

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1138

By: Representative Sanson

"AN ACT ALLOWING COUNTIES NOT HAVING A COUNTY-WIDE SALES AND USE TAX TO ADOPT A ONE PERCENT TAX PURSUANT TO THIS ACT; TO PROVIDE THAT THE ADOPTION OF THE TAX WOULD ABOLISH CERTAIN CITY SALES AND USE TAXES; TO PROVIDE THAT THE TAX SHALL BE DISTRIBUTED TO THE COUNTY AND EACH MUNICIPALITY IN THE COUNTY ON A PER CAPITA BASIS BUT PROVIDING THE COUNTY WITH AT LEAST TWENTY-FIVE PERCENT OF THE MONIES; AND FOR OTHER PURPOSES."

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

SECTION 1 (a) In any county not having a one percent (1%) county-wide sales and use tax levied pursuant to Act 991 of 1981, or Act 26 of the First Extraordinary Session of 1981, the County Quorum Court may call an election for the levy of a one percent (1%) county-wide sales and use tax pursuant to this Act. The election shall be held within one hundred and twenty (120) days of the ordinance calling the election.

(b) A county that levies a tax pursuant to this Act shall not be entitled to levy a county-wide sales and use tax pursuant to Act 991 of 1981 or Act 26 of the First Extraordinary Session of 1981.

(c) The adoption of a one percent (1%) county-wide sales and use tax pursuant to this Act shall have the effect of abolishing any city sales tax levied pursuant to Act 990 of 1975, as amended, or Act 25 of the First Extraordinary Session of 1981, as amended, by any city within the county, except that:

(1) any city sales and use tax in which all or a portion of the tax has been pledged to the payment of lease rentals or bonds shall not be repealed or abolished by this Act until the obligation is no longer outstanding; and

(2) this Act shall not repeal a city sales and use tax adopted pur-

suant to an ordinance which dedicates a portion of the tax to support a specific program or service.

SECTION 2. The Quorum Courts shall notify their respective county board of election commissioners that the measure has been referred to the vote of the people and shall submit a copy of the ballot title to their respective boards.

SECTION 3. (a) The ballot title to be used shall be substantially in the following form:

"FOR adoption of a one percent (1%) sales and use tax within (Name of county)."

"AGAINST adoption of a one percent (1%) sales and use tax within (Name of county)."

(b) The ballot title may also include an expiration date for the levy of such tax, and if adopted in such form the tax shall cease to be levied on the date noted on the ballot.

(c) The ballot may also indicate designated uses of the revenues derived from the sales tax, and if the tax is approved the proceeds shall only be used for the designated purposes.

(d) Any tax adopted for a specified period of time shall cease to be levied on the date indicated on the ballot.

SECTION 4. The election shall be conducted in the manner provided by law for all other county elections unless otherwise specified herein.

SECTION 5. (a) Once the election results have been certified, the county court shall immediately issue a proclamation declaring the results of the election and cause the proclamation to be published one (1) time in a newspaper having general circulation within the county. Any person desiring to challenge the results of the election as published in the proclamation shall file such challenge in the Chancery Court of the county within thirty (30) days after the date of publication of the proclamation. If no election challenge is timely filed, there shall be levied, effective on the first day of the first calendar month subsequent to the expiration of the thirty-day challenge period, a one percent (1%) tax on the gross receipts from the sale

at retail within the county of all items which are now subject or may hereafter be subject to the Arkansas Gross Receipts Tax which is Act 386 of 1941, as amended, the same being Arkansas Statute 84-1901 et seq., and in every county where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or consumption within such county of tangible personal property purchased, leased or rented from any retailer outside the State after the effective date of the sales and use tax for storage, use or other consumption in such county at a rate of one percent (1%) of the sale price of the property or, in the case of leases or rentals, of said lease or rental price, the rate of said use tax to correspond to the rate of the sales tax portion of said tax. Provided that the tax levied pursuant to this Act shall not apply to the sale of propane, butane, and kerosene purchased for the purpose of heating. Provided, that the use tax portion of said local sales and use tax shall be collected according to the terms of the Arkansas Compensating (Use) Tax Act which is Act 487 of 1949, as amended, the same being Arkansas Statute 84-3101 et seq.

(b) The tax levied pursuant to this Act shall not exceed twenty-five dollars (\$25.00) on a single transaction.

SECTION 6. In the event of an election challenge, the effective date of the tax levy shall be the first day of the first calendar month subsequent to the final judicial determination of the challenge. Hearings involving such litigation shall be advanced on the docket of the courts and disposed of at the earliest feasible time.

SECTION 7. A county sales tax levied pursuant to the authority granted in this Act shall be applicable to sales of items and services sold by a business located in the levying county to a resident or nonresident of the levying county, but such sales tax shall not be applicable to sales of items or services by a business located in a county which levies no county sales tax, regardless of the place of residence of the purchaser. Provided, that a county sales tax levied pursuant to the provisions of this Act shall not be applicable to sale of items and services sold to a nonresident of the levying county if the sale is made for delivery to an address which is in a city or county that does not impose a one percent (1%) city or county sales tax, pro-

vided, that such sale is documented by a sales invoice indicating that the sale was made for delivery, and that delivery was actually made to the person at the place noted thereon located outside the county in which the sales tax is levied.

SECTION 8. (a) When the question of the levy or repeal of a county sales and use tax is submitted to the electors and the proposition is approved or defeated, the question shall not again be submitted to the electors by ordinance of the quorum court of the county or by petition of electors at a special or general election for a period of six (6) months from the date the proposition was last voted upon. Petitions requesting that such issue be submitted to the electors of the county shall contain the signatures of at least fifteen percent (15%) of the electors of the county as determined by the total number of votes cast for all candidates for circuit clerk of the county at the last preceding general election. Such petitions shall be filed and verified by the county clerk and if the petitions are found to be sufficient, the issue shall be submitted to the electors at a special election or at the next general election as may be requested by the petitions. If the petitions request that the issue be submitted at a special election, the special election shall be called for a date not less than thirty (30) nor more than sixty (60) days from the date on which the clerk certifies the sufficiency of the petitions to the County Board of Election Commissioners.

(b) The ballot title for use in an election on the question of abolishing the county sales and use tax shall be the same as indicated in Section 3 of this Act except that the word "ABOLISH" shall be substituted for the word "ADOPTION". The effective date of any affirmative vote to abolish such tax shall correspond to the dates indicated in this Act for the initial effective date of the tax.

(c) Notwithstanding anything in this Act to the contrary, in any county in which a local sales and use tax has been adopted in the manner provided for herein, and all or any portion pledged to secure lease rentals or the payment of bonds as authorized by this Act, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished or reduced so long as the lease is effective or any of such bonds are outstanding.

SECTION 9. Within ten (10) days after the certification of the votes of

any election resulting in the adoption or abolition of a tax levied pursuant to this Act, the county court shall notify the Commissioner of Revenues of such results and furnish the Commissioner with a map or maps clearly indicating the boundaries of the county and the boundaries of each incorporated area within the county.

SECTION 10. (a) The Commissioner of Revenues shall maintain a record of the amount of tax collected pursuant to this Act in each county and shall deposit all such revenues with the State Treasurer. Upon receipt of such funds, the State Treasurer shall deduct three percent (3%) thereof as a charge by the State for its services as specified in this Act, and shall credit said three percent (3%) to the Constitutional and Fiscal Agencies Fund. In addition, the State Treasurer is authorized to retain in the Local Sales and Use Tax Trust Fund an amount not to exceed five percent (5%) of the total amount received from the tax levied by each county, to be used by the Treasurer to make remittances to the county for rebates made by the county for taxes in excess of amounts specified by the particular county ordinances paid by a taxpayer on a single transaction, to make refunds for overpayment of the taxes, and to redeem dishonored checks and drafts received and deposited in the Local Sales and Use Tax Trust Fund.

(b) All funds received by the State Treasurer from the sales tax levied by each county after deducting the the three percent (3%) for the Constitutional and Fiscal Agencies Fund shall be deposited in the Local Sales and Use Tax Trust Fund and shall be credited to the account of the county in which collected. The State Treasurer shall monthly transmit to the County Treasurer and to the City Treasurer of each city of the first class, city of the second class and incorporated town located in a county levying the tax authorized herein, their per capita share of the monies received by the State Treasurer from the sales tax levied by such county and credited to the account of the county in the Local Sales and Use Tax Trust Fund. Provided however that the county government shall be entitled to at least twenty-five percent (25%) of the monies received by the State.

(c) Funds received by the counties and municipalites pursuant to the provisions of this Act may be used by the counties and municipalities for any purpose for which the county general funds or the city general funds may be used.

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

(e) When any tax adopted by a county pursuant to this Act is abolished the Commissioner shall retain in the account of that county in the Local Sales and Use Tax Trust Fund for a period of one (1) year, an amount equal to five percent (5%) of the final remittance to the county and municipalities therein at the time of termination of the collection of the tax to cover possible rebates by the county, refunds for overpayment of taxes, and to redeem dishonored checks and drafts deposited to the credit of the Local Sales and Use Tax Trust Fund. After one (1) year has elapsed after the effective date of the abolition of the tax in any county, the Commissioner shall transfer the balance in that county's account to the county and municipalities in the county and shall close the account.

(f) Provided, however, any monies collected which, as indicated by a certified copy of an ordinance of the quorum court of the county previously filed with the Commissioner and the Treasurer, are pledged to secure lease rentals or the payment of bonds authorized by this Act shall not be deposited in the State Treasury but shall be deposited by the Commissioner in a bank or banks designated by the county, as cash funds, and transmitted to the county subject to the charges payable and retainage authorized above in this Section. Charges deducted shall be transmitted to the Treasurer and amounts retained shall be retained by the Commissioner as cash funds.

SECTION 11. The Commissioner of Revenues may promulgate reasonable rules and regulations not inconsistent with the provisions of this Act to implement the administration, collection, enforcement and operation of the taxes authorized herein.

SECTION 12. (a) The procedures and penalties used by the Commissioner in enforcing any local tax imposed pursuant to this Act shall be the same as for the Arkansas Gross Receipts Tax and Compensating (Use) Tax as set out in Act 401 of 1979, as amended, except as specifically set out herein.

(b) Where property is seized by the Commissioner under the provisions of any law authorizing seizure of property of a taxpayer who is delinquent in payment of the taxes imposed by the State Gross Receipts Tax Act or State

Compensating Use Tax Act and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the Commissioner shall sell sufficient property to pay the delinquent taxes and penalty due to any city or county under this Act in addition to that required to pay any amount due the State under such State Acts. The proceeds from such sale shall first be applied to all sums due to the State, and the remainder, if any, shall be applied to all sums due the city or county.

SECTION 13. (a) Subject to the provisions of subsection (b) below, if the General Assembly shall hereafter levy an additional statewide gross receipts tax of one percent (1%) or more; the quorum court of any county which has levied a sales tax or a sales and use tax pursuant to the authority granted in this Act may, by ordinance approved by the quorum court, repeal such county sales tax or county sales and use tax.

(b) In any county in which a local sales tax or sales and use tax has been adopted in the manner provided for herein, and all or any portion pledged to secure the payment of lease rentals or bonds as authorized by this Act, that portion of the tax pledged to lease rentals or bonds shall not be repealed, abolished or reduced so long as the lease is effective or any of such bonds are outstanding.

SECTION 14. County sales and use taxes adopted under Act 991 of 1981 Act 26 of the First Extraordinary Session of 1981, or Act 879 of 1985 which are in effect on the effective date of this Act shall remain in full force and effect and are not repealed by the provisions of this Act.

