, §~~
11 ~~26-18-101 et seq.~~

12 ~~(b) Judicial review of the final determination by the secretary shall~~
13 ~~be available pursuant to the provisions of § 26-18-406.~~

14
15 SECTION 40. Arkansas Code § 26-62-204(g), concerning licenses and
16 bonds for alternative fuels suppliers, interstate users, and IFTA carrier
17 users, is amended to read as follows:

18 ~~(g)(1)(A) In the event that upon hearing of which the alternative~~
19 ~~fuels supplier, interstate user, or IFTA carrier user shall be given five (5)~~
20 ~~days' notice in writing, the secretary shall decide that the amount of the~~
21 ~~existing bond is insufficient to ensure payment to the State of Arkansas of~~
22 ~~the amount of the tax and any penalties and interest for which said~~
23 ~~alternative fuels supplier, interstate user, or IFTA carrier user is or may~~
24 ~~at any time become liable, then the alternative fuels supplier, interstate~~
25 ~~user, or IFTA carrier user upon written demand of the secretary shall~~
26 ~~immediately file an additional bond in the same manner and form and with a~~
27 ~~surety company thereon approved by the secretary in any amount determined by~~
28 ~~the secretary to be necessary to secure at all times the payment to the State~~
29 ~~of Arkansas of all taxes, penalties, and interest due under the provisions of~~
30 ~~this chapter; failing which, the secretary shall immediately cancel the~~
31 ~~license of the alternative fuels supplier, interstate user, or IFTA carrier~~
32 ~~user. If the secretary determines that the amount of the existing bond is~~
33 ~~insufficient to ensure payment of the tax, interest, and penalty that are~~
34 ~~currently owed or that may be owed by the alternative fuels supplier,~~
35 ~~interstate user, or IFTA carrier, the secretary may issue a written demand~~
36 ~~that an additional bond be filed in the same manner and form with a surety~~

1 company approved by the secretary.

2 (B) An alternative fuels supplier, interstate user, or IFTA
3 carrier may seek administrative relief from the demand for additional bond by
4 filing a written protest under the Arkansas Tax Procedure Act, § 26-18-101 et
5 seq., or by filing a petition under the Independent Tax Appeals Commission
6 Act, § 26-18-1101 et seq.

7 (C) A hearing on the protest or petition shall be held
8 within twenty (20) days of the date of the filing of the protest or petition,
9 and a decision shall be issued within twenty (20) days of the hearing.

10 (2) If the alternative fuels supplier, interstate user, or IFTA
11 carrier fails to timely seek administrative relief from the decision of the
12 secretary, the secretary shall cancel the license of the alternative fuels
13 supplier, interstate user, or IFTA carrier immediately.

14
15 SECTION 41. EFFECTIVE DATE. Sections 1-40 of this act are effective
16 on and after January 1, 2023.

17
18 SECTION 42. DO NOT CODIFY. Legislative intent – Contingent
19 effectiveness.

20 (a) The General Assembly intends for this act to be effective only if
21 the Arkansas Code is amended to expressly authorize, implement, and enable
22 the hearing and determination of tax appeals by the Tax Appeals Commission
23 under the Arkansas Tax Procedure Act, § 26-18-101 et seq., the Independent
24 Tax Appeals Commission Act, § 26-18-1101 et seq., and any other relevant
25 laws.

26 (b)(1) This act shall not become effective unless HB1468 of 2021 is
27 enacted during the Ninety-Third Regular Session of the General Assembly.

28 (2) If HB1468 of 2021 is not enacted during the Ninety-Third
29 Regular Session of the General Assembly, this act expires retroactively upon
30 the sine die adjournment of the Ninety-Third Regular Session of the General
31 Assembly.

32
33
34 /s/Jett

35 APPROVED: 4/6/21