

Act 626 of the 1989 Regular Session.

Act 626

SB496

By: Senator Canada

"AN ACT TO AMEND ARKANSAS CODE 26-75-602 TO PERMIT CITIES OF THE FIRST CLASS TO LEVY A GROSS RECEIPTS TAX OF NOT TO EXCEED THREE PERCENT (3%) ON THE GROSS RECEIPTS OF HOTELS, MOTELS AND RESTAURANTS; TO AMEND ARKANSAS CODE 26-75-606 RELATING TO THE USES OF FUNDS DERIVED FROM THE TAX LEVIED AS AUTHORIZED HEREIN; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

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

"SECTION 1. It is hereby found and determined by the General Assembly that:

(A) tourism is the second largest industry in the United States with revenues totaling over two hundred billion dollars;

(B) the various states spend in excess of two hundred million dollars per year to promote and develop tourism and that this amount increases substantially each year;

(C) as part of the major economic development program being undertaken in Arkansas, it is imperative that the state and its counties and municipalities have every opportunity to participate in the available tourism dollars;

(D) the hotel and restaurant tax authorized by Act 185 of 1965, as amended, has been levied by many municipalities in Arkansas and in some instances has been pledged to revenue bonds, as authorized by Act No. 977 of 1975, as amended, and the levy of such tax has been essential to the various tourism programs and projects of those municipalities and such projects have and will continue to result in substantial inflow of tourism dollars and the resulting economic benefits to residents of those municipalities and to the state as a whole; and

(E) as the result of several recent cases in the Supreme Court of Arkansas, questions have arisen concerning the constitutional right of the General Assembly to authorize revenue bond financing and classify revenues for revenue purposes, and the General Assembly desires to reassert its constitutional right to do so as a separate branch of government to the fullest extent of its inherent sovereign power and constitutional power.

Therefore, it is the purpose of this act is to enable cities of the first class to continue and expand their tourism promotion programs and projects to further enhance the revenues and other benefits derived from tourism and to thereby improve the quality of life of all residents of such cities and the residents of the entire state.

SECTION 2. Arkansas Code 26-75-602 is hereby amended by adding the following new subsections:

"(d) (1) Any city of the first class may by ordinance of the governing body thereof, levy a tax not to exceed three percent (3%) upon:

(A) the gross receipts or gross proceeds from the renting, leasing or otherwise furnishing of hotel, motel, or short term condominium rental accommodations for sleeping, meeting or party room facilities for profit in such city, but such accommodations shall not include the rental or lease of such accommodations for periods of 30 days or more;

(B) the portion of the gross receipts or gross proceeds received by

restaurants, cafes, cafeterias, delis, drive-in restaurants, carryout restaurants, concession stands, convenience stores, grocery store restaurants, and similar businesses as shall be defined in the levying ordinance, from the sale of prepared food and beverages for on or off premises consumption, but such tax shall not apply to such gross receipts or gross proceeds of fraternal organization qualified under Section 501 (c) (3) of the Federal Internal Revenue Code.

(2) An ordinance levying a tax as authorized herein shall be subject to referendum in the manner prescribed in Amendment 7 to the Arkansas Constitution or upon petitions containing 500 signatures of qualified electors of the city requesting a referendum and filed with the governing body of the city within thirty (30) days after adoption of the levying ordinance.

(e) (1) In any city levying a tax of three percent (3%) as authorized in subsection (d) above, the tax so levied shall be paid by the persons, firms, and corporations liable therefor and shall be collected by the advertising and promotion commission of the levying city or by a designated agent of the commission in the same manner and at the same time as the tax levied by the Arkansas Gross Receipts Act, 26-52-101 et seq.

(2) The person paying the tax shall report and remit it upon forms provided by the commission, and as directed by the commission. The rules, regulations, forms of notice, assessment procedures, and the enforcement and collection of the tax under the Arkansas Gross Receipts Act shall, so far as practicable, be applicable with respect to the enforcement and collection of the tax levied pursuant to the authority of this subchapter. However, the administration and enforcement, and all actions, shall be by, and in the name of, the commission through the proper commission officials or agents.

(f) Any city levying a tax of three percent (3%) as authorized in subsection (d) above shall create a city advertising and promotion commission to be composed of seven (7) members as follows:

(1) four (4) members shall be owners or managers of businesses in the tourism industry, at least three (3) of whom shall be owners or managers of hotels, motels, or restaurants, and all of whom shall be appointed by the governing body of the city for staggered terms of four (4) years; and

(2) two (2) members of the commission shall be members of the governing body of the city and selected by the governing body; and

(3) one (1) member shall be from the public at large and shall be nominated by the chief administrator of the city and approved by the governing body of the city for a term of four (4) years.

(g) In any city which levies a tax at the rate of three percent (3%), as authorized in subsection (d) of this section and creates a commission as provided in subsection (f), the four (4) tourism industry representatives appointed by the governing body of the city, at the first meeting of the commission, shall draw lots for terms so that:

(1) one (1) of the members will serve for a term of one (1) year;

(2) one (1) shall serve for a term of two (2) years;

(3) one (1) shall serve for a term of three (3) years; and

(4) one (1) shall serve for a term of four (4) years."

SECTION 3. Arkansas Code 26-75-606 shall be amended by adding a new subsection to read as follows:

"(c) All local taxes levied as authorized in subsection 25-75-602(d) shall be credited to the City Advertising and Promotion Fund and shall be used for the purposes described in subsections (a) and (b) hereof, except such taxes shall not be used:

(1) For general capital improvements within the city;

(2) For the costs associated with the general operation of the city;

(3) For general subsidy of any civic groups or chamber of commerce,

except the Advertising and Promotion Commission may contract with such groups to provide actual services to the Commission that are connected with tourism events or conventions;

(4) The authorization and limitations contained in this subsection shall be reasonably construed, so as to provide funds for promoting and encouraging tourism and conventions, while not allowing such special revenues to be utilized for expenditures that are normally paid from general revenues of the city."

SECTION 4. 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 the 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 5. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 7. EMERGENCY. It is hereby found and determined by the General Assembly that some cities in the state are in urgent need of additional revenues to finance tourist oriented facilities to promote the tourist industry in the state and to thereby produce much needed general revenue receipts for the state of Arkansas; that this act is designed to authorize certain cities to increase the tax on gross receipts of hotels, motels and restaurants in such cities to produce such essential revenues and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

APPROVED: March 16, 1989

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