

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4 By: Representative Lynn

As Engrossed: H3/5/97

A Bill

HOUSE BILL 1462

For An Act To Be Entitled

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9 "AN ACT TO ESTABLISH THAT THE PROCEDURES AND REMEDIES
10 PROVIDED BY THE TAX PROCEDURE ACT ARE AVAILABLE TO AN
11 ADVERTISING AND PROMOTION COMMISSION; AND FOR OTHER
12 PURPOSES."

Subtitle

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16 "TO ESTABLISH THAT CERTAIN PROCEDURES AND REMEDIES PROVIDED
17 BY THE TAX PROCEDURE ACT ARE AVAILABLE TO AN ADVERTISING AND
18 PROMOTION COMMISSION."

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

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23 SECTION 1. Ark. Code Ann. § 26-75-603 is amended to read as follows:

24 "(a) From the effective date of the levying ordinance, the tax so
25 levied shall be paid by the persons, firms, and corporations liable therefor
26 and shall be collected by the advertising and promotion commission of the
27 levying city or by a designated agent of the commission in the same manner and
28 at the same time as the tax levied by the Arkansas Gross Receipts Act of 1941,
29 § 26-52-101 et seq.

30 (b) The person paying the tax shall report and remit it upon forms
31 provided by the commission, and as directed by the commission. The rules,
32 regulations, forms of notice, assessment procedures, and the enforcement and
33 collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-
34 101 et seq. and the Arkansas Tax Procedure Act, § 26-18-101, et seq., shall,
35 so far as practicable, be applicable with respect to the practicable, be
36 applicable with respect to the enforcement and collection of the tax levied
37 pursuant to the authority of this subchapter. However, the administration and

1 enforcement, and all actions, shall be by, and in the name of, the commission
2 through the proper commission officials or agents. The commission shall have
3 the authority to sue and be sued in its name. The Department of Finance and
4 Administration shall have no authority to enforce or collect the tax levied
5 pursuant to this subchapter.

6 (c) The levying city is authorized to adopt ordinances consistent with
7 and in similar form to § 26-18-101, et seq. to enable the commission or its
8 agent to enforce the tax through examination of records, notices of proposed
9 and final assessment, and administrative hearings on proposed assessments.
10 The levying city is also authorized to adopt ordinances which enable the
11 commission to:

12 (1) assess penalties and interest against taxpayers who fail to
13 timely report or pay the tax. The penalty is equal to five percent (5%) of
14 the unpaid tax amount per month not to exceed a total assessment of thirty-
15 five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall
16 be assessed at the rate of 10% per annum.

17 (2) assess unpaid or unreported tax within three (3) years of the
18 date the tax is due.

19 (3) provide for judicial relief from proposed assessments in
20 accordance with subsection (d) of this section.

21 (4) issue certificates of indebtedness in accordance with
22 subsection (3) of this section.

23 (d)(1) Within thirty (30) days of the issuance of the notice and demand
24 for payment of a deficiency in tax established by a final determination of the
25 hearing officer, taxpayer may seek judicial relief from the final
26 determination by either:

27 (A) Paying under protest the amount of the deficiency, plus
28 penalty and interest determined by the commission to be due, and filing a suit
29 to recover that amount within one (1) year from the date of payment under
30 protest; or

31 (B)(i) Filing with the commission a bond in double the
32 amount of the tax deficiency due and by filing suit within thirty (30) days
33 thereafter to stay the effect of the commissions determination.

34 (ii) The bond shall be subject to the condition that
35 the taxpayer shall file suit within thirty (30) days after filing the bond,
36 shall faithfully and diligently prosecute the suit to a final determination,

1 and shall pay any deficiency found by the court to be due and any court cost
2 assessed against him.

3 _____ (iii) A taxpayers failure to file suit, diligently
4 prosecute the suit, or pay any tax deficiency and court costs, as required by
5 this subsection, shall result in the forfeiture of the bond in the amount of
6 the assessment and assessed court costs.

7 _____ (C) The method provided in this section is the exclusive
8 method for seeking relief from a written decision of the commission
9 establishing a deficiency in tax. No injunction shall issue to stay
10 proceedings for assessment or collection of this tax.

11 _____ (e)(1) If a taxpayer does not timely and properly pursue his remedies
12 seeking relief from a decision of the commission and a final assessment is
13 made against the taxpayer, or if the taxpayer fails to pay the deficiency
14 assessed upon notice and demand, then the commission shall, as soon as
15 practicable thereafter, issue to the circuit clerk of the county in which the
16 taxpayers business is located a certificate of indebtedness certifying that
17 the person named therein is indebted to the commission for the amount of the
18 tax established by the commission as due.

19 _____ (2) The circuit clerk shall enter immediately upon the circuit
20 court judgment docket:

21 _____ (A) The name of the delinquent taxpayer;

22 _____ (B) The amount certified as being due;

23 _____ (C) The name of the tax; and

24 _____ (D) The date of entry upon the judgment docket.

25 _____ (3) The entry of the certificate of indebtedness shall have the
26 same force and effect as the entry of a judgment rendered by the circuit
27 court. This entry shall constitute the commissions lien upon the title of
28 any real and personal property of the taxpayer in the county where the
29 certificate of indebtedness is recorded.

30 _____ (4) The certificate of indebtedness authorized by this subsection
31 shall continue in force for ten (10) years from the date of recording and
32 shall automatically expire after the ten (10) year period has run. Actions on
33 the lien on the certificate of indebtedness shall be commenced within ten (10)
34 years after the date of recording of the certificate, and not afterward.

35 _____ (5) The commission shall have all remedies and may take all
36 proceedings for the collection of the tax which may be taken for the recovery

1 of a judgment at law.

2 (f) The provisions of subsections (d) and (e) of this section shall be
3 effective only when the levying city adopts an ordinance which specifically
4 provides that these provisions shall be utilized by the commission in
5 enforcing the tax."

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

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11 SECTION 3. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.

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17 SECTION 4. All laws and parts of laws in conflict with this act are
18 hereby repealed.

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/s/Rep. Lynn

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