

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Foster

HOUSE BILL 1962

"AN ACT TO LEVY A TWO PERCENT (2%) TAX ON CERTAIN SALES OF TANGIBLE PERSONAL PROPERTY WHICH ARE NOT NOW SUBJECT TO THE ARKANSAS GROSS RECEIPTS TAX, TO LEVY A TWO PERCENT (2%) TAX ON THE STORAGE, USE OR CONSUMPTION OF CERTAIN TANGIBLE PERSONAL PROPERTY WHICH IS NOW EXEMPT FROM THE ARKANSAS COMPENSATING (USE) TAX; AND FOR OTHER PURPOSES."

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

SECTION 1. (A) For the purposes of this Section words shall have the same meaning as in the Arkansas Gross Receipts (Tax) Act, Act 386 of 1941, as amended, the same being Ark. Stat. Ann. §84-4701 et seq., unless a different meaning is clearly required by the use of the word. The term "tax levied by this Act" refers to the two percent (2%) taxes provided for hereafter and does not refer to four percent (4%) taxes as applicable because of the repeal of an exemption by this Act.

(B) There is hereby levied an excise tax of two percent (2%) upon the gross proceeds or gross receipts derived from all sales, to any person subsequent to the effective date of this Act of the following:

(1) The gross receipts and gross proceeds derived from the sale and purchase of vessels, barges, and towboats of at least fifty (50) tons load displacement and parts and labor used in the repair and construction of the same.

(2) Special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft.

(3) That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute "core charges" which are received for the purpose of securing a trade-in for the article purchased, except that when the article is not traded in and the Arkansas Gross Receipts

or Compensating (Use) Tax is paid.

(4) Gross receipts derived from sales of property to or by Regional Water Improvement Districts which sales would be taxable under the Arkansas Gross Receipts Tax, Compensating (Use) Tax or this Act but for the exemption provided by §10 of Act 114 of 1957, the same being Ark. Stat. Ann. §21-1410.

(5) Gross receipts derived from sales of property to or by Hospital and Medical Service Corporations which would be taxable under the Arkansas Gross Receipts Tax, Compensating (Use) Tax or this Act except for the exemption provided by §688 of Act 148 of 1959, the same being Ark. Stat. Ann. §66-4918.

(6) Gross receipts derived from all sales of property to a private owner/operator of a wastewater project which would be taxable under the Arkansas Gross Receipts Tax, Compensating (Use) Tax or this Act but for the exemption provided by §7 of Act 690 of 1985, the same being Ark. Stat. Ann. §82-1992.6.

(7) The gross receipts from leases or rentals of tangible personal property including the lease or rental of automobiles and all other motor vehicles. Sales and purchases made where the tangible personal property sold or purchased is to be used for lease or rental shall not be exempt from the Arkansas Gross Receipts Tax levied by Act 386 of 1941, as amended (Ark. Stat. Ann. §84-1901 et seq.), or the Compensating (Use) Tax levied by Act 487 of 1949, as amended (Ark. Stat. Ann. §84-3101 et seq.), as sales for resale.

Provided the tax levied by this Section shall not apply to motor vehicles leased for a period of more than thirty (30) days for a commercial purpose. To qualify as a lease for a commercial purpose the payments made under the lease must qualify as an ordinary and necessary business expense for federal or Arkansas state income tax purposes for the person leasing the vehicle or the shareholders or partners in such person. A motor vehicle for the purpose of this paragraph is any vehicle used to transport persons or property over the highway and required to be licensed for highway use.

(8) The gross receipts or gross proceeds derived from the sale of religious, professional, trade and sports journals and/or publications printed and published within this State when sold through regular subscriptions.

SECTION 2. (A) For the purposes of this Section words shall have the same meaning as in the Arkansas Compensating (Use) Tax Act, Act 487 of 1949,

as amended, the same being Ark. Stat. Ann. §84-3101 et seq. or the Arkansas Tax Procedure Act, Act 401 of 1979, as amended, the same being Ark. Stat. Ann. §84-4701 et seq. unless a different meaning is clearly required by the use of the word.

(B) There is hereby levied and shall be collected from every person in this State a tax or excise for the privilege of storing, using or consuming, within this State, any article of tangible personal property, after the passage and approval of this Act, purchased for storage, use or consumption in this State at the rate of two percent (2%) of the sale price of such property of the following:

(1) All property purchased out of this State and brought into this State for use, storage or consumption to which the tax levied by Section 1 of this Act would apply if the property were purchased in this State.

(2) Property sold from outside the State to those organizations named in Section 1 of this Act provided that the tax levied by this paragraph shall apply only to that property which would otherwise be taxable under the Arkansas Compensating (Use) Tax, levied by Act 487 of 1949, as amended, the same being Ark. Stat. Ann. §84-3101 et seq., or the tax levied by this Act including the exemptions which are repealed by Section 3 of this Act.

SECTION 3. Section 2(c) of Act 386 of 1941, as amended, the same being Ark. Stat. Ann. §84-1902(c), is hereby amended to read as follows:

"(c) Sale: The term 'sale' is hereby declared to mean the transfer of either the title or possession for a valuable consideration of tangible personal property, regardless of the manner, method, instrumentality, or device by which such transfer is accomplished. The term 'sale' is also declared to include the exchange or barter of tangible personal property. The term 'sale' shall include also the sale, giving away, exchanging or other disposition of admission, dues or fees to clubs, to places of amusement, recreational, or athletic events, or for the privilege of having access to the use of amusement, athletic or entertainment facilities. The term 'sale' shall not include the furnishing or rendering of service or services, except as herein otherwise provided."

SECTION 4. (A) Where any sale of property is taxable under the Arkansas Gross Receipts (Tax) Act, the same being Ark. Stat. Ann. §84-1901 et seq., or

the Arkansas Compensating (Use) Tax Act, the same being Ark. Stat. Ann. §84-3101 et seq., the tax levied by this Act shall not be applicable and does not repeal the tax levied by those Acts.

(B) Where any sale of property taxable under this Act is included in the gross receipts, gross proceeds or sales price of a sale or purchase taxable under either the Arkansas Gross Receipts (Tax) Act (Ark. Stat. Ann. §84-1901 et seq.) or Arkansas Compensating (Use) Tax Act (Ark. Stat. Ann. §84-3101 et seq.), the sale of property shall be taxed at the higher rate set out in the gross receipts or use tax Act but shall not be subject to any additional tax under this Act.

SECTION 5. No sale subject to the taxes levied by this Act shall be subject to any local option sales or sales and use tax whether such tax is levied by a county, city or town unless: (A) In the case of a county, city or town which has a tax on the effective date of this Act, the governing body of the county, city or town shall either:

- (1) Adopt an ordinance providing for the levy of the local tax on those sales taxed by this Act, or
- (2) Call an election on the issue of the levy of the local tax on sales taxed under this Act.

(B) In any county, city or town which holds an election on the issue of the levy of a local sales or sales and use tax after the effective date of this Act the governing body may elect to hold an election only on the issue of a tax which taxes those sales taxed by Act 386 of 1941, as amended, and Act 487 of 1949, as amended, but not those sales subject to the tax levied by this Act. Where such an election is held, and a tax is approved, the governing body may later:

- (1) By ordinance provide for collection of the tax on sales taxes by this Act, or
- (2) Call a separate election on the levy of the tax on sales taxed by this Act.

(C) After the effective date of this Act, a city, county or town may call an election for a vote on a local sales or sales and use tax and the tax levied by this Act in the same election and allow the voters to make their decision by:

- (1) The same single vote, or

(2) A vote on the tax levied by the Act separate from the vote on the regular local tax.

(D) No county, city or town shall have a tax on sales taxed under this Act unless the county, city or town shall also have a local tax on sales taxed under Act 386 of 1941, as amended, and Act 487 of 1949, as amended. In no event shall any local tax be levied on sales taxed under this Act unless the local tax on sales taxed under Act 386 of 1941, as amended, and Act 487 of 1949, as amended, is levied prior to or at the time as the tax levied on sales taxed under this Act. Repeal of any local tax shall also repeal the local tax on sales levied under this Act.

SECTION 6. The taxes levied by this Act shall in all respects be administered in the same manner as the Arkansas Gross Receipts Tax levied by Act 386 of 1941, the same being Ark. Stat. Ann. §84-1901 et seq. and Arkansas Compensating Use Tax levied by Act 487 of 1949, as amended, the same being Ark. Stat. Ann. §84-3101 et seq. and the Arkansas Tax Procedures Act, Act 401 of 1979, the same being Ark. Stat. Ann. §84-4701 et seq., whichever shall be applicable.

SECTION 7. It shall be unlawful for any taxpayer under this Act to engage or transact business within this State unless a written permit or permits shall have been issued to him. This permit shall be distinct from and in addition to other permits. Permits shall be issued to taxpayers under this Act in the same manner as under the Arkansas Gross Receipts (Tax) Act, Act 386 of 1941, as amended, the same being Ark. Stat. Ann. §84-1901 et seq. and Arkansas Compensating (Use) Tax Act, Act 487 of 1949, the same being Ark. Stat. Ann. §84-3101 et seq. and shall be subject to the same rules, regulations and penalties as set out in those Acts and the Arkansas Tax Procedure Act, Act 401 of 1979, the same being Ark. Stat. Ann. §84-4701 et seq., except as otherwise specifically provided for herein.

SECTION 8. Persons holding permits issued for the purpose of collecting the tax levied by this Act shall not be entitled to claim purchases exempt from the Arkansas Gross Receipts levied by Act 386 of 1941, as amended, the same being Ark. Stat. Ann. §84-1902 et seq. or Arkansas Compensating Use Tax levied by Act 487 of 1949, as amended, the same being Ark. Stat. Ann. §84-3101

et seq., as sales for resale which exemption is provided at Ark. Stat. Ann. §84-1904(i) and is incorporated in the use tax at Ark. Stat. Ann. §84-3106(B) but shall be deemed to be the consumers of property and shall charge the tax levied herein on their entire gross receipts.

SECTION 9. REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for schools and other essential services required by the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and effect on and after July 1, 1987.

