

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Hawkins**

A Bill

HOUSE BILL 1546

For An Act To Be Entitled

8 "AN ACT PROVIDING FOR A STUDY OF ARKANSAS CODE 26-52-
9 301(3)(E) RELATING TO THE LEVY OF A SALES TAX ON CERTAIN
10 SERVICES; TO AMEND THE ARKANSAS TAX PROCEDURE ACT TO
11 CONFORM THE METHODS OF CONTESTING STATE TAX ASSESSMENTS
12 AND FILING CLAIMS FOR REFUND TO THE SIMILAR FEDERAL TAX
13 PROCEDURE METHODS; AND FOR OTHER PURPOSES."

Subtitle

16 "PROVIDING FOR A STUDY OF THE NEED TO EXEMPT CLEANING AND
17 JANITORIAL SERVICES FROM THE SALES TAX; TO ALLOW A
18 TAXPAYER AN ALTERNATIVE RIGHT TO CONTEST STATE TAX
19 DISPUTES."

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

23 SECTION 1. The Joint Interim Committee on Revenue and Taxation shall
24 conduct a study of Arkansas Code 26-52-301(3)(E), as added by Section 1 of Act
25 5 of the Second Extraordinary Session, 1992, for the purpose of examining the
26 need to exempt cleaning and janitorial services from the Arkansas Gross
27 Receipts Tax. The committee shall report its findings and recommendations to
28 the Eightieth General Assembly.

30 SECTION 2. Arkansas Code 26-18-406(a) is amended to read as follows:

31 "(a) Within thirty (30) days of the issuance of the notice and demand
32 for payment of a deficiency in tax established by a final determination of the
33 hearing officer or the director under § 26-18-405, a taxpayer may seek
34 judicial relief from the final determination by :

35 (1) Paying under protest the amount of the deficiency, plus

1 penalty and interest determined by the director to be due for any taxable
2 period involved, and filing a suit to recover that amount within one (1) year
3 from the date of payment under protest; or

4 (2) (A) Filing with the director a bond in double the amount of the
5 tax deficiency due and by filing suit within thirty (30) days thereafter to
6 stay the effect of the director's determination.

7 (B) The bond shall be subject to the condition that the
8 taxpayer shall file suit within thirty (30) days after filing the bond, shall
9 faithfully and diligently prosecute the suit to a final determination, and
10 shall pay any deficiency found by the court to be due and any court costs
11 assessed against him.

12 (C) A taxpayer's failure to file suit, diligently prosecute
13 the suit, or pay any tax deficiency and court costs, as required by this
14 subsection, shall result in the forfeiture of the bond in the amount of the
15 assessment and assessed court costs."

16

17 SECTION 3. Arkansas Code 26-18-406 (d) is amended to read as follows:

18 "(d) The method provided in this section, or the refund method provided
19 by § 26-18-507, shall be the sole alternative methods for seeking relief from
20 a written decision of the director establishing a deficiency in tax. No
21 injunction shall issue to stay proceedings for assessment or collection of any
22 taxes levied under any state tax law, unless the effected taxpayer shall
23 establish to the satisfaction of a Chancery Court that there is no set of
24 circumstances where the Department of Finance and Administration will
25 ultimately prevail on its assessment."

26

27 SECTION 4. Arkansas Code 26-18-507(a) is amended to read as follows:

28 "(a) Any taxpayer who has paid any state tax to the State of Arkansas in
29 excess of the taxes lawfully due shall, subject to the requirements of this
30 chapter, be refunded the overpayment of the tax determined by the director to
31 be erroneously paid upon the filing of an amended return or a verified claim
32 for refund."

33

34 SECTION 5. Arkansas Code 26-18-507 (e) is amended to read as follows:

35 "(e) (1) The director shall make a written determination and give notice

1 to the taxpayer concerning whether or not a refund is due. If a refund is
2 due, the director shall certify that the claim is to be paid to the taxpayer
3 as provided by law or credited against taxes due or to become due.

4 (2) (A) The taxpayer may seek, as an alternative to the protest
5 procedure set out in Ark. Code Ann. § 26-18-406, judicial relief from:

6 (i) The written decision of the director which denies
7 the claim in whole or part; or

8 (ii) The director's failure to issue a written
9 decision after the claim has been filed for six (6) months;

10 by filing an action for such refund with the Pulaski County Chancery
11 Court or the chancery court of the county in which the taxpayer resides or has
12 his principal place of business after at least six (6) months have expired
13 from the date of the filing of the claim for refund if the director has not
14 acted on the claim, or within ninety (90) days after issuance of the
15 director's written decision.

16 (B) A written decision of the director on a refund becomes
17 final and not subject to suit ninety-one (91) days after it is issued to the
18 taxpayer."

19

20 SECTION 6. The General Assembly intends, by the passage of this
21 Amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its
22 intent that taxpayers involved in state tax disputes with the Arkansas
23 Department of Finance and Administration shall have, as much as possible, the
24 opportunity to secure an objective review of their dispute by a court at law
25 through either: (1) the payment under protest method; or (2) the claim for
26 refund method, after the payment by the taxpayer of all state tax claimed to
27 be due from the taxpayer for at least one complete taxable period in dispute.
28 This amendment to the Arkansas Tax Procedure Act is intended to conform state
29 tax procedure to similar provisions of the Internal Revenue Code for federal
30 tax purposes and to recognize, for state tax purposes, the "divisible tax"
31 theory applicable to federal tax procedure, as also being applicable for state
32 tax purposes.

33

34 SECTION 7. All provisions of this act of a general and permanent
35 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

2

3 SECTION 8. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

8

9 SECTION 9. All laws and parts of laws in conflict with this act are
10 hereby repealed.

11

12 SECTION 10. EMERGENCY. It is hereby found and determined by the
13 General Assembly that a taxpayer's procedural right to pursue an objective
14 judicial review in a challenge to a state tax assessment is being unfairly
15 denied to Arkansas taxpayers who have legitimate disputes with the Arkansas
16 Department of Finance and Administration, and that the provisions of this Act
17 are needed to cure this problem for state taxpayers. Accordingly, it is
18 therefore found that an emergency is hereby declared to exist and this Act
19 being necessary for the immediate preservation of the public peace, health and
20 safety, shall be in full force and effect from and after its passage and
21 approval.

22

23

24

25

26

/s/Bruce Hawkins

27

28

29

30

31

32

33

34

35

As Engrossed: 3/25/93 3/26/93 3/31/93

HB 1546

1
2
3

jmb163