

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Stalaker**

A Bill

ACT 835 OF 1995
HOUSE BILL 1472

For An Act To Be Entitled

"AN ACT TO CLARIFY THE TAXATION OF CONTRACTORS FOR GROSS
RECEIPTS AND USE TAX PURPOSES; AND FOR OTHER PURPOSES."

Subtitle

"TO CLARIFY THE TAXATION OF
CONTRACTORS."

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

SECTION 1. Arkansas Code 26-52-103(a) (9) is amended to read as follows:

"(9) (A) Consumer or user means the person to whom the taxable sale is made or to whom taxable services are furnished. All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies, and equipment used or consumed by them in performing any contract, and the sales of all such property to contractors are taxable sales within the meaning of this act;

(B) Contract means any agreement or undertaking to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(C) Contractor means any person who contracts or undertakes to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts."

SECTION 2. Arkansas Code 26-52-301(3) (C) is amended to add the following subsection (3) (C) (vii):

"(vii) Additionally, the gross receipts tax levied in this section shall not apply to the alteration, addition, cleaning, refinishing,

1 replacement, or repair of nonmechanical, passive or manually operated
2 components of buildings or other improvements or structures affixed to real
3 estate, including but not limited to the following: walls, floors, ceilings,
4 doors, locks, windows, glass, heat and air ducts, roofs, wiring, breakers,
5 breaker boxes, electrical switches and receptacles, light fixtures, pipes,
6 plumbing fixtures, fire and security alarms, intercoms, sprinkler systems,
7 parking lots, fences, gates, fireplaces, and similar components which become a
8 part of real estate after installation. Contractors are deemed to be
9 consumers or users of all tangible personal property used or consumed by them
10 in providing such nontaxable services, in the same manner as when performing
11 any other contract. *This subsection (3)(C)(vii) shall not apply to any*
12 *services subject to tax pursuant to the terms of subsection 3(E) of this*
13 *section."*

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15 SECTION 3. Arkansas Code §26-52-307 is amended to read as follows:

16 "§ 26-52-307. Contractors as consumer users.

17 (a) Sales of service and tangible personal property including
18 materials, supplies, and equipment made to contractors who use them in the
19 performance of any contract are declared to be sales to consumers or users not
20 sales for resale. Subsequent transfers of title or possession of such
21 property used in the performance of a contract by contractors are not subject
22 to the tax imposed by the Gross Receipts Tax Act.

23 (b) Provided that if the performance of a contract or any portion
24 thereof by a contractor constitutes the performance of a taxable service under
25 the terms of Arkansas Code § 26-52-301(3) then the entire gross proceeds or
26 gross receipts derived from the performance of such taxable services including
27 the sale or transfer of title or possession of any materials or supplies used
28 or consumed in performing such taxable services shall be subject to the tax
29 imposed by the Gross Receipts Tax Act.

30 (c) Contractors shall be entitled to receive a gross receipts tax
31 credit, tax offset or refund for any gross receipts tax or use tax paid on
32 materials or supplies used or consumed by them which becomes a part of real
33 estate in performing taxable services."

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35 SECTION 4. Arkansas code 26-52-201 is amended to add the following

1 subsection (e):

2 "(e) The Director of the Department of Finance and Administration is
3 authorized to establish types and classifications of Arkansas gross receipts
4 tax permits including, not by limitation, special permits for taxpayers whose
5 principal line of business does not include the retail selling of tangible
6 personal property or performing taxable services."

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8 SECTION 5. Arkansas Code 26-52-501 is amended to add the following
9 subsection (j):

10 "(j) The Director of the Department of Finance and Administration is
11 authorized to establish by regulation separate requirements for filing reports
12 and returns and paying the tax levied hereunder for taxpayers whose principal
13 line of business does not include the retail selling of tangible personal
14 property or performing taxable services."

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16 SECTION 6. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

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20 SECTION 7. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

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26 SECTION 8. All laws and parts of laws in conflict with this act are
27 hereby repealed.

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29 SECTION 9. EMERGENCY. It is hereby found and determined by the General
30 Assembly that the Arkansas law is unclear as it applies to the taxation of
31 contractors and subcontractors who construct and repair buildings and other
32 improvements and structures affixed to real estate; that Arkansas gross
33 receipts and use tax laws which impose tax on certain services to motors,
34 electrical appliances and devices, household appliances, and machinery were
35 never intended by the General Assembly to apply to nonmechanical, passive or

1 manually operated building systems or components; that none of the charges
2 made by a contractor for labor or materials used in performing such nontaxable
3 services are properly subject to tax; that contractors and subcontractors are
4 suffering substantial losses on audits after making best efforts to comply
5 with existing law; and that the gross receipts and use tax laws need to be
6 clarified to specifically exclude certain services to buildings and other
7 improvements or structures affixed to real estate from tax. Therefore, an
8 emergency is hereby declared to exist and this act being necessary for the
9 immediate preservation of the public peace, health and safety shall be in full
10 force and effect on and after July 1, 1995.

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/s/Rep. Stalnaker

APPROVED: 3-31-95

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