

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1682

Bill Subtitle: TO AMEND THE ARKANSAS TAX PROCEDURE ACT CONCERNING BUSINESS CLOSURES; AND TO PROVIDE THAT A BUSINESS CLOSURE ORDER ACTS AS AN INJUNCTION PROHIBITING FURTHER BUSINESS OPERATION UNLESS OTHERWISE PROVIDED BY A COURT.

Basic Change :

Sponsor: Representative Jett

HB1682 would amend the Arkansas Tax Procedure Act regarding the code provisions for business closure which are applicable to noncompliant taxpayers who have collected state and local sales taxes from customers or who have withheld income taxes from their employees and who have not paid or remitted the taxes collected or withheld to DFA. Upon the third failure to pay the tax, authority is granted in the law for DFA to issue a business closure order to the taxpayer who must cease business operations until the delinquent taxes are paid.

The issuance by DFA of a business closure order is subject to appeal through an administrative hearing. The bill would provide that a decision of the hearing officer to sustain the decision to close the business is effective twenty (20) days after the date of the decision, and unless stayed by an order of the circuit court, the decision by the hearing officer acts as an injunction prohibiting further operation of the business.

The noncompliant taxpayer cannot operate the business after twenty (20) calendar days from issuance of an administrative decision unless the noncompliant taxpayer obtains an order from the circuit court staying the effect of the administrative decision. An order of a circuit court to stay the effect of an administrative decision may be revoked if DFA provides proof that the taxpayer has failed to timely file and make full payment of the delinquent taxes due. The taxpayer or DFA could file an appeal of an order from the circuit court to the appropriate appellate court.

Revenue Impact :

None.

Taxpayer Impact :

A decision of the hearing officer resulting from the appeal of the issuance of a business closure order would serve as an injunction prohibiting further operation of the business.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

None.

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Other Comments :

None.

Legal Analysis :

Under current law, the Director of the Department of Finance and Administration (DFA) may close the business of a noncompliant taxpayer who fails to file sales and use tax or withholding tax returns three (3) or more times during a consecutive twenty-four (24) month period, or who fails to pay sales and use taxes or withholding taxes three (3) or more times during a consecutive twenty-four (24) month period. The only way the noncompliant taxpayer may avoid closure of the business is by proving that the he or she has filed all delinquent returns, and has either paid the delinquent tax in full or has entered into a payment agreement with DFA to repay the delinquent tax due. Noncompliant taxpayers may challenge the Director's decision to close their business by filing an administrative protest. If the Director's decision is affirmed at the administrative level, the noncompliant taxpayer may seek judicial relief from that decision. Under current law, the noncompliant taxpayer can continue business operations while challenging the Director's decision to close their business. Some noncompliant taxpayers that file a circuit court appeal to challenge the Director's decision to close their business do not take any steps to cure their delinquencies prior to filing their appeal. Sometimes the appeal is filed solely to provide the noncompliant taxpayer with additional time to obtain funds to pay the existing delinquency. In addition, some noncompliant taxpayers who file suit to challenge the decision to close the business also incur additional tax delinquencies while the suit is pending.

HB1682 intends to limit the filing of frivolous challenges to the Director's decision to close a noncompliant taxpayer's business by requiring the taxpayer to cease business operations after twenty (20) days from the date of an administrative decision sustaining the closure of the business. Specifically, under this bill an administrative decision sustaining the closure of the business will become effective twenty (20) days after the date of the decision and will act as an injunction prohibiting further business operation. A taxpayer may challenge the administrative decision by filing suit in circuit court, but will not be permitted to operate the business while the circuit court challenge is pending unless the taxpayer first obtains an order of the circuit court staying the effect of the administrative decision. If the taxpayer continues to incur delinquencies while the circuit court challenge is pending, DFA can ask the circuit court to revoke the order staying the effect of the administrative decision and, if the request is granted, DFA must enforce the closure of the business by posting signs and sealing the business. If the circuit court upholds the decision to close the taxpayer's business, the taxpayer may file an appeal to the appropriate appellate court. However, the circuit court's decision to uphold the closure of the business will also constitute an injunction prohibiting continued operation of the business, and the taxpayer will be required to obtain a stay of the effect of the circuit court order from the appellate court before he or she can continue business operations.