

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

ACT 364 OF 1993
HOUSE BILL 1544

4 **By: Representative Jones, Pryor, Argue, Henry, Dietz, Riable, D. Wood, Walker, Molinaro,**
5 **Bennett, Stalnaker, Townsend, and Brown**

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For An Act To Be Entitled

9 "AN ACT TO AMEND TITLE 26, CHAPTER 75, SUBCHAPTER 6 OF THE
10 ARKANSAS CODE FOR THE PURPOSE OF CLARIFYING THE METHOD BY
11 WHICH A CITY MAY LEVY A HOTEL AND RESTAURANT TAX, THE
12 GROSS RECEIPTS TO WHICH THE TAX APPLIES, THE METHOD BY
13 WHICH THE TAX IS COLLECTED, THE MEMBERSHIP OF ADVERTISING
14 AND PROMOTION COMMISSIONS, THE USES TO WHICH TAX PROCEEDS
15 MAY BE PUT, AND THE PROVISIONS FOR ISSUANCE OF BONDS
16 PAYABLE FROM PROCEEDS OF THE TAX; PRESCRIBING OTHER
17 MATTERS RELATING THERETO; DECLARING AN EMERGENCY; AND FOR
18 OTHER PURPOSES."

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Subtitle

21 "AN ACT PERTAINING TO THE HOTEL AND RESTAURANT TAX."
22

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

24

25 SECTION 1. Arkansas Code § 26-75-602 is hereby amended to read as
26 follows:

27 "26-75-602. Gross receipts taxes authorized.

28 (a) Any city of the first class may, by ordinance of the governing body
29 thereof, levy a tax of not to exceed three percent (3%) upon the gross
30 receipts or gross proceeds identified in subsection (c) of this section.

31 (b) Any city of the first class in which is located a city park of one
32 thousand (1,000) acres or more may, in a like manner, levy an additional tax
33 of one percent (1%) upon the gross receipts or gross proceeds identified in
34 subsection (c) of this section. Revenues collected from this additional tax
35 shall be used by the city parks and recreation department for the promotion
36 and development of city parks and recreation areas.

1 (c) The tax authorized in this subchapter shall be upon any one (1) or
2 more of the following, as specified in the levying ordinance:

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

8 (B) The portion of the gross receipts or gross proceeds received by
9 restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out
10 restaurants, concession stands, convenience stores, grocery store-restaurants,
11 and similar businesses as shall be defined in the levying ordinance, from the
12 sale of prepared food and beverages for on or off-premises consumption, but
13 such tax shall not apply to such gross receipts or gross proceeds of
14 organizations qualified under section 501(c)(3) of the federal Internal
15 Revenue Code.

16 (d) An ordinance levying a tax as authorized in this section shall be
17 subject to referendum in the manner prescribed in Arkansas Constitution,
18 Amendment 7, or upon petitions containing five hundred (500) signatures of
19 qualified electors of the city requesting a referendum and filed with the
20 governing body of the city within thirty (30) days after adoption of the
21 levying ordinance."
22

23 SECTION 2. Arkansas Code § 26-75-603 is hereby amended to read as
24 follows:

25 "26-75-603. Collection of tax.

26 (a) From the effective date of the levying ordinance, the tax so levied
27 shall be paid by the persons, firms, and corporations liable therefor and
28 shall be collected by the advertising and promotion commission of the levying
29 city or by a designated agent of the commission in the same manner and at the
30 same time as the tax levied by the Arkansas Gross Receipts Act of 1941,
31 § 26-52-101 et seq.

32 (b) The person paying the tax shall report and remit it upon forms
33 provided by the commission, and as directed by the commission. The rules,
34 regulations, forms of notice, assessment procedures, and the enforcement and
35 collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-

1 101 et seq., shall, so far as practicable, be applicable with respect to the
2 enforcement and collection of the tax levied pursuant to the authority of this
3 subchapter. However, the administration and enforcement, and all actions,
4 shall be by, and in the name of, the commission through the proper commission
5 officials or agents."

6

7 SECTION 3. Arkansas Code § 26-75-605 is hereby amended to read as
8 follows:

9 "26-75-605. Advertising and promotion commissions.

10 (a) Any city levying a tax pursuant to this subchapter shall by
11 ordinance create a city advertising and promotion commission, to be composed
12 of seven (7) members, each of whom shall reside within the levying city, as
13 follows:

14 (1) Four (4) members shall be owners or managers of businesses in the
15 tourism industry, at least three (3) of whom shall be owners or managers of
16 hotels, motels, or restaurants, and shall serve for staggered terms of four
17 (4) years; and

18 (2) Two (2) members of the commission shall be members of the governing
19 body of the city and selected by the governing body and shall serve at the
20 will of the governing body; and

21 (3) One (1) member shall be from the public at large and shall serve for
22 a term of four (4) years.

23 (b) In the case of a city creating the commission authorized in this
24 section after [the effective date of this act], the initial members of the
25 commission shall be selected as follows: the four (4) tourism industry
26 positions provided for in (a)(1) shall be filled by appointment made by the
27 governing body of the city for staggered terms so that

28 (1) One (1) member will serve for a term of one (1) year,

29 (2) One (1) for a term of two (2) years,

30 (3) One (1) for a term of three (3) years, and

31 (4) One (1) for a term of four (4) years,

32 and the at-large position provided for in (a)(3) shall be filled by nomination
33 by the chief administrator of the city and approval by the governing body of
34 the city for a term of four (4) years.

35 (c) In the case of a city in which a city advertising and promotion

1 commission exists on [the effective date of this act], the members of the
2 commission shall continue in office for the balance of the terms to which they
3 have been previously appointed; provided, that if on that date no commission
4 member has been appointed to hold an at-large position, the mayor shall
5 designate one of the commission members who is also a member of the governing
6 body of the city to fill the at-large position provided for in (a) (3) for a
7 term of not longer than one (1) year.

8 (d) Vacancies on the commission, whether resulting from expiration of a
9 regular term or otherwise, in any of the four (4) tourism industry positions
10 provided for in (a) (1) or in the at-large position provided for in (a) (3),
11 shall be filled by appointment made by the remaining members of the
12 commission, with the approval of the governing body of the city."
13

14 SECTION 4. Arkansas Code § 26-75-606(a) (3) is hereby repealed.
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16 SECTION 5. Arkansas Code § 26-75-606(b) (1) is hereby amended to read as
17 follows:

18 "(1) Any city of the first class which is authorized to levy and does
19 levy a tax pursuant to this subchapter, is authorized to use or pledge all, or
20 any part of, the revenues derived from the tax for the purposes prescribed in
21 this subchapter, or for the operation of tourist-oriented facilities
22 including, but not limited to, theme parks and other family entertainment
23 facilities or the retirement of bonds issued for the establishment and
24 operation of other tourist-oriented facilities including, but not limited to,
25 theme parks and other family entertainment facilities. These revenues shall
26 be used or pledged for the purposes authorized in this subsection only upon
27 approval of the city advertising and promotion commission created pursuant to
28 this subchapter."
29

30 SECTION 6. Arkansas Code § 26-75-606(c) is hereby amended to read as
31 follows:

32 "(c) All local taxes levied as authorized in § 26-75-602(a) shall be
33 credited to the city advertising and promotion fund and shall be used for the
34 purposes described in subsections (a) and (b) of this section.

35 (1) Such taxes shall not be used:

1 (A) For general capital improvements within the city;

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

3 (C) For general subsidy of any civic groups or the chamber of commerce.

4 (2) However, the advertising and promotion commission may contract with
5 such groups to provide to the commission actual services that are connected
6 with tourism events or conventions;

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

12

13 SECTION 7. Arkansas Code § 26-75-608(b)(1) is hereby amended to read as
14 follows:

15 "(1) Be in registered or other form;"

16

17 SECTION 8. Arkansas Code § 26-75-609 is hereby amended to read as
18 follows:

19 "26-75-609. Execution of bonds.

20 The bonds shall be executed in the manner provided by the Registered
21 Public Obligation Act of Arkansas, § 19-9-401 et seq., as that act may be
22 amended."

23

24 SECTION 9. Arkansas Code § 26-75-610(b) is hereby amended to read as
25 follows:

26 "(b) The principal of and interest on all bonds issued under the
27 authority of this subchapter shall be secured by a pledge of, and shall be
28 payable from, all or any part of the revenues derived from the tax levied by
29 the city pursuant to this subchapter or from all or any part of the revenues
30 derived from the operation of the convention center project involved."

31

32 SECTION 10. Arkansas Code § 26-75-613(a)(2) is hereby amended to read
33 as follows:

34 "(2) Any municipality that has levied a tax, known as the hotel and
35 restaurant tax, as authorized in § 26-75-602(a), may pledge all, or any part,

1 of the revenues derived from the hotel and restaurant tax to the payment of
2 principal and interest on bonds, issued by the municipality under the
3 authority of §§ 14-170-201 - 14-170-214 or any subsequent law and called
4 tourism revenue bonds, or, to the extent necessary to match grant funds, in an
5 amount at least equal to the proceeds of the bonds, to the payment of
6 principal and interest on bonds issued by the municipality under the authority
7 of §§ 14-186-101, 14-186-302 - 14-186-312, or any subsequent law."

8

9 SECTION 11. Arkansas Code, title 26, chapter 75, subchapter 6, is
10 hereby amended by adding the following sections:

11 "26-75-614. Trust indenture.

12 (a) The ordinance authorizing the bonds may provide for the execution by
13 the chief executive officer of the municipality of a trust indenture which
14 defines the rights of the owners of the bonds and provides for the appointment
15 of a trustee for the owners of the bonds.

16 (b) The trust indenture may provide for the priority between and among
17 successive issues and may contain any of the provisions set forth in § 26-75-
18 608 and any other terms, covenants, and conditions that are deemed desirable.

19

20 26-75-615. Sale of bonds.

21 The bonds may be sold at public or private sale for such price,
22 including, without limitation, sale at a discount, and in such manner as the
23 governing body of the municipality may determine.

24

25 26-75-616. No personal liability.

26 No official, officer, employee, or member of the governing body of the
27 municipality or the commission shall be personally liable on any bonds issued
28 under the provisions of this subchapter or for any damages sustained by any
29 person in connection with any contracts entered into to carry out the purposes
30 and intent of this subchapter unless that person has acted with a corrupt
31 intent.

32

33 26-75-617. Refunding bonds.

34 (a) Bonds may be issued under this subchapter to refund any outstanding
35 bonds issued pursuant to this subchapter or to refund any outstanding bonds

1 issued pursuant to any other law for the purpose of financing convention
2 center projects.

3 (b) (1) The refunding bonds may be either sold for cash or delivered in
4 exchange for the outstanding obligations.

5 (2) If sold for cash, the proceeds may be either applied to the
6 payment of the obligations refunded or deposited in irrevocable trust for the
7 retirement thereof either at maturity or on an authorized redemption date.

8 (c) Refunding bonds shall in all respects be authorized, issued, and
9 secured in the manner provided in this subchapter.

10 (d) The ordinance under which the refunding bonds are issued may provide
11 that any refunding bonds shall have the same priority of lien on all project
12 revenues as originally pledged for payment of the obligation refunded thereby.

13

14 26-75-618. Title.

15 This subchapter may be referred to as the Advertising and Promotion
16 Commission Act."

17

18 SECTION 12. The amendments made by this act shall not be deemed to
19 impair the validity of any tax levied under the authority of Arkansas Code,
20 title 26, chapter 75, subchapter 6, prior to the effective date of this act.

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22 SECTION 13. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

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26 SECTION 14. If any provision of this act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or applications of the act which can be given effect without
29 the invalid provision or application, and to this end the provisions of this
30 act are declared to be severable.

31

32 SECTION 15. All laws and parts of laws in conflict with this act are
33 hereby repealed.

34

35 SECTION 16. EMERGENCY CLAUSE. It is hereby found and determined by the

1 General Assembly that there is urgent need to revise current law relating to
2 the advertising and promotion commissions of municipalities and relating to
3 the authorized uses of local revenues derived from local sales taxes levied on
4 gross receipts of hotel, motels, and restaurants, and that the provisions of
5 this act are designed to accomplish this purpose and are immediately needed in
6 order to clarify the methods of operating of such commissions and
7 administration of such taxes. Therefore, an emergency is hereby declared to
8 exist and this act being necessary for the preservation of the public peace,
9 health, and safety shall be in full force and effect from and after its
10 passage and approval.

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/s/Rep. Jones, et al

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APPROVED: 3/4/93

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