

ARKANSAS SENATE
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. 1 to House Bill No. 2164.

Amend House Bill No. 2164 as engrossed, H3/16/01:

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 challenging a tax pursuant to Arkansas Constitution, Article 16, §13, is the prevailing party, the trial court may, in its discretion, award reasonable attorney's fees and costs to the attorneys of record for the taxpayer and class members including, but not limited to, contingency or hourly fees if the court deems them appropriate. The trial court may base such fees on factors that include, but are not limited to, the experience of the attorney, time spent litigating the issues, the amount in controversy and result obtained, customary fees for similar services in the locale, novelty and difficulty of the issues and the amount refunded to the taxpayers.

(B) 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).

(C) 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 the first time, rules suspended and read the second time and _____

By: Senator Everett

LH/RRS - 040920011018

RRS881

Secretary