

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 781

5 By: Senator Salmon
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For An Act To Be Entitled

8 AN ACT TO PLACE THE BURDEN OF DETERMINING THE
9 LEGALITY OF A TAX ON THE TAXING AUTHORITY; TO CREATE
10 A TAX REFUND FOR ILLEGAL EXACTIONS; AND FOR OTHER
11 PURPOSES.
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Subtitle

14 TO PLACE THE BURDEN OF DETERMINING THE
15 LEGALITY OF A TAX ON THE TAXING AUTHORITY
16 AND TO CREATE A TAX REFUND FOR ILLEGAL
17 EXACTIONS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code Title 26, Chapter 1, Subchapter 1 is amended
24 to add an additional section to read as follows:

25 26-1-102. Burden on taxing authority – Refund.

26 (a) The General Assembly finds that:

27 (1) Taxpayers are generally unable to make a determination of
28 whether a tax assessed on the taxpayer or the taxpayer's property is an
29 illegal exaction within the meaning of Article 16, § 13 of the Constitution
30 of Arkansas; and

31 (2) It should be the responsibility of the taxing authority to
32 make an initial determination as to whether a tax it proposes to assess is
33 constitutional.

34 (b)(1) Before the assessment of the tax, the state and any political
35 subdivision of the state that may assess a tax shall submit the proposed tax
36 to the Attorney General for an opinion of the constitutionality of the



1 proposed tax.

2 (2) If the Attorney General determines that the proposed tax
3 would be unconstitutional, the Attorney General shall state the reasons for
4 the opinion.

5 (c) If the Attorney General opines that the proposed tax would be
6 unconstitutional, the taxing authority that proposes to levy the tax shall
7 not levy the tax until the taxing authority has remedied the constitutional
8 deficiencies identified by the Attorney General.

9 (d) If a taxing authority levies a tax that is determined by a court
10 to be an illegal exaction within the meaning of Article 16, § 13 of the
11 Constitution of Arkansas, the taxing authority shall refund to the taxpayers
12 all revenues collected from the tax, less any attorneys' fees apportioned by
13 the court to the attorneys of record.

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15 SECTION 2. DO NOT CODIFY. Subsection (d) of § 26-1-102 applies
16 retroactively to any action challenging a tax as an illegal exaction if the
17 action is pending before a court of the state at the time § 26-1-102 becomes
18 effective.

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