

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas As Engrossed: H3/9/01 H3/13/01 H3/16/01

2 83rd General Assembly

# A Bill

3 Regular Session, 2001

HOUSE BILL 2164

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5 By: Representatives Teague, Hunt

6 By: *Senators Riggs, Bisbee*

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## For An Act To Be Entitled

10 AN ACT TO AMEND Arkansas Code 26-35-902 TO  
11 CLARIFY THE AWARD OF ATTORNEY'S FEES IN ILLEGAL  
12 EXACTIONS SUITS; AND FOR OTHER PURPOSES.

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### Subtitle

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

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

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

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

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

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

1 (B) The attorney's fees, if awarded, shall be either:

2 (i) A reasonable percentage of the tax refunds paid  
3 to each class member by the taxing entity based on factors including the  
4 experience of the attorney, time spent litigating the issues, the amount in  
5 controversy and result obtained, customary fee for similar services in the  
6 locale, and novelty and difficulty of the issues; or,

7 (ii) A reasonable fee computed by the court and  
8 based on factors including the experience of the attorney, time spent  
9 litigating the issues, the amount in controversy and result obtained,  
10 customary fee for similar services in the locale, and novelty and difficulty  
11 of the issues. The fee shall only be awarded if the court orders the taxing  
12 entity to escrow taxes collected by the taxing entity after the date the  
13 lawsuit is filed and shall be paid only from such fund.

14 (C) It is the specific intent of the General Assembly that  
15 the "common fund" theory, the "common benefit" theory, and the "substantial  
16 benefit" theory as adopted by the Arkansas Supreme Court in supporting  
17 attorney's fee awards shall not apply in cases concerning challenges to taxes  
18 under Arkansas Constitution, Article 16, §13, and that attorney's fees shall  
19 only be awarded pursuant to § 26-35-902(a)(2).

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

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24 /s/ Teague, et al.  
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