

## 1989-1. Taxpayer Bill of Rights Regulation

The Commissioner of Revenues of the State of Arkansas pursuant to the authority vested in him in Section 1 of Act 590 of 1989 does hereby promulgate the following regulations for the orderly administration of Section 1 of Act 590 of 1989, known as the "Taxpayer Bill of Rights."

BR-1. EFFECTIVE DATE. These regulations shall be effective on and after September 11, 1989.

BR-2. PURPOSE OF THE REGULATIONS. The following regulations are promulgated to implement and clarify the Taxpayer Bill of Rights Act, Section 1 of Act 590 of 1989. All persons affected by or relying upon these regulations are advised to read them in their entirety because the meaning of the provisions of one regulation may depend upon the provisions contained in another regulation.

### BR-3. DISCLOSURE OF RIGHTS OF TAXPAYER.

A. Agents of the Commissioner shall distribute to taxpayers a copy of the statement - "Your Rights as a Taxpayer" -:

- (1) When a proposed assessment of any state tax is made against the taxpayer or when the taxpayer is contacted by the Commissioner for an examination of the taxpayer's records, whichever is earlier;
- (2) When requested by the taxpayer; and
- (3) At any time the Commissioner deems it appropriate.

B. The Commissioner is not required to provide a copy of the statement outlined in paragraph A. above to a taxpayer who writes an insufficient fund check or a check drawn on a bank where the taxpayer does not have an account in payment of a state tax debt.

### BR-4. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

A. Recordings of Interviews:

- (1) Recording by Taxpayer - Any agent of the Commissioner in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio

recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

- (2) Recording by Commissioner - An agent of the Commissioner may make an audio recording of any interview described in paragraph (1) if such agent –
  - (A) informs the taxpayer of such recording prior to the interview, and
  - (B) upon request of the taxpayer, provides the taxpayer with a copy of such recording but only if the taxpayer provides reimbursement for the cost of the reproduction of such copy.
  - (C) Cost of the reproduction shall be the Commissioner's cost for the blank tapes.
- (3) Administrative hearings under Ark. Code Ann. §20-18-405 are not "interviews" within the meaning of this regulation. A taxpayer may record any administrative hearing but the Commissioner shall not be required to provide copies of his own recording of the hearing.

B. Safeguards:

- (1) Explanations of Processes. - An agent of the Commissioner shall before or at an initial interview provide to the taxpayer –
  - (A) In the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or
  - (B) In the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.
- (2) Right of Consultation. - If the taxpayer clearly states to an agent of the Commissioner at any time during any interview (other than an interview initiated by an administrative summons issued under § 26-18-305) that the taxpayer wishes to consult with an attorney, certified public accountant, or any other person permitted to represent the taxpayer before the Commissioner; such agent shall suspend such interview regardless of whether the taxpayer may have answered one or more questions. However, the taxpayer may be requested to sign a waiver extending the time the Commissioner has for making a final assessment as provided by §

26-18-401. If the taxpayer refuses to sign such a waiver, the taxpayer may be subject to an estimated assessment by the Commissioner based upon the best information available to the Commissioner.

C. Representatives Holding Power of Attorney. - Any attorney, certified public accountant, or any other person permitted to represent the taxpayer before the Commissioner who is not disbarred or suspended from practice may be authorized by such taxpayer to represent the taxpayer in any interview described in Subsection A. An agent of the Commissioner may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under 26-18-305. Such an agent, with the consent of the immediate supervisor of such agent, may notify the taxpayer directly that such agent believes such representative is responsible for unreasonable delay or hindrance of an examination or investigation of the taxpayer.

D. Section Not to Apply to Certain Investigations. This section shall not apply to criminal investigations or investigations relating to the integrity of any agent of the Commissioner.

#### BR-5. ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE COMMISSIONER.

A. In General - The Commissioner shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an agent of the Commissioner, acting in such agent's official capacity.

B. Limitations. - Paragraph (A) shall apply only if -

(1) The written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(2) The portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

#### BR-6. BASIS FOR EVALUATION OF EMPLOYEES.

A. In General - The Commissioner shall not use records of tax collection results -

(1) to evaluate employees directly involved in collection activities, and their immediate supervisors, or

(2) to impose or suggest production quotas or goals with respect to employees directly involved in collection activities, and their immediate supervisors.

BR-7. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

A. Authorization of Agreements. - The Commissioner is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Commissioner determines that such agreement will facilitate collection of such liability.

B. Extent to Which Agreements Remain in Effect. -

(1) In General. -- Except as otherwise provided in this subsection, any agreement entered into by the Commissioner under subsection A. shall remain in effect for the term of the agreement.

(2) Inadequate Information or Jeopardy. -- The Commissioner may terminate any agreement entered into by the Commissioner under subsection A. if -

(A) Information which the taxpayer provided to the Commissioner prior to the date such agreement was entered into was inaccurate or incomplete, or

(B) The Commissioner believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) Subsequent Change in Financial Conditions. -

(A) In General - If the Commissioner makes a determination that the financial condition of a taxpayer with whom the Commissioner has entered into an agreement under subsection A. has significantly changed, the Commissioner may alter, modify, or terminate such agreement.

(B) Notice - Action may be taken by the Commissioner under subparagraph A. only if -

(i) Notice of such determination is provided to the taxpayer no later than thirty (30) days prior to the date of such action, and

(ii) Such notice includes the reasons why the Commissioner believes a significant change in the financial condition of the taxpayer has occurred.

(4) Failure to Pay an Installment of any other Tax Liability when Due or to Provide Requested Financial Information. - The Commissioner may

alter, modify, or terminate an agreement entered into by the Commissioner under subsection A. in the case of the failure of the taxpayer –

(A) To pay any installment at the time such installment payment is due under such agreement,

(B) To pay any other tax liability at the time such liability is due, or

(C) to provide a financial condition update as requested by the Commissioner.

#### BR-8. TAXPAYER NOTICE TO THE COMMISSIONER OF FAILURE TO RELEASE LIEN.

A. If a lien against a taxpayer is still on file after the debt has been satisfied in full, the taxpayer shall notify the Commissioner. The notice must contain the following:

1. A letter stating when and how the debt was paid in full or discharged;
2. The taxpayer's social security number, federal I.D. number or permit number;
3. Telephone number at which taxpayer can be reached.
4. County or counties in which lien is filed.
5. The name or names and address under which the lien is filed.
6. Type of tax and the amount of the lien.

B. The information required above should be mailed to:

Office of Revenue Legal Counsel  
P.O. Box 1272-L  
Little Rock, Arkansas 72203

C. If taxpayer's information concerning payment in full or discharge is correct, the lien will be released immediately. If taxpayer's information is incorrect, taxpayer is to be notified in writing why the lien was not released and what the taxpayer must do to have the lien released.

#### BR-9. ADMINISTRATIVE APPEAL OF LIENS.

A. In General. - Any person shall be allowed to appeal to the Commissioner after the filing of a notice of a lien on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien.

B. Certificate of Release. - If the Commissioner determines that the filing of the notice of any lien was erroneous, the Commissioner shall expeditiously (and, to the extent practicable, within fourteen (14) days after such determination) issue a certificate

of release of such lien and shall include in such certificate a statement that such filing was erroneous.

Dated this 22<sup>nd</sup> day of August, 1989

Jim C. Pledger, Director  
Department of Finance and Administration  
State of Arkansas

Timothy J. Leathers  
Commissioner of Revenues  
State of Arkansas