

REVENUE DIVISION REGULATIONS

SURETY BOND REGULATION

Pursuant to authority given the Commissioner of Revenues by sections 4 and 32 of Act 401 of 1979 (Ark. Stat. Ann. §§84-4704 and 4732), after the effective date of this regulation, only corporate surety bonds, certificates of deposit with assignment and irrevocable letters of credit which meet the requirements of this regulation shall be accepted where a bond is required for the purpose of any state tax law.

1) Definitions:

- (A) Terms shall have the meaning set out in the Arkansas Tax Procedure Act.
- (B) “Bond” means any corporate surety bond, certificate of deposit or letter of credit given for the purpose of guaranteeing payment.
- (C) “Excise Tax” means any state tax except the tax levied on the income of corporations and individuals by Act 118 of 1929, as amended, the Arkansas Corporate Franchise Tax levied by Act 889 of 1979, as amended, and the Arkansas Real Property Transfer Tax levied by Act 2785 of 1971, as amended.
- (D) “Insurer” means any person with a valid certificate of authority, issued by the Arkansas Insurance Commissioner which certificate grants the authority to become surety on contracts in the State of Arkansas, or any other guarantor approved by the Commissioner of Revenues.

2) After the effective date of this regulation, bonds required by state tax laws, except bonds filed under Ark. Stat. Ann. §84-4721 for the purpose of seeking judicial relief from the decision establishing a tax deficiency, will not be accepted unless the bond guarantees payment of all state, county and municipal excise taxes required to be collected by the Commissioner which are levied on or arise out of the same transaction as the tax for which the bond is required during the period covered by the bond. Provided that no audit shall be required for any tax except the specific tax for which the bond is obtained.

3) (A) The obligation for payment of a state tax by any person on account of any bond shall not be released until the Commissioner is satisfied, either by audit or otherwise that, all tax liability of the person on account of the bond has been paid.

(B) Because an audit will be necessary before most bonds are released, a bond shall be effective for at least one year from the date of issuance before it may be released (except in the case of a business which closes) or before any other bond may be substituted in its place. It is not the intent of this section to increase the liability of the surety in excess of the face amount of the bond regardless of the period of time the bond remains in force nor is it the intent to affect the right of any surety on a corporate surety bond to terminate the bond at any time.

4) A bond required by state tax law shall not be accepted unless it is a corporate surety bond, certificate of deposit with assignment or irrevocable letter of credit and meets the following requirements:

(A) "Corporate Surety Bond". A corporate surety bond shall:

- i) be on forms approved by Commissioner;
- ii) be issued by an insurer;
- iii) be signed by the individual owner, a partner, or a corporate officer showing his authority, and payable to the State of Arkansas;
- iv) be signed by the insurer or its licensed agent or broker with power of attorney to act on behalf of the insurer and countersigned as otherwise required by law;
- v) be accompanied by:
 - a) an application for permit signed by the taxpayer
 - b) the taxpayer's written consent to an audit of his records prior to release or cancellation of the bond,
 - c) power of attorney of the person executing on behalf of the insurer,
- vi) contain a provision which requires the insurer to give 60 days notice to Commissioner prior to cancellation of the bond;
- vii) in all other respects comply with specific statutory requirements applicable under the state tax laws.

(B) "Certificate of Deposit with Assignment": a certificate of deposit and assignment shall:

- i) be on forms approved by the Commissioner
- ii) In the case of the certificate of deposit:
 - a) be signed by the assignor;
 - b) be issued by a bank or savings and loan;
 - c) be delivered to the Commissioner;
 - d) contain a provision for the automatic renewal of the certificate;
 - e) in all other respects comply with statutory requirements of the laws of the State of Arkansas;

- iii) in the case of the assignment which shall accompany the certificate of deposit:
 - a) be signed by assignor;
 - b) be acknowledged by the financial institution;
 - c) contain an irrevocable appointment of the Commissioner which allows him to endorse the certificate of deposit and apply the proceeds to any and all state and local tax liability of the taxpayer;
 - d) contain or be accompanied by a written consent to an audit of the taxpayer's records prior to the release or cancellation of the certificate of deposit;
 - e) provide that the certificate of deposit is to be held by the Commissioner for a period of not less than one year from the date of delivery to the Commissioner.
- iv) No certificate of deposit will be accepted or approved by the Commissioner for the purpose of security in lieu of a contractor's surety bond.

(C) "Irrevocable Letter of Credit": An irrevocable letter of credit shall:

- i) be on forms supplied by the issuer and approved by the Commissioner,
- ii) be issued by an Arkansas bank;
- iii) be an irrevocable letter of credit;
- iv) be titled or conspicuously state that it is an irrevocable letter of credit;
- v) state that any draft drawn against the letter of credit is payable on presentment of a notice of proposed assessment;
- vi) contain or be accompanied by a written consent to an audit of the taxpayer's records prior to termination.
- vii) state that it may be drawn against for any state excise tax liability of the business for the year during which the letter is effective plus the preceding 3 years.
- viii) the letter of credit may state it may be terminated on a day certain, provided that notice of termination of the letter of credit is received

by the Commissioner from the customer or issuer no later than six (6) months prior to the date of termination. The notice of termination shall be acknowledged in writing by the manager of the Tax Section for the notice of termination to be effective and for the six month period to begin.

- ix) where a letter of credit expires or is terminated the Commissioner shall conduct an audit prior to the date of expiration unless, prior to the beginning of the audit, a new letter of credit is provided which can be drawn against for any state excise tax liability of the business for the time immediately after the time the present letter of credit ends plus the preceding 3 years.

Witness our hands this 29th day of June 1987.

Mahlon A Martin

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