

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
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/20/07

A Bill

SENATE BILL 946

5 By: Senator Trusty
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For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT;
10 TO ALLOW TAXPAYERS TO FILE AMENDED RETURNS AND
11 CLAIMS FOR REFUNDS FOR AS LONG AS THE STATUTE OF
12 LIMITATIONS FOR ASSESSMENT IS OPEN TO THE
13 DIRECTOR OF THE DEPARTMENT OF FINANCE AND
14 ADMINISTRATION; TO CLARIFY THAT TAXPAYERS MAY
15 SEEK JUDICIAL RELIEF UPON A FINDING OF A CREDIT
16 OWING; AND FOR OTHER PURPOSES.
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Subtitle

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19 TO AMEND THE TAX PROCEDURE ACT TO ALLOW
20 TAXPAYERS TO FILE AMENDED RETURNS AND
21 REFUNDS UNTIL THE STATUTE OF LIMITATIONS
22 EXPIRES FOR THE DIRECTOR AND TO CLARIFY
23 THAT TAXPAYERS MAY SEEK JUDICIAL RELIEF
24 UPON A FINDING OF A CREDIT OWING.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. The General Assembly has determined that:

30 (a) Prior to the enactment of Act 785 of 1993 a taxpayer could claim a
31 refund of any overpayment of state tax within a specified number of years or
32 "as long as the statute of limitations for assessment is still open to the
33 director";

34 (b) Section 1 of Act 785 of 1993 inadvertently deleted the language
35 that arguably allowed a taxpayer that filed a return the same statute of
36 limitations as the state and thereby gave the state an unfair advantage over



1 a taxpayer that filed a return by permitting the state to retain an
2 overpayment of tax that should have been refunded to the taxpayer that filed
3 the return;

4 (c) Section 1 of Act 785 of 1993 was intended to apply only to a
5 taxpayer that had not filed a return or that had underreported the taxpayer's
6 income by twenty-five percent (25%) or more;

7 (d) Fundamental fairness dictates that the statute of limitations
8 should be the same for the state and the taxpayer that filed a return;

9 (e) While the state law should be designed to fairly collect taxes it
10 should not give the state the upper hand to retain an overpayment from a
11 taxpayer that filed a return; and

12 (f) This act will clarify the intent of the General Assembly to
13 provide equal treatment between taxpayers that filed a return and the state.

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15 SECTION 2. Arkansas Code § 26-18-306(i), concerning the filing of an
16 amended return, is amended to read as follows:

17 (i)(1)(A) An amended return or verified claim for credit or refund of
18 an overpayment of any state tax shall be filed by the taxpayer within three
19 (3) years from the time the return was filed or two (2) years from the time
20 the tax was paid, whichever of the periods expires the later, or as long as
21 the statute of limitations for an assessment under subsection (a) of this
22 section is still open to the director.

23 (B) The provisions of subdivision (i)(1)(A) of this
24 section shall not apply to a tax paid as a result of an audit or proposed
25 assessment.

26 (2) Any taxpayer who fails to file a return, underreports his or
27 her income by twenty-five percent (25%) or more, or fails to notify the
28 director of any change or correction by the Internal Revenue Service in the
29 taxpayer's taxable income, shall not be entitled to file an amended return or
30 verified claim for credit or refund after the expiration of three (3) years
31 from the date the original return or notification of change was originally
32 due.

33 (3) Notwithstanding the limitation in subdivision (i)(2) of this
34 section, any act or omission which tolls the time in which an assessment may
35 be made under subsection (a) of this section, shall also toll the time in
36 which an amended return or verified claim for a credit or refund of an

1 overpayment of a state tax may be filed under this subsection (i).
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3 SECTION 3. Arkansas Code § 26-18-401, concerning assessment of tax, is
4 amended to add a new subsection as follows:

5 (c) If a proposed assessment under § 26-18-401 or an examination to
6 determine the accuracy of a return of a taxpayer results in a credit owing
7 the taxpayer, then the director shall issue a final determination setting out
8 the credit amount and notifying the taxpayer of the taxpayer's right to
9 appeal for judicial relief under § 26-18-406.

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11 SECTION 4. Arkansas Code § 26-18-405(d)(4), concerning decisions on
12 proposed assessments, is amended to add the following subdivision:

13 (E) If a proposed assessment or an examination to
14 determine the accuracy of a return of a taxpayer is amended pursuant to an
15 administrative hearing prescribed by this section and the result is a credit
16 owing the taxpayer, then the director shall issue a final determination
17 setting out the credit amount and notifying the taxpayer of the taxpayer's
18 right to appeal for judicial relief under § 26-18-406.

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20 SECTION 5. The language and intent of this act is a clarification of
21 existing law and does not imply that existing law may be construed as being
22 inconsistent with the law as amended by this act.

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24 SECTION 6. Sections 1 - 5 of this act shall be effective retroactive
25 to tax year 1993 and all succeeding tax years.

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27 /s/ Trusty
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