

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By: Representatives J. Miller and Cunningham**

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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."

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

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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.

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1 SECTION 2. Arkansas Code of 1987 Annotated §26-52-303(a) is hereby
2 amended to read as follows:

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

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

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

28 "26-52-504. Sale of house trailers or mobile homes.

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

1 homes, the purchaser's name and address, the make, year model, serial number,
2 and gross sales price of each house trailer or mobile home, and the amount of
3 tax collected from the purchaser.

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

12 (c) Any permittee who fraudulently attempts to evade any provision of
13 this section or of the Arkansas Gross Receipts Act, §26-52-101 et seq., shall
14 be subject to having his permit revoked after notice and hearing as provided
15 by §26-52-208, as amended."
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17 SECTION 5. Arkansas Code of 1987 Annotated §26-52-505 is hereby amended
18 to read as follows:

19 "26-52-505. Sales of aircraft.

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

30 (b) When a used aircraft is taken in trade as a credit or part payment
31 on the sale of a new or used aircraft, the tax levied by Arkansas Code of 1987
32 Annotated §26-52-101 et seq. shall be paid on the net difference between the
33 total consideration for the new or used aircraft sold and the credit for the
34 used aircraft taken in trade. However, if the total consideration for the
35 sale of the new or used aircraft is less than \$2,000, no tax shall be due.

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

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

11 "26-52-510. Direct payment of tax by consumer-user - New and used cars.

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

24 (b) When a used motor vehicle, trailer or semi-trailer is taken in
25 trade as a credit or part payment on the sale of a new or used motor vehicle,
26 trailer or semi-trailer, the tax levied by this act shall be paid on the net
27 difference between the total consideration for the new or used vehicle,
28 trailer or semi-trailer sold and the credit for the used vehicle, trailer or
29 semi-trailer taken in trade. However, if the total consideration for the sale
30 of the new or used motor vehicle, trailer or semi-trailer is less than \$2,000,
31 no tax shall be due.

32 (c) Used car dealers shall be deemed the consumer-users of all parts
33 and accessories used by them for the reconditioning or rebuilding of used
34 automobiles and shall be required to report as a sale all parts and
35 accessories withdrawn or used from the stock in trade. In instances where

1 dealers are not engaged in the sale of parts and accessories in connection
2 with the sale of used cars, the tax shall be paid to the seller at the time
3 purchases of parts and accessories are made.

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

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

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

14 "26-53-126. Tax on used cars - Payment and collection.

15 (a) All new and used motor vehicles, trailers or semi-trailers required
16 to be licensed in this state shall, upon being registered in this state , be
17 subject to the tax levied herein irrespective of whether such motor vehicle,
18 trailer or semi-trailer was purchased from a dealer or an individual. The tax
19 shall be paid to the director by the person making application to register the
20 motor vehicle, trailer or semi-trailer instead of being collected by the
21 dealer or individual seller. It shall be the mandatory duty of the director
22 to collect the tax before issuing a license for any motor vehicle, trailer or
23 semi-trailer.

24 (b) When a used motor vehicle, trailer or semi-trailer is taken in trade
25 as a credit or part payment on the sale of a new or used vehicle, trailer or
26 semi-trailer, the tax levied herein shall be paid on the net difference
27 between the total consideration for the new or used vehicle, trailer or
28 semi-trailer sold and the credit for the used vehicle, trailer or semi-trailer
29 taken in trade. However, if the total consideration for the sale of the new
30 or used motor vehicle, trailer or semi-trailer is less than \$2,000, no tax
31 shall be due.

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

35 (d) Nothing in this section shall be construed to repeal any exemption

1 from the Arkansas Compensating Tax Act, §26-53-101 et seq."

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3 SECTION 8. The Director of the Department of Finance and Administration
4 is authorized to adopt an alternative method for determining the total
5 consideration for the sale of new or used house trailers or mobile homes under
6 Arkansas Code of 1987 Annotated §26-52-504; new or used aircraft under
7 Arkansas Code of 1987 Annotated §26-52-505; and new or used motor vehicles,
8 trailers or semi-trailers under Arkansas Code of 1987 Annotated §26-52-510 and
9 §26-53-126. The alternative method adopted shall incorporate any generally
10 accepted method of determining the value of the item being sold. If the
11 consideration stated by the parties to the sale is less than the value
12 determined by such generally accepted method of valuation, then for purposes
13 of taxation, it shall be presumed that the higher figure is the total
14 consideration unless the taxpayer provides a contract, bill of sale or other
15 evidence establishing that the true consideration is less than the value
16 determined under the alternative method.

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

20 "26-18-201. Attempt to evade or defeat tax.

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

24 (b) Any person who willfully assists a taxpayer in evading or defeating
25 the payment of any tax, penalty, or interest due under any state tax law shall
26 be guilty of a Class C felony."

27

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

31 "26-18-209.

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

1 26-18-210.

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

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

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

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

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19 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined that
20 the State of Arkansas is lacking adequate funds to provide for the education
21 of its citizens and for other essential services; that increased funds must be
22 raised to adequately provide for those needs; that certain persons are
23 assisting taxpayers in evading or defeating the payment or collection of
24 lawfully imposed state taxes depriving the state of needed revenues and that
25 this act is designed to provide the necessary revenues to the state sufficient
26 to meet these needs. Therefore, an emergency is declared to exist and this
27 act, being necessary for the immediate preservation of the public peace,
28 health and safety, shall be in full force and effective on and after May 1,
29 1991.

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