

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

Call Item 6

A Bill

HOUSE BILL 1016

5 By: Representative L. Prater
6
7

For An Act To Be Entitled

9 AN ACT TO PROVIDE ADDITIONAL REVENUE TO FUND THE
10 STATE EDUCATION SYSTEM; TO INCREASE THE STATE
11 GROSS RECEIPTS AND USE TAX RATE BY SEVEN-EIGHTHS
12 OF ONE PERCENT (7/8 of 1%); TO CREATE THE
13 EDUCATIONAL ADEQUACY TRUST FUND FOR DISTRIBUTION
14 OF SPECIAL REVENUE TO THE PUBLIC SCHOOL FUND; TO
15 IMPOSE A GROSS RECEIPTS TAX ON THE SALE OF
16 ADVERTISING SPACE AND TIME INCLUDING NEWSPAPER
17 ADVERTISING SPACE, TELEVISION AND RADIO
18 ADVERTISING TIME, AND BILLBOARD ADVERTISING; TO
19 REPEAL ARKANSAS CODE § 26-52-401(13) TO ELIMINATE
20 THE GROSS RECEIPTS TAX EXEMPTION FOR ADVERTISING
21 SPACE IN NEWSPAPERS AND ON BILLBOARDS; TO AMEND
22 ARKANSAS CODE §§ 26-52-304 AND 26-53-109 TO
23 PROVIDE THAT GROSS RECEIPTS FROM THE SALE OF
24 SOFTWARE AND LICENSES ARE TAXABLE WITHOUT REGARD
25 TO THE MANNER OF DELIVERY AND IMPOSING SALES TAX
26 ON SOFTWARE-RELATED SERVICES AND COMPUTER
27 CONSULTING SERVICES; AND FOR OTHER PURPOSES.

Subtitle

28
29 TO PROVIDE ADDITIONAL REVENUE TO FUND
30 THE STATE EDUCATION SYSTEM.
31
32
33

34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
35

36 SECTION 1. Arkansas Code § 26-52-302, pertaining to additional gross



1 receipts tax, is amended to add a new subsection to read as follows:

2 (d)(1) There is levied an additional excise tax of seven-eighths of
 3 one percent (7/8 of 1%) upon all taxable sales of property and services
 4 subject to the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-
 5 52-101 et seq.

6 (2) The tax shall be collected, reported, and paid in the same
 7 manner and at the same time as is prescribed by the Arkansas Gross Receipts
 8 Act of 1941, § 26-52-101 et seq., for the collection, reporting, and payment
 9 of Arkansas gross receipts taxes.

10 (3) The revenue collected under this subdivision (d) shall be
 11 deposited into the Educational Adequacy Trust Fund.

12
 13 SECTION 2. Arkansas Code § 26-53-107, pertaining to additional use
 14 taxes, is amended to add a new subsection to read as follows:

15 (d)(1) There is levied an additional excise tax of seven-eighths of
 16 one percent (7/8 of 1%) upon all tangible personal property subject to the
 17 tax levied by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.

18 (2) The tax shall be collected, reported, and paid in the same
 19 manner and at the same time as is prescribed by the Arkansas Compensating Tax
 20 Act of 1949, § 26-53-101 et seq., for the collection, reporting, and payment
 21 of Arkansas compensating taxes.

22 (3) The revenue collected under this subdivision (d) shall be
 23 deposited into the Educational Adequacy Trust Fund.

24
 25 SECTION 3. Arkansas Code § 6-5-301(a)(2), regarding the creation and
 26 funding of the Educational Excellence Trust Fund, is amended to read as
 27 follows:

28 (2) For each of the State's fiscal years, the Chief Fiscal
 29 Officer of the State shall determine as an annual allocation for this fund an
 30 amount based on the total ~~net general revenues as enumerated in § 19-6-201(1)~~
 31 ~~and (2) state sales and use tax levied under §§ 26-52-301, 26-52-302(a) and~~
 32 (b), 26-53-106, 26-53-107(a) and (b), which were collected in the immediate
 33 past year, times a factor of 0.1414.

34
 35 SECTION 4. Arkansas Code Title 19, Chapter 5, Subchapter 1 is amended
 36 to add an additional section to read as follows:

1 19-5-1125. Educational Adequacy Trust Fund.

2 (a)(1) There is created on the books of the Treasurer of State,
 3 Auditor of State, and Chief Fiscal Officer of the State a trust fund to be
 4 known as the "Educational Adequacy Trust Fund".

5 (2) The Treasurer of State shall credit to the Educational
 6 Adequacy Trust Fund all moneys earned on the fund balance and the fund shall
 7 retain its interest.

8 (b)(1) All moneys collected under §§ 26-52-302(d) and 26-53-107(d)
 9 shall be deposited into the State Treasury to the credit of the fund as
 10 special revenue.

11 (2) The fund shall also consist of any other revenues as may be
 12 authorized by law.

13 (c) The fund and interest earned on the fund shall be used exclusively
 14 for the purposes stated in §§ 26-52-302(d) and 26-53-107(d).

15 (d) From the moneys accruing to the Educational Adequacy Trust Fund,
 16 the Treasurer of State on the last day of the month shall transfer the
 17 amounts that are available in the Educational Adequacy Trust Fund to the
 18 Department of Education Public School Fund Account established in § 19-5-305,
 19 there to be used for the purposes as provided by law.

20
 21 SECTION 5. Arkansas Code § 26-52-301, listing items subject to the
 22 sales tax, is amended to add an additional subdivision as follows:

23 (9) Sales of:

24 (A) Advertising space and time including advertising space
 25 in newspapers, magazines, advertising supplements, and other publications;

26 (B) Television and radio advertising time;

27 (C) Billboard advertising space and time; and

28 (D) Other advertising space and time, including, but not
 29 limited to, outdoor structures, displays, banners, broadcasts, devices,
 30 vehicles, or airborne devices.

31
 32 SECTION 6. Arkansas Code § 26-52-401(13), regarding the gross receipts
 33 tax exemption for advertising space, is repealed:

34 ~~(13) Gross proceeds derived from sales of advertising space in~~
 35 ~~newspapers and publications and billboard advertising services;~~

1 SECTION 7. Arkansas Code § 26-52-304(a), relating to computer software
 2 and services, is amended to read as follows:

3 (a) The excise tax levied by the Arkansas Gross Receipts Act, § 26-52-
 4 101 et seq., and by any act supplemental thereto, is levied on gross receipts
 5 or gross proceeds received from the following:

6 (1) Sales of computer software or licenses to use software which
 7 shall be taxed as sales of tangible personal property whether the software or
 8 license is delivered in a tangible or intangible manner. Software shall
 9 include ~~tapes, disks, cards, or other devices or materials which contain~~ any
 10 device or material that contains instructions for a computer and ~~dictate that~~
 11 dictates different operations or functions to be performed by the computer;

12 (2) Service of repairing or maintaining computer equipment or
 13 hardware in any form; and

14 (3) Service of programming, writing, creating, producing,
 15 designing, modifying, installing, implementing, or maintaining computer
 16 software or processing of data.

17
 18 SECTION 8. Arkansas Code § 26-53-109(a), concerning tax or use,
 19 storage, or distribution of computer software, is amended to read as follows:

20 (a) The excise tax levied by the Arkansas Compensating Tax Act, § 26-
 21 53-101 et seq., and by any act supplemental thereto, is levied on the
 22 privilege of storing, using, distributing, or consuming within this state any
 23 computer software or license to use software which shall be treated as a use,
 24 storage, distribution, or consumption of tangible personal property for
 25 purposes of tax whether the software or license is delivered in a tangible or
 26 intangible manner. Computer software shall include ~~tapes, disks, cards, or~~
 27 ~~other devices or materials which contain~~ any device or material that contains
 28 instructions for a computer and ~~dictate that~~ dictates different operations or
 29 functions to be performed by the computer.

30
 31 SECTION 9. Arkansas Code Title 26, Chapter 52, Subchapter 3 is amended
 32 to add an additional section to read as follows:

33 26-52-316. Computer consultants.

34 (a) As used in this section unless the context otherwise requires:

35 (1) “Computer consultant” means any person, firm, partnership,
 36 corporation, limited liability company, or other entity who installs,

1 maintains, repairs, or updates computer hardware or software or who provides
2 technical support or assistance in the purchase, installation, maintenance,
3 repair, or updating of computer hardware or software; and

4 (2) "Services" means all acts or work rendered, furnished, or
5 performed for a valuable consideration by any person engaged in computer
6 consulting for a consumer or client other than an employer.

7 (b) All fees and compensation collected by any computer consultant for
8 services performed shall be subject to the Arkansas Gross Receipts Act of
9 1941, § 26-52-101 et seq.

10 (c) The tax shall be collected, reported, and paid in the same manner
11 and at the same time as is prescribed by law for the collection, reporting,
12 and payment of the tax imposed by the Arkansas Gross Receipts Act of 1941, §
13 26-52-101 et seq.

14 (d) Any computer consultant required to collect and remit gross
15 receipts tax on fees collected for services under this section shall obtain a
16 sales tax permit under § 26-52-201, et seq.

17
18 SECTION 10. Arkansas Code § 26-52-301(6), regarding the gross receipts
19 tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et
20 seq., is amended to add an additional subdivision to read as follows:

21 (6)(A) The gross receipts or gross proceeds received by any of
22 the following for ~~Dues and membership~~ dues or fees ~~to~~ for membership,
23 initiation, or joining:

24 (i) Health spas, health clubs, and fitness clubs;
25 ~~and~~

26 (ii) Private clubs within the meaning of § 3-9-
27 202(10) ~~which~~ and that hold any permit from the Alcoholic Beverage Control
28 Board allowing the sale, dispensing, or serving of alcoholic beverages of any
29 kind on the premises;

30 (iii) Private clubs that do not hold a permit from
31 the Alcoholic Beverage Control Board, if the private club does any of the
32 following:

33 (a) Restricts access to facilities, amenities,
34 or activities to members or guests of members;

35 (b) Is organized for social, pleasure, or
36 recreational purposes; or

1 (c) Provides facilities for member activities.

2 (iv) A private club includes, but is not limited to,
3 the following:

4 (a) A country club;

5 (b) A golf club;

6 (c) A city club;

7 (d) A yacht club;

8 (e) A dinner club;

9 (f) A social club;

10 (g) A theater club; or

11 (h) A dance club.

12 (v) Semi-private athletic or recreational clubs that
13 do not hold a permit from the Alcoholic Beverage Control Board, if the semi-
14 private athletic or recreational club does any of the following:

15 (a) Permits public, non-member access to
16 facilities for a fee;

17 (b) Offers club memberships; or

18 (c) Provides facilities for member activities.

19 (B)(i) Except as provided in subdivision (B)(ii) of this
20 section, the gross receipts derived from services provided by or through a
21 health spa, health club, fitness club, or private club shall not be subject
22 to gross receipts tax unless the service is specifically enumerated as a
23 taxable service under this chapter.

24 (ii) The gross receipts derived by a private club
25 from the charges to members for the preparation and serving of mixed drinks
26 or for the cooling and serving of beer and wine shall be subject to gross
27 receipts tax as well as any supplemental taxes as provided by law.

28
29 SECTION 11. This act becomes effective on the first day of the
30 calendar month following the ninetieth day after the sine die adjournment of
31 this session of the General Assembly or the first day of the calendar month
32 following the ninetieth day after a recess or adjournment for a period longer
33 than ninety (90) days.

34
35
36