

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

SENATE BILL 180

5 By: Senators J. Key, J. Dismang  
6

## For An Act To Be Entitled

8 AN ACT TO REQUIRE VOTER APPROVAL OF CERTAIN TAX  
9 LEVIES; TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER  
10 PURPOSES.  
11

## Subtitle

12 TO REQUIRE VOTER APPROVAL OF CERTAIN TAX  
13 LEVIES AND TO MAKE TECHNICAL CORRECTIONS.  
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17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code § 26-74-501 is amended to read as follows:

21 26-74-501. Levy of tax.

22 Any county ~~which~~ that does not levy a tax under § 14-20-112, ~~county~~  
23 ~~gross receipts tax on hotels and restaurants, and where~~ in which there is not  
24 located a city ~~which~~ that levies a tax under § 26-75-602 or § 26-75-701, by  
25 either an ordinance of the county quorum court under § 26-74-502(a) or  
26 through petition ~~pursuant to § 26-74-502(a)~~ under § 26-74-502(b) may levy a  
27 tax in the amount necessary for the payment of bonds issued or indebtedness  
28 incurred by the county public facilities board for the purposes prescribed in  
29 this subchapter, but in no event to exceed two percent (2%) upon the gross  
30 receipts or gross proceeds from either or both of the following:

31 (1) (A) Gross receipts or gross proceeds from the renting,  
32 leasing, or ~~otherwise~~ furnishing of hotel, motel, or short-term condominium  
33 rental accommodations for sleeping, meeting, or party room facilities for  
34 profit in ~~such city, but such accommodations shall~~ the county.

35 (B) However, subdivision (1)(A) of this section does not  
36 include the rental or lease of ~~such~~ accommodations described in subdivision



1 (1)(A) of this section for periods a period of thirty (30) days or more; and

2 (2)(A) Portions The portion of gross receipts or gross proceeds  
 3 received from the sale of prepared food and beverages for on-premises or off-  
 4 premises consumption by restaurants, cafes, cafeterias, delis, drive-in  
 5 restaurants, carry-out restaurants, concession stands, convenience stores,  
 6 grocery store-restaurants, and similar businesses as shall be defined in the  
 7 levying ordinance, ~~from the sale of prepared food and beverages for on-~~  
 8 ~~premises or off-premises consumption, but such.~~

9 (B) However, the tax shall not apply to ~~such~~ the gross  
 10 receipts or gross proceeds of fraternal organizations qualified under 26  
 11 U.S.C. § 501(c)(3), as it existed on January 1, 2011.

12  
 13 SECTION 2. Arkansas Code § 26-74-502 is amended to read as follows:

14 26-74-502. Voter approval of levy of tax – Petitions requesting an  
 15 election.

16 (a)(1) If a county quorum court enacts an ordinance levying a tax  
 17 under § 26-74-501, the county quorum court shall submit the question of the  
 18 levying of the tax to the electors.

19 (2) The election shall be held within one hundred twenty (120)  
 20 days of the enacting of the ordinance.

21 (3) The tax shall be levied upon approval of a majority of the  
 22 qualified electors voting on the question at the election.

23 ~~(a)~~ (b)(1) If ~~petitions are~~ a petition is filed requesting an election  
 24 for an initiated ordinance levying the tax authorized under ~~this subchapter §~~  
 25 26-74-501, the county quorum court shall submit the question of the levying  
 26 of the tax to the electors.

27 (2) The ~~petitions~~ petition must be signed by not less than five  
 28 hundred (500) electors of the county.

29 (3) The election shall be held within one hundred twenty (120)  
 30 days of the filing of the ~~petitions~~ petition.

31 (4) The tax shall be levied upon approval of a majority of the  
 32 qualified electors voting on the ~~issue~~ question at the election.

33 ~~(b) If petitions requesting a referendum election are filed, the~~  
 34 ~~quorum court levying a tax under this subchapter shall submit the question of~~  
 35 ~~the levying of the tax to the electors. The petitions must be signed by not~~  
 36 ~~less than five hundred (500) electors of the county and must be filed with~~

~~the quorum court within thirty (30) days after the adoption of the ordinance levying the tax.~~

SECTION 3. Arkansas Code § 26-75-602 is amended to read as follows:

26-75-602. Gross receipts taxes authorized.

(a)(1) ~~Any~~ A city of the first class, city of the second class, or incorporated town by ordinance of the governing body thereof may levy a tax not to exceed three percent (3%) upon the gross receipts or gross proceeds identified in subsection (c) of this section.

(2)(A) If the governing body enacts an ordinance levying a tax under this section, the governing body shall submit the question of the levying of the tax to the electors.

(B) The election shall be held within one hundred twenty (120) days of the enacting of the ordinance.

(C) The tax shall be levied upon approval of a majority of the qualified electors voting on the question at the election.

(b) ~~Any~~ A city of the first class in which ~~is located~~ a city park of one thousand (1,000) acres or more ~~in a like manner~~ is located may levy an additional tax of one percent (1%) upon the gross receipts or gross proceeds identified in subsection (c) of this section. Revenues collected from this additional tax shall be used by the city parks and recreation department for the promotion and development of city parks and recreation areas.

(c) The tax authorized in this ~~subchapter~~ section shall be upon any one (1) or more of the following, as specified in the levying ordinance:

(1)(A) The gross receipts or gross proceeds from renting, leasing, or otherwise furnishing hotel, motel, house, cabin, bed and breakfast, campground, condominium, or other similar rental accommodations for sleeping, meeting, or party room facilities for profit in such the city or town, but such accommodations shall.

(B) However, subdivision (c)(1)(A) of this section does not include the rental or lease of such accommodations described in subdivision (c)(1)(A) of this section for periods a period of thirty (30) days or more; and

(2)(A) The portion of the gross receipts or gross proceeds received from the sale of prepared food and beverages for on-premises or off-premises consumption by restaurants, cafes, cafeterias, delicatessens, drive-

1 in restaurants, carry-out restaurants, concession stands, convenience stores,  
 2 grocery store-restaurants, or similar businesses as shall be defined in the  
 3 levying ordinance ~~from the sale of prepared food and beverages for on-~~  
 4 ~~premises or off-premises consumption, but such.~~

5 (B) However, the tax shall not apply to such the gross  
 6 receipts or gross proceeds of organizations qualified under 26 U.S.C. §  
 7 501(c)(3), as it existed on January 1, 2011.

8  
 9 SECTION 4. Arkansas Code § 26-75-603 is amended to read as follows:

10 26-75-603. Collection of tax.

11 ~~(a) From the effective date of the levying ordinance, the tax so~~  
 12 ~~levied shall be paid by the persons, firms, and corporations liable therefor~~  
 13 A person liable for a tax levied under § 26-75-602 shall pay the tax, and  
 14 ~~shall be collected by the advertising and promotion commission of the levying~~  
 15 ~~city or by a designated agent of the commission shall collect the tax in the~~  
 16 same manner and at the same time as the tax levied by the Arkansas Gross  
 17 Receipts Act of 1941, § 26-52-101 et seq.

18 (b)(1) The person paying the tax levied under § 26-75-602 shall report  
 19 and remit it upon forms provided by the commission and as directed by the  
 20 commission. The rules, regulations, forms of notice, assessment procedures,  
 21 and the enforcement and collection of the tax under the Arkansas Gross  
 22 Receipts Act of 1941, § 26-52-101 et seq. and the Arkansas Tax Procedure Act,  
 23 § 26-18-101 et seq., ~~so far as practicable shall be~~ are applicable with  
 24 respect to the enforcement and collection of the tax levied ~~pursuant to the~~  
 25 ~~authority of this subchapter~~ under § 26-75-602.

26 (2) However, the administration and enforcement of the tax  
 27 levied under § 26-75-602 and all actions arising from the tax levied under §  
 28 26-75-602 shall be by and in the name of the commission through the proper  
 29 commission officials or agents. The commission ~~shall have the authority to~~  
 30 may sue and be sued in its name.

31 (3) The Department of Finance and Administration shall have no  
 32 authority to enforce or collect the tax levied ~~pursuant to this subchapter~~  
 33 under § 26-75-602.

34 (c) The levying city ~~is authorized to~~ may adopt ordinances consistent  
 35 with and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et  
 36 seq., to enable the commission or ~~its~~ the commission's agent to enforce the

1 tax levied under § 26-75-602 through examination of records, notices of  
 2 proposed and final assessment, and administrative hearings on proposed  
 3 assessments. The levying city is also authorized to adopt ordinances ~~which~~  
 4 that enable the commission to:

5 (1)(A) Assess penalties and interest against taxpayers who fail  
 6 to timely report or pay the tax levied under § 26-75-602.

7 (B) The penalty is equal to five percent (5%) of the  
 8 unpaid tax amount per month not to exceed a total assessment of thirty-five  
 9 percent (35%) of the unpaid tax.

10 (C) Simple interest on unpaid taxes shall be assessed at  
 11 the rate of ten percent (10%) per annum;

12 (2) Assess unpaid or unreported tax within three (3) years of  
 13 the date the tax is due;

14 (3) Provide ~~for~~ judicial relief from proposed assessments in  
 15 accordance with subsection (d) of this section; and

16 (4) Issue certificates of indebtedness in accordance with  
 17 subdivision (c)(3) of this section.

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

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

26 (B)(i) Filing with the commission a bond in double the  
 27 amount of the tax deficiency due ~~and by filing suit within thirty (30) days~~  
 28 ~~thereafter to stay the effect of the commission's determination.~~

29 (ii) The bond shall be subject to the condition that  
 30 the taxpayer shall file;

31 (a) File suit within thirty (30) days after  
 32 filing the bond, to stay the effect of the commission's determination; shall  
 33 faithfully

34 (b) Faithfully and diligently prosecute the  
 35 suit to a final determination, ~~and shall pay~~

36 (c) Pay any deficiency found by the court to

1 be due and any court costs assessed against the taxpayer.

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

6 (2) The ~~method~~ methods provided in this section ~~is~~ are the  
7 exclusive ~~method~~ methods for seeking relief from a written decision of the  
8 commission establishing a deficiency in tax. ~~No injunction shall issue~~ A  
9 court shall not issue an injunction to stay proceedings for assessment or  
10 collection of ~~this tax~~ the tax levied under § 26-75-602.

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

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

- 22 (A) The name of the delinquent taxpayer;
- 23 (B) The amount certified as being due;
- 24 (C) The name of the tax; and
- 25 (D) The date of entry upon the judgment docket.

26 (3) The entry of the certificate of indebtedness ~~shall have~~ has  
27 the same force and effect as the entry of a judgment rendered by the circuit  
28 court. ~~This entry shall constitute~~ The entry of the certificate of  
29 indebtedness constitutes the commission's lien upon the title of any real and  
30 personal property of the taxpayer in the county ~~where in which~~ where in which the  
31 certificate of indebtedness is recorded.

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

1 afterward.

2 (5) The commission ~~shall have~~ has all remedies and may take all  
3 proceedings for the collection of the tax ~~which~~ levied under § 26-75-602 that  
4 may be taken for the recovery of a judgment at law.

5 (f) ~~The provisions of subsections~~ Subsections (d) and (e) of this  
6 section ~~shall be~~ are effective only when the levying city adopts and the  
7 voters approve an ordinance ~~which~~ under § 26-75-602 that specifically  
8 provides that ~~these provisions shall be utilized by the commission~~ the  
9 commission shall utilize subsections (d) and (e) of this section in enforcing  
10 the tax levied under § 26-75-602.