

"AN ACT TO AMEND SUBSECTION (a) OF SECTION 5 OF ACT 487 OF 1949, AS AMENDED [ARK. STATS. 84-3105(a)], FOR THE PURPOSE OF CLARIFYING THE COMPENSATING TAX ACT TO PROVIDE THAT AIRCRAFT, AIRCRAFT EQUIPMENT, AIR-MOTIVE EQUIPMENT, AND RAILROAD PARTS, CARS AND EQUIPMENT, OR TANGIBLE PERSONAL PROPERTY LEASED BY AIRCRAFT, AIRMOTIVE, OR RAILROAD COMPANIES BROUGHT INTO THIS STATE SOLELY AND EXCLUSIVELY FOR THE PURPOSE OF REFURBISHING, CONVERSION, OR MODIFICATION, AND NOT USED OR INTENDED FOR FURTHER USE IN THIS STATE, AND ANY AIRCRAFT, AIRCRAFT EQUIPMENT, AIRMOTIVE EQUIPMENT, AND RAILROAD PARTS, CARS AND EQUIPMENT, OR TANGIBLE PERSONAL PROPERTY BROUGHT INTO THE STATE OF ARKANSAS FOR STORAGE PENDING SHIPMENT FOR USE OUTSIDE THE STATE OF ARKANSAS, SHALL NOT BE SUBJECT TO THE TAX LEVIED UNDER THE ARKANSAS COMPENSATING TAX ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (a) of Section 5 of Act 487 of 1949, as amended, the same being subsection (a) of Section 84-3105 of the Arkansas Statutes, is hereby amended to read as follows:

"(a) There is hereby levied and there shall be collected from every person in this State a tax or excise for the privilege of storing, using or consuming, within the State, any article of tangible personal property, after the passage and approval of this Act, purchased for storage, use or consumption in this State at the rate of three per centum (3%) of the sales price of such property. This tax will not apply with respect to the storage, use or consumption of any article of tangible personal property purchased, produced or manufactured outside this State until the transportation of such article has finally come to rest within this State or until such article has become commingled with the general mass of property of this State. This tax shall apply to the use, storage or consumption of every article of tangible personal property, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured within the State of Arkansas or are available for purchase within the State of Arkansas, and irrespective of any other condition. Provided, however, that the tax levied in this Act shall not apply to aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the State of Arkansas solely and exclusively for (i) refurbishing, conversion or modification within this state and is not used or intended for use in this State, and the presence of such tangible personal property within this State shall not be construed as storage, use, or consumption in this State for the purpose of this Act, if such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or tangible personal property is removed from this State within sixty (60) days from the date of the completion of such refurbishing, conversion, or modification, or (ii) storage for use outside or inside the State of Arkansas regardless of the length of time any such property is so stored in the State of Arkansas. If any such property is subsequently initially used in the State of Arkansas, the tax levied by this Act shall be and become applicable to the property so used in Arkansas. Provided, further, that nothing in this subsection is intended to exempt from taxation any materials used or services furnished in the refurbishing, conversion, or modification of such property in this State which is

subject to the Arkansas Gross Receipts Tax.

SECTION 2. The General Assembly hereby determines that it was not the intent of Act 487 of 1949, as amended, to impose the compensating use tax upon aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to any tangible personal property owned or leased by aircraft, airmotive or railroad companies, as provided in Section 5(a) of Act 487 of 1949, as amended, and as classified by this Act, and any claim that the State of Arkansas now has for collection of compensating use taxes upon any such aircraft, aircraft equipment, and railroad parts, cars, and equipment, or to tangible personal property owned or leased by aircraft, airmotive or railroad companies brought into the State of Arkansas solely and exclusively for refurbishing, conversion, or modification shall not be collected, whether the same is pending in the Revenue Services Division of the Department of Finance and Administration or is pending and unpaid as a result of any court litigation or court decision of this State, it being the intent of the General Assembly that the State of Arkansas should not pursue the collection of any claim now pending or the execution of any court order with respect to any such claim for the collection of compensating use taxes upon such property. Provided, however, that no person shall have a claim against the State of Arkansas for any compensating use tax paid to the State of Arkansas on or before the effective date of this Act with respect to such tangible personal property.

SECTION 3. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1237 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: April 7, 1987

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