

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H3/19/97

## A Bill

HOUSE BILL 1145

4  
5 By: Representative Luker  
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### For An Act To Be Entitled

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9 "AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT, ARKANSAS  
10 CODE 26-18-101, ET SEQ., TO CLARIFY THAT THE TAX REFUND  
11 PROVISIONS DO NOT APPLY TO CONSTITUTIONAL CLAIMS; TO  
12 PROVIDE A THREE-YEAR LIMITATIONS PERIOD FOR ILLEGAL  
13 EXACTION CLAIMS; TO ADOPT THE VOLUNTARY PAYMENT RULE FOR  
14 REFUNDS OF UNCONSTITUTIONAL TAXES; AND FOR OTHER  
15 PURPOSES."

### Subtitle

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18 "EXCLUDES CONSTITUTIONAL TAX CLAIMS FROM  
19 THE REFUND PROVISIONS; PROVIDES THREE-  
20 YEAR PERIOD FOR ILLEGAL EXACTION CLAIMS;  
21 ADOPTS VOLUNTARY PAYMENT RULE FOR  
22 CONSTITUTIONAL CLAIMS."  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Ark. Code Ann. § 26-18-507(a) is amended to read as follows:  
27 "(a) ~~Any~~Each taxpayer who has paid any state tax to the State of  
28 Arkansas, through error fact, computation, or mistake of law, in excess of the  
29 taxes lawfully due shall, subject to the requirements of this chapter, be  
30 refunded the overpayment of the tax determined by the director to be  
31 erroneously paid upon the filing of an amended return or a verified claim for  
32 refund. Each taxpayer seeking a refund must file a claim for refund. A claim  
33 in which one taxpayer files a claim for refund on behalf of himself and other  
34 similarly situated but unnamed taxpayers is not a valid claim for refund under  
35 this section."  
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1 SECTION 2. Ark. Code Ann. § 26-18-507(e)(2) is amended to add a new  
2 subsection to read as follows:

3 "(C) The provisions of Ark. R. Civ, P. 23 shall not apply to suits  
4 filed to recover refunds of taxes under this section. Each taxpayer whose  
5 claim for refund is denied must be a party to the suit authorized under this  
6 section and no class of unnamed taxpayers shall be entitled to a refund if the  
7 requirements of this section have not been met."

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9 SECTION 3. Arkansas Code 26-18-507 is amended to add a new subsection  
10 to read as follows:

11 "(f) This section shall not apply to claims for refund founded on  
12 challenges to the constitutionality of state tax statutes or local ordinances  
13 under provisions of the Arkansas or United States Constitutions. A taxpayers  
14 sole recourse for such constitutional challenges to state tax statutes or  
15 local ordinances shall be pursuant to the Arkansas Constitution, Article 16,  
16 Section 13, to which the Arkansas Rules of Civil Procedure shall apply.  
17 Claims for refund based on an illegal application or administration of a state  
18 tax law shall be made pursuant to this section."

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20 SECTION 4. Arkansas Code 26-18-306 is amended to add a new subsection  
21 to read as follows:

22 "(k) No action pursuant to Article 16, Section 13 of the Arkansas  
23 Constitution shall be brought against the State of Arkansas or its political  
24 subdivisions for refund of state or local taxes more than three (3) years  
25 after such taxes were involuntarily paid."

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27 SECTION 5. A taxpayer may file notice of an involuntary payment by  
28 attaching to the instrument of payment a notarized statement declaring the tax  
29 to be paid involuntarily and containing the specific provision of the  
30 Constitution being contested. If an action is not brought pursuant to Article  
31 16, Section 13 of the Arkansas Constitution within three (3) years of the  
32 involuntary payment, the payment shall be considered voluntary.

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34 SECTION 6. The provisions of this act affect substantive rights of  
35 taxpayers and shall not apply to any claim for refund of state tax which a  
36 taxpayer may possess prior to the effective date of this act.

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SECTION 7. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/Rep. Luker*