

1 State of Arkansas

Call Item 2

2 79th General Assembly

A Bill

3 Second Extraordinary Session, 1992

HOUSE BILL

4 By: Representatives Cunningham, M. Wilson

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For An Act To Be Entitled

8 "AN ACT TO LEVY A GROSS RECEIPTS TAX UPON MEDICAL
9 SERVICES, WHOLESALE DRUGS, LONG TERM CARE AND NURSING
10 FACILITIES, AND LEGAL SERVICES; TO PROVIDE THAT OBTAINING
11 A PERMIT TO COLLECT THE GROSS RECEIPTS TAX IS A
12 PRECONDITION TO OBTAINING A LICENSE; TO PROVIDE FOR
13 ADMINISTRATION BY THE DEPARTMENT OF FINANCE AND
14 ADMINISTRATION; AND FOR OTHER PURPOSES."

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Subtitle

17 "AN ACT TO LEVY TAXES ON MEDICAL AND LEGAL SERVICES,
18 WHOLESALE DRUGS, LONG TERM CARE AND NURSING FACILITIES."

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

22 SECTION 1. DEFINITIONS.

23 As used in this Act, unless the context otherwise requires:

24 (a) "Attorney" means every person licensed to practice law in Arkansas
25 and all attorneys who practice by comity under Rule XIV of the Arkansas
26 Supreme Court Rules Governing Admission to the Bar. However, the term
27 "attorney" shall not include the following: sitting federal or state court
28 judges; employees of businesses or organizations other than law firms who do
29 not engage in the practice of law except as an employee of the business or
30 organization; and employees of local, state and federal governments who do not
31 engage in the practice of law except as an employee of the agency.

32 (b) "Director" means the Director of the Department of Finance and
33 Administration or his authorized agents.

34 (c) "Gross Receipts" shall mean the actual cash receipts received by
35 persons or organizations subject to the tax levied by Section 2 of this Act.

1 However, if any person or organization subject to the tax levied by Section 2
2 of this Act charges the tax to its clients or customers on its bill or
3 invoice, then the gross receipts shall be the entire amount billed for the
4 service or sale without any deduction of any kind. "Gross Receipts" shall
5 not include the sale of services or tangible personal property by persons,
6 businesses, or organizations subject to the permit requirements of Section 3
7 of this Act if sold to persons, businesses, or organizations permitted under
8 Section 3 of this Act who are regularly engaged in the business of reselling
9 the services and property purchased. Neither shall the term "Gross Receipts"
10 include premiums regularly paid to Health Maintenance Organizations as a
11 precondition to receive medical services, however, nothing provided herein
12 shall be construed to exempt Health maintenance Organizations from the
13 imposition of tax in Section 2 on their otherwise taxable services.

14 (d) "Law firm" means attorneys engaged in the practice of law as a
15 partnership or corporation.

16 (e) "Legal services" means all charges including legal fees, counseling
17 fees and other charges, which are invoiced to clients by attorneys or law
18 firms. "Legal services" shall not include filing fees, service of process
19 fees, courier services, court reporter fees, expert witness fees, exhibits for
20 trial, subpoenas, witness fees, printing costs for briefs, transcript costs
21 and court costs that are paid by an attorney or law firm on behalf of a client
22 to an unrelated party and reimbursed by the client as a separately stated item
23 on the invoice of the attorney or law firm.

24 (f) "Medical Services" means any medical care provided by the persons
25 or organizations subject to the tax levied by this Act and shall include the
26 transfer of items of tangible personal property incidental to providing such
27 services.

28 (g) "Personal care services" shall mean physician-prescribed non-
29 skilled services relating to an individual's functional abilities which enable
30 the individual to avoid institutional medical care. Such services shall
31 include the following: basic personal care and grooming, bathing, hair care;
32 assistance with clothing and bodily functions; assistance with meal
33 preparation, household services essential to a client's health and comfort;
34 and transportation of the client to and from a physician or medical facility
35 for necessary medical services.

1 (h) "Prescription drugs" shall mean those substances, drugs, or
2 immediate precursors as provided for in Ark. Code Ann. §20-64-503(5) except
3 veterinary legend drugs.

4 (i) "Wholesale drug company" means a wholesale distributor as provided
5 by Ark. Code Ann. §20-64-503(10), any out-of-state pharmacy licensed pursuant
6 to Ark. Code Ann. §17-91-401 et seq., and any apothecary shop, drugstore, or
7 pharmacy permitted in Arkansas under Ark. Code Ann. §17-91-402 et seq.

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9 SECTION 2. IMPOSITION OF TAX.

10 (a) For the months of March, April, May and June of 1993 there is
11 levied a tax of seven tenths of one percent (0.7%), and for all months
12 beginning on or after July 1, 1993 there is levied a tax of one percent (1%),
13 upon the gross receipts derived from all medical services, legal services and
14 the transfer of items of tangible personal property incidental to such
15 services, provided by the following:

16 (1) Physicians and surgeons licensed under Ark. Code Ann. §17-93-101 et
17 seq.

18 (2) Podiatrists licensed under Ark. Code Ann. §17-95-101 et seq.

19 (3) Dentists licensed under Ark. Code Ann. §17-82-101 et seq.

20 (4) Optometrists licensed under Ark. Code Ann. §17-89-101 et seq.

21 (5) Osteopaths licensed under Ark. Code Ann. §17-90-101 et seq.

22 (6) Dental assistants and dental hygienists licensed under Ark. Code
23 Ann. §17-82-101 et seq.

24 (7) Hearing aid dispensers licensed under Ark. Code Ann. §17-83-101 et
25 seq.

26 (8) Respiratory care practitioners licensed under Ark. Code Ann. §17-84-
27 101 et seq.

28 (9) Lay midwives licensed under Ark. Code Ann. §17-85-101 et seq.

29 (10) Nurses licensed under Ark. Code Ann. §17-86-101 et seq.

30 (11) Occupational therapists licensed under Ark. Code Ann. §17-87-101 et
31 seq.

32 (12) Ophthalmic dispensers licensed under Ark. Code Ann. §17-88-101 et
33 seq.

34 (13) Physical therapists licensed under Ark. Code Ann. §17-92-101 et
35 seq.

1 (14) Physician's trained assistants licensed under Ark. Code Ann. §17-
2 94-101 et seq.

3 (15) Psychologists and psychological examiners licensed under Ark. Code
4 Ann. §17-96-101 et seq.

5 (16) Speech pathologists and audiologists licensed under Ark. Code Ann.
6 §17-97-101 et seq.

7 (17) Massage therapists licensed under Ark. Code Ann. §17-98-101 et seq.

8 (18) Dietitians licensed under Ark. Code Ann. §17-100-101 et seq.

9 (19) Home health care service agencies licensed pursuant to Ark. Code
10 Ann. §20-10-801 et seq.

11 (20) Health maintenance organizations licensed pursuant to Ark. Code
12 Ann. §23-76-101 et seq.

13 (21) Any personal care service providers certified pursuant to Ark.
14 Code Ann. §20-10-706

15 (22) Medical laboratories engaged in providing professional analytic or
16 diagnostic services to the medical profession or to a patient as prescribed by
17 a physician. Medical laboratories shall include dental and optical
18 laboratories.

19 (23) Ambulance services licensed pursuant to Ark. Code Ann. §14-266-101
20 et seq.

21 (24) Abortion clinics and centers licensed pursuant to Ark. Code Ann.
22 §20-9-302

23 (25) Attorneys and law firms.

24 (b)(1) For the months of March, April, May and June of 1993 there is
25 hereby levied a tax of seven tenths of one percent (0.7%), and for all months
26 beginning on or after July 1, 1993 there is levied a tax of one percent (1%)
27 upon the gross receipts derived from the sale of prescription drugs within
28 this state by any business or person licensed as a wholesale distributor of
29 prescription drugs under Ark. Code Ann. §20-64-501 et seq.

30 (2) If any pharmacy licensed to sell drugs in this state under Ark.
31 Code Ann. §17-91-401 et seq., sells prescription drugs from a location either
32 within or without this state and such prescription drugs were obtained from a
33 supplier who is not licensed as a "wholesale distributor" under Ark. Code Ann.
34 §20-64-501 et seq., then the pharmacy must remit the tax in paragraph (b)(1)
35 of this section on the pharmacy's purchase price for the prescription drugs.

1 (3) Any person, business or other entity who obtains prescription drugs
2 from someone other than a "wholesale distributor" licensed under Ark. Code
3 Ann. §20-64-501 et seq. or an in-state or out-of-state pharmacy licensed under
4 Ark. Code Ann. §17-91-401 et seq, shall be responsible for reporting and
5 remitting the tax in paragraph (b)(1) of this section upon the total purchase
6 price of prescription drugs purchased by them.

7 (4) For purposes of administration of this section, wholesale
8 distributors and pharmacies shall pay tax on their actual cash receipts
9 without regard to the amount billed or invoiced to clients or customers. Tax
10 paid under paragraphs (b)(1) and (b)(2) of this section shall be passed on to
11 the public or the ultimate consumer by the wholesale distributor or pharmacy.

12 (c) For the months of March, April, May and June of 1993 there is levied
13 a tax of two percent (2%), and for all months beginning on or after July 1,
14 1993 there is levied a tax of two and eight tenths percent (2.8%), upon the
15 gross receipts derived by long term care facilities required to be licensed
16 pursuant to Ark. Code Ann. §20-10-101 et seq. and nursing facilities required
17 to be licensed pursuant to Ark. Code Ann. §20-10-1101 et seq. from all
18 services provided by such facilities and the transfer of items of tangible
19 personal property incidental to providing such services.

20 (d) For the months of March, April, May and June of 1993 there is
21 levied a tax of seven tenths of one percent (0.7%), and for all months
22 beginning on or after July 1, 1993 there is levied a tax of one percent (1%),
23 upon the gross receipts derived by intermediate care facilities for the
24 mentally retarded and adult day health care facilities from all services
25 provided by such facilities and the transfer of items of tangible personal
26 property incidental to providing such services.

27 (e) Notwithstanding the exemption granted by Ark. Code Ann. §23-75-120,
28 for the months of March, April, May and June of 1993 there is levied a tax of
29 seven tenths of one percent (0.7%), and for all months beginning on or after
30 July 1, 1993 there is levied a tax of one percent (1%), upon the gross
31 receipts derived from all medical services and the transfer of items of
32 tangible personal property incidental to providing such services by hospitals,
33 institutions, public health centers, non-profit hospitals, non-profit medical
34 facilities, medical facilities, outpatient surgery centers, recuperation
35 centers, alcohol and drug abuse treatment centers, outpatient psychiatric

1 centers, and infirmaries licensed pursuant to Ark. Code Ann. §20-9-201 et
2 seq., including inpatient services, outpatient services, and emergency room
3 treatment.

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5 SECTION 3. ISSUANCE OF PERMIT BY DIRECTOR - PRECONDITION TO OBTAINING
6 LICENSE.

7 (a) Prior to issuance of a professional license by a state board or
8 state regulatory agency or a license to conduct business within this state,
9 any person, business or organization subject to the tax levied in Section 2 of
10 this Act, shall present evidence to the licensing board or agency of the
11 issuance of a permit by the Director to collect the tax imposed by Section 2
12 of this Act. Those persons, businesses or organizations subject to the tax
13 levied by Section 2 of this Act shall obtain a permit as required by this
14 Section prior to conducting business in the State of Arkansas.

15 (b) It shall be unlawful for anyone upon whom a tax is imposed by
16 Section 2 of this Act to transact business within this state prior to the
17 issuance and receipt of a permit issued by the Director.

18 (c) Failure to obtain a permit from the Director as required by this
19 Section shall result in the licensing board or agency denying the application
20 for a professional license or a license to conduct business, or shall result
21 in the revocation of an existing professional license or license to conduct
22 business pursuant to the applicable rules and regulations of the licensing
23 board or agency.

24 (d) The failure of any person, business or organization responsible for
25 the tax levied in Section 2 of this Act to pay such tax when due shall result
26 in the revocation of the permit issued by the Director and suspension or
27 revocation of any license required to practice a profession or conduct
28 business.

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30 SECTION 4. ADMINISTRATION - RULES AND REGULATIONS.

31 (a) The administration of this Act is vested in and shall be exercised
32 by the Director and shall be subject to the provisions of the Arkansas Tax
33 Procedure Act, Ark. Code Ann. §26-18-101 et seq.

34 (b) The Director shall promulgate rules and regulations and prescribe
35 forms for the proper enforcement of this Act.

1 (c) The tax levied hereunder shall be due and payable to the Arkansas
2 Department of Finance and Administration in the same manner as provided for by
3 Ark. Code Ann. §26-52-501. Provided however, that the returns for the tax
4 collected in the previous month required by §26-52-501(g), shall be due on or
5 before the fifteenth day of each month.

6 (d) The Director is authorized to provide information to any state
7 licensing board or agency for purposes of enforcement of the provisions of
8 this Act.

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10 SECTION 5. The taxes levied in Section 2 of this Act are in addition to
11 all other taxes currently levied, including, but not limited to, those taxes
12 levied by Ark. Code Ann. §26-52-1101 et seq., Ark. Code Ann. §26-52-1201 et
13 seq. and Ark. Code Ann. §26-52-1301 et seq. and nothing contained herein shall
14 be construed to repeal the taxes levied therein.

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16 SECTION 6. EFFECTIVE DATE.

17 The provisions of this Act shall be effective on and after March 1,
18 1993.

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20 SECTION 7. The revenues derived from the taxes collected under this
21 act shall be remitted to the State Treasurer who shall deposit the revenues in
22 the State Treasury as general revenues.

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24 SECTION 8. All provisions of this act of a general and permanent nature
25 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
26 Revision Commission shall incorporate the same in the Code.

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28 SECTION 9. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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34 SECTION 10. All laws and parts of laws in conflict with this act are
35 hereby repealed.

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SECTION 11. 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 from and after its passage and approval.

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