

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative M. Wilson

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A Bill

HOUSE BILL

2111

For An Act To Be Entitled

8 "AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT TO CONFORM
9 THE METHODS OF CONTESTING STATE TAX ASSESSMENTS AND FILING
10 CLAIMS FOR REFUND TO THE SIMILAR FEDERAL TAX PROCEDURE
11 METHODS; AND FOR OTHER PURPOSES."

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Subtitle

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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 26-18-406 is amended to read as follows:

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"26-18-406. Judicial relief.

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(a) After the issuance of the notice and demand for payment of a deficiency in tax established by a final determination of the hearing officer or the director under §26-18-405, a taxpayer may seek judicial relief from the final determination by :

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(1)(A) Within thirty (30) days of the issuance and notice and demand for payment, file with the director a bond in double the amount of the tax deficiency due and by filing suit within thirty (30) days thereafter to stay the effect of the director's determination.

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(B) The bond shall be subject to the condition that the taxpayer shall file suit within thirty (30) days after filing the bond, shall faithfully and diligently prosecute the suit to a final determination, and

1 shall pay any deficiency found by the court to be due and any court cost
2 assessed against him.

3 (C) A taxpayer's failure to file suit, diligently
4 prosecute the suit, or pay any tax deficiency and court costs, as required by
5 this subsection, shall result in the forfeiture of the bond in the amount of
6 the *assessment and assessed court costs; or*

7 (2) *Paying the entire amount of state tax, penalties and interest due*
8 *for any taxable period; filing a claim for refund, under the provisions of*
9 *§26-18-507; and, if the director disallows such claim for refund or the six*
10 *(6) month period provided in § 26-18-507 expires without any action being*
11 *taken on such claim for refund, seeking judicial review under the provisions*
12 *of §26-18-507. The director may proceed with collection activities,*
13 *including the filing of a certificate of indebtedness for any unpaid state*
14 *taxes, penalties or interest owed for other taxable periods, while a claim*
15 *for refund is being processed for the taxpayer.*

16 (b)(1) Jurisdiction for a suit to contest a determination of the
17 director *under this section or § 26-18-507* shall be in the Pulaski County
18 Chancery Court or the chancery court of the county in which the taxpayer
19 resides or has his principal place of business, where the matter shall be
20 tried de novo.

21 (2) An appeal will lie from the chancery court to the Supreme
22 Court of Arkansas, as in other cases provided by law.

23 (c) *The method provided in this section or by § 26-18-507 (e) shall be*
24 *the sole alternative methods* for seeking relief from a written decision of
25 the director establishing a deficiency in tax. No injunction shall issue to
26 stay proceedings for *assessment or collection of any taxes levied under any*
27 *state tax law.*

28 (d)(1) In any court proceeding under this section, the prevailing
29 party may be awarded a judgment for court costs.

30 (2) A judgment of court costs entered by the court in favor of
31 either party shall be treated, for purposes of this chapter, in the same
32 manner as an overpayment or deficiency of tax, except that no interest or
33 penalty shall be allowed or assessed with respect to any judgment for court
34 costs."

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1 SECTION 2. Arkansas Code 26-18-507(a) is amended to read as follows:
2 "26-18-507. Claims for refunds of overpayments.

3 (a) Any taxpayer who has paid any state tax to the State of Arkansas
4 in excess of the taxes lawfully due shall, subject to the requirements of
5 this chapter, be refunded the overpayment of the tax determined by the
6 director to be erroneously paid upon the filing of an amended return or a
7 verified claim for refund."

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9 SECTION 3. Arkansas Code 26-18-507(e)(2) is amended to read as
10 follows:

11 "(2)(A) The taxpayer may seek, as an alternative to the procedure set
12 out in Arkansas Code Annotated §26-18-406, judicial relief from:

13 (i) The written decision of the director which denies the claim in
14 whole or part; or

15 (ii) The director's failure to issue a written decision
16 after the claim has been filed for six (6) months, by filing an action for
17 such refund with the Pulaski County Chancery Court or the chancery court of
18 the county in which the taxpayer resides or has his principal place of
19 business after at least six (6) months have expired from the date of the
20 filing of the claim for refund if the director has not acted on the claim, or
21 within ninety (90) days after issuance of the director's written decision.

22 (B) A written decision of the director on a refund becomes final
23 and not subject to suit ninety-one (91) days after it is issued to the
24 taxpayer."

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26 SECTION 4. All provisions of this act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

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30 SECTION 5. If any provision of this act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 act are declared to be severable.

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1 SECTION 6. All laws and parts of laws in conflict with this act are
2 hereby repealed.

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4 SECTION 7. The General Assembly intends, by the passage of this
5 amendment to the provisions of the Arkansas Tax Procedure Act, to clarify its
6 intent that taxpayers involved in state tax disputes with the Arkansas
7 Department of Finance and Administration shall have, as much as possible, the
8 opportunity to secure an objective review of their dispute by a court at law
9 *through: (1) the posting of bond method; or (2) the claim for refund method,*
10 *after the payment (or posting of sufficient bond) by the taxpayer of all*
11 *state taxes claimed to be due from the taxpayer for at least one complete*
12 *taxable period in dispute. This amendment to the Arkansas Tax Procedure Act*
13 *is intended to conform state tax procedure to similar provisions of the*
14 *Internal Revenue Code for federal tax purposes and to recognize, for state*
15 *tax purposes, the "divisible tax" theory applicable to federal tax procedure,*
16 *as also being applicable for state tax procedural purposes.*

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18 SECTION 8. EMERGENCY. It is hereby found and determined by the
19 General Assembly that a taxpayer_s procedural right to pursue an objective
20 judicial review in a challenge to a state tax assessment is being unfairly
21 denied to Arkansas taxpayers who have legitimate disputes with the Arkansas
22 Department of Finance and Administration, and that the provisions of this act
23 are needed to cure this problem for state taxpayers. Accordingly, it is
24 therefore found that an emergency is hereby declared to exist and this act
25 being necessary for the immediate preservation of the public peace, health
26 and safety, shall be in full force and effect *as of July 1, 1995.*

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/s/Rep. M. Wilson

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