

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 490

By: Senator B. Sample

## For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING THE  
ADMINISTRATION OF STATE TAXES; TO IMPROVE THE  
FAIRNESS OF TAX ADMINISTRATION BY ELIMINATING  
PREPAYMENT CONDITIONS FOR APPEAL, ADJUSTING THE  
TAXPAYER BURDEN OF PROOF, EQUALIZING THE LIMITATIONS  
PERIOD FOR REFUNDS, ADOPTING MARKET INTEREST RATES,  
PROMOTING TRANSPARENCY IN TAX ADMINISTRATION,  
CONFORMING DUE DATES FOR INCOME TAX RETURNS,  
EXTENDING TAXPAYER RIGHTS TO ATTORNEY'S FEES, AND  
EXTENDING THE REBATE PERIOD FOR LOCAL TAXES; AND FOR  
OTHER PURPOSES.

## Subtitle

TO IMPROVE THE FAIRNESS OF TAX  
ADMINISTRATION.

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

SECTION 1. Arkansas Code § 26-18-306(b)(1)-(3), concerning the time  
limitations for assessments, collections, and refunds, is amended to read as  
follows:

(b)(1) Notwithstanding ~~the provisions of~~ subsection (a) of this  
section, if the amount of taxable income or taxable estate for a taxpayer for  
~~any~~ a year, as returned to the United States Department of the Treasury, is  
changed and corrected by the Commissioner of Internal Revenue or ~~any~~ an  
officer of the United States of competent authority, the taxpayer, within  
~~ninety (90)~~ one hundred eighty (180) days from the receipt of the notice and



1 demand for payment by the Internal Revenue Service, ~~must~~ shall report to the  
 2 director the corrected federal tax, taxable income, or taxable estate for the  
 3 taxable period covered by the change on an amended Arkansas income tax  
 4 return.

5 (2)(A) If there is ~~any~~ an additional state tax due from the  
 6 taxpayer because of the correction by the Internal Revenue Service, ~~any~~ the  
 7 additional state tax resulting from the issues that are included in the  
 8 correction ~~must~~ shall be assessed by the director within one (1) year ~~of~~ the  
 9 filing of the amended Arkansas income tax return by the taxpayer.

10 (B) However, ~~in the instance of~~ if a taxpayer ~~who~~ fails to  
 11 notify the director of the correction as required by this subsection, no  
 12 assessment of additional state tax due from the taxpayer because of the  
 13 correction by the Internal Revenue Service shall be made by the director  
 14 after the expiration of ~~eight (8)~~ three (3) years from the date the amended  
 15 return was required to be filed ~~or the date the return was filed, whichever~~  
 16 ~~period expires later.~~

17 (C) If the taxpayer appeals the assessment made by the  
 18 Internal Revenue Service ~~is appealed by the taxpayer~~, the director ~~shall have~~  
 19 has three (3) years from the date of the final Internal Revenue Service  
 20 assessment or date of payment of the federal assessment by the taxpayer,  
 21 whichever of the two (2) periods expires later, in which to make an  
 22 assessment.

23 (3)(A) Notwithstanding ~~the provisions of~~ subsection (i) of this  
 24 section, if the correction by the Internal Revenue Service results in an  
 25 overpayment of state income tax for the taxable year for which the correction  
 26 is made, the taxpayer may receive a refund of the overpaid income tax for  
 27 that year resulting from the issues that are included in the correction upon  
 28 the filing of the amended return within ~~ninety (90)~~ one hundred eighty (180)  
 29 days from receipt of the notice from the Internal Revenue Service.

30 (B) A refund shall not be paid if the amended return is  
 31 filed on or after the ~~ninety-first~~ one hundred eighty-first day following  
 32 receipt of the notice from the Internal Revenue Service unless the amended  
 33 return is filed within three (3) years from the time the original return was  
 34 filed or two (2) years from the time the income tax due on the original  
 35 return was paid, whichever of the periods expires later.

36

SECTION 2. Arkansas Code § 26-18-306(i), concerning the time limitations for assessments, collections, and refunds, is amended to read as follows:

(i)(1)(A) An amended return or verified claim for credit or refund of an overpayment of ~~any a~~ state tax shall be filed by the taxpayer within ~~three~~ the later of:

(i) Three (3) years from the time the return was filed or two;

(ii) Two (2) years from the time the tax was paid, whichever of the periods expires later; or

(iii) The statute of limitations period for assessment by the director.

(B) ~~The provisions of subdivision~~ Subdivision (i)(1)(A) of this section ~~shall~~ does not apply to a tax paid as a result of an audit or proposed assessment.

(2) ~~Any A~~ taxpayer who fails to file ~~a~~ an income tax return, underreports his or her income by twenty-five percent (25%) or more, or fails to notify the director of ~~any a~~ change or correction by the Internal Revenue Service in the taxpayer's taxable income ~~shall~~ is not be entitled to file an amended return or verified claim for credit or refund after the expiration of three (3) years from the date the original return or notification of change was originally due.

SECTION 3. Arkansas Code § 26-18-313 is amended to read as follows:

26-18-313. Standard of proof for exemptions, deductions, and credits.

(a) The standard of proof for a taxpayer to establish facts to support a claim for a tax exemption, tax deduction, or tax credit is clear and convincing by a preponderance of the evidence.

(b) When a taxpayer has established facts to support a claim for a tax exemption, tax deduction, or tax credit based on a preponderance of the evidence, the claim shall be denied only if there is substantial doubt that the exemption, deduction, or credit lawfully applies.

SECTION 4. Arkansas Code Title 26, Chapter 18, Subchapter 3, is amended to add an additional section to read as follows:

26-18-314. Transparency.

1       (a)(1) A written legal opinion issued by the director on or after  
2       January 1, 2016, shall be posted on the Arkansas.gov website.

3       (2) Any identifying facts and information that the director  
4       determines to be confidential in nature concerning taxpayers or other  
5       individuals or entities shall be redacted from an opinion posted under this  
6       section.

7       (3) The director may post a synopsis that describes the subject  
8       matter, facts, and guidance provided in an opinion instead of posting the  
9       complete redacted opinion if a copy of the redacted opinion is made available  
10      upon request.

11      (b)(1) A final determination of a hearing officer or the director  
12      issued under § 26-18-405 on or after January 1, 2016, shall be posted on the  
13      Arkansas.gov website.

14      (2) Any identifying facts and information that the director  
15      determines to be confidential in nature concerning taxpayers or other  
16      individuals or entities shall be redacted from a final determination posted  
17      under this section.

18      (3) The director may post a synopsis that fully describes the  
19      subject matter, facts, and conclusions reached by the hearing officer or  
20      director instead of posting the complete determination.

21      (4) An administrative appeal that is settled or withdrawn from  
22      consideration before a final determination is made shall not be posted under  
23      this section.

24  
25      SECTION 5. Arkansas Code § 26-18-406 is amended to read as follows:

26      26-18-406. Judicial relief.

27      (a) After the issuance and service on the taxpayer of the final  
28      assessment of a deficiency in tax that is not protested by the taxpayer under  
29      § 26-18-403 or a final determination of the hearing officer or the director  
30      under § 26-18-405, a taxpayer may seek judicial relief from the final  
31      ~~determination or assessment~~ or determination by:

32              (1)(A) Filing suit for judicial relief from the final assessment  
33              or determination within one hundred eighty (180) days of the date of the  
34              final assessment or determination.

35              (B) A taxpayer filing suit under this subdivision (a)(1)  
36              shall not be required to pay the state tax, penalties, and interest due

1 before filing suit;

2 (2) Paying the entire amount of state tax due for any taxable  
 3 period or periods covered by the final assessment within one (1) year of the  
 4 date of the final assessment or determination and filing suit to recover that  
 5 amount within one (1) year of the date of payment; or

6 ~~(B) The director may proceed with collection activities~~  
 7 ~~including the filing of a certificate of indebtedness as authorized under §~~  
 8 ~~26-18-701 within thirty (30) days of the issuance of the final assessment for~~  
 9 ~~any assessed but unpaid state taxes, penalties, or interest owed by the~~  
 10 ~~taxpayer for other taxable periods covered by the final assessment while the~~  
 11 ~~suit for refund is being pursued by the taxpayer for other taxable periods~~  
 12 ~~covered by the final assessment;~~

13 ~~(2)(A) Filing with the director a bond in double the amount of~~  
 14 ~~the tax deficiency due within thirty (30) days of the issuance and service on~~  
 15 ~~the taxpayer of the final assessment and by filing suit within thirty (30)~~  
 16 ~~days thereafter to stay the effect of the director's determination.~~

17 ~~(B) The bond shall be subject to the conditions that the~~  
 18 ~~taxpayer shall:~~

19 ~~(i) File suit within thirty (30) days after filing~~  
 20 ~~the bond;~~

21 ~~(ii) Faithfully and diligently prosecute the suit to~~  
 22 ~~a final determination; and~~

23 ~~(iii) Pay any deficiency found by the court to be~~  
 24 ~~due and pay any court cost assessed against him or her.~~

25 ~~(C) A taxpayer's failure to file suit, diligently~~  
 26 ~~prosecute the suit, or pay any tax deficiency and court costs, as required by~~  
 27 ~~subdivision (a)(2)(B) of this section, shall result in the forfeiture of the~~  
 28 ~~bond in the amount of the assessment and assessed court costs; or~~

29 (3) Filing suit to recover assessed tax, penalty, and interest  
 30 paid prior to the time for issuance of the final assessment within one (1)  
 31 year of the date of the final determination of the hearing officer or the  
 32 director under § 26-18-405.

33 (b) A taxpayer may seek judicial relief from a final determination  
 34 denying a claim for refund by filing suit to recover the amount claimed  
 35 within one (1) year from the mailing of the denial of the director under §  
 36 26-18-507, or a final determination of the hearing officer or the director

1 under § 26-18-405, whichever is later.

2 (c)(1) Jurisdiction for a suit to contest a final assessment or  
3 determination of the director under this section shall be in the Pulaski  
4 County Circuit Court or the circuit court of the county in which the taxpayer  
5 resides or has his or her principal place of business, where the matter shall  
6 be tried de novo.

7 (2) An appeal will lie from the circuit court to the Supreme  
8 Court, as in other cases provided by law.

9 (3) A presumption of correctness or weight of authority ~~will~~  
10 shall not attach to a final assessment or determination of the director in a  
11 trial de novo or an appeal under this section.

12 (d)(1) The methods provided in this section shall be the sole  
13 alternative methods for seeking relief from a written decision of the  
14 director establishing a deficiency in tax or disallowing a claim for refund.

15 (2) ~~No~~ An injunction shall not issue to stay proceedings for  
16 assessment or collection of ~~any~~ taxes levied under ~~any~~ state tax law.

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

18 (A) Prevailing party may be awarded a judgment for court  
19 costs; and

20 (B) Taxpayer may be awarded reasonable attorney fees if  
21 the:

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

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

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

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

35 (f) If a taxpayer pays the tax, penalty, and interest assessed under §  
36 26-18-403 and does not request administrative relief according to § 26-18-

404, then:

(1) The taxpayer may seek judicial relief from the assessment only if the taxpayer files suit in circuit court within one (1) year from the date of payment of the assessment; and

(2) The provisions of § 26-18-507 shall not apply to the payments.

(g)(1)(A)(i) Collection activities for taxes subject to judicial appeal shall be stayed for the first twenty-four (24) months that a judicial appeal is pending.

(ii) A court may extend a stay under this subsection for good cause shown.

(B) However, after the stay under subdivision (g)(1)(A) of this section expires, the director may proceed with collection activities including without limitation the filing of a certificate of indebtedness as authorized under § 26-18-701 for any assessed but unpaid state taxes, penalties, or interest owed by the taxpayer while the suit is pending.

(2)(A) The Arkansas Rules of Civil Procedure and § 16-56-126 concerning nonsuit and commencement of new actions apply to appeals under this section.

(B) However, nonsuit and commencement of a new action shall not extend a stay of collection beyond the date the stay would expire following the filing of the original action.

SECTION 6. Arkansas Code § 26-18-508 is amended to read as follows:

26-18-508. Interest on deficiencies and overpayments.

(a) Interest shall be collected on tax deficiencies and paid on overpayments as follows:

(1)(A) A tax levied under ~~any~~ state tax law ~~which~~ that is not paid when due is delinquent.

(B) ~~Interest at the rate of ten percent (10%) per annum~~ shall be collected on the total tax deficiency from the date the return for the tax was due to be filed until the date of payment at the rate stated in subsection (b) of this section;

(2)(A) Interest on a tax deficiency shall be assessed at the same time as the tax deficiency.

(B) The tax deficiency together with the interest shall be

1 paid upon notice and demand by the director;

2 (3) When ~~any~~ an overpayment has been made by a taxpayer, the  
3 overpayment shall be refunded together with interest at the rate ~~of ten~~  
4 ~~percent (10%) per annum~~ stated in subsection (b) of this section;

5 (4) Interest on ~~overpayments~~ an overpayment shall be paid from  
6 the date the return for the tax was due to be filed or the date the return is  
7 filed, whichever occurs later, until a date, to be determined by the  
8 director, preceding the date of the refund warrant by not more than thirty  
9 (30) days, whether or not the warrant is accepted by the taxpayer; and

10 (5) ~~No interest~~ Interest shall not be allowed on an overpayment  
11 of tax that is refunded by the director within ninety (90) days after the  
12 last date provided for filing the return for the tax including any extension  
13 of time for filing the return, or ninety (90) days after the date the return  
14 is filed, whichever occurs later; ~~and.~~

15 ~~(6)(A) In lieu of the amount of interest otherwise provided by~~  
16 ~~this section, when an election to defer the payment of estate tax is made~~  
17 ~~pursuant to the provisions of § 26-59-113(e), then the amount of interest on~~  
18 ~~the deferred portion of the estate tax qualifying for the election shall be~~  
19 ~~at the rate of four percent (4%) per annum on the balance of the payments due~~  
20 ~~under the installment deferral election.~~

21 ~~(B) However, the four percent (4%) interest rate shall~~  
22 ~~only apply to the "4 percent portion" as that term is defined in 26 U.S.C. §~~  
23 ~~6601(j)(2), as it existed on January 1, 1989.~~

24 ~~(C) The interest rate on the estate tax exceeding the "4-~~  
25 ~~percent portion" shall be at the rate specified in subdivision (1) of this~~  
26 ~~section.~~

27 (b) The interest rate for deficiencies and overpayments is as follows:

28 (1) Until December 31, 2015, ten percent (10%) per annum; and

29 (2)(A) Beginning January 1, 2016, the interest rate for each  
30 calendar year shall be the rate the director determines to be the average  
31 market yield on outstanding marketable obligations of the United States with  
32 remaining periods to maturity of three (3) years or less during the previous  
33 state fiscal year, plus three (3) percentage points, up to a maximum interest  
34 rate of ten percent (10%) per annum.

35 (B)(i) The rate determined under subdivision (b)(2)(A) of  
36 this section shall be rounded to the nearest full percent.



1                   (ii) If the rate is a percent plus exactly one-half  
2 of one percent (.5%), then the rate shall be rounded up to the nearest full  
3 percent.

4  
5           SECTION 7. Arkansas Code Title 26, Chapter 18, Subchapter 8, is  
6 amended to add an additional section to read as follows:

7           26-18-813. Reimbursement of fees and other costs.

8           (a) As used in this section:

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

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

14                           (A) Expert witnesses;

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

17                           (C) Fees for attorneys or other representatives.

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

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

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

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

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

30                   (1) During the course of the proceeding, the taxpayer  
31 unreasonably protracted the final resolution of the matter as determined by  
32 the hearing officer or director; or

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

35           (d)(1) The taxpayer shall present an itemization of the fees and other  
36 costs to the hearing officer within thirty (30) days after the final

1 determination of the hearing officer or the director under § 26-18-405.

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

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

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

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

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

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

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

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

22 (2) The reimbursable attorney fees or other representative fees  
23 shall not exceed the lesser of two hundred dollars (\$200) per hour or the  
24 actual amount spent unless the director or a court determines that an  
25 increase in the cost of living or a special factor, such as the limited  
26 availability of qualified attorneys for the proceeding, justifies a higher  
27 fee.

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

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

SECTION 8. Arkansas Code § 26-51-806(a), concerning the filing of income tax returns, is amended to read as follows:

26-51-806. Filing returns – Time and place – Forms.

(a)(1) Returns shall be in ~~such~~ the form ~~as~~ the Director of the Department of Finance and Administration ~~may prescribe from time to time~~ prescribes and shall be filed with the director's office at Little Rock.

(2) Returns for all income taxes other than ~~corporation income tax~~, cooperative associations, and exempt organizations shall be filed as follows:

(A) If covering the preceding calendar year, on or before April 15; or

(B) If covering a fiscal year, on or before the expiration of three and one-half (3 1/2) months after the closing date of the period covered.

~~(3) Returns for corporation income tax shall be filed as follows:~~

~~(A) If covering the preceding calendar year, on or before March 15; or~~

~~(B) If covering a fiscal year, on or before the expiration of two and one-half (2 1/2) months after the closing date of the period covered.~~

~~(4)~~ (3)(A) Returns for cooperative association income tax shall be filed as follows:

(i) If covering the preceding calendar year, on or before September 15; or

(ii) If covering a fiscal year, on or before the expiration of eight and one-half (8 1/2) months after the closing date of the period covered.

(B) As used in this section, "cooperative association" means a cooperative association as described in § 26 U.S.C. § 1381(a) as in effect on January 1, 2003.

~~(5)~~ (4)(A) Returns for an exempt organization that is required to file an income tax return shall be filed as follows:

(i) If covering the preceding calendar year, on or before May 15; or

(ii) If covering a fiscal year, on or before the

expiration of four and one-half (4 1/2) months after the closing date of the period covered.

(B) As used in this section, "exempt organization" means an organization as described in § 26-51-303.

SECTION 9. Arkansas Code § 26-52-523(d), concerning credits and rebates of local sales and use taxes, is amended to read as follows:

(d) ~~No~~ A credit or rebate under this section shall not be paid for ~~any~~ a claim filed after six (6) months from more than three (3) years following the date of the qualifying purchase or ~~after six (6) months from more than~~ two (2) years following the date of payment, if later.