

Hall of the House of Representatives

83rd General Assembly - Regular Session, 2001

Amendment Form

Subtitle of House Bill No. 2164

"CLARIFIES AWARD OF ATTORNEY'S FEES IN ILLEGAL EXACTION SUITS."

Amendment No. 2 to House Bill No. 2164.

Amend House Bill No. 2164 as originally introduced:

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code 26-35-902(a) is amended to read as follows:

(a)(1)(A) It is the public policy of this state that circuit and chancery courts may, in meritorious litigation brought under Arkansas Constitution, Article 16, § 13, in which the court orders any county, city, or town to refund or return to taxpayers moneys illegally exacted by the county, city, or town, apportion a reasonable part of the recovery of the class members to attorneys of record and order the return or refund of the balance to the members of the class represented.

(B) This subdivision (a)(1) applies only to causes of action filed prior to the effective date of subdivision (a)(2) of this section.

(2)(A) If a taxpayer challenges a tax pursuant to Arkansas Constitution, Article 16, §13 and the trial court orders the taxing entity to refund to the taxpayer and class members the taxes illegally exacted, the trial judge may award attorney's fees to the attorneys of record for the taxpayer and class members.

(B) The attorney's fees, if awarded, shall be either:
(i) A reasonable percentage of the tax refunds paid to each class member by the taxing entity; or,
(ii) A reasonable fee computed by the court and based on factors including the experience of the attorney, time spent litigating the issues, the amount in controversy and result obtained, customary fee for similar services in the locale, and novelty and difficulty of the issues.

(C) The fee shall only be awarded if the court orders the taxing entity to escrow taxes collected by the taxing entity after the date the lawsuit is filed and shall be paid only from such fund.

(D) It is the specific intent of the General Assembly that the "common fund" theory, the "common benefit" theory, and the "substantial benefit" theory as adopted by the Arkansas Supreme Court in supporting attorney's fee awards shall not apply in cases concerning challenges to taxes under Arkansas Constitution, Article 16, §13, and that attorney's fees shall

only be awarded pursuant to § 26-35-902(a)(2).

(E) Subdivision (a)(2) of this section applies only to causes of action filed on or after the effective date of subdivision (a)(2). "

The Amendment was read _____
By: Representative Teague
LH/LH _____
LDH032 Chief Clerk