

Act 590 of the 1989 Regular Session.

Act 590

HB1522

By: Representatives Matthews, Foster, Barclay, Hutchinson,  
Schexnayder, Arnold, Clark, Dowd, Brown, Jones, Glover,  
Lendall, Keet, Hinshaw, Cunningham

"AN ACT TO AMEND CHAPTER 18 OF TITLE 26 OF THE ARKANSAS CODE OF 1987 BY ADDING THERETO A NEW SUBCHAPTER 8 TO PROVIDE FOR A TAXPAYER BILL OF RIGHTS; TO AMEND SECTION 26-18-701(a) OF THE ARKANSAS CODE OF 1987 ANNOTATED TO PROVIDE FOR THE AUTOMATIC TERMINATION OF CERTIFICATES OF INDEBTEDNESS FILED BY THE COMMISSIONER OF REVENUES; AND FOR OTHER PURPOSES."

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

SECTION 1. Chapter 18 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding thereto a new subchapter to read as follows:

"Subchapter 8 - Taxpayer Bill of Rights.

26-18-801 Title. This subchapter may be cited as the 'Taxpayer Bill of Rights'.

26-18-802. DISCLOSURE OF RIGHTS OF TAXPAYER. (a) The Commissioner of Revenues shall, as soon as practicable, but not later than 180 days after the date of the enactment of this act, prepare a statement which sets forth in simple and nontechnical terms:

- (1) the rights of a taxpayer and the obligations of the Commissioner during an audit;
- (2) the procedure by which a taxpayer may appeal any adverse decision of the Commissioner (including administrative and judicial appeals);
- (3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and
- (4) the procedures which the Commissioner may use in enforcing the state's revenue laws (including assessment, estimated assessment, jeopardy assessment, and the filing and enforcement of liens.

(b) The statement prepared in accordance with subsection (a) shall be distributed by the Commissioner to a taxpayer:

- (1) When a proposed assessment of any state tax is made against the taxpayer or when the taxpayer is contacted by the Commissioner for an examination of the taxpayer's records, whichever is earlier;
- (2) When requested by the taxpayer; and
- (3) At any time the Commissioner deems it appropriate.

The Commissioner shall take such actions as the Commissioner deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.

26-18-803. PROCEDURES INVOLVING TAXPAYER INTERVIEWS. -

(a) Recording of Interviews. -

(1) Recording by Taxpayer - Any agent of the Commissioner in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) Recording by Commissioner - An agent of the Commissioner may make an audio recording of any interview described in paragraph (1) if such

agent -

(A) informs the taxpayer of such recording prior to the interview, and

(B) upon request of the taxpayer, provides the taxpayer with a copy of such recording but only if the taxpayer provides reimbursement for the cost of the reproduction of such copy.

(b) SAFEGUARDS. -

(1) Explanations of Processes. - An agent of the Commissioner shall before or at an initial interview provide to the taxpayer -

(A) In the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or

(B) In the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) Right of Consultation. - If the taxpayer clearly states to an agent of the Commissioner at any time during any interview (other than an interview initiated by an administrative summons issued under 26-18-305) that the taxpayer wishes to consult with an attorney, certified public accountant, or any other person permitted to represent the taxpayer before the Commissioner; such agent shall suspend such interview regardless of whether the taxpayer may have answered one or more questions. However, the taxpayer may be requested to sign a waiver extending the time the Commissioner has for making a final assessment as provided by 26-18-401. If the taxpayer refuses to sign such a waiver, the taxpayer may be subject to an estimated assessment by the Commissioner.

(c) Representatives Holding Power of Attorney. - Any attorney, certified public accountant, or any other person permitted to represent the taxpayer before the Commissioner who is not disbarred or suspended from practice may be authorized by such taxpayer to represent the taxpayer in any interview described in Subsection (a). An agent of the Commissioner may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under 26-18-305. Such an agent, with the consent of the immediate supervisor of such agent, may notify the taxpayer directly that such agent believes such representative is responsible for unreasonable delay or hindrance of an examination or investigation of the taxpayer.

(d) Section Not to Apply to Certain Investigations. This section shall not apply to criminal investigations or investigations relating to the integrity of any agent of the Commissioner.

26-18-804. ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE COMMISSIONER.

(1) In General. - The Commissioner shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an agent of the Commissioner, acting in such agent's official capacity.

(2) Limitations. - Paragraph (1) shall apply only if -

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

26-18-805. BASIS FOR EVALUATION OF EMPLOYEES.

(a) In General - The Commissioner shall not use records of tax collection results -

(1) to evaluate employees directly involved in collection activities, and their immediate supervisors, or

(2) to impose or suggest production quotas or goals with respect to

employees directly involved in collection activities, and their immediate supervisors.

26-18-806. CONTENT OF TAX DUE, DEFICIENCY, AND OTHER NOTICES.

(a) General Rule. - Any notice to which this section applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice.

(b) Notices to Which Section Applies. - This section shall apply to -

(1) any notice to be given by the Commissioner described in section 26-18-307,

(2) any notice generated out of any information return matching program, and

(3) the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review under the Arkansas Tax Procedure Act.

26-18-807. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

(a) Authorization of Agreements. - The Commissioner is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Commissioner determines that such agreement will facilitate collection of such liability.

(b) Extent to Which Agreements Remain in Effect. -

(1) In General. - Except as otherwise provided in this subsection, any agreement entered into by the Commissioner under subsection (a) shall remain in effect for the term of the agreement.

(2) Inadequate Information or Jeopardy. - The Commissioner may terminate any agreement entered into by the Commissioner under subsection (a) if -

(A) information which the taxpayer provided to the Commissioner prior to the date such agreement was entered into was inaccurate or incomplete, or

(B) the Commissioner believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) Subsequent Change in Financial Conditions. -

(A) In General. - If the Commissioner makes a determination that the financial condition of a taxpayer with whom the Commissioner has entered into an agreement under subsection (a) has significantly changed, the Commissioner may alter, modify, or terminate such agreement.

(B) Notice. - Action may be taken by the Commissioner under subparagraph (A) only if -

(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

(ii) such notice includes the reasons why the Commissioner believes a significant change in the financial condition of the taxpayer has occurred.

(4) Failure to Pay an Installment or any other Tax Liability when Due or to Provide Requested Financial Information. - The Commissioner may alter, modify, or terminate an agreement entered into by the Commissioner under subsection (a) in the case of the failure of the taxpayer -

(A) to pay any installment at the time such installment payment is due under such agreement,

(B) to pay any other tax liability at the time such liability is due, or

(C) to provide a financial condition update as requested by the Commissioner.

26-18-808. CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

(a) In General. - If any employee of the Commissioner knowingly, or by reason of negligence, fails to release a lien under section 26-18-706 or section 26-18-811 on property of the taxpayer, such taxpayer may bring a civil action for damages against the Commissioner in court.

(b) Damages. - In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of -

(1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

(2) the costs of the action.

(c) Limitations. -

(1) Requirement that Administrative Remedies be Exhausted. - A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Department of Finance and Administration, Revenue Division.

(2) Mitigation of Damages. - The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for Bringing Action. - Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two years after the date the right of action accrues.

(d) Notice of Failure to Release Lien. - The Commissioner shall by regulation prescribe reasonable procedures for a taxpayer to notify the Commissioner of the failure to release a lien on property of the taxpayer.

#### 26-18-809. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS.

(a) In General. - If, in connection with any collection of state tax with respect to a taxpayer, any employee of the Department of Finance and Administration, Revenue Division, recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the Commissioner. Except as provided in section 26-18-808, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages. - In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$10,000 or the sum of -

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

(2) the costs of the action.

(c) Limitations. -

(1) Requirement that Administrative Remedies be Exhausted. - A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Department of Finance and Administration, Revenue Division.

(2) Mitigation of Damages. - The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) Period for Bringing Action. - Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within two years after the date the right of action accrues.

(d) Damages for Frivolous or Groundless Claims. - Whenever it appears to

the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under this section 26-18-809 is frivolous or groundless, damages in an amount not in excess of \$10,000 shall be awarded to the Department of Finance and Administration by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the Commissioner.

26-18-810. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) Imposition of Penalty. - If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax administered under the Arkansas Tax Procedure Act, 28-18-101 et seq., or any person who for compensation prepares any such return for any other person, and who -

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall pay a penalty of \$250 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed \$10,000.

(b) Subsection (a) shall not apply to a disclosure of information if such disclosure is made -

(1) pursuant to any other provision of this title, or

(2) pursuant to an order of a court.

(c) Subsection (a) shall be in addition to the provisions in section 26-18-303.

26-18-811. ADMINISTRATIVE APPEAL OF LIENS.

(a) In General. - In such form and at such time as the Commissioner shall prescribe by regulations, any person shall be allowed to appeal to the Commissioner after the filing of a notice of a lien under this chapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien.

(b) Certificate of Release. - If the Commissioner determines that the filing of the notice of any lien was erroneous, the Commissioner shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

26-18-812. REGULATIONS. The Commissioner shall prescribe the regulations necessary to fully implement this subchapter within 180 days after the date of the enactment of this act."

SECTION 2. The provisions contained in Section 1 of this act shall be effective for income years beginning on and after January 1, 1989.

SECTION 3. Section 26-18-701(a) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(a) (1) If a taxpayer does not timely and properly pursue his remedies seeking relief from a decision of the Commissioner and a final assessment is made against the taxpayer or if the taxpayer fails to pay the deficiency assessed upon notice and demand, then the Commissioner shall, as soon as practicable thereafter, issue to the circuit clerk of any county of the state a certificate of indebtedness certifying that the person named therein is indebted to the state for the amount of the tax established by the Commissioner as due.

(2) The circuit clerk shall enter immediately upon the circuit court judgment docket:

(A) The name of the delinquent taxpayer;

(B) The amount certified as being due;

(C) The name of the tax; and

(D) The date of entry upon the judgment docket.

(3) (A) The entry of the certificate of indebtedness shall have the same force and effect as the entry of a judgment rendered by the circuit court. This entry shall constitute the state's lien upon the title of any real and personal property of the taxpayer in the county where the certificate of indebtedness is recorded.

(B) This lien is in addition to any other lien existing in favor of the state to secure payment of taxes, applicable interest, penalties, and costs. The lien is superior to other liens of any type or character attaching to the property after the date of entry of the certificate of indebtedness on the judgment docket. This lien is superior to all claims of unsecured creditors.

(C) The certificate of indebtedness authorized by this section shall continue in force for ten (10) years from the date of recording and shall automatically expire after the ten (10) year period has run. Actions on the lien on the certificate of indebtedness shall be commenced within ten (10) years after the date of recording of the certificate, and not afterward. The Commissioner shall not be required to file releases on liens which have expired and the provisions of 26-18-808 dealing with failure to release liens are not applicable to this section. The provisions of this section are applicable to both liens already on file and all future filings of liens."

SECTION 4. Section 26-18-402(b) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

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

(2) If the taxpayer fails or refuses to pay the tax upon demand of the Commissioner or request a hearing before the Commissioner within five (5) business days after the day the taxpayer is furnished the written statement described in paragraph (1), the tax shall become delinquent and the Commissioner shall proceed to issue a certificate of indebtedness."

SECTION 5. Section 26-18-402(c) of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(c) When the taxpayer requests a hearing, the Commissioner shall hold the hearing within five (5) business days of receipt of the request. After a hearing, the Commissioner shall determine whether the making of the assessment under section (a) is reasonable under the circumstances and shall render his decision. The taxpayer has three (3) days after the receipt of the Commissioner's decision either to pay the tax and applicable penalty and interest due or to protest the decision of the Commissioner as provided by 26-18-406(a) prior to the Commissioner issuing a certificate of indebtedness."

SECTION 6. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 15, 1989

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