

ARKANSAS SENATE
90th General Assembly - Regular Session, 2015
Amendment Form

Subtitle of Senate Bill No. 490

TO IMPROVE THE FAIRNESS OF TAX ADMINISTRATION.

Amendment No. 1 to Senate Bill No. 490

Amend Senate Bill No. 490 as originally introduced:

Add Senators Teague, Hester, Files as cosponsors of the bill

AND

Page 1, line 13, delete "ADOPTING MARKET INTEREST RATES,"

AND

Page 1, Line 16, delete "EXTENDING TAXPAYER RIGHTS TO ATTORNEY FEES,"

AND

Delete SECTION 2, and substitute the following:

"SECTION 2. Arkansas Code § 26-18-306, concerning the time limitations for assessments, collections, and refunds, is amended to add an additional subsection to read as follows:

(m)(1) Except in the case of deficiencies that are determined to be due to fraud, if the director assesses a tax or begins an action in court for the collection of a tax under subsection (e) or subsection (f) of this section for a time period in excess of the time periods provided in subsection (a) of this section, the taxpayer may file a verified claim for a credit or refund of an overpayment of state tax for the additional time period open for assessment by the director at any time before the time of collection of the assessment.

(2) However, the taxpayer shall not receive a credit or refund of any amount in excess of the assessment under this subsection.

(3) The taxpayer's ability to file a verified claim under this subsection is in addition to and not in limitation of the other provisions for filing claims in this section."

AND

Page 3, delete lines 25 through 32, and substitute the following:

"26-18-313. Construction – Standard of proof for exemptions,



deductions, and credits.

~~The standard of proof for a taxpayer to establish facts to support a claim for a tax exemption, tax deduction, or tax credit is clear and convincing evidence.~~

(a) When the state seeks to impose a tax under the terms of a state tax law, then the statute imposing the tax shall be strictly construed in limitation of the imposition of the tax.

(b) When a taxpayer claims to be entitled to a tax exemption, deduction, or credit under the terms of a state tax law, then the statute providing the tax exemption, deduction, or credit shall be strictly construed in limitation of the exemption, deduction, or credit.

(c) The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state, in controversies regarding the application of a state tax law shall be by preponderance of the evidence.

(d) When the meaning of a state tax law is in controversy, the burden of establishing the proper construction of the statute shall be on the party claiming application of the tax or benefit of the tax exemption, deduction, or credit.

(e) Words used in statutes imposing a tax and in statutes providing for a tax exemption, deduction, or credit shall be given their plain and ordinary meaning, not their narrowest possible meaning.

(f)(1) Statutes imposing a tax and statutes providing a tax exemption, deduction, or credit shall be fairly and reasonably construed, taking into consideration the purpose and spirit of the tax, exemption, deduction, or credit and the public policy at the time the statute was passed.

(2) If after taking this section and other applicable rules of statutory construction into account, a well-founded doubt exists with respect to the meaning of a statute imposing a tax or providing a tax exemption, deduction, or credit, the rule of strict construction shall require that the doubt be resolved against the tax, exemption, deduction, or credit.

(g) This section is remedial and procedural and shall apply to all actions on and after the effective date of this section."

AND

Page 6, delete lines 22 through 29, and substitute the following:

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

(ii) Taxpayer is the prevailing party in an action for judicial relief from the determination of the director under this section; and

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

AND

Page 7, delete lines 7 through 22, and substitute the following:

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

AND

Delete SECTION 6 and SECTION 7 of the bill

AND

Immediately following SECTION 9, add an additional section to read as follows:

"SECTION 8. EFFECTIVE DATE. Sections 1 through 7 of this act are effective on the first day of the calendar quarter following the effective date of this act."

AND

Appropriately renumber the sections of the bill

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator B. Sample

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Secretary