

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator C. Bell**

A Bill ACT 3 OF 1991
SENATE BILL 156

For An Act To Be Entitled

8 "AN ACT TO LEVY AN ADDITIONAL EXCISE TAX OF ONE-HALF OF
9 ONE PERCENT (1/2%) UNDER THE ARKANSAS GROSS RECEIPTS TAX
10 ACT AND THE ARKANSAS COMPENSATING TAX ACT; TO IMPOSE
11 ARKANSAS GROSS RECEIPTS AND COMPENSATING TAX ON ALL USED
12 MOTOR VEHICLES, TRAILERS, MOBILE HOMES, AND AIRPLANES; TO
13 ALLOW A CREDIT FOR TRADE-IN VALUE ON USED MOTOR VEHICLES,
14 TRAILERS, SEMI-TRAILERS, MOBILE HOMES AND AIRPLANES; TO
15 IMPOSE CRIMINAL PENALTIES ON PERSONS WHO ASSIST TAXPAYERS
16 IN EVADING PAYMENT OF TAX; TO IMPOSE A PENALTY EQUAL TO
17 THE AMOUNT OF TAX EVADED ON ANY PERSON WHO ASSISTS A
18 TAXPAYER IN EVADING OR DEFEATING THE PAYMENT OF TAX; TO
19 PROVIDE FOR PROSECUTION OF TAX OFFENSES IN PULASKI COUNTY;
20 AND FOR OTHER PURPOSES."

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. In addition to the excise tax levied upon the gross proceeds
25 or gross receipts derived from all sales by the Arkansas Gross Receipts Act
26 [Arkansas Code of 1987 Annotated §26-52-101 et seq.], there is hereby levied
27 an excise tax of one-half of one percent (1/2%) upon all taxable sales of
28 property and services subject to the tax levied in that Act, and such tax
29 shall be collected, reported, and paid in the same manner and at the same time
30 as is prescribed by law for the collection, reporting and payment of all other
31 Arkansas gross receipts taxes. Provided that, in computing gross receipts or
32 gross proceeds as defined in Arkansas Code of 1987 Annotated §26-52-103(a)(4),
33 a deduction shall be allowed for bad debts resulting from the sale of tangible
34 personal property.

35
36 SECTION 2. Arkansas Code of 1987 Annotated §26-52-303(a) is hereby

1 amended to read as follows:

2 "(a) In instances where an Arkansas city or incorporated town is (1)
3 divided by a State line from an incorporated city or town in an adjoining
4 state, and (2) the city or town in the adjoining state is of greater
5 population than the Arkansas city or town, and (3) that a tax imposed in such
6 adjoining state is in the nature of a selective sales tax or limited to
7 specific items as a special excise tax, then the rate of tax upon such
8 articles on the Arkansas side shall be at the same rate imposed in such such
9 adjoining state, not to exceed four and one-half percent (4 1/2%), provided
10 that if such border city has voted to levy an additional one percent (1%)
11 gross receipts tax in such city in lieu of paying state income taxes by
12 individuals who are residents of said city, as authorized by Arkansas Code of
13 1987 Annotated §26-52-601 et seq., in such event the rate of tax shall be one
14 percent (1%) above said four and one-half percent (4 1/2%)."

15

16 SECTION 3. In addition to the excise tax levied upon the privilege of
17 storing, using, distributing or consuming tangible personal property within
18 the State by the Arkansas Compensating Tax Act [Arkansas Code of 1987
19 Annotated §26-53-101 et seq.], there is hereby levied an excise tax of
20 one-half of one percent (1/2%) upon all tangible personal property subject to
21 the tax levied in that Act, and such tax shall be collected, reported, and
22 paid in the same manner and at the same time as is prescribed by law for the
23 collection, reporting and payment of Arkansas compensating taxes.

24

25 SECTION 4. Arkansas Code of 1987 Annotated §26-52-504 is hereby amended
26 to read as follows:

27 "26-52-504. Sale of house trailers or mobile homes.

28 (a) Every person selling new or used house trailers or mobile homes in
29 this state, whether from an established business, under a dealership, or
30 otherwise, shall obtain and hold a permit as provided by § 26-52-202 and shall
31 make a monthly report and remittance to the director of the Department of
32 Finance and Administration as provided in the Arkansas Gross Receipts Act, §
33 26-52-101 et seq., together with copies of invoices, sales tickets, or bills
34 of sale reflecting the date of all sales of such house trailers or mobile
35 homes, the purchaser's name and address, the make, year model, serial number,

1 and gross sales price of each house trailer or mobile home, and the amount of
2 tax collected from the purchaser.

3

4

5 (b) When a used house trailer or mobile home is taken in trade as a
6 credit or part payment on the sale of a new or used house trailer or mobile
7 home, the tax levied by Arkansas Code of 1987 Annotated §26-52-101 *et seq.*
8 *and all other gross receipts taxes levied by the State shall be paid on the*
9 *net difference between the total consideration for the house trailer or mobile*
10 *home sold and the credit for the used trailer or mobile home taken in trade.*
11 However, if the total consideration for the sale of the new or used house
12 trailer or mobile home is less than \$2,000, no tax shall be due.

13 (c) Any permittee who fraudulently attempts to evade any provision of
14 this section or of the Arkansas Gross Receipts Act, §26-52-101 *et seq.*, shall
15 be subject to having his permit revoked after notice and hearing as provided
16 by §26-52-208, as amended."

17

18 SECTION 5. Arkansas Code of 1987 Annotated §26-52-505 is hereby amended
19 to read as follows:

20 "26-52-505. Sales of aircraft.

21 (a) Every person selling new or used aircraft in this state, whether
22 from an established business, under a dealership, as a flying service, or as a
23 private individual, shall obtain and hold a permit as provided in § 26-52-202
24 and shall make a monthly report and remittance to the Director of the
25 Department of Finance and Administration as provided in the Arkansas Gross
26 Receipts Act, § 26-52-101 *et seq.*, together with copies of invoices, sales
27 tickets, or bills of sales reflecting the date of all sales of aircraft, the
28 purchaser's name and address, the make, year model, serial number, and gross
29 sales price of each aircraft, and the amount of tax collected from the
30 purchaser.

31

32

33 (b) When a used aircraft is taken in trade as a credit or part payment
34 on the sale of a new or used aircraft, the tax levied by Arkansas Code of 1987
35 Annotated §26-52-101 *et seq.* *and all other gross receipts taxes levied by the*

1 *State shall be paid on the net* difference between the total consideration for
 2 the new or used aircraft sold and the credit for the used aircraft taken in
 3 trade. However, if the total consideration for the sale of the new or used
 4 aircraft is less than \$2,000, no tax shall be due.

5 (c) However, the gross receipts or gross proceeds derived from the sale
 6 of new aircraft manufactured or substantially completed within the State of
 7 Arkansas shall not be subject to the gross receipts tax when sold by the
 8 manufacturer or substantial completer to a purchaser for use exclusively
 9 outside this state, notwithstanding the fact that possession may be taken in
 10 the state for the sole purpose of removing the aircraft from the state under
 11 its own power."

12

13 SECTION 6. Arkansas Code of 1987 Annotated §26-52-510 is hereby amended
 14 to read as follows:

15 "26-52-510. Direct payment of tax by consumer-user - New and used cars.

16 (a) The tax levied by this *Chapter and all other gross receipts taxes*
 17 *levied by the State* in respect to the sale of new or used motor vehicles,
 18 trailers or semi-trailers required to be licensed in this state shall be paid
 19 by the consumer to the director of the Department of Finance and
 20 Administration instead of being collected by the dealer, and it is the
 21 mandatory duty of the director to require the payment of such tax before
 22 issuing licenses for new or used motor vehicles or trailers. However, when a
 23 consumer purchases a new automobile which is so defective that the dealer or
 24 manufacturer agrees either to grant the consumer a full cash refund or to
 25 replace the original automobile with another new automobile, then the amount
 26 of gross receipts tax paid on the defective vehicle shall be applied as a
 27 credit upon the gross receipts tax due from the purchase or receipt of the new
 28 automobile which is a replacement vehicle for the original vehicle.

29

30

31 (b) When a used motor vehicle, trailer or semi-trailer is taken in
 32 trade as a credit or part payment on the sale of a new or used motor vehicle,
 33 trailer or semi-trailer, the tax levied by this *Chapter and all other gross*
 34 *receipts taxes levied by the State* shall be paid on the net difference between
 35 the total consideration for the new or used vehicle, trailer or semi-trailer

1 sold and the credit for the used vehicle, trailer or semi-trailer taken in
2 trade. However, if the total consideration for the sale of the new or used
3 motor vehicle, trailer or semi-trailer is less than \$2,000, no tax shall be
4 due.

5 (c) Used car dealers shall be deemed the consumer-users of all parts
6 and accessories used by them for the reconditioning or rebuilding of used
7 automobiles and shall be required to report as a sale all parts and
8 accessories withdrawn or used from the stock in trade. In instances where
9 dealers are not engaged in the sale of parts and accessories in connection
10 with the sale of used cars, the tax shall be paid to the seller at the time
11 purchases of parts and accessories are made.

12
13 (d) Nothing in this section shall be construed to repeal any exemption
14 from the Arkansas Gross Receipts Act, §26-52-101 et seq.

15 (e) No credit shall be allowed for sales or use taxes paid to another
16 state with respect to the purchase of motor vehicles, trailers, or
17 semitrailers which were first registered by the purchaser in Arkansas. This
18 subsection shall apply to all motor vehicles, trailers, or semitrailers
19 purchased on or after November 3, 1989."

20
21 SECTION 7. Arkansas Code of 1987 Annotated §26-53-126 is hereby amended
22 to read as follows:

23 "26-53-126. Tax on used cars - Payment and collection.

24 (a) All new and used motor vehicles, trailers or semi-trailers required
25 to be licensed in this state shall, upon being registered in this state , be
26 subject to the tax levied herein *and all other use taxes levied by the State*
27 irrespective of whether such motor vehicle, trailer or semi-trailer was
28 purchased from a dealer or an individual. The tax shall be paid to the
29 director by the person making application to register the motor vehicle,
30 trailer or semi-trailer instead of being collected by the dealer or individual
31 seller. It shall be the mandatory duty of the director to collect the tax
32 before issuing a license for any motor vehicle, trailer or semi-trailer.

33
34 (b) When a used motor vehicle, trailer or semi-trailer is taken in trade
35 as a credit or part payment on the sale of a new or used vehicle, trailer or

1 semi-trailer, the tax levied herein *and all other use taxes levied by the*
2 *State* shall be paid on the net difference between the total consideration for
3 the new or used vehicle, trailer or semi-trailer sold and the credit for the
4 used vehicle, trailer or semi-trailer taken in trade. However, if the total
5 consideration for the sale of the new or used motor vehicle, trailer or
6 semi-trailer is less than \$2,000, no tax shall be due.

7 (c) The tax imposed by this subchapter shall not apply to a motor
8 vehicle, trailer or semi-trailer to be registered by a bona fide nonresident
9 of this state.

10 (d) Nothing in this section shall be construed to repeal any
11 exemption from the Arkansas Compensating Tax Act, §26-53-101 et seq."

12

13 SECTION 8. The Director of the Department of Finance and Administration
14 is authorized to adopt an alternative method for determining the total
15 consideration for the sale of new or used house trailers or mobile homes under
16 Arkansas Code of 1987 Annotated §26-52-504; new or used aircraft under
17 Arkansas Code of 1987 Annotated §26-52-505; and new or used motor vehicles,
18 trailers or semi-trailers under Arkansas Code of 1987 Annotated §26-52-510 and
19 §26-53-126. The alternative method adopted shall incorporate any generally
20 accepted method of determining the value of the item being sold. If the
21 consideration stated by the parties to the sale is less than the value
22 determined by such generally accepted method of valuation, then for purposes
23 of taxation, it shall be presumed that the higher figure is the total
24 consideration unless the taxpayer provides a contract, bill of sale or other
25 evidence establishing that the true consideration is less than the value
26 determined under the alternative method.

27

28 SECTION 9. Arkansas Code of 1987 Annotated §26-18-201 is amended to
29 read as follows:

30 "26-18-201. Attempt to evade or defeat tax.

31 (a) Any taxpayer who willfully attempts to evade or defeat the payment
32 of any tax, penalty, or interest due under any state tax law shall be guilty
33 of a Class C felony.

34 (b) Any person who willfully assists a taxpayer in evading or defeating
35 the payment of any tax, penalty, or interest due under any state tax law shall

1 be guilty of a Class C felony."

2

3 SECTION 10. Subchapter 2 of Chapter 18 of Title 26 of the Arkansas Code
4 of 1987 Annotated is hereby amended by adding two new Sections at the end
5 thereof to read as follows:

6 "26-18-209.

7 Any person who assists a taxpayer in evading or defeating the payment of
8 any state tax shall be liable for a penalty equal to the total amount of the
9 tax evaded, or not collected, or not accounted for and paid over to the
10 Director.

11 26-18-210.

12 Prosecution of any criminal offense provided for in this subchapter may
13 be in the county wherein the taxpayer resides, has an established place of
14 business, or in Pulaski County."

15

16 SECTION 11. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

19

20 SECTION 12. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25

26 SECTION 13. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28

29 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined that
30 the State of Arkansas is lacking adequate funds to provide for the education
31 of its citizens and for other essential services; that increased funds must be
32 raised to adequately provide for those needs; that certain persons are
33 assisting taxpayers in evading or defeating the payment or collection of
34 lawfully imposed state taxes depriving the state of needed revenues and that
35 this act is designed to provide the necessary revenues to the state sufficient

1 to meet these needs. Therefore, an emergency is declared to exist and this
2 act, being necessary for the immediate preservation of the public peace,
3 health and safety, shall be in full force and effective on and after May 1,
4 1991.

5

6

7

/s/Bell

9

APPROVED: 1-25-91

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29