

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB544**

**Bill Subtitle: TO ESTABLISH PREJUDGMENT AND POST-JUDGMENT INTEREST RATES.**

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### **Basic Change :**

SB544 changes the computation of interest for judgment creditors. Individuals who have obtained a judgment in court are judgment creditors and the amount that they are owed will accrue interest based on the guidance of the Arkansas Code that specifies the amount of interest both pre-judgment (from the time the cause of action occurred until the court enters judgment, and post-judgment (on and after when the court's judgment is filed with the circuit clerk).

### **Revenue Impact :**

None. DFA state tax liens, certificates of indebtedness, are not court judgments and the State is not a judgment creditor subject to this limitation.

### **Taxpayer Impact :**

Litigants will be subject to a different computation of interest after the provisions of SB544 were to go into effect. The calculation of interest does not change the substantive claims that would be brought giving rise to the judgment.

### **Resources Required :**

None.

### **Time Required :**

None.

### **Procedural Changes :**

None.

### **Other Comments :**

None.

### **Legal Analysis :**

Currently, the post-judgment interest rate on judgments entered by a court is 10% per annum. SB544 will reduce that rate to a rate equal to the Federal Reserve primary credit rate in effect on the date on which the judgment is entered plus 2%. Effective December 20, 2018, the Federal Reserve primary credit rate was 3%. The bill does not contain an effective date and will become effective 90 days from *sine die* adjournment.

In 1964, and relying on the case of *United States v. Gilbert Associates*, 345 U.S. 361, 73 S.Ct. 701, 97 L.Ed. 1071 (1953) (which held that the term judgment creditor, at least for determining the priority of tax liens filed by both the federal government and by state governments, means a creditor who

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obtained a judgment of a court of record rather a taxing authority who files a tax lien), the Arkansas Supreme Court held that the filing of a tax lien does not render the department a judgment creditor. *U.S. v. McGehee*, 237 Ark. 698, 375 S.W.2nd 365 (1964).

Though the department's tax liens have the same force and effect of a judgment, § 26-18--701(a)(3)(A)(i) (Repl. 2012), they are not judgments of a court, the department is not a judgment creditor, interest accrues on tax liens at the rate of 10% per annum per § 26-18-508, and the provisions of SB544 do not impact interest charged and collected by DFA upon the filing of certificates of indebtedness.