

As Engrossed: 3/5/93 3/8/93 4/2/93

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representatives Mahony, Hinshaw, Jones, Cunningham, and K. Wood**

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For An Act To Be Entitled

8 *"AN ACT TO PROHIBIT STATE COURTS FROM AWARDING CERTAIN*
9 *ATTORNEY FEES IN STATE TAX CASES; TO SPECIFY WHEN A*
10 *REQUEST FOR A REFUND OF STATE TAXES COLLECTED UNDER AN*
11 *INVALID OR UNCONSTITUTIONAL TAX STATUTE MAY BE FILED; TO*
12 *AMEND ARK. CODE ANN. § 26-18-507(a) TO PROVIDE THAT A*
13 *REFUND MAY BE REQUESTED IF A TAX STATUTE OR REGULATION IS*
14 *DECLARED INVALID OR UNCONSTITUTIONAL; AND FOR OTHER*
15 *PURPOSES."*

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Subtitle

18 *"TO PROHIBIT PAYMENT OF CERTAIN ATTORNEYS' FEES IN TAX*
19 *CASES; TO SPECIFY WHEN A REFUND REQUEST MAY BE FILED IF A*
20 *TAX STATUTE IS HELD UNCONSTITUTIONAL."*

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

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24 SECTION 1. Subchapter 7 of Chapter 18 of Title 26 of the Arkansas Code
25 of 1987 Annotated is hereby amended by adding a new section to read as
26 follows:

27 *"26-18-708. No court shall award attorney fees against this state which*
28 *are in addition to the amount of any taxes ordered by the Court to be refunded*
29 *in favor of any party in an action in any court of this State brought to*
30 *obtain relief from the imposition, assessment, collection, deposit,*
31 *disbursement or other administration of any state tax. Nothing herein shall*
32 *prohibit a court from awarding attorney fees from the amount of any taxes*
33 *ordered by the court to be refunded. This Section shall not apply to the*
34 *award of attorney fees under federal statutes which preempt state law.*

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1 SECTION 2. Ark. Code Ann. § 26-18-306 is hereby amended by adding a new
2 subsection (k) to read as follows:

3 "*(k) Any amended return or verified claim for credit or refund of an*
4 *overpayment of any state tax which challenges the constitutionality of a tax*
5 *statute or regulation, shall be filed by the taxpayer withing two (2) years*
6 *from the time the tax was paid. Any taxes paid on or before the effective*
7 *date of this Act shall be under existing law with the two (2) year limitation*
8 *period to begin with taxes paid subsequent to the effective date of this Act.*"

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10 SECTION 3. Section 26-18-507(a) of the Arkansas Code of 1987 Annotated
11 is hereby amended as follows:

12 "(a) Any taxpayer who has paid any state tax to the State of Arkansas,
13 through error of fact, computation, or mistake of law, or under a tax statute
14 or regulation declared invalid or unconstitutional by a court of competent
15 jurisdiction, in excess of the taxes lawfully due shall, subject to the
16 requirements of this chapter, be refunded the overpayment of the tax
17 determined by the director to be erroneously paid upon the filing of an
18 amended return or a verified claim for refund."

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20 SECTION 4. *This Act is not applicable to actions in state court which*
21 *have been filed as of the effective date of this Act.*

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23 SECTION 5. *Nothing contained in this Act shall be construed to create*
24 *any inference with respect to the applicable law in effect prior to the*
25 *effective date hereof.*

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27 SECTION 6. All laws and parts of laws in conflict with this Act are
28 hereby repealed.

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30 SECTION 7. All provisions of this Act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 8. It is hereby found and determined by the General Assembly
35 that lawsuits challenging the constitutionality of state tax laws are

1 resulting in great uncertainty regarding the amount of state revenues
2 available for distribution to state agencies, and that this uncertainty
3 inhibits state agencies from properly planning for and providing essential
4 state services, and that the effectiveness of this Act is essential to the
5 ability of state agencies to plan and provide those services required by the
6 citizens of this State. Therefore, an emergency is hereby declared to exist
7 and this Act being necessary for the immediate preservation of the public
8 peace, health and safety, shall be in full force and effect from and after its
9 passage and approval.

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/s/Jodie Mahony, et al

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HB 1827

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