

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: S3/10/97 S3/19/97

## A Bill

ACT 1139 OF 1997  
SENATE BILL 504

4  
5 By: Senator Jeffries  
6  
7

### For An Act To Be Entitled

8  
9 "AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT TO CON-  
10 FORM THE METHODS OF CONTESTING STATE TAX ASSESSMENTS AND  
11 FILING CLAIMS FOR REFUND TO THE SIMILAR TAX PROCEDURAL  
12 METHODS OF THE FEDERAL LAW FOR CONTESTING FEDERAL TAX  
13 ASSESSMENTS AND FILING CLAIMS FOR REFUND; AND FOR OTHER  
14 PURPOSES."

### Subtitle

15  
16  
17 "TO ALLOW A TAXPAYER THE ALTERNATIVE  
18 RIGHT TO CONTEST STATE TAX DISPUTES BY  
19 THE POSTING OF BOND METHOD OR THE CLAIM  
20 FOR REFUND METHOD WHERE THE DISPUTED  
21 TAXES HAVE BEEN FULLY PAID FOR AT LEAST  
22 ONE TAXABLE PERIOD."

23  
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 *Section 1. Arkansas Code 26-18-403(a)(2) is amended to read as follows:*  
27 *(2) When no return has been filed and the director determines that*  
28 *there is a tax due for the taxable period or when a return has been filed and*  
29 *the director determines that the tax disclosed by the return is less than the*  
30 *tax disclosed by his examination, the director shall propose the assessment of*  
31 *additional tax plus penalties, as the case may be, and shall give notice of*  
32 *the proposed assessment to the taxpayer. The notice shall explain the basis*  
33 *for the proposed assessment and shall state that a final assessment, as*  
34 *provided by § 26-18-401, will be made if the taxpayer does not protest such*  
35 *proposed assessment as provided by § 26-18-404. The taxpayer does not have to*  
36 *protest the proposed assessment to later be entitled to exercise the right to*

1 seek a judicial review of the assessment, pursuant to the provisions of § 26-  
2 18-406.

3

4 Section 2. Arkansas Code § 26-18-404(a) is amended to read as follows:

5 (a) Any taxpayer who wishes to seek administrative relief from any  
6 proposed assessment of taxes or proposed notice of disallowance of a claim for  
7 refund by the director shall follow the procedure provided by this section.

8

9 Section 3. Arkansas Code § 26-18-404(c) is amended to read:

10 (c) Within thirty (30) days after service of notice of the proposed  
11 ~~assessment, or action~~ or proposed notice of claim disallowance, the taxpayer  
12 may file with the director a written protest under oath, signed by himself or  
13 his authorized agent, setting forth the taxpayer's reasons for opposing the  
14 proposed assessment, or the proposed notice of claim disallowance.

15

16 Section 4. Arkansas Code § 26-18-405(a)(1) to read as follows:

17 (a)(1). The director shall appoint a hearing officer to review all  
18 written protests submitted by taxpayers, hold all hearings, and make written  
19 findings as to the applicability of the proposed assessment or the proposed  
20 notice of claim disallowance.

21

22 Section 5. Arkansas Code § 26-18-405(d)(3) and (4) are amended to read  
23 as follows:

24 (3) After the hearing, the hearing officer shall render his decision in  
25 writing and shall serve copies upon both the taxpayer and the section or  
26 division of the Department of Finance and Administration which proposed the  
27 assessment or the proposed notice of claim of disallowance.

28 (4)(A) If the proposed assessment or proposed notice of claim  
29 disallowance is sustained, in whole or part, the taxpayer may request in  
30 writing, within twenty (20) days of the mailing of the decision, that the  
31 director revise the decision of the hearing officer.

32 (B) If the director refuses to make a revision or if the taxpayer  
33 does not make a request for revision, then a final assessment, as provided by  
34 § 26-18-401, or a final notice of claim disallowance, as provided by § 26-18-  
35 507, shall be made upon the final determination of the hearing officer or the  
36 director.

1 (C) The director may within twenty (20) days of the mailing of the  
 2 decision revise the decision of the hearing officer regardless of whether the  
 3 taxpayer has requested a revision. If the director revises the decision of  
 4 the hearing officer sustaining any portion of an assessment, or allowing any  
 5 part of a claim for refund, then a notice of final assessment, as provided by  
 6 § 26-18-401, or a final notice of claim disallowance, as provided by § 26-18-  
 7 507, shall be made upon the final determination of the director. The taxpayer  
 8 may not request revision of a decision issued by the director under this  
 9 subdivision.

10

11 Section 6. Arkansas Code § 26-18-405(e) is amended to read as follows:

12 (e) A taxpayer may seek relief from the final decision of the hearing  
 13 officer or the director on a final assessment of a tax deficiency or a final  
 14 notice of claim disallowance by following the procedure set forth in § 26-18-  
 15 406.

16

17 Section 7. Arkansas Code 26-18-406 is amended to read as follows:

18 26-18-406. Judicial relief.

19 (a) ~~After Within thirty (30) days of the issuance and service on~~  
 20 ~~the taxpayer of the notice and demand for payment of a deficiency in tax~~  
 21 ~~established by (1) an audit determination that is not protested by the~~  
 22 ~~taxpayer under § 26-18-403, or (2) a final determination of the hearing~~  
 23 ~~officer or the director under §26-18-405, a taxpayer may seek judicial relief~~  
 24 ~~from the final determination by either:~~

25 ~~————— (1) Paying under protest the amount of the deficiency, plus~~  
 26 ~~penalty and interest determined by the director to be due, and filing a suit~~  
 27 ~~to recover that amount within one (1) year from the date of payment under~~  
 28 ~~protest; or~~

29 (1) Within one (1) year of the date of the final assessment,  
 30 paying of the entire amount of state tax due, for any taxable period or  
 31 periods covered by the final assessment and filing suit to recover that amount  
 32 within one (1) year of the date of payment. The director may proceed with  
 33 collection activities, including the filing of a certificate of indebtedness  
 34 as authorized under § 26-18-701, within thirty (30) days of the issuance of  
 35 the final assessment, for any assessed, but unpaid, state taxes, penalties or  
 36 interest owed by the taxpayer for other taxable periods covered by the final

1 assessment, while the suit for refund is being pursued by the taxpayer for  
2 other taxable periods covered by the final assessment; or

3 (2)(A) Filing Within thirty (30) days of the issuance and service  
4 on the taxpayer of the notice and demand for payment, filing with the director  
5 a bond in double the amount of the tax deficiency due and by filing suit  
6 within thirty (30) days thereafter to stay the effect of the director's  
7 determination.

8 (B) The bond shall be subject to the condition that the  
9 taxpayer shall file suit within thirty (30) days after filing the bond, shall  
10 faithfully and diligently prosecute the suit to a final determination, and  
11 shall pay any deficiency found by the court to be due and any court cost  
12 assessed against him.

13 (C) A taxpayer's failure to file suit, diligently prosecute  
14 the suit, or pay any tax deficiency and court costs, as required by this  
15 subsection, shall result in the forfeiture of the bond in the amount of the  
16 assessment and assessed court costs.

17 (b) After the issuance of the final notice of claim disallowance  
18 established by: (1) the director's action under § 26-18-507, or (2) a final  
19 determination of the hearing officer or the director under § 26-18-405, a  
20 taxpayer may seek judicial relief from the final determination by filing suit  
21 to recover the amount claimed within one (1) year of the date of the issuance  
22 of the final notice of claim disallowance.

23 ~~\_\_\_\_\_ (c)(1) All taxes and penalties paid under protest shall be held by~~  
24 ~~the director in a Tax Protest Fund Account.~~

25 ~~\_\_\_\_\_ (2) The director shall make refunds of the taxes and penalties~~  
26 ~~found by the court to be overpaid by the taxpayer from the Tax Protest Fund~~  
27 ~~Account.~~

28 ~~\_\_\_\_\_ (3) If no suit is instituted by a taxpayer within one (1) year of~~  
29 ~~the date of payment, the director shall pay the amount so held into the~~  
30 ~~appropriate account as provided in § 26-18-308.~~

31 (c)(b)(1) Jurisdiction for a suit to contest a determination of the  
32 director under this section shall be in the Pulaski County Chancery Court or  
33 the chancery court of the county in which the taxpayer resides or has his  
34 principal place of business, where the matter shall be tried de novo.

35 (2) An appeal will lie from the chancery court to the Supreme  
36 Court of Arkansas, as in other cases provided by law.

1 (d) The ~~method~~ methods provided in this section ~~is the exclusive~~  
2 ~~method shall be the sole alternative methods~~ for seeking relief from a written  
3 decision of the director establishing a deficiency in tax or disallowing a  
4 claim for refund. No injunction shall issue to stay proceedings for  
5 assessment or collection of any taxes levied under any state tax law.

6 (e)(1) In any court proceeding under this section, the prevailing  
7 party may be awarded a judgment for court costs.

8 (2) A judgment of court costs entered by the court in favor of  
9 either party shall be treated, for purposes of this chapter, in the same  
10 manner as an overpayment or deficiency of tax, except that no interest or  
11 penalty shall be allowed or assessed with respect to any judgment for court  
12 costs.

13

14 Section 8. Arkansas Code 26-18-507(c) is amended to read as follows:

15 (c) The director shall determine what amount of refund, if any, is due  
16 as soon as practicable after a claim has been filed, but in no event shall the  
17 taxpayer be entitled to file a suit for refund under ~~subsection (c) of this~~  
18 ~~section~~ § 26-18-406, until at least six (6) months have elapsed from the date  
19 of the filing of the claim for refund, or the director has issued a final  
20 notice of claim disallowance.

21

22 Section 9. Arkansas Code 26-18-507(e) is amended to read as follows:

23 (e) (1) The director shall make a written determination and give notice  
24 to the taxpayer concerning whether or not a refund is due. If a refund is  
25 due, the director shall certify that the claim is to be paid to the taxpayer  
26 as provided by law or credited against taxes due or to become due.

27 (2)(A) If the director's determination is to disallow the claim  
28 for refund, in whole or in part, then the director shall forthwith issue a  
29 written decision giving notice to the taxpayer of the proposed disallowance of  
30 the claim for refund.

31 (B) A notice of proposed claim disallowance shall be treated in  
32 the same manner as the issuance by the director of a proposed assessment of  
33 tax, as provided by § 26-18-403. The taxpayer, at the taxpayer's option, may  
34 seek administrative review and relief from the director's notice of proposed  
35 claim disallowance by protesting the proposed notice of claim disallowance as  
36 provided by § 26-18-404 And § 26-18-405. A final determination of the hearing

1 officer or the director adverse to the taxpayer, shall be deemed sufficient  
2 reason for the director to issue a final notice of disallowance of the claim  
3 for refund.

4 (C) If the taxpayer does not seek relief from the director's  
5 notice of proposed claim disallowance, as provided by this subsection; then  
6 the director shall issue a final notice of claim disallowance to the taxpayer  
7 upon the expiration of the thirty (30) day period after the proposed notice of  
8 claim disallowance has been issued by the director.

9 (3)(2)(A) The taxpayer may seek judicial relief, under the  
10 provisions of §26-18-406, from: (i) A final notice of claim disallowance  
11 issued by The written decision of the director which denies the claim in whole  
12 or part; or (ii) the director's failure to issue a written decision after the  
13 claim for refund has been filed for six (6) months. , by filing any action  
14 with the Pulaski County Chancery Court or the chancery court of the county in  
15 which the taxpayer resides or has his principal place of business after at  
16 least six (6) months have expired from the date of the filing of the claim for  
17 refund if the director has not acted on the claim, or within ninety (90) days  
18 after issuance of the director's written decision.

19 ~~(B) A written decision of the director on a refund becomes final and not~~  
20 ~~subject to suit ninety-one (91) days after it is issued to the taxpayer.~~

21

22 Section 10. The General Assembly intends, by the passage of this  
23 amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its  
24 intent that taxpayers involved in state tax disputes with the Arkansas  
25 Department of Finance and Administration shall have, as much as possible, the  
26 opportunity to secure an objective review of their dispute by a court at law  
27 through: (1) the posting of bond method; (2) the payment after assessment  
28 method; or (3) the claim for refund method, after the payment by the taxpayer  
29 of all state taxes claimed to be due from the taxpayer for at least one  
30 complete taxable period involved in the audit period. It is also intended by  
31 the General Assembly that the courts of this state are to recognize the  
32 "divisible tax theory" applicable to the review of federal tax dispute by  
33 federal courts, as also being applicable to the review of state tax disputes  
34 by the courts of this state.

35

36 SECTION 11. All provisions of this act of a general and permanent

1 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
2 Code Revision Commission shall incorporate the same in the Code.

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4 SECTION 12. If any provision of this act or the application thereof to  
5 any person or circumstance is held invalid, such invalidity shall not affect  
6 other provisions or applications of the act which can be given effect without  
7 the invalid provision or application, and to this end the provisions of this  
8 act are declared to be severable.

9

10 SECTION 13. All laws and parts of laws in conflict with this act are  
11 hereby repealed.

12

13 SECTION 14. EMERGENCY. It is found and determined by the General  
14 Assembly of the State of Arkansas that the taxpayers' procedural rights to  
15 pursue an objective judicial review in challenging a state tax assessment are,  
16 in some instances, being unfairly denied to Arkansas taxpayers who have  
17 legitimate disputes with the Arkansas Department of Finance and  
18 Administration. It is therefore held that the provisions of this act, are  
19 needed to cure this problem for state taxpayers. Therefore an emergency is  
20 declared to exist and this act being immediately necessary for the  
21 preservation of the public peace, health and safety shall become effective on  
22 and after July 1, 1997.

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/s/Jeffries

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APPROVED: 4-07-97

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