

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: H3/10/17 S3/23/17  
**A Bill**

HOUSE BILL 1681

By: Representative Jett

### **For An Act To Be Entitled**

AN ACT TO AMEND THE ARKANSAS TAX PROCEDURE ACT; TO AMEND THE DEFINITIONS UNDER THE ARKANSAS TAX PROCEDURE ACT; TO PROVIDE THAT ERRONEOUSLY PAID REFUNDS ARE CONSIDERED UNDERPAYMENTS OF TAX AND SUBJECT TO ASSESSMENT; TO CREATE STATUTES OF LIMITATION SPECIFIC TO ASSESSMENTS FOR ERRONEOUSLY PAID REFUNDS; TO PROVIDE A FORMAL MECHANISM TO ISSUE ASSESSMENTS FOR ERRONEOUSLY PAID REFUNDS; TO PROVIDE THAT TAX LIENS MAY BE FILED AND EXECUTIONS ISSUED TO RECOVER ERRONEOUSLY PAID REFUNDS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO AMEND THE DEFINITIONS UNDER THE ARKANSAS TAX PROCEDURE ACT; AND TO PROVIDE THAT ERRONEOUSLY PAID REFUNDS ARE CONSIDERED UNDERPAYMENTS OF TAX AND ARE SUBJECT TO ASSESSMENT.

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

SECTION 1. Arkansas Code § 26-18-104(15), concerning the definitions to be used under the Arkansas Tax Procedure Act, is amended to read as follows:

*(15)(A) "Tax deficiency" or "deficiency" means the amount ~~by which the tax imposed by any state tax exceeds the excess of the sum of:~~*  
*~~(A) The amount shown as the tax by the taxpayer on his or~~*



~~her return if a return was made by the taxpayer; plus~~

~~(B) The amounts previously assessed or collected without assessment as a deficiency of tax owed by a taxpayer that is not paid when due.~~

(B) "Tax deficiency" or "deficiency" includes an underpayment of tax;

SECTION 2. Arkansas Code § 26-18-104(18), concerning the definitions to be used under the Arkansas Tax Procedure Act, is amended to read as follows:

(18)(A) "Underpayment" means the difference between the state tax paid and the amount required to be paid under the particular state tax law in question.

(B) "Underpayment" includes an erroneously paid refund;  
and

SECTION 3. Arkansas Code § 26-18-104, concerning the definitions to be used under the Arkansas Tax Procedure Act, is amended to add an additional subdivision to read as follows:

(19) "Erroneously paid refund" means a refund of tax received by a taxpayer that was not entitled to receive the refund.

SECTION 4. Arkansas Code § 26-18-306, concerning the time limitations for assessments, collection, refunds, and prosecution under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(n)(1) Except as provided in subdivision (n)(2) of this section, an assessment to recover an erroneously paid refund shall not be made after the expiration of three (3) years from the date of the refund warrant.

(2) However, an assessment may be made at any time to recover an erroneously paid refund that was paid as a result of fraud or misrepresentation by the taxpayer.

SECTION 5. Arkansas Code § 26-18-403, concerning proposed assessments under the Arkansas Tax Procedure Act, is amended to add an additional subsection to read as follows:

(c)(1) An erroneously paid refund is a tax deficiency and is subject

to assessment under this section.

(2)(A) When an erroneously paid refund is issued to a taxpayer, the director shall issue a notice of proposed assessment for the amount of the erroneously paid refund, plus interest and any penalty authorized under this chapter.

(B) The notice of proposed assessment to recover an erroneously paid refund shall explain the basis for the proposed assessment and shall inform the taxpayer that a final assessment under § 26-18-401 shall be made if the taxpayer fails to protest the assessment under § 26-18-404.

(3) Sections 26-18-404, 26-18-405, 26-18-406, and 26-18-701 apply to assessments of erroneously paid refunds.

(4) Interest and penalties imposed on a tax deficiency are subject to waiver or abatement in accordance with the procedure established in § 26-18-705(b) if the tax deficiency arose from an error by the Department of Finance and Administration that resulted in the issuance of an erroneously paid refund.

/s/Jett