

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1921**

**Bill Subtitle: TO AMEND THE LAW CONCERNING NOTICE OF TAX ASSESSMENTS AND DETERMINATIONS; AND TO REQUIRE EVIDENCE OF ACTUAL NOTICE OF A TAX ASSESSMENT OR DETERMINATION IN CERTAIN CIRCUMSTANCES.**

---

### **Basic Change :**

**Sponsors: Reps. Lundstrum and Sen. Hester**

HB1921 amends the Arkansas Tax Procedure Act whereas a taxpayer shall not lose the right to seek administrative relief from a tax assessment unless DFA provides evidence that the taxpayer received actual notice under this section. The act would be effective for the specific notices sent out by the Director of DFA on or after January 1, 2020.

### **Revenue Impact :**

\$1.2 million in increased mailing costs for the Department of Finance and Administration.

[ The number of Proposed Notices of Assessment and Proposed Notices of Refund Claim Denial during 2018 totaled 215,508. Each Notice is printed and mailed by DFA to the taxpayer through regular mail. To provide the proof required in the bill, DFA would mail these notices by certified mail with return receipt required. Total cost to DFA for each certified mail letter is \$5.40. Annual budget costs if sending by certified mail would total approximately \$1.2 million based on 2018 notice issuance. ]

### **Taxpayer Impact :**

Taxpayers will receive Notices of Proposed Assessment and Notices of Refund Claim Denial via certified mail or other form of actual notice.

### **Resources Required :**

Unknown additional personnel and associated costs would be incurred to establish procedures for imaging and retaining return receipt copies for future reference when needed.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Establish system and procedures to retain images of certified mail receipts by taxpayer identification.

### **Other Comments :**

In prior years, Arkansas law required DFA to mail Final Notices of Assessment by certified mail. DFA encountered a high percentage of the Notices issued being returned as not being claimed at the Post Office by the taxpayer. Due to taxpayers not accepting the correspondence when delivered based on the identity of the sender and because the bulk of the Notices are being mailed to delinquent taxpayers, the mail was returned without the certified mail requirement insuring the taxpayer receipt.

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1921**

**Bill Subtitle: TO AMEND THE LAW CONCERNING NOTICE OF TAX ASSESSMENTS AND DETERMINATIONS; AND TO REQUIRE EVIDENCE OF ACTUAL NOTICE OF A TAX ASSESSMENT OR DETERMINATION IN CERTAIN CIRCUMSTANCES.**

---

### Legal Analysis :

HB1921 modifies the protest procedure of the Arkansas Tax Procedure Act (codified at § 26-18-101, et seq). Currently, a taxpayer may protest an assessment or refund claim denial to the Director for an administrative review, as long as the protest is received by the Director within sixty (60) days from service of the Notice of the Proposed Assessment or Refund Claim Denial. The Director, in his discretion, may extend the time to protest an additional ninety (90) days. In addition or as an alternative to the administrative process, a taxpayer may protest the assessment or refund claim denial through the judicial process by filing suit in circuit court. This can be achieved by either: (1) filing suit within one hundred and eighty (180) days of the final assessment, refund claim denial, or administrative appeal determination; or (2) paying the entire amount of the tax due within one (1) year and then filing a suit within one (1) year of the date of payment. Under the Arkansas Tax Procedure Act, a taxpayer does not have to exhaust the administrative hearing process to file suit in circuit court.

HB1921 suspends the time limitations for protesting an assessment or refund claim denial to the administrative hearing office or circuit court, unless the Department can provide proof of "actual service." While the term "actual service" is not defined by the bill, it is commonly defined in the legal field as "[n]otice given directly to, or received personally by, a party." NOTICE, Black's Law Dictionary (10th ed. 2014).

**Cost of Actual Service** --- This bill will create significant administrative burdens on the Department. The most common ways to provide actual notice would be service via process server or the use of certified mail. These options both increase the cost to provide notice and to encourage compliance of delinquent taxpayers. As a practical matter, taxpayers may not be at home when a process server or postal worker attempts to deliver the notice. In the case of certified mail, the taxpayer would then have to go to his or her local post office to retrieve the mail, or it will be returned to the Department as undeliverable.

**Inability to Pursue Final Assessments and Collections** --- Additionally, this provision could frustrate the Department's ability to pursue delinquencies. It is unclear whether or not the Department would be authorized to issue a final assessment under the language of this bill. A final assessment cannot be issued by the Department until the time for the taxpayer to request an administrative hearing. § 26-18-401(b)(2)(A)(iii). With this bill, a taxpayer arguably has an infinite time to protest unless the Department can establish actual notice. Accordingly, the Department may not be able to issue final assessments unless it has record of actual notice of each notice of proposed assessment. This could prevent the collections process from continuing and would prevent the Department from filing liens pursuant to § 26-18-701. A certificate of indebtedness, or state tax lien cannot be issued until a notice of final assessment is issued. Inability to file liens would prevent the Department from collecting delinquencies through land sale transfers, writs of garnishment, writs of executions, and any other attempted collection method.

**Encouragement of the Provision of False Information** --- As an unintended consequence of this bill, taxpayers with tax delinquencies or expected tax delinquencies will be rewarded or encouraged to provide incorrect addresses or to not maintain up to date addresses with the Department. As explained above, a taxpayer with a tax delinquency or an expected tax delinquency could avoid the issuance of a

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1921**

**Bill Subtitle: TO AMEND THE LAW CONCERNING NOTICE OF TAX ASSESSMENTS AND DETERMINATIONS; AND TO REQUIRE EVIDENCE OF ACTUAL NOTICE OF A TAX ASSESSMENT OR DETERMINATION IN CERTAIN CIRCUMSTANCES.**

---

final assessment and filing of a lien by either providing false information or by failing to provide an up-to-date address. By doing so, the taxpayer could prevent the Department from getting actual service and moving forward with collection procedures.

If the bill would provide for the Department to issue a final assessment and subsequent state tax lien, it is unclear what the effect will be if a taxpayer attempts to bring a protest for a period subject to a lien that has been filed.

**Ineffective Communication with Taxpayers** --- As an unintended result, taxpayers that have no issue with the Department's assessment or refund claim denial will not receive these notices (unless the Department elects to send the notices via regular U.S. Mail and process server or certified mail, leading to additional cost). This will likely lead to confusion and frustration for taxpayers.

It should also be noted that many of the notice of proposed assessments issued by the Department constitute routine practice that keeps taxpayers informed of their tax delinquency status. For example, notice of proposed assessments are issued as a result of the taxpayer's income tax return filing. These notices remind taxpayers that they have told the state they owe money for that tax year but have not yet paid it. Additionally, notices of proposed assessment are sent out when individuals register a vehicle, but the payment was faulty in some way. In both of these examples, taxpayers acknowledge that they owe a debt to the state.

This bill would go into effect on January 1, 2020.