

1 State of Arkansas

*As Engrossed: S3/3/15 S3/5/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

SENATE BILL 490

5 By: Senators B. Sample, Teague, Hester, Files, *Hickey*

6 *By: Representative Bragg*

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAWS CONCERNING THE  
10 ADMINISTRATION OF STATE TAXES; TO IMPROVE THE  
11 FAIRNESS OF TAX ADMINISTRATION BY ELIMINATING  
12 PREPAYMENT CONDITIONS FOR APPEAL, ADJUSTING THE  
13 TAXPAYER BURDEN OF PROOF, EQUALIZING THE LIMITATIONS  
14 PERIOD FOR REFUNDS, PROMOTING TRANSPARENCY IN TAX  
15 ADMINISTRATION, CONFORMING DUE DATES FOR INCOME TAX  
16 RETURNS, AND EXTENDING THE REBATE PERIOD FOR LOCAL  
17 TAXES; AND FOR OTHER PURPOSES.

## Subtitle

21 TO IMPROVE THE FAIRNESS OF TAX  
22 ADMINISTRATION.

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

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

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



1 director the corrected federal tax, taxable income, or taxable estate for the  
2 taxable period covered by the change on an amended Arkansas income tax  
3 return.

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

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

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

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

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

35  
36 *SECTION 2. Arkansas Code § 26-18-306, concerning the time limitations*

1 for assessments, collections, and refunds, is amended to add an additional  
2 subsection to read as follows:

3 (m)(1) Except in the case of deficiencies that are determined to be  
4 due to fraud, if the director assesses a tax or begins an action in court for  
5 the collection of a tax under subsection (e) or subsection (f) of this  
6 section for a time period in excess of the time periods provided in  
7 subsection (a) of this section, the taxpayer may file a verified claim for a  
8 credit or refund of an overpayment of state tax for the additional time  
9 period open for assessment by the director at any time before the time of  
10 collection of the assessment.

11 (2) However, the taxpayer shall not receive a credit or refund  
12 of any amount in excess of the assessment under this subsection.

13 (3) The taxpayer's ability to file a verified claim under this  
14 subsection is in addition to and not in limitation of the other provisions  
15 for filing claims in this section.

16  
17 SECTION 3. Arkansas Code § 26-18-313 is amended to read as follows:

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

20 ~~The standard of proof for a taxpayer to establish facts to support a~~  
21 ~~claim for a tax exemption, tax deduction, or tax credit is clear and~~  
22 ~~convincing evidence.~~

23 (a) When the state seeks to impose a tax under the terms of a state  
24 tax law, then the statute imposing the tax shall be strictly construed in  
25 limitation of the imposition of the tax.

26 (b) When a taxpayer claims to be entitled to a tax exemption,  
27 deduction, or credit under the terms of a state tax law, then the statute  
28 providing the tax exemption, deduction, or credit shall be strictly construed  
29 in limitation of the exemption, deduction, or credit.

30 (c) The burden of proof applied to matters of fact and evidence,  
31 whether placed on the taxpayer or the state, in controversies regarding the  
32 application of a state tax law shall be by preponderance of the evidence.

33 (d) When the meaning of a state tax law is in controversy, the burden  
34 of establishing the proper construction of the statute shall be on the party  
35 claiming application of the tax or benefit of the tax exemption, deduction,  
36 or credit.

1 (e) Words used in statutes imposing a tax and in statutes providing  
2 for a tax exemption, deduction, or credit shall be given their plain and  
3 ordinary meaning, not their narrowest possible meaning.

4 (f)(1) Statutes imposing a tax and statutes providing a tax exemption,  
5 deduction, or credit shall be fairly and reasonably construed, taking into  
6 consideration the purpose and spirit of the tax, exemption, deduction, or  
7 credit and the public policy at the time the statute was passed.

8 (2) If after taking this section and other applicable rules of  
9 statutory construction into account, a well-founded doubt exists with respect  
10 to the meaning of a statute imposing a tax or providing a tax exemption,  
11 deduction, or credit, the rule of strict construction shall require that the  
12 doubt be resolved against the tax, exemption, deduction, or credit.

13 (g) This section is remedial and procedural and shall apply to all  
14 actions on and after the effective date of this section.

15  
16 SECTION 4. Arkansas Code Title 26, Chapter 18, Subchapter 3, is  
17 amended to add an additional section to read as follows:

18 26-18-314. Transparency.

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

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

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

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

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

36 (3) The director may post a synopsis that fully describes the

1 subject matter, facts, and conclusions reached by the hearing officer or  
2 director instead of posting the complete determination.

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

6  
7 SECTION 5. Arkansas Code § 26-18-406 is amended to read as follows:  
8 26-18-406. Judicial relief.

9 (a) After the issuance and service on the taxpayer of the final  
10 assessment of a deficiency in tax that is not protested by the taxpayer under  
11 § 26-18-403 or a final determination of the hearing officer or the director  
12 under § 26-18-405, a taxpayer may seek judicial relief from the final  
13 ~~determination or assessment~~ or determination by:

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

17 (B) A taxpayer filing suit under this subdivision (a)(1)  
18 shall not be required to pay the state tax, penalties, and interest due  
19 before filing suit;

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

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

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

35 ~~(B) The bond shall be subject to the conditions that the~~  
36 ~~taxpayer shall;~~

1                               ~~(i) File suit within thirty (30) days after filing~~  
2 ~~the bond;~~

3                               ~~(ii) Faithfully and diligently prosecute the suit to~~  
4 ~~a final determination; and~~

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

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

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

15                               (b) A taxpayer may seek judicial relief from a final determination  
16 denying a claim for refund by filing suit to recover the amount claimed  
17 within one (1) year from the mailing of the denial of the director under §  
18 26-18-507, or a final determination of the hearing officer or the director  
19 under § 26-18-405, whichever is later.

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

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

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

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

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

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

36                               (A) Prevailing party may be awarded a judgment for court

1 costs; and

2 (B) Taxpayer may be awarded reasonable attorney fees if  
3 the:

4 "(i) Director revised a decision of the hearing  
5 officer in favor of the taxpayer under § 26-18-405;

6 (ii) Taxpayer is the prevailing party in an action  
7 for judicial relief from the determination of the director under this  
8 section; and

9 (iii) Court finds that the director's revision was  
10 without a reasonable basis in law and fact.

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

16 (f) If a taxpayer pays the tax, penalty, and interest assessed under §  
17 26-18-403 and does not request administrative relief according to § 26-18-  
18 404, then:

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

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

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

26  
27 SECTION 6. Arkansas Code § 26-51-806(a), concerning the filing of  
28 income tax returns, is amended to read as follows:

29 26-51-806. Filing returns – Time and place – Forms.

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

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

36 (A) If covering the preceding calendar year, on or before

1 April 15; or

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

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

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

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

12 ~~(4)~~ (3)(A) Returns for cooperative association income tax shall  
13 be filed as follows:

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

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

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

22 ~~(5)~~ (4)(A) Returns for an exempt organization that is required  
23 to file an income tax return shall be filed as follows:

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

26 (ii) If covering a fiscal year, on or before the  
27 expiration of four and one-half (4 1/2) months after the closing date of the  
28 period covered.

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

31  
32 SECTION 7. Arkansas Code § 26-52-523(d), concerning credits and  
33 rebates of local sales and use taxes, is amended to read as follows:

34 (d) ~~No~~ A credit or rebate under this section shall not be paid for ~~any~~  
35 a claim filed after six (6) months from more than one (1) year following the  
36 date of the qualifying purchase or after six (6) months from more than one



1 (1) year following the date of payment, if later.

2  
3 *SECTION 8. EFFECTIVE DATE. Sections 1 through 7 of this act are*  
4 *effective on the first day of the calendar quarter following the effective*  
5 *date of this act.*

6  
7 /s/B. Sample  
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