

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1681

Amendment Number: H1

Bill 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.

Basic Change :

Sponsor: Rep Jett

Engrossment 03/10/17 --- House Amendment 1 --- Amends the bill to further clarify that an "underpayment" of tax subject to assessment under state tax procedures includes an erroneously claimed and paid tax refund. Current law does not provide statutory authority to DFA to issue an assessment for an erroneously issued refund.

Original Bill --- HB1681 clarifies the definitions of "tax deficiency" under the Arkansas Tax Procedure Act (TPA), § 26-18-101, et seq. In addition, the bill adds a new definition to the TPA for "erroneously paid refund" that will mean "a refund of tax received by a taxpayer that was not entitled to receive the refund."

In addition, Arkansas law does not currently provide a clear mechanism to issue an assessment to recover a tax refund erroneously paid to a taxpayer. HB1681 is designed to permit the Department of Finance and Administration (DFA) to make an assessment to recover an erroneously paid refund.

Revenue Impact :

It is undetermined the amount of erroneously paid refunds that may be recovered through allowing DFA to issue an assessment that was erroneously paid to a taxpayer.

Taxpayer Impact :

A taxpayer that received an erroneously issued tax refund may be issued an assessment.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

Amendment H1 to HB1681, engrossed March 10, 2017, authorizes the Department of Finance and Administration ("DFA") to issue an assessment to recover an erroneously paid refund as a tax

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deficiency. An erroneously paid refund is defined in the bill as "a refund of tax received by a taxpayer that was not entitled to receive the refund". If a refund was paid as the result of fraud or misrepresentation by a taxpayer, DFA may make an assessment at any time to recover the amount of the refund.

The legislation is needed in part because certain state courts reviewing federal tax assessments to recover erroneously paid federal refunds have determined erroneously paid refunds are not underpayments of tax subject to assessment. To prevent similar challenges, some states, such as Minnesota, have specifically defined erroneously paid refunds to be an underpayment of tax subject to assessment. HB1681, in conformity with legislation passed by other states, amends Arkansas law to define the term "underpayment" of tax to include erroneously paid refunds. It also re-defines the term "tax deficiency" to clarify that definition for ease of understanding, and to make it clear that a tax deficiency includes underpayments of tax. By amending state law to amend the definition of a tax deficiency to include underpayments of tax, and thus also erroneously paid refunds, assessments to recover erroneously paid refunds should survive challenges such as those faced by federal government.

The legislation is also needed to resolve challenges to assessments of interest when there is an "underpayment" of tax. Specifically, suits are being filed to challenge an assessment of interest against taxpayers who make some payment towards delinquent tax, but do not pay delinquent tax in full. Under state law, interest is due on tax deficiencies. As state law contains different definitions of the terms "tax deficiency" and "underpayment", and as the term "underpayment" is not currently included within the definition of tax deficiency, this has led litigants to assert that interest cannot be assessed on an underpayment of tax. By amending the term "tax deficiency" to include underpayments of tax, this will preclude challenges to the assessment of interest when a taxpayer only pays part of the tax he or she may owe.