

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/8/17

A Bill

HOUSE BILL 1772

5 By: Representatives Jett, E. Armstrong, Ballinger, Baltz, Blake, Boyd, Cavanaugh, Cozart, Davis, D.
6 Douglas, Drown, Eaves, Gazaway, M. Gray, Henderson, Hillman, Jean, Lowery, D. Meeks, Miller,
7 Rushing, Vaught, *Bragg, Dotson, C. Douglas, Eubanks, M. Hodges, Leding, Lemons, Sabin*
8 By: Senators Files, *J. English, B. Sample*
9

For An Act To Be Entitled

11 AN ACT TO AMEND THE LAW CONCERNING PROPERTY TAX
12 ADMINISTRATION; TO IMPROVE THE FAIRNESS OF PROPERTY
13 TAX ADMINISTRATION BY ESTABLISHING A FAIR AND
14 EQUITABLE BURDEN OF PROOF FOR PROPERTY TAX APPEALS,
15 CLARIFYING THE STANDARD FOR CORRECTION OF ERRORS AND
16 REFUNDS, AND PRESCRIBING TAXPAYER RIGHTS IN HEARINGS
17 BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION; TO
18 IMPROVE THE OPERATION OF COUNTY EQUALIZATION BOARDS
19 BY PRESCRIBING TRAINING COURSES AND PROVIDING FOR
20 UNIFORM HEARING PROCEDURES; AND FOR OTHER PURPOSES.
21
22

Subtitle

24 TO IMPROVE THE FAIRNESS OF PROPERTY TAX
25 ADMINISTRATION AND APPEALS.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

31 (a) The General Assembly finds that:

32 (1) The normal burden of proof in civil actions before
33 administrative authorities and in court is a preponderance of the evidence;

34 (2) The General Assembly has previously clarified the burden of
35 proof on taxpayers in state tax appeals to reduce standards of proof to a
36 preponderance of the evidence;



1 (3) It is in the best interests of the taxpayers in this state
2 to follow the General Assembly's approach in previous sessions and clarify
3 that the proper burden of proof in state tax appeals is the preponderance of
4 the evidence; and

5 (4) Prescribing training and education courses for members of
6 county equalization boards and providing for uniform hearing procedures would
7 improve the operation of county equalization boards and their ability to
8 serve the taxpayers of this state.

9 (b) The General Assembly intends:

10 (1) For the preponderance of the evidence standard to apply in
11 property tax administration and appeals;

12 (2) To make additional clarifications to the law as a result of
13 recent judicial decisions affecting the Arkansas Property Taxpayer Bill of
14 Rights, § 26-23-201 et seq., adopted by the General Assembly in 1999;

15 (3) To extend the limitation period for tax appeals subject to
16 the jurisdiction of the Arkansas Public Service Commission; and

17 (4) Improve the operation of county equalization boards.

18
19 SECTION 2. Arkansas Code § 26-26-1610(b), concerning notice of
20 assessment of property and review and refunds of assessments, is amended to
21 read as follows:

22 (b)(1)(A) If the owner of the property so assessed is dissatisfied
23 with the assessment made by the division, as approved by the Arkansas Public
24 Service Commission or the ~~Arkansas Transportation Commission [abolished]~~
25 State Highway Commission, the owner, within ~~ten (10)~~ thirty (30) days from
26 date of notice under subsection (a) of this section, may file with the
27 appropriate commission a written petition for review of the assessment.

28 (B) The deadline for filing a written petition under
29 subdivision (b)(1)(A) of this section may be extended for fifteen (15) days
30 by order of the appropriate commission for good cause shown.

31 (C)(i) A written petition under subdivision (b)(1)(A) of
32 this section may be signed and filed by the property owner or an officer,
33 agent, or attorney on the property owner's behalf.

34 (ii) However, the appropriate commission may require
35 that the property owner be represented by a licensed attorney in any filings
36 or proceedings following the filing of the petition.

1 (2)(A) All hearings on the petition shall be had before the
2 appropriate commission or its agent on or before November 1 after assessment
3 notice has been given. However, hearings on petitions for review of
4 assessments of bus lines, motor carriers, airlines, water transportation
5 companies, and private car companies, which assessments are certified to the
6 Director of the Department of Finance and Administration for collection of
7 tax, shall be to the appropriate commission or its agent, on or before
8 December 31 of the assessing year.

9 (B) However, a hearing may be continued by order of the
10 appropriate commission for a period not to exceed ninety (90) days.

11
12 SECTION 3. Arkansas Code § 26-27-315(b), concerning equalization of
13 assessments, is amended to read as follows:

14 (b) For this purpose, the county equalization board shall observe the
15 following rules:

16 (1)(A) It shall raise or lower the valuation of any property to
17 bring about a complete equalization of property at the proper value under §
18 26-26-407 or § 26-26-1202 or in accordance with a value otherwise prescribed
19 by law.

20 (B) It shall not raise or lower the valuation of any
21 property without documenting the reason for raising or lowering the valuation
22 of the property to achieve the proper value under § 26-26-407 or § 26-26-1202
23 or in accordance with a value otherwise prescribed by law, and the
24 documentation shall be attached to the appropriate property record card or
25 cards.

26 ~~(C) The reasons for lowering or raising the valuation of~~
27 ~~property shall be limited to:~~

28 ~~(i) The assessment is unfair compared with other~~
29 ~~properties of the same kind similarly situated, evidenced by the fact that~~
30 ~~the property is assessed higher than neighborhood properties of the same use,~~
31 ~~size, materials, and condition;~~

32 ~~(ii) The assessment is clearly erroneous, evidenced~~
33 ~~by the fact that the appraisal relies on substantially inaccurate or~~
34 ~~insufficient information concerning the property; or~~

35 ~~(iii) The assessment is manifestly excessive or~~
36 ~~greatly exceeds what willing and knowledgeable buyers will pay similarly~~

1 ~~motivated sellers for the property, evidenced by selling prices of similarly~~
2 ~~situated properties.~~

3 ~~(D)(i)~~ (C)(i) It shall not raise or lower the value of any
4 property without reviewing values of similarly situated properties.

5 (ii) If the same reason for raising or lowering the
6 value of the property exists for those similarly situated properties, the
7 values for those properties shall also be raised or lowered, and the changes
8 shall be documented.

9 ~~(E)~~ (D) It shall not materially change the records of the
10 county assessor's office, but may only direct that the assessed value of
11 property be raised or lowered in keeping with its documented findings;

12 (2)(A) In each instance in which the county equalization board
13 shall raise the valuation of any property, it shall immediately notify the
14 owner or his or her agent by first class mail of the increase.

15 (B) However, all persons present before the county
16 equalization board in person or by agent at the time the increase is ordered
17 are there so notified and shall not be entitled to further notice.

18 (C) The notice shall state the valuation returned by the
19 county assessor and the valuation fixed by the county equalization board and
20 shall advise the owner or his or her agent that he or she may in person, by
21 agent, petition, or letter apply for and receive consideration or hearing by
22 or before the county equalization board if the application shall be made on
23 or before the first Saturday next preceding the third Monday in September if
24 in regular session for equalization or before the first Saturday next
25 preceding the third Monday of November if meeting in special sessions; and

26 (3) In each instance in which an assessment is raised and the
27 owner or his or her agent has applied for consideration or hearing for an
28 adjustment of his or her assessment, if the county equalization board has
29 failed to take action on his or her application before adjourning its regular
30 session or if it fails to convene in special session to consider the
31 application, then the county equalization board shall reduce all such
32 increases to the assessed levels of the previous year.

33
34 SECTION 4. Arkansas Code § 26-27-317(c) and (d), concerning
35 applications for adjustment of property assessments, are amended to read as
36 follows:

1 (c)(1) The county equalization board shall begin hearing appeals no
2 later than the second Monday in August.

3 (2) On at least one (1) day each week, appeals shall be heard
4 after normal business hours to accommodate working property owners.

5 (d)(1)(A) At a hearing before a county equalization board, the county
6 assessor shall first present to the county equalization board any evidence
7 that the county assessor's office or a contracted appraisal company
8 considered when determining the valuation of the property that is the subject
9 of the hearing.

10 (B) After the county assessor has presented the evidence
11 as required in subdivision (d)(1)(A) of this section, the appealing property
12 owner or his or her agent shall present to the county equalization board any
13 evidence that supports a valuation of the property that is different from the
14 valuation set by the county assessor.

15 (C)(i) After the appealing property owner or his or her
16 agent presents evidence under subdivision (d)(1)(B) of this section, the
17 county assessor shall have the opportunity to rebut the evidence presented by
18 the appealing property owner or his or her agent in the proceeding.

19 (ii) If the appealing property owner presents
20 material evidence that has not been provided to the county assessor at least
21 five (5) business days before the hearing, the county equalization board may
22 continue the hearing to a future date in order for the county assessor to
23 review and prepare a response, including without limitation additional
24 evidence.

25 (D) After the evidence has been presented by both parties
26 under this subsection (d), the county equalization board shall consider all
27 evidence presented at the hearing and make a determination based on evidence
28 presented by the parties to either accept the valuation of the subject
29 property set by the county assessor or raise or lower the valuation of the
30 subject property.

31 (E)(i) Except as necessary during other hearings of the
32 county equalization board for the purpose of comparison or equalization, or
33 both, ex parte communications between members of the county equalization
34 board or between a member of the county equalization board and other persons
35 concerning property on appeal before the county equalization board are
36 prohibited.

1 (ii) However, members of the county equalization
2 board may communicate with the attorneys for the county equalization board
3 and with the secretary for the county equalization board for purposes of
4 scheduling.

5 (e)(1) The county equalization board shall decide the merits of an
6 adjustment of assessment application and notify the property owner of its
7 decision in writing at least ten (10) business days after the hearing.

8 (2) The county equalization board's notification shall include:

9 (A) The county equalization board's decision;

10 (B) The right of the property owner to appeal the county
11 equalization board's decision to the county court; ~~and~~

12 (C) The deadline for petitioning the county court for a
13 hearing; and

14 (D) A statement that a petition filed in county court for
15 a hearing on behalf of a corporation, limited liability company, or other
16 business entity shall be signed and filed by an attorney licensed to practice
17 law in Arkansas.

18
19 SECTION 5. Arkansas Code § 26-27-318(d), concerning appeals to courts
20 of county equalization board actions, is amended to read as follows:

21 (d)(1) ~~No reduction shall be allowed except on evidence corroborative~~
22 ~~of that of the property owner.~~ On an appeal from the action of the county
23 equalization board or a subsequent court order affecting the valuation of the
24 property, the petitioner or plaintiff shall have the burden of proving by a
25 preponderance of the evidence the true and correct value of the property for
26 ad valorem tax purposes as prescribed by law.

27 (2) A presumption of correctness or weight of authority does not
28 attach to the action of the county assessor or the county equalization board,
29 and the petitioner or plaintiff is not required to:

30 (A) Show that the assessed valuation of property is
31 clearly erroneous, manifestly excessive, or confiscatory; or

32 (B) Meet a higher standard of proof than preponderance of
33 the evidence.

34
35 SECTION 6. Arkansas Code Title 26, Chapter 27, Subchapter 3, is
36 amended to add additional sections to read as follows:

1 26-27-324. Education and training of members of a county equalization
2 board.

3 (a)(1) Beginning January 1, 2018, the Director of the Assessment
4 Coordination Department shall:

5 (A) Approve curricula and provide materials for use in
6 training and educating members of county equalization boards;

7 (B) Supervise a comprehensive course for training and
8 education of members of county equalization boards and issue certificates
9 indicating course completion;

10 (C) Make all materials for use in training and educating
11 members of county equalization boards freely available online; and

12 (D) Provide staff to respond to technical questions
13 relating to the duties and responsibilities of members of county equalization
14 boards and property appraisal issues.

15 (2) The director may contract with one (1) or more service
16 providers to assist with the requirements of this subsection.

17 (b) The curricula and materials for the comprehensive course
18 established under this section shall include without limitation information
19 regarding the:

20 (1) Cost, income, and market data comparison methods of property
21 appraisal;

22 (2) Appraisal of business personal property;

23 (3) Duties of the county assessor;

24 (4) Duties of a county equalization board, including without
25 limitation the independence of a county equalization board from the county
26 assessor and other employees and contractors of the county assessor;

27 (5) Prohibition against ex parte communications applicable to
28 members of a county equalization board;

29 (6) Requirements regarding equal and uniform appraisal of
30 property; and

31 (7) Right of a property owner to protest the appraised value of
32 the property and the procedures for an appeal.

33 (c)(1) Except as otherwise provided in this subsection, each member of
34 a county equalization board shall complete the comprehensive course
35 established under subsection (a) of this section.

36 (2)(A) A member of a county equalization board who is required

1 to attend the comprehensive course shall not participate in a county
2 equalization board hearing unless the member of the county equalization board
3 has been certified as completing the comprehensive course established under
4 subsection (a) of this section.

5 (B) A member of a county equalization board who is
6 appointed after the date the comprehensive course established under
7 subsection (a) of this section is offered for that year may serve without
8 certification until the next comprehensive course established under
9 subsection (a) of this section is offered.

10 (3)(A) Until January 1, 2021, no more than one-third (1/3) of
11 the members of a county equalization board, as designated by the chair of the
12 county equalization board serving on January 1 of each year or, if no chair
13 is serving on January 1, then by the county judge, shall be required to
14 attend the comprehensive course established under subsection (a) of this
15 section in a single year.

16 (B) The director may waive the requirements of this
17 subsection for:

18 (i) Appraisers who are registered, licensed, or
19 certified to perform appraisals in Arkansas; and

20 (ii) Attorneys licensed to practice law in Arkansas.

21 (d)(1) For purposes of continuing education, a member of a county
22 equalization board shall obtain certification of completion of the
23 comprehensive course established in subsection (a) of this section every
24 three (3) years.

25 (2) If a member of a county equalization board does not become
26 recertified under subdivision (d)(1) of this section three (3) years after
27 the his or her previous certification of the course, the member of a county
28 equalization board shall not participate in a hearing before the county
29 equalization board until the member is recertified.

30
31 26-27-325. Uniform hearing procedures.

32 (a) The Director of the Assessment Coordination Department shall
33 establish uniform hearing procedures for county equalization boards, which
34 shall include without limitation information regarding:

35 (1) The notice required for a hearing;

36 (2) Conducting a hearing;

1 (3) Scheduling, rescheduling, and cancelling a hearing;

2 (4) The right of the county assessor and property owner to offer
3 evidence and testimony and examine and cross-examine witnesses at a hearing;

4 (5) A property owner's right to appear by an agent at a hearing;

5 (6) The prohibitions against ex parte communications and a
6 county equalization board's consideration of information not provided at a
7 hearing; and

8 (7) Conflicts of interest.

9 (b)(1) A county equalization board shall adopt at its first meeting of
10 each year and shall follow the uniform hearing procedures established by the
11 director under this section.

12 (2) Upon request, the secretary of a county equalization board
13 shall provide an owner of property in the county with a copy of the uniform
14 hearing procedures that have been adopted by the county equalization board
15 for that year's hearings.

16 (3) A copy of the uniform hearing procedures adopted by a county
17 equalization board shall be conspicuously posted in a prominent place in the
18 room in which the county equalization board hearings are held.

19 (c)(1) At the first meeting of a county equalization board each year,
20 each member of the county equalization board shall sign an affidavit stating
21 that the member of the county equalization board will not knowingly violate
22 any law or procedure regarding the conducting of county equalization board
23 hearings.

24 (2) If a member of a county equalization board violates a law or
25 procedure regarding the conducting of county equalization board hearings
26 before or during a hearing, the member of the county equalization board shall
27 recuse from further participation in that hearing.

28 (3)(A) If a member of a county equalization board recuses from a
29 hearing under subdivision (c)(2) of this section or otherwise, the county
30 judge shall appoint an interim member of the county equalization board to
31 serve for the duration of that hearing.

32 (B) An interim member of a county equalization board
33 appointed under this subdivision (c)(3) shall not be subject to the education
34 and training requirements stated in § 26-27-324.

35
36 SECTION 7. Arkansas Code § 26-28-111(c), concerning the correction of

1 errors in real or personal property tax books, is amended to read as follows:

2 ~~(c)(1) The provisions of this~~ This section shall be applicable applies
3 only to the correction of ~~actual and obvious errors on the tax books and~~
4 ~~related records, with such errors being restricted to~~ extension errors,
5 erroneous property descriptions, classifications, or listings, ~~and.~~

6 (2)(A) A correction shall be made under this section regardless
7 of whether the error was caused by the county assessor or the taxpayer or was
8 the result of an erroneous record or report or other circumstance.

9 (B) However, a correction under this section shall not be
10 utilized to make any change in the valuation of ~~any~~ real or personal property
11 as shown on the tax books and related records other than a change in
12 valuation necessitated by the correction of ~~actual and obvious~~ factual errors
13 as provided in this section.

14 (3) In no case shall any A reduction in the valuation of ~~any~~
15 real or personal property shall not be made, except such as shall have been
16 ordered by the county equalization board, the county court, the circuit
17 court, or the Supreme Court, or be caused by the correction of actual and
18 obvious errors as provided in this section.

19
20 SECTION 8. Arkansas Code § 26-28-111, concerning the correction of
21 errors in real or personal property tax books, is amended to add an
22 additional subsection to read as follows:

23 (d) When the county assessor discovers or is informed of an error
24 described in subsection (c) of this section in the real or personal property
25 tax books before the tax books have been delivered to the county collector,
26 the county assessor shall correct the error directly on the tax books and
27 shall maintain a record of the correction in the county assessor's records.

28
29 SECTION 9. Arkansas Code § 26-35-901(a), concerning taxes erroneously
30 assessed and paid, is amended to add an additional subdivision to read as
31 follows:

32 (3) If an erroneous assessment claim is for erroneous
33 assessments made in two (2) or more tax years, the county court may order
34 that the property tax refund be made in up to two (2) equal annual
35 installments, by December 31 of each year, beginning with the year in which
36 the order is entered.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/Jett