

1 State of Arkansas

2 82nd General Assembly

3 Regular Session, 1999

A Bill

HOUSE BILL 2147

4
5 By: Representative Files

For An Act To Be Entitled

9 "AN ACT TO AMEND TITLE 26, CHAPTER 35, SUBCHAPTER 9 OF
10 THE ARKANSAS CODE; AND FOR OTHER PURPOSES."

Subtitle

13 "TO AMEND TITLE 26, CHAPTER 35,
14 SUBCHAPTER 9 OF THE ARKANSAS CODE."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code 26-35-902 is amended to read as follows:

20 "26-35-902. Award of attorneys' fees - Disposition of residual funds.

21 (a) It is the public policy of this state that circuit and chancery
22 courts may, in meritorious litigation brought under Arkansas Constitution,
23 Article 16, § 13, in which the court orders the state or any county, city, or
24 town or other governmental entity or unit, to refund or return to taxpayers
25 moneys illegally exacted ~~by the county, city, or town,~~ apportion a reasonable
26 ~~part~~ percentage of the recovery of the class members to attorneys of record
27 and order the return or refund of the balance to the members of the class
28 represented.

29 (b) ~~If, after expiration of a reasonable period of time for the filing~~
30 ~~of claims for the illegally exacted moneys as ordered by the court, residual~~
31 ~~funds exist, said residual funds shall be deemed abandoned and escheat to the~~
32 ~~county, city, or town which exacted same.~~ It is in the public policy of this
33 state that circuit and chancery courts shall, in meritorious litigation
34 brought under Arkansas Constitution, Article 16, § 13, in which the court
35 orders the repayment of any misappropriated funds to the state or any county,
36 city, or town or other governmental entity or unit, or the treasury of same,

1 apportion a reasonable percentage of the repayment to attorneys of record,
2 sufficient to encourage competent attorneys to accept and vigorously prosecute
3 such cases.

4 (c) In case of suits against illegal taxes where the court requires the
5 filing of claims, after expiration of the time for the filing of claims for
6 repayment of the illegal taxes, as specified and ordered by the court, where
7 residual funds exist, the residual funds shall be deemed abandoned and escheat
8 to the county, city, or town or other governmental unit which exacted the
9 funds. However, where possible, the unclaimed funds shall be used for payment
10 of attorney's fees, so that the aggrieved taxpayers may receive a more
11 complete refund, including, if possible, the full amount of interest at the
12 legal rate on the illegally exacted funds."

13
14 SECTION 2. Title 26, Chapter 35, Subchapter 9 of the Arkansas Code is
15 amended to add the following section to be numbered by the Arkansas Code
16 Revision Commission:

17 "Statute of limitations in actions for illegal exaction and collection
18 of delinquent taxes – Abolition of voluntary payments rule.

19 (a) Henceforth, the common law rule against recovery back of voluntary
20 payments, as applied to illegal exactions, constitutes no part of the law of
21 Arkansas. The statute of limitations for the recovery back of any illegal
22 tax, assessment, collection, or other enforced governmental or quasi
23 governmental exaction whatsoever shall be three (3) years from the filing of
24 suit unless a longer time period is prescribed by statute or constitutional
25 provision.

26 (b) In all suits against any illegal tax, in which the plaintiff shall
27 prevail, all other persons similarly situated shall be equally entitled to
28 recover back the illegal tax paid, upon such conditions as the court may find
29 just.

30 (c) The statute of limitations for all actions to collect delinquent
31 taxes, by the state or any of its subdivisions, shall be three (3) years from
32 the date the tax was due or three (3) years from the deadline for the filing
33 of the tax return, whichever is longer. All longer or shorter statutes of
34 limitation for the collection of delinquent taxes are hereby abolished."

35
36 SECTION 3. Title 26, Chapter 35, Subchapter 9 of the Arkansas Code is

1 amended to add the following section to be numbered by the Arkansas Code
2 Revision Commission:

3 "Right of action against erroneous or excessive exactions.

4 (a) Henceforth, the term 'illegal exaction', as used in the Arkansas
5 Constitution and implementing statutes, shall be deemed and construed to
6 include the illegal, erroneous, or excessive imposition, levying, assessment,
7 or collection of any tax or enforced governmental or quasi governmental
8 exaction of any kind whatsoever. Provided, however, that no recovery shall be
9 had, and no injunction shall issue, to recover back or stay the collection or
10 assessment of any legal tax if the taxing authority reasonably attempted to
11 comply with all laws, regulations, and requirements for the assessment or
12 collection of the tax, and the circumstances are such that the taxpayers in
13 fairness and equity ought not to escape liability for the tax.

14 (b) Sovereign immunity shall be no bar whatever to any illegal exaction
15 lawsuit. Payment of the illegal action over to another entity shall
16 constitute no defense to any lawsuit for illegal exaction, and the full amount
17 of any illegal exaction shall be collectible by the aggrieved taxpayer from
18 the treasury of the entity receiving the illegal exaction, whether or not
19 appropriation is made sufficient to pay the judgment. Failure to exhaust
20 administrative remedies shall not be a bar to recovery back in any illegal
21 exaction lawsuit where the illegal exaction affects at least twenty-five (25)
22 taxpayers."

23
24 SECTION 3. Title 26, Chapter 35, Subchapter 9 of the Arkansas Code is
25 amended to add the following section to be numbered by the Arkansas Code
26 Revision Commission:

27 "Right of action against illegal expenditures.

28 (a) Any person paying any part of the tax received by any city, county,
29 or town of the State of Arkansas, whether directly or indirectly, shall be
30 entitled to maintain suit to recover back any illegal expenditures by the
31 public entity, or any of its agencies or instrumentalities. The provisions of
32 this statute shall control as to any action brought to judgment after the
33 effective date of this section.

34 (b) The statute of limitations on illegal exactions shall be five (5)
35 years from the date of receipt of the funds, or the benefit thereof, unless
36 the party receiving the illegal funds proves to the satisfaction of the finder

1 of fact that the recipient of the funds:

2 (1) Initially made reasonable inquiry into the legality of the
3 receipt of the funds, and was unaware of the illegality of the receipt of the
4 funds; and

5 (2) Within forty-five (45) calendar days after an Arkansas
6 Attorney General's opinion suggesting that the receipt of the funds was
7 probably violative of the laws or Constitution of Arkansas, ceased the receipt
8 of the funds, in which case the statute of limitations shall be three (3)
9 years.

10 (c) For purposes of this subchapter, the term 'funds' or 'expenditures'
11 shall include money, goods, services, or other valuable consideration obtained
12 at the expense of the treasury of the affected public entity, with or without
13 official approval. Where two or more persons acted jointly to cause the
14 illegal expenditure, both shall be jointly and severally liable for the
15 repayment of same.

16 (d) Where it is shown that the defendant obtained all or part of the
17 illegally expended funds by intentional and willful violation of the laws of
18 Arkansas, the defendant shall be required to pay all costs plus a reasonable
19 attorney's fee in addition to the illegal funds taken, in an amount not less
20 than one-third (1/3) of the amount illegally taken, so that the taxpayers may
21 be completely compensated.

22 (e) In the case where all or substantially all of the illegally
23 expended funds were obtained by the defendant through intentional and willful
24 violation of the laws of Arkansas, the defendant may also be held liable to
25 punitive damages. If punitive damages are sought, the case may at the option
26 of either party be transferred to circuit court for jury trial. However, the
27 attorney prosecuting the case shall be entitled to a reasonable percentage of
28 the punitive damage award, not less than one-third (1/3), to be paid out of
29 any punitive damages collected, and not in addition thereto."

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

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35 SECTION 5. If any provision of this act or the application thereof to
36 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 act are declared to be severable.

4
5 SECTION 6. All laws and parts of laws in conflict with this act are
6 hereby repealed.