

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Dawson**

A Bill

HOUSE BILL 1641

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 26, CHAPTER 74 TO ADD
9 A NEW SUBCHAPTER ALLOWING COUNTIES NOT HAVING A ONE
10 PERCENT (1%) COUNTYWIDE SALES AND USE TAX TO LEVY A ONE-
11 HALF (1/2%) PERCENT COUNTYWIDE SALES AND USE TAX TO BE
12 USED FOR ANY PURPOSE FOR WHICH COUNTY GENERAL FUNDS OR
13 COUNTY ROAD FUNDS MAY BE USED; AND FOR OTHER PURPOSES."

14
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16
17 SECTION 1. Arkansas Code Title 26, Chapter 74 is amended to add the
18 following new subchapter to read as follows:

19 "SUBCHAPTER 4.

20
21 26-74-401. Definitions.

22 As used in this subchapter 'Director' means the Director of the
23 Department of Finance and Administration of the State of Arkansas, or any
24 successor thereof, or any authorized agent thereof.

25
26 26-74-402. Call for tax election.

27 (a) The county quorum court of any county not having a countywide one
28 percent (1%) sales and use tax on *March 14, 1991* may call an election for the
29 levy of a one-half percent (1/2%) countywide sales and use tax for any purpose
30 for which the County General Fund or County Road Fund may be used *including*
31 *allocating portions of this tax to the municipalities located therein.* The
32 election shall be held within one hundred twenty (120) days of the ordinance
33 calling the election.

34 (b) The quorum courts shall notify their respective county board of
35 election commissioners that the measure has been referred to the vote of the

1 people and shall submit a copy of the ballot title to their respective boards.

2

3 26-74-403. Form of ballot.

4 (a) The ballot title to be used shall be substantially in the following
5 form:

6

7 [] 'FOR adoption of a one-half percent (1/2%) sales and use tax within
8(Name of county).'

9 [] 'AGAINST adoption of a one-half percent (1/2%) sales and use tax
10 within(Name of county).'

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

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

16

17 26-74-404. Conduct of election and results - Challenges.

18 (a) The election shall be conducted in the manner provided by law for
19 all other county elections unless otherwise specified in this subchapter.

20 (b) Once the election results have been certified, the county court
21 shall immediately issue a proclamation declaring the results of the election
22 and cause the proclamation to be published one (1) time in a newspaper having
23 general circulation within the county.

24 (c) Any person desiring to challenge the results of the election as
25 published in the proclamation shall file such challenge in the chancery court
26 of the county within thirty (30) days after the date of publication of the
27 proclamation.

28 (d) If no election challenge is timely filed, there shall be levied,
29 effective on the first day of the first calendar month subsequent to the
30 expiration of the thirty-day challenge period, a one-half percent (1/2%) tax
31 on the gross receipts from the sale at retail within the county of all items
32 which are subject to the Arkansas Gross Receipts Act, § 26-52-101 et seq.,
33 and, in every county where the local sales and use tax has been adopted
34 pursuant to the provisions of this subchapter, there is imposed an excise tax
35 on the storage, use, or consumption within the county of tangible personal

1 property purchased, leased, or rented from any retailer outside the state
2 after the effective date of the sales and use tax for storage, use, or other
3 consumption in the county, at a rate of one-half percent (1/2%) of the sale
4 price of the property or, in the case of leases or rentals, of the lease or
5 rental price, the rate of the use tax to correspond to the rate of the sales
6 tax portion of the tax. The use tax portion of the local sales and use tax
7 shall be collected according to the terms of the Arkansas Compensating Tax
8 Act, § 26-53-101 et seq.

9 (e) In the event of an election challenge, the effective date of the
10 tax levy shall be the first day of the first calendar month subsequent to the
11 final judicial determination of the challenge. Hearings involving such
12 litigation shall be advanced on the docket of the courts and disposed of at
13 the earliest feasible time.

14

15 26-74-405. Resubmission of question of levy.

16 (a) (1) When the question of the levy of a county sales and use tax is
17 submitted to the electors and the proposition is defeated, the question shall
18 not again be submitted to the electors by ordinance of the quorum court of the
19 county at a special or general election for a period of one (1) year from the
20 date the proposition was last voted upon.

21

22 26-74-406. Notification of results.

23 Within ten (10) days after the certification of the votes of any
24 election resulting in the adoption of a tax levied pursuant to this
25 subchapter, the county court shall notify the director of such results.

26

27 26-74-407. Applicability of tax.

28 (a) A county sales tax levied pursuant to the authority granted in this
29 subchapter or in § 26-74-301 et seq., shall be applicable to sales of items
30 and services sold by a business located in the levying county to a resident or
31 nonresident of the levying county.

32 (b) This sales tax shall not be applicable to sales of items or
33 services by a business located in a county which levies no county sales tax,
34 regardless of the place of residence of the purchaser.

35

1 26-74-408. Rebates.

2 (a) A county shall provide in its ordinance authorized by this
3 subchapter a rebate from the county for taxes collected pursuant to this
4 subchapter in excess of twenty-five dollars (\$25.00) paid to the county on a
5 single transaction.

6 (b) Where a rebate would be due pursuant to the provisions of this
7 subchapter as a result of the purchase of a new or used motor vehicle and
8 where the tax thereon is collected directly from the purchaser pursuant to the
9 provisions of § 26-52-510, then the director shall collect only the amount of
10 tax due less the amount to which the purchaser would be entitled under the
11 rebate provisions of this subchapter. Where the rebate is credited against
12 tax paid as set out in this subsection, then no other rebate of the tax shall
13 be given.

14

15 26-74-409. Disposition of funds.

16 (a) (1) The director shall maintain a record of the amount of tax
17 collected pursuant to this subchapter in each county and shall deposit all
18 such revenues with the State Treasurer.

19 (2) Upon receipt of the funds, the State Treasurer shall deduct
20 three percent (3%) thereof as a charge by the state for its services as
21 specified in this subchapter and shall credit the three percent (3%) to the
22 Constitutional and Fiscal Agencies Fund. In addition, the State Treasurer is
23 authorized to retain in the Local Sales and Use Tax Trust Fund an amount not
24 to exceed five percent (5%) of the total amount received from the tax levied
25 by each county, to be used by the State Treasurer to:

26 (A) Make remittances to the county for rebates made by the
27 county for taxes in excess of amounts specified by the particular county
28 ordinances paid by a taxpayer on a single transaction;

29 (B) Make refunds for overpayment of the taxes; and

30 (C) Redeem dishonored checks and drafts received and
31 deposited in the Local Sales and Use Tax Trust Fund.

32 *Furthermore, the State Treasurer shall determine which cities or towns*
33 *within the county do not levy a local sales tax and remit to those cities or*
34 *towns a percentage of the tax based upon the population of the city or town*
35 *versus the population of the county.*

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

5 (2) The State Treasurer shall monthly transmit to the county
6 treasurer the moneys received by the State Treasurer from the sales tax levied
7 by such county and credited to the account of the county in the Local Sales
8 and Use Tax Trust Fund. The county treasurer of any county which has levied a
9 sales tax pursuant to this subchapter and which rebates taxes paid on a single
10 transaction in excess of a specified amount shall monthly certify to the State
11 Treasurer the total amount of rebates paid since the preceding certification,
12 and the State Treasurer shall remit that amount to the county treasurer from
13 the Local Sales and Use Tax Trust Fund.

14 (c) Funds received by the counties pursuant to the provisions of this
15 subchapter may be used by the counties for any purpose for which the County
16 General Fund or County Road Fund may be used *including allocating portions to*
17 *municipalities located therein.*

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

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

- 26 (1) Cover possible rebates by the county;
 - 27 (2) Cover refunds for overpayment of taxes;
 - 28 (3) Redeem dishonored checks and drafts deposited to the credit
- 29 of the Local Sales and Use Tax Trust Fund. After one (1) year has elapsed
30 after the tax ceases in any county, the director shall transfer the balance in
31 that county's account to the county and shall close the account.

32
33 26-74-410. Rules and regulations.

34 The director may promulgate reasonable rules and regulations not
35 inconsistent with the provisions of this subchapter to implement the

1 administration, collection, enforcement, and operation of the taxes authorized
2 in this subchapter.

3

4 26-74-411. Procedures and penalties for enforcement.

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

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

20

21 26-74-412. Maximum tax limitation.

22 (a) Any county general sales or use tax levied pursuant to this
23 subchapter shall be levied and collected only to a maximum tax of twenty-five
24 dollars (\$25.00) on each single transaction, and vendors shall be responsible
25 for collecting and remitting the tax only to the maximum of twenty-five
26 dollars (\$25.00) for each single transaction. Vendors collecting, reporting,
27 and remitting the county sales or use taxes shall show county sales taxes as a
28 separate entry on the tax report form filed with the director.

29 (b) The term 'single transaction,' as used in this section and §§ 26-
30 75-207 - 26-75-212, shall be defined by ordinance of the county levying the
31 tax. In the case of any taxpayer not subject to the levy of a use tax on
32 tangible personal property brought into the State of Arkansas for storage
33 until such property is subsequently initially used in the State of Arkansas, a
34 county use tax shall be computed on each purchase of such property by the
35 taxpayer as if all such property was subject upon purchase to the county use

1 tax up to a maximum of twenty- five dollars (\$25.00) per single transaction.
2 The taxes so computed shall be aggregated on a monthly basis, and the
3 aggregate monthly amount shall be divided by the sum of the total purchases of
4 such property on which the taxes are computed, and the quotient shall be
5 multiplied by the amount of the taxpayer's property subsequently initially
6 used and subject to levy of a use tax within the county during the month for
7 which the monthly aggregate tax figure was computed, and the product shall be
8 the amount of county use tax liability for the taxpayer for the month
9 computed.

10

11 26-74-413. Administration of Local Sales and Use Tax Trust Fund.

12 (a) (1) There is created a trust fund for the remittance of local sales
13 and use taxes which shall be known as The Local Sales and Use Tax Trust Fund.

14 (2) (A) There is also created a trust fund which shall be known as
15 the Identification Pending Trust Fund for Local Sales and Use Taxes.

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

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

25 (iii) When the total amount in the Identification
26 Pending Trust Fund for Local Sales and Use Taxes exceeds fifty thousand
27 dollars (\$50,000), the State Treasurer shall transfer any amount in excess of
28 fifty thousand dollars (\$50,000) to general revenues.

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

33 (2) After making the estimate, the administrator shall invest the
34 estimated surplus amount in certificates of deposit issued by any financial
35 institution located in the State of Arkansas. All interest income derived

1 from the certificates of deposit shall be credited, as trust fund income, to
2 the Local Sales and Use Tax Trust Fund.

3 (3) The State Treasurer shall monthly transmit to the county
4 treasurers and city treasurers their proportionate share of the interest
5 derived from investment of the Local Sales and Use Tax Trust Fund.

6 *26-74-414. Notwithstanding any other laws granting counties authority
7 to levy sales and use taxes, no county levying a tax pursuant to this act
8 shall have authority to levy combined total sales and use taxes at a rate
9 greater than two percent (2%). If any county levying a one-half percent tax
10 under the authority of this act subsequently levies any additional sales and
11 use taxes under authority of any other law, the net revenues derived from any
12 such additional levy or levies shall be allocated and distributed to the
13 county and the municipalities in the county on a per capita basis in the
14 manner provided in Arkansas Code 26-74-313."*

15

16 SECTION 2. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

19

20 SECTION 3. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

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26 SECTION 4. All laws or parts of laws in conflict with this act are
27 hereby repealed.

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29 /s/J. Dawson

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