

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Stalnaker

A Bill

HOUSE BILL 1472

For An Act To Be Entitled

"AN ACT TO CLARIFY THE TAXATION OF CONTRACTORS FOR GROSS RECEIPTS AND USE TAX PURPOSES; AND FOR OTHER PURPOSES."

Subtitle

"TO CLARIFY THE TAXATION OF CONTRACTORS."

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

SECTION 1. Arkansas Code 26-52-103(a)(9) is amended to read as follows:

"(9)(A) Consumer or user means the person to whom the taxable sale is made or to whom taxable services are furnished. All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies, and equipment used or consumed by them in performing any contract, and the sales of all such property to contractors are taxable sales within the meaning of this act;

(B) Contract means any agreement or undertaking to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts;

(C) Contractor means any person who contracts or undertakes to construct, manage or supervise the construction, erection, alteration or repair of any building or other improvement or structure affixed to real estate, including any of their component parts."

SECTION 2. Arkansas Code 26-52-301(3)(C) is amended to add the following subsection (3)(C)(vii):

"(vii) Additionally, the gross receipts tax levied in this section

1 shall not apply to the alteration, addition, cleaning, refinishing,
2 replacement, or repair of nonmechanical, passive or manually operated
3 components of buildings or other improvements or structures affixed to real
4 estate, including but not limited to the following: walls, floors, ceilings,
5 doors, locks, windows, glass, heat and air ducts, roofs, wiring, breakers,
6 breaker boxes, electrical switches and receptacles, light fixtures, pipes,
7 plumbing fixtures, fire and security alarms, intercoms, sprinkler systems,
8 parking lots, fences, gates, fireplaces, and similar components which become
9 a part of real estate after installation. Contractors are deemed to be
10 consumers or users of all tangible personal property used or consumed by them
11 in providing such nontaxable services, in the same manner as when performing
12 *any other contract. This subsection (3)(C)(vii) shall not apply to any*
13 *services subject to tax pursuant to the terms of subsection 3(E) of this*
14 *section."*

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16 *SECTION 3. Arkansas Code §26-52-307 is amended to read as follows:*

17 *"§ 26-52-307. Contractors as consumer users.*

18 *(a) Sales of service and tangible personal property including*
19 *materials, supplies, and equipment made to contractors who use them in the*
20 *performance of any contract are declared to be sales to consumers or users*
21 *not sales for resale. Subsequent transfers of title or possession of such*
22 *property used in the performance of a contract by contractors are not subject*
23 *to the tax imposed by the Gross Receipts Tax Act.*

24 *(b) Provided that if the performance of a contract or any portion*
25 *thereof by a contractor constitutes the performance of a taxable service*
26 *under the terms of Arkansas Code § 26-52-301(3) then the entire gross*
27 *proceeds or gross receipts derived from the performance of such taxable*
28 *services including the sale or transfer of title or possession of any*
29 *materials or supplies used or consumed in performing such taxable services*
30 *shall be subject to the tax imposed by the Gross Receipts Tax Act.*

31 *(c) Contractors shall be entitled to receive a gross receipts tax*
32 *credit, tax offset or refund for any gross receipts tax or use tax paid on*
33 *materials or supplies used or consumed by them which becomes a part of real*
34 *estate in performing taxable services."*

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1 SECTION 4. Arkansas code 26-52-201 is amended to add the following
2 subsection (e):

3 "(e) The Director of the Department of Finance and Administration is
4 authorized to establish types and classifications of Arkansas gross receipts
5 tax permits including, not by limitation, special permits for taxpayers whose
6 principal line of business does not include the retail selling of tangible
7 personal property or performing taxable services."
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9 SECTION 5. Arkansas Code 26-52-501 is amended to add the following
10 subsection (j):

11 "(j) The Director of the Department of Finance and Administration is
12 authorized to establish by regulation separate requirements for filing
13 reports and returns and paying the tax levied hereunder for taxpayers whose
14 principal line of business does not include the retail selling of tangible
15 personal property or performing taxable services."
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17 SECTION 6. 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 7. 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 8. All laws and parts of laws in conflict with this act are
28 hereby repealed.
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30 SECTION 9. EMERGENCY. It is hereby found and determined by the
31 General Assembly that the Arkansas law is unclear as it applies to the
32 taxation of contractors and subcontractors who construct and repair buildings
33 and other improvements and structures affixed to real estate; that Arkansas
34 gross receipts and use tax laws which impose tax on certain services to
35 motors, electrical appliances and devices, household appliances, and

1 machinery were never intended by the General Assembly to apply to
2 nonmechanical, passive or manually operated building systems or components;
3 that none of the charges made by a contractor for labor or materials used in
4 performing such nontaxable services are properly subject to tax; that
5 contractors and subcontractors are suffering substantial losses on audits
6 after making best efforts to comply with existing law; and that the gross
7 receipts and use tax laws need to be clarified to specifically exclude
8 certain services to buildings and other improvements or structures affixed to
9 real estate from tax. Therefore, an emergency is hereby declared to exist
10 and this act being necessary for the immediate preservation of the public
11 peace, health and safety shall be in full *force and effect on and after July*
12 *1, 1995.*

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/s/Rep. Stalaker

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