

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/26/99

A Bill

Act 1152 of 1999
SENATE BILL 457

5 By: Senators Wooldridge, Russ, Critcher, Kennedy
6
7

For An Act To Be Entitled

9 "AN ACT TO REPEAL TITLE 26, CHAPTER 52, SUBCHAPTER 15
10 OF THE ARKANSAS CODE WHICH LEVIES A BINGO TAX; AND TO
11 AMEND ARKANSAS CODE 26-52-301 TO ADD A SECTION STATING
12 THAT ADMISSIONS TO BINGO GAMES ARE SUBJECT TO SALES
13 TAX; AND FOR OTHER PURPOSES. "
14

Subtitle

15 "AN ACT TO REPEAL THE BINGO TAX; AND TO
16 TAX ADMISSIONS TO BINGO GAMES. "
17
18

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code 26-52-1501 through 26-52-1507 are repealed.

23 ~~"26-52-1501. Definitions.~~

24 ~~As used in this subchapter, unless the context otherwise requires:~~

25 ~~(1) 'Director' means the Director of the Department of Finance~~
26 ~~and Administration or his authorized agents;~~

27 ~~(2) 'Bingo' means a game in which each participant receives one~~
28 ~~(1) or more cards, including, but not limited to, pull-tab cards marked off~~
29 ~~into twenty-five (25) squares arranged on five (5) horizontal rows of five (5)~~
30 ~~squares each, or one (1) or more cards marked off into twenty-five (25)~~
31 ~~squares arranged on five (5) horizontal rows of five (5) squares each which~~
32 ~~are not pull-tab cards and, in addition thereto, one (1) or more pull-tab~~
33 ~~cards. Each square is designated by a number, letter, or by a combination of~~
34 ~~numbers and letters, except that the center square on the card shall be~~
35 ~~designated with the word "FREE." No two (2) cards shall be identical. As the~~
36 ~~announcer of the game announces a number, letter, or a combination of numbers~~

1 and letters, each player covers the square corresponding to the announced
2 number, letter, or combination. The numbers, letters, or combinations of
3 numbers and letters which are announced shall appear on an object selected by
4 chance, either manually or mechanically, from a receptacle containing the
5 objects bearing numbers, letters, or combinations of numbers and letters. The
6 winner or winners of each game shall be the player who is or players who are
7 first to properly cover a predetermined and announced pattern of squares upon
8 the card or cards used by such player or players. A prize or prizes may be
9 awarded to the winner or winners of a game;

10 (3) ~~'Bingo operator'~~ shall include any person who owns or
11 operates a location or business within the State of Arkansas which offers the
12 game of bingo;

13 (4) ~~'Person'~~ includes any individual, partnership, joint venture,
14 corporation, estate, trust, nonprofit corporation, church, association, club,
15 or organization;

16 (5)(A) ~~'Gross receipts'~~ or "gross proceeds" means the total
17 amount of consideration for the sale of tangible personal property and such
18 services and admissions as are herein specifically provided for, whether the
19 consideration is in money or otherwise, without any deduction on account of
20 the cost of the properties sold, labor service performed, interest paid,
21 losses, or any expenses whatsoever.

22 (B) ~~The term 'gross proceeds'~~ or "gross receipts" shall
23 include the value of any goods, wares, merchandise, or property withdrawn or
24 used from the established business or from the stock in trade of the
25 established reserves for consumption or use by the bingo operator or by any
26 other person;

27 (6)(A) ~~'Sale'~~ is declared to mean the transfer of either the
28 title or possession for a valuable consideration of tangible personal
29 property, regardless of the manner, method, instrumentality, or device by
30 which the transfer is accomplished.

31 (B) ~~'Sale'~~ is also declared to include the exchange,
32 barter, lease, or rental of tangible personal property.

33 (C) ~~'Sale'~~ shall also include the sale, giving away,
34 exchanging, or other disposition of admissions, dues, or fees for admission to
35 a bingo game location; and

36 (7) ~~'Charitable or nonprofit organization'~~ means any nonprofit

1 ~~tax-exempt religious, educational, veterans', fraternal, service, civic,~~
2 ~~medical, volunteer rescue service, or volunteer fire fighters' organization~~
3 ~~which has been in continuing existence in this state for a period of not less~~
4 ~~than five (5) years immediately prior to making application for registration,~~
5 ~~and which does not offer bingo on more than two (2) days during a consecutive~~
6 ~~seven-day period. An organization is tax-exempt if it has received from the~~
7 ~~Internal Revenue Service a determination letter that is currently in effect~~
8 ~~stating that the organization is exempt from federal income taxation under §~~
9 ~~501(a), and if it is described in § 501(c)(3), (10), or (19) or § 528 of the~~
10 ~~Internal Revenue Code.~~

11
12 ~~26-52-1502. Imposition of tax.~~

13 ~~There is levied a tax of twenty percent (20%) on the total gross~~
14 ~~receipts derived from the retail sale of any device used in playing bingo, and~~
15 ~~any charge for admittance to a bingo game or other payment to play bingo,~~
16 ~~whether voluntary or not. The tax levied by this subchapter does not apply to~~
17 ~~sales of other tangible personal property by the bingo operator, if the~~
18 ~~property is not for use in playing bingo.~~

19
20 ~~26-52-1503. Exemptions.~~

21 ~~No exemptions or deductions shall be allowed from the tax levied by this~~
22 ~~subchapter, except as otherwise provided hereafter for charitable or nonprofit~~
23 ~~organizations. It is intended that charitable or nonprofit organizations~~
24 ~~which engage in only limited bingo operations as specified in this subchapter~~
25 ~~shall not be subject to the tax.~~

26
27 ~~26-52-1504. Annual registration with director required.~~

28 ~~(a)(1) All persons who act as a bingo operator within the State of~~
29 ~~Arkansas shall be required to register annually on July 1 of each year with~~
30 ~~the director.~~

31 ~~(2) Registration shall be made with the director upon forms~~
32 ~~designed and provided by him.~~

33 ~~(3) The director shall issue a certificate of registration which~~
34 ~~shall be posted conspicuously on all premises owned, leased, or controlled by~~
35 ~~the bingo operator where bingo is to be played.~~

36 ~~(b)(1) Registration shall be complete and a certificate issued upon~~

1 ~~submission of the properly completed forms and the payment of a five hundred~~
2 ~~dollar (\$500) nonrefundable annual registration fee by all bingo operators,~~
3 ~~except those who qualify as a charitable or nonprofit organization.~~

4 ~~(2)(A) Registration for charitable or nonprofit organizations~~
5 ~~shall be completed and a bingo tax exemption registration certificate issued~~
6 ~~upon the submission of the properly completed forms and payment of a twenty-~~
7 ~~five dollar (\$25.00) nonrefundable annual registration fee.~~

8 ~~(B) The bingo tax exemption registration certificate shall~~
9 ~~only be issued to those charitable or nonprofit organizations which qualify~~
10 ~~for that status under the specific requirements of this subchapter.~~

11 ~~(3) The registration fee shall not be prorated.~~

12 ~~(c)(1) Any person required to register under this section shall obtain~~
13 ~~a certificate of registration for each location where bingo games are played.~~

14 ~~(2) The registration certificate shall be conspicuously displayed~~
15 ~~at the location for which it was issued.~~

16 ~~(d)(1) The certificate shall be effective from the date of issuance~~
17 ~~until June 30 next following the date of issuance.~~

18 ~~(2) All registrations shall be renewed on an annual basis.~~

19 ~~(3) All registration renewals must be made on or before July 1~~
20 ~~each year.~~

21 ~~(e) Failure to properly register or to report or pay the tax levied in~~
22 ~~this subchapter shall be a Class C felony.~~

23
24 ~~26-52-1505. Authorized persons.~~

25 ~~(a) Persons who lease premises, sell or lease supplies or equipment, or~~
26 ~~furnish commodities or services to sponsoring organizations to conduct bingo~~
27 ~~games shall not participate in the operation of the bingo games.~~

28 ~~(b) No lease providing for a rental arrangement for premises or~~
29 ~~equipment for use in the game shall provide for payment in excess of the~~
30 ~~reasonable fair market rental rate for the premises or equipment, and in no~~
31 ~~case shall any payment be based on a percentage of gross receipts or proceeds.~~
32 ~~The reasonable fair market rental rate shall be determined by the director.~~

33 ~~(c) No person shall participate in conducting or managing the game of~~
34 ~~bingo for a charitable or nonprofit organization except a person who has been~~
35 ~~a bona fide member of the registered organization for at least two (2) years~~
36 ~~immediately preceding such participation and who volunteers his time and~~

1 ~~service necessary to conduct the game. Such person shall not be a paid~~
2 ~~employee of the registered organization or compensated specifically for~~
3 ~~conducting or managing the game of bingo for the charitable or nonprofit~~
4 ~~organization.~~

5 ~~(d) No person, firm, partnership, or corporation shall receive any~~
6 ~~remuneration, profit, or gift for participating in the management or operation~~
7 ~~of the game for a charitable or nonprofit organization, including the granting~~
8 ~~or use of bingo cards without charge or at a reduced charge, from the~~
9 ~~registered organization or from any other source.~~

10
11 ~~26-52-1506. Administration - Rules and regulations.~~

12 ~~(a) The administration of this subchapter shall be vested in and shall~~
13 ~~be exercised by the director and shall be subject to the provisions of the~~
14 ~~Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

15 ~~(b) The director shall promulgate rules and regulations and prescribe~~
16 ~~forms for the proper enforcement of this subchapter.~~

17 ~~(c) The tax levied by this subchapter shall be due and payable to the~~
18 ~~Department of Finance and Administration in the same manner as provided for by~~
19 ~~§ 26-52-501. However, tax payments under this subchapter shall be due and~~
20 ~~payable on the fifteenth of each month.~~

21
22 ~~26-52-1507. Relationship to other taxes.~~

23 ~~(a) The taxes levied in § 26-52-1502 are in lieu of all state gross~~
24 ~~receipts taxes currently levied under § 26-52-101 et seq.~~

25 ~~(b) The taxes levied in § 26-52-1502 are in addition to all gross~~
26 ~~receipts taxes levied by cities or counties."~~

27
28 *SECTION 2. Arkansas Code 26-52-301 is amended to read as follows:*

29 *"26-52-301. Tax levied.*

30 *There is levied an excise tax of three percent (3%) upon the gross*
31 *proceeds or gross receipts derived from all sales to any person of the*
32 *following:*

33 *(1) Tangible personal property;*

34 *(2) Natural or artificial gas, electricity, water, ice, steam, or any*
35 *other utility or public service except transportation services, sewer*
36 *services, and sanitation or garbage collection services;*

1 (3)(A)(i) Service by telephone, telecommunications, and telegraph
2 companies to subscribers or users, including transmission of messages or
3 images, whether local or long distance.

4 (ii) Taxable services shall include basic local service and
5 rental charges, including all installation and construction charges and all
6 service and rental charges having any connection with transmission of any
7 message or image.

8 (iii) Except as provided in subdivision (3)(A)(iv) of this
9 section, taxable long distance services shall include:

10 (a) Long distance messages which originate and
11 terminate within this state;

12 (b) Interstate long distance messages which originate
13 within this state and terminate outside this state and are billed to an
14 Arkansas telephone number or customer location;

15 (c) Interstate long distance messages which originate
16 outside of this state and terminate within this state and are billed to an
17 Arkansas telephone number or customer location.

18 (iv) However, the following services shall not be subject
19 to the tax:

20 (a) Any interstate private communications service
21 which is not accessible by the public;

22 (b) Any interstate service which allows access to
23 private telephone lines and which is not accessible by the public; or

24 (c) Any interstate-wide area telecommunications
25 service or other similar service which entitles the subscriber to make or
26 receive an unlimited number of communications to or from persons having
27 telecommunications service in a specified area which is outside the state in
28 which the station provided with this service is located.

29 (v) This tax shall apply to all customer access line
30 charges billed to an Arkansas telephone number. Access line charges are those
31 charges associated with or for access to the long distance network. However,
32 access or other telecommunication services provided to telephone, telegraph,
33 or telecommunications companies which will be used to provide
34 telecommunications services shall not be subject to this tax;

35 (B)(i) Service of furnishing rooms, suites, condominiums,
36 townhouses, rental houses, or other accommodations by hotels, apartment

1 hotels, lodging houses, tourist camps, tourist courts, property management
2 companies, or any other provider of accommodations to transient guests.

3 (ii) The term "transient guests" is defined for the purpose
4 of this subdivision (3) (B) as those who rent accommodations, other than their
5 regular place of abode, on less than a month-to-month basis;

6 (C)(i) Service of alteration, addition, cleaning, refinishing,
7 replacement, and repair of motor vehicles, aircraft, farm machinery and
8 implements, motors of all kinds, tires and batteries, boats, electrical
9 appliances and devices, furniture, rugs, upholstery, household appliances,
10 television and radio, jewelry, watches and clocks, engineering instruments,
11 medical and surgical instruments, machinery of all kinds, bicycles, office
12 machines and equipment, shoes, tin and sheetmetal, mechanical tools, and shop
13 equipment.

14 (ii) However, the provisions of this section shall not
15 apply to coin-operated car washes. For the purposes of this section, a coin-
16 operated car wash shall be defined as one wherein the car washing equipment is
17 activated by the insertion of coins into a slot or receptacle and where the
18 labor of washing the exterior of the car or motor vehicle is performed solely
19 by the customer or by mechanical equipment.

20 (iii) Additionally, the gross receipts tax levied in this
21 section shall not apply to the repair or maintenance of railroad parts,
22 railroad cars, and equipment brought into the State of Arkansas solely and
23 exclusively for the purpose of being repaired, refurbished, modified, or
24 converted within this state.

25 (iv) The General Assembly determines and affirms that the
26 original intent of this subdivision which provides that gross receipts derived
27 from certain services would be subject to the gross receipts tax was not
28 intended to be applicable, nor shall Arkansas gross receipts taxes be
29 collected, with respect to services performed on watches and clocks which are
30 received by mail or common carrier from outside this state and which, after
31 the service is performed, are returned by mail or common carrier or in the
32 repairman's own conveyance to points outside this state.

33 (v) Additionally, the gross receipts tax levied in this
34 section shall not apply to the repair or remanufacture of industrial metal
35 rollers or platens that have a remanufactured, nonmetallic material covering
36 on all or part of the roller or platen surface which are brought into the

1 State of Arkansas solely and exclusively for the purpose of being repaired or
2 remanufactured in this state and are then shipped back to the state of origin.

3 (vi) The gross receipts tax levied in this section shall
4 not apply to the service of alteration, addition, cleaning, refinishing,
5 replacement, or repair of commercial jet aircraft, commercial jet aircraft
6 components, or commercial jet aircraft subcomponents. The term "commercial
7 jet aircraft" shall mean any commercial, military, private, or other turbine
8 or turbo jet aircraft having a certified maximum take-off weight of more than
9 twelve thousand five hundred (12,500) pounds;

10 (vii) The provisions of subdivision (3)(C)(i) of this
11 section shall not apply to the services performed by a temporary or leased
12 employee or other contract laborer on items owned or leased by the employer.
13 The following criteria must be met for a person to be a temporary or leased
14 employee:

15 (a) There must be a written contract with the
16 temporary employment agency, employee leasing company, or other contractor
17 providing the services;

18 (b) The employee, temporary employment agency,
19 employee leasing company, or other contractor must not bear the risk of loss
20 for damages caused during the performance of the contract. The person for whom
21 the services are performed must bear the risk of loss; and

22 (c) The temporary or leased employee or contract
23 laborer is controlled by the employer as if he were a full-time permanent
24 employee. "Control" includes, but is not limited to, scheduling work hours,
25 designating work duties, and directing work performance.

26 (viii)(a) Additionally, the gross receipts tax levied in
27 this section shall not apply to the alteration, addition, cleaning,
28 refinishing, replacement, or repair of nonmechanical, passive, or manually
29 operated components of buildings or other improvements or structures affixed
30 to real estate, including, but not limited to, the following:

- 31 (1) Walls;
- 32 (2) Floors;
- 33 (3) Ceilings;
- 34 (4) Doors;
- 35 (5) Locks;
- 36 (6) Windows;

- 1 (7) Glass;
- 2 (8) Heat and air ducts;
- 3 (9) Roofs;
- 4 (10) Wiring;
- 5 (11) Breakers;
- 6 (12) Breaker boxes;
- 7 (13) Electrical switches and receptacles;
- 8 (14) Light fixtures;
- 9 (15) Pipes;
- 10 (16) Plumbing fixtures;
- 11 (17) Fire and security alarms;
- 12 (18) Intercoms;
- 13 (19) Sprinkler systems;
- 14 (20) Parking lots;
- 15 (21) Fences;
- 16 (22) Gates;
- 17 (23) Fireplaces; and
- 18 (24) Similar components which become a part of real
- 19 estate after installation.

20 (b) Contractors are deemed to be consumers or users of all tangible
21 personal property used or consumed by them in providing such nontaxable
22 services, in the same manner as when performing any other contract.

23 (c) This subdivision (3)(C)(viii) shall not apply to any services
24 subject to tax pursuant to the terms of subdivision (3)(E) of this section.

25 (D)(i) Service of cable television, community antenna television,
26 and any and all other distribution of television, video, or radio services
27 with or without the use of wires provided to subscribers or paying customers
28 or users, including all service charges and rental charges, whether for basic
29 service, premium channels, or other special service, and including
30 installation and repair service charges and any other charges having any
31 connection with the providing of the said services.

32 (ii) The tax levied by this section does not apply to
33 services purchased by radio or television companies for use in providing their
34 services;

35 (E)(i) Service of providing transportation or delivery of money,
36 property or valuables by armored car; service of providing cleaning or

1 *jani torial work; service of pool cleaning and servicing; pager services;*
2 *telephone answering services; lawn care and landscaping services; service of*
3 *parking a motor vehicle or allowing the motor vehicle to be parked; service of*
4 *storing a motor vehicle; service of storing furs; service of providing indoor*
5 *tanning at a tanning salon.*

6 (ii) *[Repealed].*

7 (iii) *For purposes of this section:*

8 (a) *"Landscaping" means the installation,*
9 *preservation or enhancement of ground covering by planting trees, bushes and*
10 *shrubbery, grass, flowers, and other types of decorative plants; and*

11 (b) *"Lawn care" means the maintenance, preservation,*
12 *or enhancement of ground covering of nonresidential property and does not*
13 *include planting trees, bushes and shrubbery, grass, flowers, and other types*
14 *of decorative plants.*

15 (c) *"Residential" means a single family residence*
16 *used solely as the principal place of residence of the owner.*

17 (4) *Printing of all kinds, types, and characters, including*
18 *the service of overprinting, and photography of all kinds;*

19 (5) *Tickets or admissions to places of amusement; to*
20 *athletic, entertainment, or recreational events; or fees for the privilege of*
21 *having access to or the use of amusement, entertainment, athletic, or*
22 *recreational facilities including free or complimentary passes and tickets,*
23 *admissions, dues, or fees, with such free or complimentary passes, tickets,*
24 *dues, or fees being declared to have a value equivalent to the sale price of*
25 *tickets, passes, admissions, fees, or dues of like kind or character;*

26 (6) *Dues and fees to health spas, health clubs, and fitness*
27 *clubs; dues and fees to private clubs which hold any permit from the Alcoholic*
28 *Beverage Control Board allowing the sale, dispensing, or serving of alcoholic*
29 *beverages of any kind on the premises--;*

30 (7) *Contracts, including service contracts, maintenance*
31 *agreements and extended warranties, which in whole or in part provide for the*
32 *future performance of or payment for services which are subject to gross*
33 *receipts tax. The seller of the contract must collect and remit the tax due on*
34 *the sale of the contract except when the contract is sold simultaneously with*
35 *a motor vehicle in which case the purchaser of the vehicle shall pay gross*
36 *receipts tax on the purchase of the contract at the time of vehicle*

1 ~~registration; and~~

2 (8) The total gross receipts derived from the retail sale
3 of any device used in playing bingo and any charge for admittance to
4 facilities or for the right to play bingo or other games of chance regardless
5 of whether such activity might otherwise be prohibited by law."

6
7 SECTION 3. Arkansas Code 19-6-201(16) is repealed.

8 ~~(16) Bingo gross receipts tax and annual registration fees, § 26-52-~~
9 ~~1501;~~

10
11 SECTION 4. All provisions of this act of a general and permanent nature
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
13 Revision Commission shall incorporate the same in the Code.

14
15 SECTION 5. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

20
21 SECTION 6. All laws and parts of laws in conflict with this act are
22 hereby repealed.

23
24 SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the
25 Eighty-second General Assembly that the revenues generated by taxing bingo are
26 dwindling; that many bingo parlors have been enjoined by court order as
27 illegal gambling operations; that bingo operators are currently required to
28 register on July 1 of each year and pay a registration fee; that the repeal of
29 the bingo tax provisions will also repeal the need to pay a registration fee;
30 that taxpayers and the Department of Finance and Administration will be
31 relieved of performing unnecessary administrative tasks related to the
32 registration fees if the tax provisions and annual registration requirements
33 are repealed prior to July 1, 1999. Therefore, an emergency is declared to
34 exist and this act being immediately necessary for the preservation of the
35 public peace, health and safety shall become effective on the date of its
36 approval by the Governor. If the bill is neither approved nor vetoed by the

1 Governor, it shall become effective on the expiration of the period of time
2 during which the Governor may veto the bill. If the bill is vetoed by the
3 Governor and the veto is overridden, it shall become effective on the date the
4 last house overrides the veto.

5 /s/ Wool d r i d g e

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APPROVED: 4/6/1999

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