

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H4/3/01

A Bill

Act 1796 of 2001
SENATE BILL 863

5 By: Senators D. Malone, DeLay, Whitaker, Wilkinson, Beebe, Brown, Cash, Everett, Faris, Fitch,
6 Gullett, Hill, Horn, Hunter, B. Johnson, T. Smith, Webb, Wilkins, Wooldridge
7 By: Representatives Carson, Cleveland, Files, Altes, Green, McMellon, Prater, Rankin, Rodgers,
8 Verkamp, Allison, Bond, Bookout, Borhauer, Dangeau, Nichols, Seawel, R. Smith, T. Steele, Teague,
9 Thomas, W. Walker, Weaver, White, Willis, Broadway

For An Act To Be Entitled

10
11
12 AN ACT TO AUTHORIZE CERTAIN COUNTIES TO LEVY A
13 SALES AND USE TAX TO PROVIDE FOR CAPITAL
14 IMPROVEMENTS TO OR MAINTENANCE AND OPERATION OF A
15 COMMUNITY COLLEGE THAT WILL BE MERGED INTO A
16 FOUR-YEAR INSTITUTION; DECLARING AN EMERGENCY;
17 AND FOR OTHER PURPOSES.
18

Subtitle

19
20 AN ACT TO AUTHORIZE CERTAIN COUNTIES TO
21 LEVY A SALES AND USE TAX TO PROVIDE FOR
22 CAPITAL IMPROVEMENTS TO OR MAINTENANCE
23 AND OPERATION OF A COMMUNITY COLLEGE
24 THAT WILL BE MERGED INTO A FOUR-YEAR
25 INSTITUTION.
26

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28
29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

30
31 SECTION 1. Arkansas Code Title 26, Chapter 74 is amended to add an
32 additional subchapter to read as follows:

33 26-74-601. Definitions.

34 As used in this subchapter:

35 (1) "Director" means the Director of the Department of Finance and
36 Administration, or any successor thereof, or any authorized agent thereof;

1 (2) "District" means any community college district formed pursuant to
 2 Amendment 52 to the Arkansas Constitution and applicable law and composed of
 3 the territory of an eligible county;

4 (3) "Calendar quarter" means the three-month period beginning on
 5 January 1, April 1, July 1, or October 1;

6 (4) "Eligible county" means any county the territory of which
 7 constitutes a community college district, created pursuant to Amendment No.
 8 52 of the Arkansas Constitution and applicable law, which college is
 9 currently or hereafter designated or recognized by the General Assembly as
 10 having authority to offer selected baccalaureate degrees and is to be or is
 11 being merged into a qualified university, and which district has in effect at
 12 the time of such merger an ad valorem tax, levied pursuant to Amendment No.
 13 52 and applicable law, for the support of such community college;

14 (5) "Eligible campus" means the campus of any community college
 15 located in an eligible county that has merged into a qualified university;

16 (6) "Local board" means the governing board of the community college
 17 located in the district which has entered into an agreement of merger with a
 18 qualified university pursuant to which the local board shall become an
 19 advisory board for the eligible campus;

20 (7) "Qualified university" means any public four-year institution of
 21 higher education or university system into which a community college included
 22 within a district is being or is to be merged; and

23 (8) "Tax" means the sales and use tax levied under this subchapter.

24
 25 26-74-602. Dissolution of district.

26 As an alternative to the method for dissolution of a district set forth
 27 in § 6-61-519(b), the question of dissolving the district and repealing the
 28 millage tax may be authorized by the affirmative vote of a majority of the
 29 members of the local board of the community college and submitted to the
 30 electors of the district at a special or general election called by ordinance
 31 of the quorum court of the county in which the district is located. The
 32 dissolution of the district and repeal of the millage tax may be made
 33 contingent upon the electors levying a county-wide sales and use tax pursuant
 34 to this subchapter. The question of dissolving the district, repealing the
 35 millage tax, and levying the county-wide sales and use tax shall be subject
 36 to approval by a majority of the qualified electors of the district voting

1 thereon at such election.

2
3 26-74-603. Call for tax election.

4 (a) Any eligible county may, by ordinance of its quorum court, levy a
5 county-wide sales and use tax in the amount of one-eighth of one percent
6 (0.125%), one-fourth of one percent (0.25%), one-half of one percent (0.50%),
7 three-fourths of one percent (0.75%), or one percent (1%) to provide capital
8 improvements to, or the maintenance and operation of, an eligible campus.

9 (b) No ordinance shall be adopted by the quorum court of an eligible
10 county for the purpose of levying a tax under this subchapter unless the
11 quorum court shall have been requested so to do by the local board and until
12 a majority of the qualified electors of the eligible county voting on the
13 question, at a general or special election, shall have approved levy of the
14 tax. The election shall be called by ordinance and shall be held no earlier
15 than thirty (30) days after the adoption of the ordinance. The ballot for the
16 election shall be subject to the approval of the local board.

17 (c) The quorum courts shall notify their respective county board of
18 election commissioners that the measure has been referred to the vote of the
19 people and shall submit a copy of the ordinance calling the election and the
20 proposed ballot language to their respective boards.

21
22 26-74-604. Form of ballot.

23 The ballot for the election shall be in substantially the form and
24 content as shall be determined by the quorum court. In addition to the
25 question of the levy of the tax, the ballot may, at the request of the local
26 board, provide for the dissolution of the district pursuant to the merger of
27 the community college into the qualified university. The ballot may provide
28 for an effective date for the levy of the tax in accordance with § 26-74-
29 605(g), for termination or reduction of the tax after a specified period and
30 for restrictions on the power to repeal or reduce the tax provided that the
31 agreement for merger is entered into in reliance on such restrictions. The
32 period for which the tax cannot be repealed or reduced shall not exceed
33 thirty (30) years.

34
35 26-74-605. Conduct of election and results - Challenges.

36 (a) The election shall be conducted in the manner provided by law for

1 all other county elections unless otherwise specified in this subchapter.

2 (b) Notice of the election shall be given by the county clerk by one
3 (1) publication in a newspaper having a general circulation within the
4 eligible county not less than ten (10) days prior to the election. No other
5 publication or posting of a notice by any other public official shall be
6 required.

7 (c) Once the election results have been certified, the county judge
8 shall immediately issue a proclamation declaring the results of the election
9 and cause the proclamation to be published one (1) time in a newspaper having
10 general circulation within the eligible county.

11 (d) Any person desiring to challenge the results of the election as
12 published in the proclamation shall file such challenge in the chancery court
13 of the eligible county within thirty (30) days after the date of publication
14 of the proclamation.

15 (e) If no election challenge is timely filed, there shall be levied,
16 effective on the first day of the first month of the calendar quarter
17 subsequent to the expiration of the thirty-day challenge period, a county-
18 wide tax on the gross receipts from the sale at retail within the eligible
19 county of all items which are subject to the Arkansas Gross Receipts Act of
20 1941, beginning at § 26-52-101, and, in every eligible county where the local
21 sales and use tax has been adopted pursuant to the provisions of this
22 subchapter, there is imposed an excise tax on the storage, use, distribution,
23 or consumption within the eligible county of tangible personal property
24 purchased, leased, or rented from any retailer outside the state after the
25 effective date of the sales and use tax for storage, use, distribution, or
26 other consumption in the eligible county at the same rate on the sale price
27 of the property or, in the case of leases or rentals, of the lease or rental
28 price, the rate of the use tax to correspond to the rate of the sales tax
29 portion of the tax. The use tax portion of the local sales and use tax shall
30 be collected according to the terms of the Arkansas Compensating Tax Act of
31 1949, beginning at § 26-53-101.

32 (f) In the event of an election challenge, the tax shall be collected
33 as prescribed in subsection (e) of this section unless enjoined by court
34 order. Hearings involving such litigation shall be advanced on the docket of
35 the courts and disposed of at the earliest feasible time.

36 (g) Notwithstanding the provisions of subsections (e) and (f) of this

1 section, the effective date of the levy of the tax may be delayed beyond the
2 effective date as set forth in subsection (e) of this section to a date to be
3 determined as set forth in the ballot, which date must be the first day of a
4 calendar quarter.

5
6 26-74-606. Abolishment of tax.

7 Subject to the restriction on the ballot for the levy of the tax as set
8 forth in § 26-74-604, the tax shall expire only after a majority of electors
9 voting on the question have approved the abolishment of the tax. The
10 termination date shall be the last day of a calendar quarter determined by
11 using the provisions of § 26-74-605(c), (d), and (e) as if the tax were being
12 approved.

13
14 26-74-607. Notification of results.

15 Within ten (10) days after the certification of the votes of any
16 election resulting in the adoption or abolition of a tax levied pursuant to
17 this subchapter, the county judge shall notify the director of such results.

18
19 26-74-608. Applicability of tax.

20 (a)(1) A tax levied pursuant to the authority granted in this
21 subchapter shall be applicable to sales of items and services sold by a
22 business located in the eligible county to a resident or nonresident of the
23 eligible county but shall not be applicable to the sale of motor vehicles to
24 nonresidents of the eligible county; provided, however, the tax shall not be
25 applicable to the sale of items and services sold to a nonresident of the
26 eligible county if the sale is made for delivery to an address which is in a
27 city or county that does not impose a city or county sales tax, and the sale
28 is of an item that is primarily sold through meter and by route delivery, if
29 the sale is documented by a sales invoice indicating that the sale was made
30 for delivery, and that delivery was actually made to the person at the place
31 noted thereon located outside a county or city in which a sales tax is
32 levied.

33 (2) When a motor vehicle is sold to a person who resides in
34 Arkansas but outside the eligible county where the sale was made, and the
35 city or county, or both, of residence of the purchaser levies a sales and use
36 tax, a use tax shall be collected at the rate levied in the city or county,

1 or both, of residence of the purchaser, and in that event the tax shall be
2 transmitted to the city or county, or both, of residence.

3 (b) The tax shall not be applicable to the sale of the following
4 items, if the sale is made to a nonresident of the eligible county and the
5 sales invoice indicates that the sale was made for delivery to, and delivery
6 was actually made to, an address which is located in a city or county that
7 does not impose a city or county sales tax:

8 (1) Aviation fuel;

9 (2) Distillate special fuel used for agricultural purposes;

10 (3) Agricultural machinery, parts, repairs, and supplies
11 therefor;

12 (4) Water wells and water well supplies;

13 (5) Agricultural feed, seed, and fertilizer; and

14 (6) Agricultural chemicals.

15 (c) When a direct pay permit holder purchases tangible personal
16 property, either from an Arkansas or out-of-state vendor for use, storage,
17 consumption, or distribution in Arkansas, the permit holder shall accrue and
18 remi t the county sales or use tax, if any, of the county where the property
19 is first used, stored, consumed, or distributed. When a direct pay permit
20 holder purchases taxable services, the permit holder shall accrue and remi t
21 the sales tax, if any, of the county where the services are performed.

22
23 26-74-609. Disposition of funds.

24 (a)(1) The director shall maintain a record of the total amount of tax
25 collected pursuant to this subchapter and all other subchapters authorizing a
26 county sales and use tax in each eligible county and shall deposit all such
27 revenues with the Treasurer of State.

28 (2)(A) Upon receipt of the funds, the Treasurer of State shall
29 deduct three percent (3%) thereof as a charge by the state for its services
30 as specified in this subchapter and shall credit the three percent (3%) to
31 the Constitutional Officers Fund and the State Central Services Fund.

32 (B) In addition, the Treasurer of State is authorized to
33 retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five
34 percent (5%) of the total amount received from the tax levied by each
35 eligible county, to be used by the Treasurer of State to:

36 (i) Make refunds for overpayment of the taxes; and

1 (ii) Redeem dishonored checks and drafts received
2 and deposited in Local Sales and Use Tax Trust Fund.

3 (b)(1) All funds received by the Treasurer of State from the tax
4 levied by each eligible county, after deducting the amounts required by
5 subsection (a) of this section, shall be credited to the account of the
6 eligible county in which collected.

7 (2) The Treasurer of State shall monthly transmit to the county
8 treasurer the moneys received by the Treasurer of State from the sales tax
9 levied by such eligible county and credited to the account of the eligible
10 county in the Local Sales and Use Tax Trust Fund.

11 (c) All collections of the tax shall, within a reasonable time after
12 receipt by the eligible county, be transmitted to the qualified university
13 and applied to the capital improvements to, or the operation and maintenance
14 of, the eligible campus.

15 (d) The Treasurer of State is authorized to make refunds for
16 overpayment of the county sales tax and to redeem dishonored checks and
17 drafts issued in payment of the county sales tax from the Local Sales and Use
18 Tax Trust Fund.

19 (e) When any tax adopted by an eligible county pursuant to this
20 subchapter ceases, the director shall retain in the account of that eligible
21 county in the Local Sales and Use Tax Trust Fund for a period of one (1) year
22 an amount equal to five percent (5%) of the final remittance to the eligible
23 county at the time of termination of the collection of the tax to:

24 (1) Cover refunds for overpayment of taxes; and

25 (2) Redeem dishonored checks and drafts deposited to the credit
26 of the Local Sales and Use Tax Trust Fund.

27 (f) After one (1) year has elapsed after the tax ceases in any
28 eligible county, the director shall transfer the balance in that eligible
29 county's account to the eligible county and shall close the account.

30
31 26-74-610. Rules and regulations.

32 The director may promulgate reasonable rules and regulations not
33 inconsistent with the provisions of this subchapter to implement the
34 administration, collection, enforcement, and operation of the taxes
35 authorized in this subchapter.

36

1 26-74-611. Procedures and penalties for enforcement.

2 (a) The procedures and penalties used by the director in enforcing any
3 tax imposed pursuant to this subchapter shall be the same as for the state
4 gross receipts tax and compensating tax, as set out in the Arkansas Tax
5 Procedure Act, beginning at § 26-18-101, except as specifically set out in
6 this subchapter.

7 (b) Where property is seized by the director under the provisions of
8 any law authorizing seizure of property of a taxpayer who is delinquent in
9 payment of the taxes imposed by the Arkansas Gross Receipts Act of 1941,
10 beginning at § 26-52-101, or Arkansas Compensating Tax Act of 1949, beginning
11 at § 26-53-101, and where the taxpayer is also delinquent in payment of any
12 tax imposed by this subchapter, the director shall sell sufficient property
13 to pay the delinquent taxes and penalty due to any eligible county under this
14 subchapter in addition to that required to pay any amount due the state under
15 these statutes. The proceeds from such sale shall first be applied to all
16 sums due to the state, and the remainder, if any, shall be applied to all
17 sums due the eligible county.

18
19 26-74-612. Maximum tax limitation.

20 (a)(1) Any county general sales or use tax levied pursuant to this
21 subchapter shall be levied and collected only on the first two thousand five
22 hundred dollars (\$2,500) of gross receipts, gross proceeds, or sales price
23 from a single transaction, and vendors shall be responsible for collecting
24 and remitting the tax only on the first two thousand five hundred dollars
25 (\$2,500) of gross receipts, gross proceeds, or sales price from a single
26 transaction.

27 (2) Vendors collecting, reporting, and remitting the tax shall
28 show the tax as a separate entry on the tax report form filed with the
29 director.

30 (b)(1) The term "single transaction" as used in this section and §§
31 26-75-207 through 26-75-212, shall be defined by ordinance of the eligible
32 county levying the tax.

33 (2)(A) Every county ordinance adopted after January 1, 1998,
34 which calls for an election to levy a local sales and use tax authorized by
35 this subchapter or any other provision of the Arkansas Code shall contain a
36 definition of the term "single transaction" which definition shall amend all

1 other previous ordinances defining "single transaction".

2 (B) Provided, however, any eligible county which adopts an
3 ordinance which calls for an election to levy a local sales and use tax
4 authorized by this subchapter or any other provision of the Arkansas Code may
5 comply with this provision by adopting a definition of the term "single
6 transaction" prior to the commencement of the collection of the local sales
7 and use tax.

8 (3) The most recent definition of "single transaction" adopted
9 prior to January 1, 1998, shall apply to and amend all previous local sales
10 and use tax ordinances.

11 (4) It is the intent of this provision to require each eligible
12 county which levies a local sales and use tax to adopt a uniform definition
13 of the term "single transaction" for all taxes levied by the eligible county.

14 (5) This provision is limited to ordinances levying local sales
15 and use taxes collected by the Department of Finance and Administration.

16
17 26-74-613. Administration of Local Sales and Use Tax Trust Fund.

18 (a)(1) There is created on the books of the Treasurer of State, the
19 Auditor of State, and the Chief Fiscal Officer of the State a trust fund for
20 the remittance of local sales and use taxes which shall be known as "The
21 Local Sales and Use Tax Trust Fund".

22 (2)(A) There is also created on the books of the Treasurer of
23 State, the Auditor of State, and the Chief Fiscal Officer of the State a
24 trust fund which shall be known as the "Identification Pending Trust Fund for
25 Local Sales and Use Taxes".

26 (B)(i) Money reported as local sales and use taxes which
27 was collected in local taxing jurisdictions which are not immediately
28 identifiable and money collected in local jurisdictions which have no tax
29 shall be deposited in the Identification Pending Trust Fund for Local Sales
30 and Use Taxes.

31 (ii) When a local tax jurisdiction is identified for
32 money which has been deposited in the Identification Pending Trust Fund for
33 Local Sales and Use Taxes, the money shall be transferred to the Local Sales
34 and Use Tax Trust Fund.

35 (iii) When the total amount in the Identification
36 Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand

1 dollars (\$50,000), the Treasurer of State shall transfer any amount in excess
2 of fifty thousand dollars (\$50,000) to general revenues.

3 (b)(1) The Treasurer of State, as the administrator of the Local Sales
4 and Use Tax Trust Fund, shall review the flow of money through the trust fund
5 in the State Treasury for the purpose of estimating the amount of the moneys
6 as may be surplus to the immediate requirements of the fund.

7 (2) After making the estimate, the administrator shall invest
8 estimated surplus amount in certificates of deposit issued by any financial
9 institution located in the State of Arkansas. All interest income derived
10 from the certificates of deposit shall be credited, as trust fund income, to
11 the Local Sales and Use Tax Trust Fund.

12 (3) The Treasurer of State shall monthly transmit to the county
13 treasurer its proportionate share of the interest derived from investment of
14 the Local Sales and Use Tax Trust Fund.

15
16 26-74-614. Limit on combined total sales and use tax levy.

17 Notwithstanding any other laws granting counties authority to levy
18 sales and use taxes, no eligible county levying a tax pursuant to this
19 subchapter shall have authority to levy such a tax if the effect thereof is
20 to cause the rate of the combined total sales and use taxes of such eligible
21 county to exceed three percent (3%).

22
23 26-74-615. Supplemental nature of the subchapter.

24 This subchapter shall be supplemental to all other laws authorizing
25 counties to levy sales and use taxes to operate and maintain and provide
26 capital improvements for public institutions of higher education.

27
28 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly that a more efficient management of the public higher
30 education resources of the State of Arkansas may be accomplished by allowing
31 community colleges designated or recognized by law as having authority to
32 offer selected baccalaureate degrees and a public university or university
33 system and their boards of trustees to merge or consolidate on a voluntary
34 basis and that legislation is needed to provide for capital improvements to
35 or maintenance and operation of, such community college which is the subject
36 of pending mergers into four-year institutions or a university system

1 pursuant to which the community college will become an eligible campus; and
2 that this legislation should take effect immediately to permit community
3 colleges currently or hereafter designated or recognized by the General
4 Assembly as having authority to offer selected baccalaureate degrees and a
5 university or university system to better plan for and implement mergers of
6 their institutions. Therefore, in order to further the operational
7 efficiencies of public institutions of higher education and increased
8 educational opportunities for the citizens of the state, an emergency is
9 declared to exist and this subchapter being immediately necessary for the
10 preservation of the public peace, health and safety shall become effective on
11 the date of its approval by the Governor. If the bill is neither approved
12 nor vetoed by the Governor, it shall become effective on the expiration of
13 the period of time during which the Governor may veto the bill. If the bill
14 is vetoed by the Governor and the veto is overridden, it shall become
15 effective on the date the last house overrides the veto.

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/s/ D. Malone, et al.

APPROVED: 4/19/2001