

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1203

5 By: Representative Holcomb
6

For An Act To Be Entitled

8 AN ACT TO ALLOW A BUSINESS ENGAGED IN THE BUSINESS OF
9 RENTING HEAVY EQUIPMENT PROPERTY TO COLLECT A
10 RECOVERY FEE FROM CERTAIN CONSUMERS; TO REQUIRE THAT
11 MONEYS COLLECTED AS A RECOVERY FEE BE USED TO PAY AD
12 VALOREM TAXES ON TANGIBLE PERSONAL PROPERTY; TO
13 PROVIDE THAT EXCESS RECOVERY FEES BE CONSIDERED
14 UNCLAIMED PROPERTY; AND FOR OTHER PURPOSES.
15

Subtitle

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18 TO PROVIDE FOR A RECOVERY FEE ON THE
19 RENTAL OF HEAVY EQUIPMENT PROPERTY; AND
20 TO REQUIRE THAT MONEYS COLLECTED AS A
21 RECOVERY FEE BE USED TO PAY AD VALOREM
22 TAXES ON TANGIBLE PERSONAL PROPERTY.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 4, Chapter 70, Subchapter 1, is amended
28 to add an additional section to read as follows:

29 4-70-104. Heavy equipment rental recovery fee.

30 (a) As used in this section:

31 (1) "Heavy equipment property" means personal property owned by
32 a business classified within sectors 532310 or 532412 of the North American
33 Industry Classification System, as in effect on January 1, 2017; and

34 (2) "Rental charge" means the total charge for the rental of
35 heavy equipment property, excluding any separately itemized costs
36 representing charges for related nonrental items, including without



1 limitation pickup and delivery, fuel, or a damage waiver.

2 (b) Except as provided in subsection (c) of this section, a person in
 3 the business of renting heavy equipment property in this state may include in
 4 a rental agreement or on a rental invoice a recovery fee of one and twenty-
 5 five hundredths percent (1.25%) of the rental charge for the rental of an
 6 item of heavy equipment property to a customer located in the state.

7 (c) The recovery fee provided for in this section shall:

8 (1) Not be collected on a rental of heavy equipment property to
 9 the United States or this state, including without limitation a county, city,
 10 town, agency, board, commission, or institution of this state; and

11 (2) Be exempt from state and local sales and use taxes.

12 (d)(1) A business that collects a recovery fee as provided in this
 13 section shall:

14 (A) Account for and hold the recovery fees separately from
 15 all other business receipts; and

16 (B) Use the amount of the recovery fee collected under
 17 this section solely to pay ad valorem taxes levied on the business's tangible
 18 personal property located in this state.

19 (2) Money collected as a recovery fee under this section that
 20 exceeds the ad valorem taxes payable on the tangible personal property of the
 21 business for the year may be used to pay the ad valorem taxes levied on the
 22 property for the assessment year in which it is collected and up to two (2)
 23 years following the assessment year in which the recovery fee is collected.

24 (3) Any moneys collected as recovery fees that remain in the
 25 business's account after the deadline to pay property taxes for the second
 26 assessment year following the assessment year in which the recovery fees were
 27 collected shall be:

28 (A) Presumed abandoned; and

29 (B) Paid to the Auditor of State and treated as unclaimed
 30 property under § 18-28-201 et seq.

31 (e) This section does not exempt heavy equipment property from ad
 32 valorem taxes.

33
 34 SECTION 2. Arkansas Code § 18-28-201(2), concerning the definitions to
 35 be used in relation to unclaimed property, is amended to read as follows:

36 (2)(A) "Apparent owner" means a person whose name appears on the

1 records of a holder as the person entitled to property held, issued, or owing
2 by the holder.

3 (B) "Apparent owner" does not include a person who paid an
4 excess recovery fee for purposes of determining ownership of the excess
5 recovery fee only.

6
7 SECTION 3. Arkansas Code § 18-28-201(11), concerning the definitions
8 to be used in relation to unclaimed property, is amended to read as follows:

9 (11)(A) "Owner" means a person who has a legal or equitable
10 interest in property subject to this subchapter or the person's legal
11 representative.

12 (B) The term "Owner" includes a depositor in the case of a
13 deposit, a beneficiary in the case of a trust other than a deposit in trust,
14 and a creditor, claimant, or payee in the case of other property.

15 (C) "Owner" does not include a person who paid an excess
16 recovery fee for purposes of determining ownership of the excess recovery fee
17 only.

18
19 SECTION 4. Arkansas Code § 18-28-201, concerning the definitions to be
20 used in relation to unclaimed property, is amended to add an additional
21 subdivision to read as follows:

22 (17) "Excess recovery fee" means a recovery fee collected under
23 § 4-70-104 that exceeds the ad valorem taxes payable on the business's
24 tangible personal property over the three-year period specified in § 4-70-
25 104(d)(2).

26
27 SECTION 5. Arkansas Code § 18-28-202(a)(6), concerning presumptions of
28 abandonment with respect to unclaimed property, is amended to read as
29 follows:

30 (6) Money or credits owed to a customer as a result of a retail
31 business transaction, other than an excess recovery fee, three (3) years
32 after the obligation accrued;

33
34 SECTION 6. Arkansas Code § 18-28-202(a), concerning presumptions of
35 abandonment with respect to unclaimed property, is amended to add an
36 additional subdivision to read as follows:

1 (16) An excess recovery fee, three (3) years after payment of
 2 the ad valorem taxes assessed for the tax year in which the recovery fee was
 3 collected.

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 5 SECTION 7. Arkansas Code § 18-28-204, concerning rules for taking
 6 custody of unclaimed property, is amended to add an additional subdivision to
 7 read as follows:

8 (8) With respect to an excess recovery fee, the heavy equipment
 9 property is rented in this state.

10
 11 SECTION 8. Arkansas Code § 18-28-205 is amended to read as follows:
 12 18-28-205. Dormancy charge.

13 A Except with respect to an excess recovery fee, a holder may deduct
 14 from property presumed abandoned a charge imposed by reason of the owner's
 15 failure to claim the property within a specified time only if there is a
 16 valid and enforceable written contract between the holder and the owner under
 17 which the holder may impose the charge and the holder regularly imposes the
 18 charge, which is not regularly reversed or otherwise canceled. The amount of
 19 the deduction is limited to an amount that is not unconscionable.

20
 21 SECTION 9. Arkansas Code § 18-28-207(b), concerning a holder's duty to
 22 report abandoned property, is amended to read as follows:

23 (b) The report must be verified and must contain:

24 (1) a description of the property;
 25 (2) except with respect to a traveler's check ~~or~~ money order,
 26 or an excess recovery fee, the name, if known, and last known address, if
 27 any, and the ~~social security~~ Social Security number or taxpayer
 28 identification number, if readily ascertainable, of the apparent owner of
 29 property of the value of fifty dollars (\$50.00) or more;

30 (3) an aggregated amount of items valued under fifty dollars
 31 (\$50.00) each;

32 (4) in the case of an amount of fifty dollars (\$50.00) or more
 33 held or owing under an annuity or a life or endowment insurance policy, the
 34 full name and last known address of the annuitant or insured and of the
 35 beneficiary;

36 (5) in the case of property held in a safe deposit box or other

1 safekeeping depository, an indication of the place where it is held and where
 2 it may be inspected by the administrator, and any amounts owing to the
 3 holder;

4 (6) the date, if any, on which the property became payable,
 5 demandable, or returnable, and, except with respect to an excess recovery
 6 fee, the date of the last transaction with the apparent owner with respect to
 7 the property; ~~and~~

8 (7) other information that the administrator by rule prescribes
 9 as necessary for the administration of this subchapter; and

10 (8) the aggregated amount of excess recovery fees held by a
 11 business beyond the three-year period specified in § 4-70-104(d)(3).

12
 13 SECTION 10. Arkansas Code § 18-28-207(e), concerning a holder's duty
 14 to report abandoned property, is amended to read as follows:

15 (e) ~~The~~ Except with respect to an excess recovery fee, the holder of
 16 property presumed abandoned shall send written notice to the apparent owner,
 17 not more than one hundred twenty (120) days or less than sixty (60) days
 18 before filing the report, stating that the holder is in possession of
 19 property subject to this subchapter, if:

20 (1) the holder has in its records an address for the apparent
 21 owner which the holder's records do not disclose to be inaccurate;

22 (2) the claim of the apparent owner is not barred by a statute
 23 of limitations; and

24 (3) the value of the property is fifty dollars (\$50.00) or more.
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26 SECTION 11. Arkansas Code § 18-28-207(g), concerning a holder's duty
 27 to report abandoned property, is amended to read as follows:

28 (g) The holder of property presumed abandoned shall file with the
 29 report an affidavit stating that the holder has complied with subsection (e)
 30 of this section or that the property presumed abandoned is an excess recovery
 31 fee that is exempt from the notice requirement of subsection (e) of this
 32 section.

33
 34 SECTION 12. Arkansas Code § 18-28-209 is amended to read as follows:
 35 18-28-209. Notice and publication of lists of abandoned property.

36 (a) The administrator shall publish a notice not later than November

1 30 of the year next following the year in which abandoned property has been
 2 paid or delivered to the administrator. The notice must be published in a
 3 newspaper of general circulation in each county of this state. The
 4 advertisement must be in a form that, in the judgment of the administrator,
 5 is likely to attract the attention of the potential owners of the unclaimed
 6 property. The advertisement shall contain:

7 (1) A statement explaining that the property the administrator
 8 is holding is presumed to be abandoned and has been taken into the protective
 9 custody of the administrator;

10 (2)(A) A statement explaining that additional information
 11 concerning the property may be obtained by consulting one (1) or more of the
 12 following:

13 (i) The Internet address of the administrator's
 14 official website;

15 (ii) The telephone number for the administrator's
 16 office; and

17 (iii) Posting of a notice at the county courthouse.

18 (B) A statement under this subdivision (a)(2) shall
 19 include the:

20 (i) Internet address of the administrator's official
 21 website; and

22 (ii) Telephone number for the administrator's
 23 office; and

24 (3) A statement that information about the property and its
 25 return to the owner is available to a person having a legal or beneficial
 26 interest in the property, upon request to the administrator.

27 (b) An excess recovery fee reported, paid, or delivered under this
 28 subchapter is exempt from the requirements of this section.

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 30 SECTION 13. EFFECTIVE DATE. This act is effective for assessment
 31 years beginning on or after January 1, 2017.