

1 State of Arkansas *As Engrossed: H3/10/17 S3/23/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 1681

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5 By: Representative Jett

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For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT; TO
9 AMEND THE DEFINITIONS UNDER THE ARKANSAS TAX
10 PROCEDURE ACT; TO PROVIDE THAT ERRONEOUSLY PAID
11 REFUNDS ARE CONSIDERED UNDERPAYMENTS OF TAX AND
12 SUBJECT TO ASSESSMENT; TO CREATE STATUTES OF
13 LIMITATION SPECIFIC TO ASSESSMENTS FOR ERRONEOUSLY
14 PAID REFUNDS; TO PROVIDE A FORMAL MECHANISM TO ISSUE
15 ASSESSMENTS FOR ERRONEOUSLY PAID REFUNDS; TO PROVIDE
16 THAT TAX LIENS MAY BE FILED AND EXECUTIONS ISSUED TO
17 RECOVER ERRONEOUSLY PAID REFUNDS; AND FOR OTHER
18 PURPOSES.

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Subtitle

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

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SECTION 1. Arkansas Code § 26-18-104(15), concerning the definitions
32 to be used under the Arkansas Tax Procedure Act, is amended to read as
33 follows:

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*(15)(A) "Tax deficiency" or "deficiency" means the amount ~~by~~
~~which the tax imposed by any state tax exceeds the excess of the sum of:~~
~~(A) The amount shown as the tax by the taxpayer on his or~~*



1 ~~her return if a return was made by the taxpayer; plus~~

2 ~~(B) The amounts previously assessed or collected without~~
3 ~~assessment as a deficiency of tax owed by a taxpayer that is not paid when~~
4 ~~due.~~

5 (B) "Tax deficiency" or "deficiency" includes an
6 underpayment of tax;

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8 SECTION 2. Arkansas Code § 26-18-104(18), concerning the definitions
9 to be used under the Arkansas Tax Procedure Act, is amended to read as
10 follows:

11 (18)(A) "Underpayment" means the difference between the state
12 tax paid and the amount required to be paid under the particular state tax
13 law in question.

14 (B) "Underpayment" includes an erroneously paid refund;
15 and

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17 SECTION 3. Arkansas Code § 26-18-104, concerning the definitions to be
18 used under the Arkansas Tax Procedure Act, is amended to add an additional
19 subdivision to read as follows:

20 (19) "Erroneously paid refund" means a refund of tax received by
21 a taxpayer that was not entitled to receive the refund.

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23 SECTION 4. Arkansas Code § 26-18-306, concerning the time limitations
24 for assessments, collection, refunds, and prosecution under the Arkansas Tax
25 Procedure Act, is amended to add an additional subsection to read as follows:

26 (n)(1) Except as provided in subdivision (n)(2) of this section, an
27 assessment to recover an erroneously paid refund shall not be made after the
28 expiration of three (3) years from the date of the refund warrant.

29 (2) However, an assessment may be made at any time to recover an
30 erroneously paid refund that was paid as a result of fraud or
31 misrepresentation by the taxpayer.

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33 SECTION 5. Arkansas Code § 26-18-403, concerning proposed assessments
34 under the Arkansas Tax Procedure Act, is amended to add an additional
35 subsection to read as follows:

36 (c)(1) An erroneously paid refund is a tax deficiency and is subject

1 to assessment under this section.

2 (2)(A) When an erroneously paid refund is issued to a taxpayer,
3 the director shall issue a notice of proposed assessment for the amount of
4 the erroneously paid refund, plus interest and any penalty authorized under
5 this chapter.

6 (B) The notice of proposed assessment to recover an
7 erroneously paid refund shall explain the basis for the proposed assessment
8 and shall inform the taxpayer that a final assessment under § 26-18-401 shall
9 be made if the taxpayer fails to protest the assessment under § 26-18-404.

10 (3) Sections 26-18-404, 26-18-405, 26-18-406, and 26-18-701
11 apply to assessments of erroneously paid refunds.

12 (4) Interest and penalties imposed on a tax deficiency are
13 subject to waiver or abatement in accordance with the procedure established
14 in § 26-18-705(b) if the tax deficiency arose from an error by the Department
15 of Finance and Administration that resulted in the issuance of an erroneously
16 paid refund.

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18 /s/Jett

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21 **APPROVED: 04/06/2017**
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