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OPINION NO. 85-117

May 28, 1985

Mr. Norman L. Hodges, Jr.
Director
Arkansas State Claims Commission
State Capitol Building
Little Rock, AR 72201

RE: Act 372 of 1983.

Dear Mr. Hodges:

On April 19, 1985, you requested an advisory opinion regarding the interpretation of Act 273 of 1983. I have paraphrased your questions as follows:

1. May Act 372 be applied to cases where the debt arose prior to the Act's effective date?
2. If so, would the Statute of Limitations still have effect?
3. Does the Arkansas State Claims Commission have jurisdiction where a "debtor" under this Act seeks a judgment for monies "set-off" for debts he was owing prior to the effective date of the Act?

In short, Act 372 of 1983 may be applied to cases where the debt arose prior to its effective date. In spite of such operation, the Statute of Limitations is still with effect. The Arkansas State Claims Commission does not have jurisdiction where a "debtor" seeks a judgment for monies improperly "set-off" pursuant to this Act.

ACT 372 OF 1983 IS APPLICABLE TO DEBTS
OUTSTANDING PRIOR TO ITS JULY 1, 1983
EFFECTIVE DATE.

There may be a sementical dispute as to whether such operation constitutes "retroactive" application. Bowles v. Strickland, 151 F.2d 419 (5th Cir. 1959). United States v.

Village Corp., 298 F.2d 816 (4th Cir. 1962). However, there is no disagreement that where, as here, a statute does not affect substantive rights, but relates only to the procedural machinery provided to enforce such rights, that it may have application even though the requisites upon which the subsequent action depends are drawn from a time antecedent to its enactment. Sutherland Statutory Construction, Vol. 2, §41.09 (4th edition, 1973); Village Corp., supra.

Act 372 of 1983 is titled:

AN ACT to Provide for the Collection of Debts Owed to the State by Set-Off of Such Debts Against Certain Income Tax Refunds; to Provide for Hearings and Appeals in Contested Cases; and for Other Purposes. (Emphasis added).

If the legislature had intended Act 372 to be inapplicable to debts owed to the State which arose prior to the Act's effective date, it would have so stated. The unmistakable purpose of this Act is to provide the State with a more effective means of collecting debts certified as due and owing. No substantive rights are affected, only the procedure allowed to enforce existing obligations is expanded.

§3 titled, "ADDITIONAL REMEDY", illustrates this Act is strictly procedural or remedial and alters no vested rights. The Arkansas Supreme Court has held the rule that statutes are to be construed to operate prospectively does not apply to procedural or remedial legislation. Harrison v. Mathews, 235 Ark. 915, 362 S.W.2d 704 (1962). In Harrison, supra the court stated at pg. 705:

The rule by which statutes are construed to operate prospectively does not ordinarily apply to procedural or remedial legislation. "The strict rule of construction contended for does not apply to remedial statutes which do not disturb vested rights, or create new obligations, but only supply a new or more appropriate remedy to enforce an existing right or obligation. These should receive a more liberal construction, and should be given a retrospective effect whenever such seems to have been the intention of the Legislature." State ex rel. Moose v. Kansas City & M. Ry. * B. Co., 117 Ark. 606, 174 S.W. 248.

§1 of the Act provides in pertinent part:

Furthermore, it is the legislative intent that this Act be liberally construed so as to effectuate these purposes as far as legally and practically possible.

It is apparent the legislature passed this Act in an attempt to alleviate some of the difficulty the State had in collecting debts. The difficulty the State had in collecting those debts owing on March 8, 1983, the date of the Acts' approval, is the reason this legislation was deemed necessary. If this Act is to liberally construed to fulfill its obvious purpose, as §1 directs, it should be applicable to aid in collecting those debts which spurred its enactment.

Arguably, §21 of Act 372 would prohibit retroactive application as it provides:

This Act shall be effective on and after July 1, 1983.

However, to further the Acts purpose, this section should be interpreted as providing a date by which the procedures within (see §§'s 6, 7, 8, 9, 10, 11, 13, 14, 16, and 17) first became effective. It is significant that §21 specifically provides July 1, 1983 as the Acts effective date. Without §21, this Act would have been effective on June 6, 1983, ninety(90) days after its approval. It must be presumed the legislature choose July 1, 1983, the beginning of the fiscal year, as the Acts effective date for good reason. The beginning of the fiscal year is the appropriate time the Department of Revenues could initiate these procedures to collect debts owed the State. It is difficult to understand why the legislature would choose July 1, 1983 as the date by which the debt must not have yet become owing in order for this Act to apply.

THIS STATUTE MAY NOT ACT TO REVIVE A CAUSE
OF ACTION ALREADY BARRED BY THE STATUTE
OF LIMITATIONS.

Although this Act may apply to debts arising before its July 1, 1983 effective date, it will not revive a cause of action already barred by the Statute of Limitations. Sutherland Statutory Construction, §41.09; Lundquist v. Coddington Bros., Inc., 202 F.Supp. 19 (W.D. Wis. 1962).

THE ARKANSAS CLAIMS COMMISSION HAS NO JURISDICTION
WHERE A "DEBTOR" UNDER THIS ACT SEEKS A
JUDGMENT FOR MONIES IMPROPERLY "SET-OFF".

Of course, the Arkansas Claims Commission's jurisdiction is limited to claims against the State. Ark. Stat. Ann. §13-1401 et seq (Repl. 1979). A "debtor" under Act 372 whose income tax refund has been wrongfully "set-off" under §8 is limited to the remedy provided in §9 of the Act. (i.e. follow procedures of the Administrative Procedures Act). By seeking relief for an improper §8 "set-off", the "debtor" is not making a claim against the State, but rather seeking to void or reverse the decision that the State's claimed sum was due and owing. Since the "debtor" here is not making a claim against the State, the Arkansas Claims Commission has no jurisdiction.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General David S. Mitchell.

Sincerely,


STEVE CLARK
Attorney General

SC/DSM/ljm