

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

HOUSE BILL

1014

By: Rep. Cunningham, Foster, Mahony

"AN ACT TO LEVY A TWO PERCENT (2%) TAX ON CERTAIN SALES OF SERVICES WHICH ARE NOT NOW SUBJECT TO THE ARKANSAS GROSS RECEIPTS 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. §84-1901 et seq. or Arkansas Tax Procedures 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. The tax levied herein shall be reported and remitted on the basis of compensation actually collected and not on the amount billed.

(B) The tax levied pursuant to this Act shall not apply to sales to a person which:

(1) owns or controls the organization providing the service subject to this Act (the "service organization"); or

(2) is owned or controlled by the service organization; if the service organization provides service exclusively to the serviced organization or serviced organizations (without regard to isolated sales of services to others within the meaning of Ark. Stat. Ann. § 84-1904(m)).

Ownership or control for purposes of this Act shall mean ownership of fifty percent (50%) or more of the equity value or control of fifty percent (50%) or more of the voting rights of another organization.

(C) The tax levied by this Act shall not exceed one hundred dollars (\$100.00) on any single billed transaction.

(D) 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) Investment counseling and advice not to include commissions for investments.

(2) The sale, giving away, exchanging or other disposition of admissions, dues or fees to health clubs, entertainment clubs, country clubs, private alcoholic beverage clubs provided that free or complimentary admissions, dues or fees are hereby declared to have a value equivalent to the sale price of admission, dues or fees of like kind or character but not including hunting, fishing, booster clubs associated with public or private schools, colleges and universities or civic and service clubs.

(3) Service of furnishing camping spaces, trailer spaces on less than a month to month basis, boat slip rentals, motor vehicle and aircraft storage and parking (except parking meters).

(4) Accounting and related services including auditing, bookkeeping, tax preparation, and fees paid to or collected by collection and billing services and agencies. Where the above services are performed by any person located outside this state for a resident or a person located in this state the person performing those services shall obtain a permit as required by this Act and collect and remit the applicable tax. If the person performing the services shall fail to collect and remit the tax, then the tax shall be due from the person for whom the services were performed. Provided that services performed by any person located in this state for any person located exclusively outside this state shall not be subject to the tax levied by this section.

(5) Laundry, dry cleaning, tailoring and clothes alteration services.

(6) Engineering architectural, drafting and blueprinting services. Provided that where the above services are performed by any persons located outside this state to a building, structure or project built or located in this state or to be built, modified or located in this state, whether such building, structure or project is actually built, completed or modified. The person performing those services shall obtain a permit as required by this Act and collect and remit the applicable tax. If the person performing the services shall fail to collect the tax, then the tax shall be due from the person for whom the services were performed. Provided further, that services provided by any person located in this state with respect to any building, structure or project built or located outside this state or to be built, modified or located outside this state, whether such building, structure or project is

ever actually built, completed or modified shall not be subject to the tax levied by this section.

(7) Legal services and for legal process serving. Where the above services are performed by any person located outside this state for a resident or a person located in this state the person performing those services shall obtain a permit as required by this Act and collect and remit the applicable tax. If the person performing the services shall fail to collect and remit the tax, then the tax shall be due from the person for whom the services were performed. Provided that services performed by any person located in this state for any person located exclusively outside this state and services performed by any lawyer as a court appointed lawyer shall not be subject to the tax levied by this section.

(8) Services to animals including animal grooming, training, breeding, kennel services, hospitalization, veterinary services, burial services and ambulance services provided that the tax levied by this paragraph shall not apply where the service is rendered to any animal which is grown for the purpose of the production of food as a business whether dairy, egg, poultry or meat production or breeding for dairy, egg, poultry or meat production.

(9) Pest control services, lawn and gardening services other than lawn and gardening services performed by a person who performs such services on an occasional basis, tree services, chimney cleaning and repair services and the service of fumigation of buildings whether residential or commercial and whether for the removal of pests, vermin, odors, or any other purpose.

(10) Janitorial services, window washing, maid or butler services.

(11) Automobile wrecker and towing services, house and mobile home transportation service including all set up charges related to the transportation.

(12) Telephone answering, beeper and paging services.

(13) Detective security, protective and armored car services and fees paid to bail bondsmen for the posting of bail bonds.

(14) Employment agency services and inventory services; and gross receipts or gross proceeds derived from the administration fees of providing temporary employee services and employee leasing services. Where the above services are performed by any person located outside this state with respect to a job located within this state the person performing those services shall obtain a permit as required by this Act and collect and remit the applicable

tax. If the person performing the services shall fail to collect and remit the tax, then the tax shall be due from the person for whom the services were performed. Provided that services performed by any person located in this state with respect to any job outside this state shall not be subject to the tax levied by this section.

(15) Real estate abstracting, surveying, percolation, and soil testing services. Where the above services are performed by any person located outside this state with respect to real property located in this state the person performing those services shall obtain a permit as required by this Act and collect and remit the applicable tax. If the person performing the services shall fail to collect and remit the tax, then the tax shall be due from the person for whom the services were performed. Provided that services performed by any person located in this state with respect to any real property located outside this state then those services shall not be subject to the tax levied by this section.

SECTION 2. (A) Where any sale of service is taxable under the Arkansas Gross Receipts (Tax) Act, the same being Ark. Stat. Ann. §84-1901 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 service 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 service 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 3. No sale subject to the tax 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 taxed 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.

(E) Any election called or held under this section of this Act shall be held in the same manner and subject to the same procedures, rules and limits for the conduct of the election, including any challenge thereto, as is prescribed for the election on the levy of the local tax.

SECTION 4. 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 the Arkansas

Tax Procedures Act, Act 401 of 1979, the same being Ark. Stat. Ann. §84-4701 et seq., whichever shall be applicable.

SECTION 5. 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, same being Ark. Stat. Ann. §84-1901 et seq., shall be subject to the same rules, regulations and penalties as set out in that Act 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 6. 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 Tax levied by Act 386 of 1941, as amended, the same being Ark. Stat. Ann. §84-1901 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 7. REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the General Assembly that the State of Arkansas is in serious need of additional revenues which are necessary to provide adequate funding for essential services required by the citizens of this state and the provisions of this Act are necessary to increase state revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect September 1, 1987.

