

2 State of Arkansas
3 90th General Assembly
4 Regular Session, 2015

A Bill

SENATE BILL 865

5
6 By: Senator B. Sample
7 By: Representative Bragg

8 Filed with: Senate Committee on Revenue and Taxation
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO PROVIDE A RIGHT TO ATTORNEY’S FEES FOR
12 TAXPAYERS SEEKING JUDICIAL RELIEF; TO AMEND THE
13 TAXPAYER BILL OF RIGHTS TO INCLUDE A RIGHT TO
14 REIMBURSEMENT OF FEES AND OTHER COSTS; AND FOR OTHER
15 PURPOSES.

Subtitle

16
17
18
19 TO PROVIDE A RIGHT TO ATTORNEY’S FEES FOR
20 TAXPAYERS SEEKING JUDICIAL RELIEF; AND TO
21 AMEND THE TAXPAYER BILL OF RIGHTS TO
22 INCLUDE A RIGHT TO REIMBURSEMENT OF FEES
23 AND OTHER COSTS.

24
25
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27
28 SECTION 1. Arkansas Code § 26-18-406(e), concerning the judicial
29 relief available for an appeal of a tax assessment, is amended to read as
30 follows:

31 (e)(1) In ~~any~~ a court proceeding under this section, the:

32 (A) Prevailing party may be awarded a judgment for court
33 costs; and

34 (B) Taxpayer may be awarded reasonable attorney fees if
35 the:

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

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

6 ~~(iii)~~ (ii) Court finds that the director's revision
7 final assessment or final determination of the hearing officer or the
8 director was without a reasonable basis in law ~~and~~, fact, or both.

9 (2) A judgment of court costs entered by the court in favor of
10 either party or of attorney fees awarded in favor of the taxpayer shall be
11 treated, for purposes of this chapter, in the same manner as an overpayment
12 or deficiency of tax, except that interest or penalty shall not be allowed or
13 assessed with respect to ~~any~~ a judgment for court costs or attorney fees.

14
15 SECTION 2. Arkansas Code Title 26, Chapter 18, Subchapter 8, is
16 amended to add an additional section to read as follows:

17 26-18-813. Reimbursement of fees and other costs.

18 (a) As used in this section:

19 (1) "Administrative proceeding" means a request for taxpayer
20 relief under §§ 26-18-404 and 26-18-405; and

21 (2) "Reasonable fees and other costs" means fees and other costs
22 that are based on prevailing market rates for the kind and quality of the
23 furnished services but that do not exceed the amount actually spent for:

24 (A) Expert witnesses;

25 (B) The cost of any study, analysis, report, test, or
26 project that is found to be necessary to prepare the taxpayer's case; and

27 (C) Fees for attorneys or other representatives.

28 (b)(1) A taxpayer that is a prevailing party may be reimbursed for
29 fees and other costs related to seeking relief in an administrative
30 proceeding.

31 (2) A taxpayer is considered to be a prevailing party under this
32 section only if:

33 (A) The director's position subject to the action for
34 administrative relief was not substantially justified, as determined by the
35 hearing officer or director; and

1 (B) The taxpayer prevails as to the predominant issue or
2 set of issues before the hearing officer or director.

3 (c) Reimbursement of fees and costs under this section may be denied
4 if:

5 (1) During the course of the proceeding, the taxpayer
6 unreasonably protracted the final resolution of the matter as determined by
7 the hearing officer or director; or

8 (2) The taxpayer prevailed because of an intervening change in
9 the applicable law.

10 (d)(1) The taxpayer shall present an itemization of the fees and other
11 costs to the hearing officer within thirty (30) days after the final
12 determination of the hearing officer or the director under § 26-18-405.

13 (2) The hearing officer shall determine the validity of the fees
14 and other costs within thirty (30) days after receiving the itemization
15 provided under this subsection.

16 (3) The taxpayer or legal counsel for the director may request
17 that the director revise the hearing officer's decision concerning fees and
18 costs in the manner stated in § 26-18-405(d)(4).

19 (4) The final determination of the hearing officer or the
20 director is subject to an action for judicial relief in the same manner as a
21 final determination denying a claim for refund under § 26-18-406(b).

22 (e)(1) The director shall pay the fees and other costs awarded under
23 this section from any funds appropriated to the Revenue Division of the
24 Department of Finance and Administration for that purpose.

25 (2) The taxpayer may file a claim for the fees and other costs
26 with the Arkansas State Claims Commission if:

27 (A) The director does not pay the fees and other costs
28 within thirty (30) days after demand by a taxpayer that has received an award
29 under this section; and

30 (B) No further review or appeals of the award are pending.

31 (f)(1) Reimbursement to a taxpayer under this section shall not exceed
32 the lesser of twenty thousand dollars (\$20,000) or the actual amount spent.

33 (2) The reimbursable attorney fees or other representative fees
34 shall not exceed the lesser of two hundred dollars (\$200) per hour or the
35 actual amount spent unless the director or a court determines that an
36 increase in the cost of living or a special factor, such as the limited

1 availability of qualified attorneys for the proceeding, justifies a higher
2 fee.

3 (g) The director shall adopt rules to implement this section.

4 (h) If a taxpayer seeks administrative relief from a proposed
5 assessment of taxes or from denial of a claim for refund and is denied
6 administrative relief under §§ 26-18-404 and 26-18-405 but is subsequently
7 granted judicial relief under § 26-18-406, the court may award reasonable
8 fees and other costs related to the taxpayer's action for administrative
9 relief on the same basis as stated in subsection (b) of this section subject
10 to the restrictions stated in subsection (f) of this section.

11
12
13 Referred by the Arkansas Senate

14 Prepared by: VJF
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36