

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representatives J. Miller, Cunningham, Allen, Dietz,**
5 **Newman, and Henry**

A Bill

HOUSE BILL

For An Act To Be Entitled

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

19

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

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22 SECTION 1. Arkansas Code of 1987 Annotated §26-52-504 is hereby amended
23 to read as follows:

24 "26-52-504. Sale of house trailers or mobile homes.

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

35 (b) When a used house trailer or mobile home is taken in trade as a

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

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

12

13 SECTION 2. Arkansas Code of 1987 Annotated §26-52-505 is hereby amended
14 to read as follows:

15 "26-52-505. Sales of aircraft.

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

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

33 (c) However, the gross receipts or gross proceeds derived from the sale
34 of new aircraft manufactured or substantially completed within the State of
35 Arkansas shall not be subject to the gross receipts tax when sold by the

1 manufacturer or substantial completer to a purchaser for use exclusively
2 outside this state, notwithstanding the fact that possession may be taken in
3 the state for the sole purpose of removing the aircraft from the state under
4 its own power."

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6 SECTION 3. Arkansas Code of 1987 Annotated §26-52-510 is hereby amended
7 to read as follows:

8 "26-52-510. Direct payment of tax by consumer-user - New and used cars.

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

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

31 (c) Used car dealers shall be deemed the consumer-users of all parts
32 and accessories used by them for the reconditioning or rebuilding of used
33 automobiles and shall be required to report as a sale all parts and
34 accessories withdrawn or used from the stock in trade. In instances where
35 dealers are not engaged in the sale of parts and accessories in connection

1 with the sale of used cars, the tax shall be paid to the seller at the time
2 purchases of parts and accessories are made.

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

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

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11 SECTION 4. Arkansas Code of 1987 Annotated §26-53-126 is hereby amended
12 to read as follows:

13 "26-53-126. Tax on used cars - Payment and collection.

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

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

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

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

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

SECTION 6. Arkansas Code of 1987 Annotated §26-18-201 is amended to read as follows:

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

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

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

SECTION 7. Subchapter 2 of Chapter 18 of Title 26 of the Arkansas Code of 1987 Annotated is hereby amended by adding two new Sections at the end thereof to read as follows:

"26-18-209.

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

26-18-210.

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

5 SECTION 8. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.
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9 SECTION 9. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.
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15 SECTION 10. All laws and parts of laws in conflict with this act are
16 hereby repealed.
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18 SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined that
19 the State of Arkansas is lacking adequate funds to provide for the education
20 of its citizens and for other essential services; that increased funds must be
21 raised to adequately provide for those needs; that certain persons are
22 assisting taxpayers in evading or defeating the payment or collection of
23 lawfully imposed state taxes depriving the state of needed revenues and that
24 this act is designed to provide the necessary revenues to the state sufficient
25 to meet these needs. Therefore, an emergency is declared to exist and this
26 act, being necessary for the immediate preservation of the public peace,
27 health and safety, shall be in full force and effective on and after May 1,
28 1991.
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