

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

# A Bill

Act 1277 of 1999  
HOUSE BILL 1626

5 By: Representative Hausam  
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## For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT TO  
10 SIMPLIFY THE PROCEDURE REQUIRED TO SEEK JUDICIAL  
11 REVIEW OF A DECISION OF THE DIRECTOR TO DENY A  
12 TAXPAYER'S CLAIM FOR REFUND; TO CLARIFY THAT THE  
13 DIRECTOR SHALL RELEASE TAX RECORDS UPON RECEIPT OF A  
14 SUBPOENA FROM A PERSON AUTHORIZED TO ISSUE SUBPOENAS;  
15 TO EXTEND THE STATUTE OF LIMITATIONS FOR AN INCOME TAX  
16 ASSESSMENT UP TO SIX YEARS FOR TAXPAYERS WHO  
17 UNDERREPORT THEIR NET TAXABLE INCOME BY TWENTY-FIVE  
18 PERCENT OR MORE; TO PERMIT THE USE OF SAMPLING AS AN  
19 AUDIT METHOD; AND FOR OTHER PURPOSES."

## Subtitle

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22 "TECHNICAL AMENDMENTS TO THE ARKANSAS TAX  
23 PROCEDURE ACT."  
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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code 26-18-404(a) is amended to read as follows:

29 "(a) Any taxpayer who wishes to seek administrative relief from any  
30 proposed assessment of taxes or ~~proposed notice of disallowance~~ a denial of a  
31 claim for refund by the director shall follow the procedure provided by this  
32 section."  
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34 SECTION 2. Arkansas Code 26-18-404(c) is amended to read as follows:

35 "(c) Within thirty (30) days after service of notice of the proposed  
36 assessment, or ~~proposed notice of claim disallowance~~ denial of a claim for

1 refund, the taxpayer may file with the director a written protest under oath,  
 2 signed by himself or his authorized agent, setting forth the taxpayer's  
 3 reasons for opposing the proposed assessment, or the ~~proposed notice of claim~~  
 4 ~~disallowance~~ denial of a claim for refund."

5  
 6 SECTION 3. Arkansas Code 26-18-405(a)(1) is amended to read as follows:

7 "(a)(1) The director shall appoint a hearing officer to review all  
 8 written protests submitted by taxpayers, hold all hearings, and make written  
 9 findings as to the applicability of the proposed assessment or the ~~proposed~~  
 10 ~~notice of claim disallowance~~ denial of the claim for refund."

11  
 12 SECTION 4. Arkansas Code 26-18-405(d) is amended to read as follows:

13 "(d)(1) The hearing officer shall set the time and place for hearing on  
 14 the written protests and shall give the taxpayer reasonable notice thereof.

15 (2) At the hearing, the taxpayer may be represented by an  
 16 authorized representative and may present evidence in support of his position.

17 (3) After the hearing, the hearing officer shall render his  
 18 decision in writing and shall serve copies upon both the taxpayer and the  
 19 section or division of the Department of Finance and Administration which  
 20 proposed the assessment or the ~~proposed notice of claim of disallowance~~ denial  
 21 of the claim for refund.

22 (4)(A) If the proposed assessment or ~~proposed notice of claim~~  
 23 ~~disallowance~~ denial of a claim for refund is sustained, in whole or part, the  
 24 taxpayer may request in writing, within twenty (20) days of the mailing of the  
 25 decision, that the director revise the decision of the hearing officer.

26 (B) If the director refuses to make a revision or if the  
 27 taxpayer does not make a request for revision, then a final assessment, as  
 28 provided by § 26-18-401, ~~or a final notice of claim disallowance, as provided~~  
 29 ~~by § 26-18-507,~~ shall be made upon the final determination of the hearing  
 30 officer or the director. No additional notices concerning a claim for refund  
 31 shall be issued by the director.

32 (C) The director may within twenty (20) days of the mailing  
 33 of the decision revise the decision of the hearing officer regardless of  
 34 whether the taxpayer has requested a revision. If the director revises the  
 35 decision of the hearing officer sustaining any portion of an assessment, ~~or~~  
 36 ~~allowing any part of a claim for refund,~~ then a notice of final assessment, as

1 provided by § 26-18-401, ~~or a final notice of claim disallowance, as provided~~  
 2 ~~by § 26-18-507,~~ shall be made upon the final determination of the director.  
 3 The taxpayer may not request revision of a decision issued by the director  
 4 under this subdivision.

5 (D) The director shall notify the taxpayer in writing of  
 6 his decision to revise or refuse to revise the hearing officer's decision  
 7 regarding a denial of a claim for refund."

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 9 SECTION 5. Arkansas Code 26-18-405(e) is amended to read as follows:

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

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 15 SECTION 6. Arkansas Code 26-18-406(b) is amended to read as follows:

16 "~~(b) After the issuance of the final notice of claim disallowance~~  
 17 ~~established by: (1) the director's action under § 26-18-507, or (2) a final~~  
 18 ~~determination of the hearing officer or the director under § 26-18-405, a~~  
 19 ~~taxpayer may seek judicial relief from the final determination by filing suit~~  
 20 ~~to recover the amount claimed within one (1) year of the date of the issuance~~  
 21 ~~of the final notice of claim disallowance. A taxpayer may seek judicial relief~~  
 22 from a final determination denying a claim for refund by filing suit to  
 23 recover the amount claimed within one (1) year from the mailing of the denial  
 24 of the director under § 26-18-507, or a final determination of the hearing  
 25 officer or the director under § 26-18-405, whichever is later."

26  
 27 SECTION 7. Arkansas Code 26-18-507(c) is amended to read as follows:

28 "(c) The director shall determine what amount of refund, if any, is due  
 29 as soon as practicable after a claim has been filed, but in no event shall the  
 30 taxpayer be entitled to file a suit for refund under § 26-18-406, until at  
 31 least six (6) months have elapsed from the date of the filing of the claim for  
 32 refund, or the director has issued a ~~final~~ notice of denial of a claim  
 33 disallowance for refund."

34  
 35 SECTION 8. Arkansas Code 26-18-507(e) is amended to read as follows:

36 "(e)(1) The director shall make a written determination and give notice

1 to the taxpayer concerning whether or not a refund is due. If a refund is due,  
 2 the director shall certify that the claim is to be paid to the taxpayer as  
 3 provided by law or credited against taxes due or to become due.

4 (2)(A) If the director's determination is to disallow the claim  
 5 for refund, in whole or in part, then the director shall forthwith issue a  
 6 written decision giving notice to the taxpayer of the ~~proposed disallowance~~  
 7 denial of the claim for refund.

8 (B) ~~A notice of proposed claim disallowance shall be~~  
 9 ~~treated in the same manner as the issuance by the director of a proposed~~  
 10 ~~assessment of tax, as provided by § 26-18-403. The taxpayer, at the taxpayer's~~  
 11 ~~option, may seek administrative review and relief from the director's notice~~  
 12 ~~of proposed claim disallowance by protesting the proposed notice of claim~~  
 13 ~~disallowance as provided by §§ 26-18-404 and 26-18-405. A final determination~~  
 14 ~~of the hearing officer or the director adverse to the taxpayer, shall be~~  
 15 ~~deemed sufficient reason for the director to issue a final notice of~~  
 16 ~~disallowance of the claim for refund. The taxpayer may seek administrative~~  
 17 ~~review and relief from the director's decision to deny a claim for refund by~~  
 18 ~~protesting as provided for by §§ 26-18-404 and 26-18-405.~~

19 (C) ~~If the taxpayer does not seek relief from the~~  
 20 ~~director's notice of proposed claim disallowance, as provided by this~~  
 21 ~~subsection; then the director shall issue a final notice of claim disallowance~~  
 22 ~~to the taxpayer upon the expiration of the thirty-day period after the~~  
 23 ~~proposed notice of claim disallowance has been issued by the director.~~

24 (3) The taxpayer may seek judicial relief, under the provisions  
 25 of § 26-18-406, from: (i) a ~~final~~ notice of claim disallowance a denial of a  
 26 claim for refund issued by the director; or (ii) the director's failure to  
 27 issue a written decision after the claim for refund has been filed for six (6)  
 28 months."

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 30 SECTION 9. Arkansas Code 26-18-303(b) is amended to add a new  
 31 subsection (14) to read as follows:

32 "(14) Disclosure compelled by a subpoena issued by a state or federal  
 33 prosecutor or Grand Jury or other state or federal entity with subpoena  
 34 power."

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 36 SECTION 10. Arkansas Code 26-18-306(e) is amended to read as follows:

1           ~~"(e) Except in the case of a tax imposed by the Arkansas Income Tax Act~~  
 2 ~~of 1929, § 26-51-101 et seq., where the understatement shall apply to the~~  
 3 ~~amount of gross income stated in the tax return if a taxpayer for any reason~~  
 4 ~~understates a state tax by an amount equal to or greater than twenty-five~~  
 5 ~~percent (25%) of the amount of tax reported in the report or return, If a~~  
 6 taxpayer understates a state tax due by an amount equal to or greater than  
 7 twenty-five percent (25%), in any return or report, or in the case of an  
 8 income tax, if the taxpayer underreports net taxable income by twenty-five  
 9 percent (25%) or more, the director may assess the tax due or begin an action  
 10 in court for the collection thereof at any time prior to the expiration of six  
 11 (6) years after the return was required to be filed or the date the return was  
 12 filed, whichever period expires later."

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 14           SECTION 11. Arkansas Code 26-18-305(a) is amended to read as follows:

15           "(a) In the administration of any state tax law, the director, for the  
 16 purpose of determining the accuracy of a return or fixing any liability under  
 17 any state tax law, may make an examination or investigation of the place of  
 18 business, the tangible personal property, equipment, and facilities, and the  
 19 books, records, papers, vouchers, accounts, and documents of any taxpayer or  
 20 other person. Every taxpayer or other person and his agents and employees  
 21 shall exhibit to the director these places and items and facilitate any  
 22 examination or investigation. The director may employ proper and reasonable  
 23 audit methods as he deems necessary, including the use of sampling. If  
 24 sampling is to be employed as an audit method, the taxpayer's consent to the  
 25 sampling technique must be obtained at the commencement of the audit."

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 27           SECTION 12. All provisions of this act of a general and permanent  
 28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 29 Code Revision Commission shall incorporate the same in the Code.

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 31           SECTION 13. If any provision of this act or the application thereof to  
 32 any person or circumstance is held invalid, such invalidity shall not affect  
 33 other provisions or applications of the act which can be given effect without  
 34 the invalid provision or application, and to this end the provisions of this  
 35 act are declared to be severable.

1 SECTION 14. All laws and parts of laws in conflict with this act are  
2 hereby repealed.

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5 APPROVED: 4/9/1999  
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