

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/17/15

A Bill

HOUSE BILL 1890

5 By: Representative Davis
6 By: Senator Rapert
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE TAXES APPLICABLE TO CERTAIN
10 FOOD PRODUCTS; TO AMEND THE COLLECTION PROCEDURE FOR
11 TAXES RELATED TO CERTAIN FOOD PRODUCTS; TO CLARIFY
12 THE TAX TREATMENT OF CERTAIN FOOD PRODUCTS; AND FOR
13 OTHER PURPOSES.
14
15

Subtitle

16
17 TO CLARIFY THE TAX TREATMENT OF CERTAIN
18 FOOD PRODUCTS; AND TO AMEND THE
19 COLLECTION PROCEDURE FOR TAXES RELATED TO
20 CERTAIN FOOD PRODUCTS.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 26-75-602(c)(2), concerning the advertising
26 and promotion tax levied by municipal governments, is amended to read as
27 follows:

28 (2) The portion of the gross receipts or gross proceeds received
29 by restaurants, cafes, cafeterias, delicatessens, drive-in restaurants,
30 carry-out restaurants, concession stands, convenience stores, grocery store-
31 restaurants, or similar businesses as shall be defined in the levying
32 ordinance from the sale of prepared food and beverages for on-premises or
33 off-premises consumption, but such tax shall not apply to such gross receipts
34 or gross proceeds of organizations qualified under 26 U.S.C. § 501(c)(3) or
35 to the gross receipts or gross proceeds received by a bakery from the sale of
36 baked goods sold for off-premises consumption.



1
2 SECTION 2. Arkansas Code § 26-75-603 is amended to read as follows:

3 26-75-603. Certification and Collection ~~collection~~ of tax.

4 ~~(a) From the effective date of the levying ordinance, the tax so levied~~
5 ~~shall be paid by the persons, firms, and corporations liable therefor and~~
6 ~~shall be collected by the advertising and promotion commission of the levying~~
7 ~~city or by a designated agent of the commission in the same manner and at the~~
8 ~~same time as the tax levied by the Arkansas Gross Receipts Act of 1941, § 26-~~
9 ~~52-101 et seq.~~

10 ~~(b)(1) The person paying the tax shall report and remit it upon forms~~
11 ~~provided by the commission and as directed by the commission. The rules,~~
12 ~~regulations, forms of notice, assessment procedures, and the enforcement and~~
13 ~~collection of the tax under the Arkansas Gross Receipts Act of 1941, § 26-52-~~
14 ~~101 et seq. and the Arkansas Tax Procedure Act, § 26-18-101 et seq., so far~~
15 ~~as practicable shall be applicable with respect to the enforcement and~~
16 ~~collection of the tax levied pursuant to the authority of this subchapter.~~

17 ~~(2) However, the administration and enforcement and all actions~~
18 ~~shall be by and in the name of the commission through the proper commission~~
19 ~~officials or agents. The commission shall have the authority to sue and be~~
20 ~~sued in its name.~~

21 ~~(3) The Department of Finance and Administration shall have no~~
22 ~~authority to enforce or collect the tax levied pursuant to this subchapter.~~

23 ~~(c) The levying city is authorized to adopt ordinances consistent with~~
24 ~~and in similar form to the Arkansas Tax Procedure Act, § 26-18-101 et seq.,~~
25 ~~to enable the commission or its agent to enforce the tax through examination~~
26 ~~of records, notices of proposed and final assessment, and administrative~~
27 ~~hearings on proposed assessments. The levying city is also authorized to~~
28 ~~adopt ordinances which enable the commission to:~~

29 ~~(1) Assess penalties and interest against taxpayers who fail to~~
30 ~~timely report or pay the tax. The penalty is equal to five percent (5%) of~~
31 ~~the unpaid tax amount per month not to exceed a total assessment of thirty-~~
32 ~~five percent (35%) of the unpaid tax. Simple interest on unpaid taxes shall~~
33 ~~be assessed at the rate of ten percent (10%) per annum;~~

34 ~~(2) Assess unpaid or unreported tax within three (3) years of the~~
35 ~~date the tax is due;~~

36 ~~(3) Provide for judicial relief from proposed assessments in~~

1 ~~accordance with subsection (d) of this section; and~~

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

4 ~~(d)(1) Within thirty (30) days of the issuance of the notice and demand~~
5 ~~for payment of a deficiency in tax established by a final determination of~~
6 ~~the hearing officer, a taxpayer may seek judicial relief from the final~~
7 ~~determination by either:~~

8 ~~(A) Paying under protest the amount of the deficiency, plus~~
9 ~~penalty and interest determined by the commission to be due, and filing a~~
10 ~~suit to recover that amount within one (1) year from the date of payment~~
11 ~~under protest; or~~

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

15 ~~(ii) The bond shall be subject to the condition that~~
16 ~~the taxpayer shall file suit within thirty (30) days after filing the bond,~~
17 ~~shall faithfully and diligently prosecute the suit to a final determination,~~
18 ~~and shall pay any deficiency found by the court to be due and any court costs~~
19 ~~assessed against the taxpayer.~~

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

24 ~~(2) The method provided in this section is the exclusive method~~
25 ~~for seeking relief from a written decision of the commission establishing a~~
26 ~~deficiency in tax. No injunction shall issue to stay proceedings for~~
27 ~~assessment or collection of this tax.~~

28 ~~(e)(1) If a taxpayer does not timely and properly pursue the taxpayer's~~
29 ~~remedies seeking relief from a decision of the commission and a final~~
30 ~~assessment is made against the taxpayer, or if the taxpayer fails to pay the~~
31 ~~deficiency assessed upon notice and demand, then the commission as soon as~~
32 ~~practicable thereafter shall issue to the circuit clerk of the county where~~
33 ~~the taxpayer's business is located a certificate of indebtedness certifying~~
34 ~~that the person named therein is indebted to the commission for the amount of~~
35 ~~the tax established by the commission as due.~~

36 ~~(2) The circuit clerk shall enter immediately upon the circuit~~

1 ~~court judgment docket;~~

2 ~~(A) The name of the delinquent taxpayer;~~

3 ~~(B) The amount certified as being due;~~

4 ~~(C) The name of the tax; and~~

5 ~~(D) The date of entry upon the judgment docket.~~

6 ~~(3) The entry of the certificate of indebtedness shall have the~~
7 ~~same force and effect as the entry of a judgment rendered by the circuit~~
8 ~~court. This entry shall constitute the commission's lien upon the title of~~
9 ~~any real and personal property of the taxpayer in the county where the~~
10 ~~certificate of indebtedness is recorded.~~

11 ~~(4) The certificate of indebtedness authorized by this subsection~~
12 ~~shall continue in force for ten (10) years from the date of recording and~~
13 ~~shall automatically expire after the ten-year period has run. Actions on the~~
14 ~~lien on the certificate of indebtedness shall be commenced within ten (10)~~
15 ~~years after the date of recording of the certificate, and not afterward.~~

16 ~~(5) The commission shall have all remedies and may take all~~
17 ~~proceedings for the collection of the tax which may be taken for the recovery~~
18 ~~of a judgment at law.~~

19 ~~(f) The provisions of subsections (d) and (e) of this section shall be~~
20 ~~effective only when the levying city adopts an ordinance which specifically~~
21 ~~provides that these provisions shall be utilized by the commission in~~
22 ~~enforcing the tax.~~

23 (a) When the levy of a tax has been approved under this subchapter,
24 the governing body of the city levying the tax shall certify to the Director
25 of the Department of Finance and Administration that the tax has become
26 operative and shall furnish to the director the rate of the tax, including
27 any limitations on the tax, and the date on which the tax is effective.

28 (b) The director shall collect the tax levied under this subchapter
29 concurrently with and in the same manner as taxes collected under the
30 Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the Arkansas
31 Compensating Tax Act of 1949, § 26-53-101 et seq.

32 (c) The director shall collect a tax levied under this subchapter for
33 the benefit of the city levying the tax and shall be deposited into the Local
34 Sales and Use Tax Trust Fund for distribution back to the city.

35 (d) A taxpayer authorized and required to collect a tax levied under
36 this subchapter has the same protections and responsibilities afforded to and

1 required of entities required to collect taxes under § 26-75-501 et seq.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/Davis