For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT; TO AMEND THE DEFINITIONS UNDER THE ARKANSAS TAX PROCEDURE ACT; TO PROVIDE THAT ERRONEOUSLY PAID REFUNDS ARE CONSIDERED UNDERPAYMENTS OF TAX AND SUBJECT TO ASSESSMENT; TO CREATE STATUTES OF LIMITATION SPECIFIC TO ASSESSMENTS FOR ERRONEOUSLY PAID REFUNDS; TO PROVIDE A FORMAL MECHANISM TO ISSUE ASSESSMENTS FOR ERRONEOUSLY PAID REFUNDS; TO PROVIDE THAT TAX LIENS MAY BE FILED AND EXECUTIONS ISSUED TO RECOVER ERRONEOUSLY PAID REFUNDS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE DEFINITIONS UNDER THE ARKANSAS TAX PROCEDURE ACT; AND TO PROVIDE THAT ERRONEOUSLY PAID REFUNDS ARE CONSIDERED UNDERPAYMENTS OF TAX AND ARE SUBJECT TO ASSESSMENT.

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

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

(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
her return if a return was made by the taxpayer; plus

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

    (B) “Tax deficiency” or “deficiency” includes an
underpayment of tax;

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

(18)(A) “Underpayment” means the difference between the state
tax paid and the amount required to be paid under the particular state tax
law in question.

(B) “Underpayment” includes an erroneously paid refund;

and

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

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

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

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

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

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

(c)(1) An erroneously paid refund is a tax deficiency and is subject
(2)(A) When an erroneously paid refund is issued to a taxpayer, the director shall issue a notice of proposed assessment for the amount of the erroneously paid refund, plus interest and any penalty authorized under this chapter.

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


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

/s/Jett

APPROVED: 04/06/2017