

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Senator C. Bell**

# A Bill

**SENATE BILL 156**

## **For An Act To Be Entitled**

8 "AN ACT TO LEVY AN ADDITIONAL EXCISE TAX OF ONE-HALF OF  
9 ONE PERCENT (1/2%) UNDER THE ARKANSAS GROSS RECEIPTS TAX  
10 ACT AND THE ARKANSAS COMPENSATING TAX ACT; TO IMPOSE  
11 ARKANSAS GROSS RECEIPTS AND COMPENSATING TAX ON ALL USED  
12 MOTOR VEHICLES, TRAILERS, MOBILE HOMES, AND AIRPLANES; TO  
13 ALLOW A CREDIT FOR TRADE-IN VALUE ON USED MOTOR VEHICLES,  
14 TRAILERS, SEMI-TRAILERS, MOBILE HOMES AND AIRPLANES; TO  
15 IMPOSE CRIMINAL PENALTIES ON PERSONS WHO ASSIST TAXPAYERS  
16 IN EVADING PAYMENT OF TAX; TO IMPOSE A PENALTY EQUAL TO  
17 THE AMOUNT OF TAX EVADED ON ANY PERSON WHO ASSISTS A  
18 TAXPAYER IN EVADING OR DEFEATING THE PAYMENT OF TAX; TO  
19 PROVIDE FOR PROSECUTION OF TAX OFFENSES IN PULASKI COUNTY;  
20 AND FOR OTHER PURPOSES."

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

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24 SECTION 1. In addition to the excise tax levied upon the gross proceeds  
25 or gross receipts derived from all sales by the Arkansas Gross Receipts Act  
26 [Arkansas Code of 1987 Annotated §26-52-101 et seq.], there is hereby levied  
27 an excise tax of one-half of one percent (1/2%) upon all taxable sales of  
28 property and services subject to the tax levied in that Act, and such tax  
29 shall be collected, reported, and paid in the same manner and at the same time  
30 as is prescribed by law for the collection, reporting and payment of all other  
31 Arkansas gross receipts taxes. Provided that, in computing gross receipts or  
32 gross proceeds as defined in Arkansas Code of 1987 Annotated §26-52-103(a)(4),  
33 a deduction shall be allowed for bad debts resulting from the sale of tangible  
34 personal property.

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1 SECTION 2. Arkansas Code of 1987 Annotated §26-52-303(a) is hereby  
2 amended to read as follows:

3 "(a) In instances where an Arkansas city or incorporated town is (1)  
4 divided by a State line from an incorporated city or town in an adjoining  
5 state, and (2) the city or town in the adjoining state is of greater  
6 population than the Arkansas city or town, and (3) that a tax imposed in such  
7 adjoining state is in the nature of a selective sales tax or limited to  
8 specific items as a special excise tax, then the rate of tax upon such  
9 articles on the Arkansas side shall be at the same rate imposed in such such  
10 adjoining state, not to exceed four and one-half percent (4 1/2%), provided  
11 that if such border city has voted to levy an additional one percent (1%)  
12 gross receipts tax in such city in lieu of paying state income taxes by  
13 individuals who are residents of said city, as authorized by Arkansas Code of  
14 1987 Annotated §26-52-601 et seq., in such event the rate of tax shall be one  
15 percent (1%) above said four and one-half percent (4 1/2%)."

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17 SECTION 3. In addition to the excise tax levied upon the privilege of  
18 storing, using, distributing or consuming tangible personal property within  
19 the State by the Arkansas Compensating Tax Act [Arkansas Code of 1987  
20 Annotated §26-53-101 et seq.], there is hereby levied an excise tax of  
21 one-half of one percent (1/2%) upon all tangible personal property subject to  
22 the tax levied in that Act, and such tax shall be collected, reported, and  
23 paid in the same manner and at the same time as is prescribed by law for the  
24 collection, reporting and payment of Arkansas compensating taxes.

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26 SECTION 4. Arkansas Code of 1987 Annotated §26-52-504 is hereby amended  
27 to read as follows:

28 "26-52-504. Sale of house trailers or mobile homes.  
29 (a) Every person selling new or used house trailers or mobile homes in  
30 this state, whether from an established business, under a dealership, or  
31 otherwise, shall obtain and hold a permit as provided by § 26-52-202 and shall  
32 make a monthly report and remittance to the director of the Department of  
33 Finance and Administration as provided in the Arkansas Gross Receipts Act, §  
34 26-52-101 et seq., together with copies of invoices, sales tickets, or bills  
35 of sale reflecting the date of all sales of such house trailers or mobile

1 homes, the purchaser's name and address, the make, year model, serial number,  
2 and gross sales price of each house trailer or mobile home, and the amount of  
3 tax collected from the purchaser.

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6 (b) When a used house trailer or mobile home is taken in trade as a  
7 credit or part payment on the sale of a new or used house trailer or mobile  
8 home, the tax levied by Arkansas Code of 1987 Annotated §26-52-101 *et seq.*  
9 *and all other gross receipts taxes levied by the State shall be paid on the*  
10 *net difference between the total* consideration for the house trailer or mobile  
11 home sold and the credit for the used trailer or mobile home taken in trade.  
12 However, if the total consideration for the sale of the new or used house  
13 trailer or mobile home is less than \$2,000, no tax shall be due.

14 (c) Any permittee who fraudulently attempts to evade any provision of  
15 this section or of the Arkansas Gross Receipts Act, §26-52-101 *et seq.*, shall  
16 be subject to having his permit revoked after notice and hearing as provided  
17 by §26-52-208, as amended."

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19 SECTION 5. Arkansas Code of 1987 Annotated §26-52-505 is hereby amended  
20 to read as follows:

21 "26-52-505. Sales of aircraft.

22 (a) Every person selling new or used aircraft in this state, whether  
23 from an established business, under a dealership, as a flying service, or as a  
24 private individual, shall obtain and hold a permit as provided in § 26-52-202  
25 and shall make a monthly report and remittance to the Director of the  
26 Department of Finance and Administration as provided in the Arkansas Gross  
27 Receipts Act, § 26-52-101 *et seq.*, together with copies of invoices, sales  
28 tickets, or bills of sales reflecting the date of all sales of aircraft, the  
29 purchaser's name and address, the make, year model, serial number, and gross  
30 sales price of each aircraft, and the amount of tax collected from the  
31 purchaser.

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34 (b) When a used aircraft is taken in trade as a credit or part payment  
35 on the sale of a new or used aircraft, the tax levied by Arkansas Code of 1987

1 *Annotated §26-52-101 et seq. and all other gross receipts taxes levied by the*  
2 *State shall be paid on the net difference between the total consideration for*  
3 *the new or used aircraft sold and the credit for the used aircraft taken in*  
4 *trade. However, if the total consideration for the sale of the new or used*  
5 *aircraft is less than \$2,000, no tax shall be due.*

6 (c) However, the gross receipts or gross proceeds derived from the sale  
7 of new aircraft manufactured or substantially completed within the State of  
8 Arkansas shall not be subject to the gross receipts tax when sold by the  
9 manufacturer or substantial completer to a purchaser for use exclusively  
10 outside this state, notwithstanding the fact that possession may be taken in  
11 the state for the sole purpose of removing the aircraft from the state under  
12 its own power."

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14 SECTION 6. Arkansas Code of 1987 Annotated §26-52-510 is hereby amended  
15 to read as follows:

16 "26-52-510. Direct payment of tax by consumer-user - New and used cars.

17 (a) The tax levied by this *Chapter and all other gross receipts taxes*  
18 *levied by the State* in respect to the sale of new or used motor vehicles,  
19 trailers or semi-trailers required to be licensed in this state shall be paid  
20 by the consumer to the director of the Department of Finance and  
21 Administration instead of being collected by the dealer, and it is the  
22 mandatory duty of the director to require the payment of such tax before  
23 issuing licenses for new or used motor vehicles or trailers. However, when a  
24 consumer purchases a new automobile which is so defective that the dealer or  
25 manufacturer agrees either to grant the consumer a full cash refund or to  
26 replace the original automobile with another new automobile, then the amount  
27 of gross receipts tax paid on the defective vehicle shall be applied as a  
28 credit upon the gross receipts tax due from the purchase or receipt of the new  
29 automobile which is a replacement vehicle for the original vehicle.

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32 (b) When a used motor vehicle, trailer or semi-trailer is taken in  
33 trade as a credit or part payment on the sale of a new or used motor vehicle,  
34 trailer or semi-trailer, the tax levied by this *Chapter and all other gross*  
35 *receipts taxes levied by the State* shall be paid on the net difference between

1 the total consideration for the new or used vehicle, trailer or semi-trailer  
 2 sold and the credit for the used vehicle, trailer or semi-trailer taken in  
 3 trade. However, if the total consideration for the sale of the new or used  
 4 motor vehicle, trailer or semi-trailer is less than \$2,000, no tax shall be  
 5 due.

6 (c) Used car dealers shall be deemed the consumer-users of all parts  
 7 and accessories used by them for the reconditioning or rebuilding of used  
 8 automobiles and shall be required to report as a sale all parts and  
 9 accessories withdrawn or used from the stock in trade. In instances where  
 10 dealers are not engaged in the sale of parts and accessories in connection  
 11 with the sale of used cars, the tax shall be paid to the seller at the time  
 12 purchases of parts and accessories are made.

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14 (d) Nothing in this section shall be construed to repeal any exemption  
 15 from the Arkansas Gross Receipts Act, §26-52-101 et seq.

16 (e) No credit shall be allowed for sales or use taxes paid to another  
 17 state with respect to the purchase of motor vehicles, trailers, or  
 18 semitrailers which were first registered by the purchaser in Arkansas. This  
 19 subsection shall apply to all motor vehicles, trailers, or semitrailers  
 20 purchased on or after November 3, 1989."

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22 SECTION 7. Arkansas Code of 1987 Annotated §26-53-126 is hereby amended  
 23 to read as follows:

24 "26-53-126. Tax on used cars - Payment and collection.

25 (a) All new and used motor vehicles, trailers or semi-trailers required  
 26 to be licensed in this state shall, upon being registered in this state , be  
 27 subject to the tax levied herein *and all other use taxes levied by the State*  
 28 irrespective of whether such motor vehicle, trailer or semi-trailer was  
 29 purchased from a dealer or an individual. The tax shall be paid to the  
 30 director by the person making application to register the motor vehicle,  
 31 trailer or semi-trailer instead of being collected by the dealer or individual  
 32 seller. It shall be the mandatory duty of the director to collect the tax  
 33 before issuing a license for any motor vehicle, trailer or semi-trailer.

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35 (b) When a used motor vehicle, trailer or semi-trailer is taken in trade

1 as a credit or part payment on the sale of a new or used vehicle, trailer or  
2 semi-trailer, the tax levied herein *and all other use taxes levied by the*  
3 *State* shall be paid on the net difference between the total consideration for  
4 the new or used vehicle, trailer or semi-trailer sold and the credit for the  
5 used vehicle, trailer or semi-trailer taken in trade. However, if the total  
6 consideration for the sale of the new or used motor vehicle, trailer or  
7 semi-trailer is less than \$2,000, no tax shall be due.

8 (c) The tax imposed by this subchapter shall not apply to a motor  
9 vehicle, trailer or semi-trailer to be registered by a bona fide nonresident  
10 of this state.

11 (d) Nothing in this section shall be construed to repeal any  
12 exemption from the Arkansas Compensating Tax Act, §26-53-101 et seq."

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14 SECTION 8. The Director of the Department of Finance and Administration  
15 is authorized to adopt an alternative method for determining the total  
16 consideration for the sale of new or used house trailers or mobile homes under  
17 Arkansas Code of 1987 Annotated §26-52-504; new or used aircraft under  
18 Arkansas Code of 1987 Annotated §26-52-505; and new or used motor vehicles,  
19 trailers or semi-trailers under Arkansas Code of 1987 Annotated §26-52-510 and  
20 §26-53-126. The alternative method adopted shall incorporate any generally  
21 accepted method of determining the value of the item being sold. If the  
22 consideration stated by the parties to the sale is less than the value  
23 determined by such generally accepted method of valuation, then for purposes  
24 of taxation, it shall be presumed that the higher figure is the total  
25 consideration unless the taxpayer provides a contract, bill of sale or other  
26 evidence establishing that the true consideration is less than the value  
27 determined under the alternative method.

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29 SECTION 9. Arkansas Code of 1987 Annotated §26-18-201 is amended to  
30 read as follows:

31 "26-18-201. Attempt to evade or defeat tax.

32 (a) Any taxpayer who willfully attempts to evade or defeat the payment  
33 of any tax, penalty, or interest due under any state tax law shall be guilty  
34 of a Class C felony.

35 (b) Any person who willfully assists a taxpayer in evading or defeating

1 the payment of any tax, penalty, or interest due under any state tax law shall  
2 be guilty of a Class C felony."

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4 SECTION 10. Subchapter 2 of Chapter 18 of Title 26 of the Arkansas Code  
5 of 1987 Annotated is hereby amended by adding two new Sections at the end  
6 thereof to read as follows:

7 "26-18-209.

8 Any person who assists a taxpayer in evading or defeating the payment of  
9 any state tax shall be liable for a penalty equal to the total amount of the  
10 tax evaded, or not collected, or not accounted for and paid over to the  
11 Director.

12 26-18-210.

13 Prosecution of any criminal offense provided for in this subchapter may  
14 be in the county wherein the taxpayer resides, has an established place of  
15 business, or in Pulaski County."

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17 SECTION 11. All provisions of this act of a general and permanent  
18 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
19 Code Revision Commission shall incorporate the same in the Code.

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21 SECTION 12. If any provision of this act or the application thereof to  
22 any person or circumstance is held invalid, such invalidity shall not affect  
23 other provisions or applications of the act which can be given effect without  
24 the invalid provision or application, and to this end the provisions of this  
25 act are declared to be severable.

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27 SECTION 13. All laws and parts of laws in conflict with this act are  
28 hereby repealed.

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30 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined that  
31 the State of Arkansas is lacking adequate funds to provide for the education  
32 of its citizens and for other essential services; that increased funds must be  
33 raised to adequately provide for those needs; that certain persons are  
34 assisting taxpayers in evading or defeating the payment or collection of  
35 lawfully imposed state taxes depriving the state of needed revenues and that

1 this act is designed to provide the necessary revenues to the state sufficient  
2 to meet these needs. Therefore, an emergency is declared to exist and this  
3 act, being necessary for the immediate preservation of the public peace,  
4 health and safety, shall be in full force and effective on and after May 1,  
5 1991.

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*/s/Bell*